No. 22-1218

IN THE

# Supreme Court of the United States

WENDY SMITH, ET AL.,

*Petitioners,*

v.

KEITH SPIZZIRRI, ET AL.,

*Respondents.*

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

## BRIEF FOR RESPONDENTS


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## QUESTION PRESENTED

Section 3 of the Federal Arbitration Act (FAA) provides that where a plaintiff files suit "upon any issue referable to arbitration," a district court "shall on application of one of the parties stay the trial of the action."

The question presented is whether § 3 permits district courts to stay, that is stop, the trial of the action by dismissing a case without prejudice where all claims in the case are subject to binding arbitration under the explicit terms of the parties' agreement.

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## INTRODUCTION

If ever there were a lawsuit that should not sit indefinitely on the docket of a federal court, this is it. Both parties agreed to resolve claims through "binding arbitration instead of filing a lawsuit in court." J.A. 16, 36, 56. Petitioners explicitly conceded that their entire dispute must be arbitrated, and they agreed to stop litigating in court. Petitioners concede that ordinarily a court confronting this situation would have the "default choice" to "stay or dismiss." Pet. Br. 23. Yet, Petitioners maintain that Congress categorically, with no exceptions, stripped district courts of their traditional authority to dismiss arbitrable claims when appropriate without saying a word about dismissals at all.

Petitioners do not acknowledge that this Court will not interpretate a statute to intrude on a court's traditional authority unless Congress communicated that intention in the clearest of terms. Far from satisfying that standard, the text, structure, and purpose of § 3 of the FAA point strongly in the other direction.

The text says only that when a case in court contains arbitrable claims, courts "shall on application of one of the parties *stay* the trial … until such arbitration has been had." 9 U.S.C. § 3 (emphasis added). As dictionaries and cases from the time of the FAA's enactment confirm, all that means is that the court must *stop* the litigation, not that a court must maintain jurisdiction when the case is pointlessly occupying a place on the docket. By contrast, when Congress wanted to require courts to retain jurisdiction under the FAA, it did so explicitly, requiring that courts

"retain jurisdiction" pending arbitration for certain admiralty cases. 9 U.S.C. § 8. Reading § 3 this way fully realizes Congress's objective of promoting arbitration by preventing courts from allowing parties to continue litigating in court in parallel with ongoing arbitration, without intruding on courts' traditional powers.

Petitioners offer not the slightest indication that Congress wanted to promote arbitration with a radical rule stripping courts of their traditional authority to dismiss cases. To justify their reading, Petitioners invoke structural arguments that both defy this Court's precedents and turn the FAA upside down. Petitioners' dominant theme is that Congress enacted § 3 to preserve a federal forum for any relief relating to an arbitration. But this Court has said the opposite: Congress declined to "provide federal courts with comprehensive control over the arbitration process," *Badgerow v. Walters*, 596 U.S. 1, 16 (2022), and left "enforcement of the Act … in large part to the state courts," *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 25 n.32 (1983).

Petitioners also argue that in § 16 "Congress … expressly barr[ed] immediate appeals of orders granting arbitration," so that permitting dismissals under § 3 would create a loophole Congress did not intend. Pet. Br. 8. But this Court has already rejected that argument too. Section 16 prohibits an "interlocutory" appeal for such orders (while preferentially granting one for orders denying arbitration). As this Court has held, this provision shows only that Congress intended to stop *interlocutory* appeals while "preserv[ing] immediate appeal of any '*final* decision

with respect to an arbitration,'" like the decision here. *Green Tree Fin. Corp.-Alabama v. Randolph*, 531 U.S. 79, 86 (2000) (emphasis added).

Finally, Petitioners acknowledge that under the FAA "[p]arties are supposed to *exit court* and enter arbitration 'as quickly and easily as possible.'" Pet. Br. 22 (citation omitted; emphasis added). Yet their reading of § 3 will encourage plaintiffs to *enter court* before arbitration—to secure a place on a federal docket—and then force parties to remain in court, in perpetuity. Parties will need to wastefully pay lawyers to appear in two forums at once. And courts will need to devote scarce resources to maintaining cases in which the court may never even be asked to rule again. Congress did not mandate such waste—especially as a reward for filing a lawsuit Petitioners should never have filed.

This Court should affirm.

## STATEMENT OF THE CASE

### *Before The FAA, Courts Frustrate Arbitration By Adjudicating Arbitrable Disputes*

Arbitration in the United States evolved alongside English common law practice. *See Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 24 (1991). Before the FAA, many courts were hostile to arbitration. When a party to an arbitration agreement sought judicial assistance to enforce a promise to arbitrate, those courts "declined to compel specific performance, or to stay proceedings on the original cause of action." *Red Cross Line v. Atl. Fruit Co.*, 264 U.S.

109, 121 (1924) (citation omitted). In doing so, they left parties free to disregard their arbitration obligation and proceed instead in court.

Early attempts to solve the problem achieved mixed success. In England, Parliament enacted the Common Law Procedure Act of 1854, and then the Arbitration Act of 1889, "to give the parties, who should agree that their differences should be referred to arbitration, the full benefit of such a reference." *Russell v. Pellegrini* (1856) 119 Eng. Rep. 1144, 1146 (Eng.). Those statutes permitted courts to halt litigation pending arbitration. They provided that courts "*may* make an order staying the proceedings." Arbitration Act of 1889, § 4 (emphasis added); Common Law Procedure Act of 1854, § 11 ("it shall be lawful for the Court … to make a Rule or Order staying all Proceedings" brought in court by a party to an arbitration agreement). And some did so. *See, e.g.*, *Scott v. Avery* (1856) 5 H.L.Cas. 811, 851-56 (Eng.).

But the permissive "may" did not *require* courts to put a stop to ongoing litigation pending arbitration. And thus some judges continued to allow arbitrable claims to be resolved in court. *See, e.g.*, *Davis v. Starr* (1889) 41 Ch. D. 242, 246-47 (Eng.); *Randell, Saunders, & Co. v. Thompson* (1876) 1 Q.B.D. 748, 756-59 (Eng.).

In the United States, where courts drew heavily from English common law authorities, the same pattern emerged. Some courts would respect arbitration agreements, but others would not. *See Red Cross Line*, 264 U.S. at 121; Julius Henry Cohen, *Commercial*

*Arbitration and the Law* 242-53 (1918) (describing early American practice).

### *Congress Enacts The FAA To Ensure Arbitrable Disputes Are Arbitrated*

In 1925, Congress enacted the FAA to "overcome courts' refusals to enforce agreements to arbitrate." *Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265, 270 (1995). It did so with a substantive rule enshrining into law the validity of arbitration agreements, and two enforcement mechanisms mandating the relief that some courts had previously refused to provide.

Section 2 provides the rule. All written arbitration agreements are "valid, irrevocable, and enforceable" on the same terms as all contracts. 9 U.S.C. § 2. This provision "creates substantive federal law regarding the enforceability of arbitration agreements, requiring courts 'to place such agreements upon the same footing as other contracts.'" *Arthur Andersen LLP v. Carlisle*, 556 U.S. 624, 629-30 (2009) (quoting *Volt Info. Scis., Inc. v. Bd. of Trs. of Leland Stanford Junior Univ.*, 489 U.S. 468, 478 (1989)).

Sections 3 and 4 give that command teeth by creating "two parallel devices for enforcing an arbitration agreement." *Moses H. Cone*, 460 U.S. at 22. Section 3 departed from the English arbitration statutes' permissive approach to the cessation of litigation. Congress *mandated* that, upon referring a case to agreed-upon arbitration, "the court … 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." 9 U.S.C. § 3.

Section 4 put an end to courts' refusal to order specific performance and compel arbitration. Congress again *mandated* that if a party petitions a court to compel arbitration, "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." 9 U.S.C. § 4. And it provided expansive jurisdiction for federal courts to compel arbitration by granting a district court jurisdiction over applications to compel arbitration if the court would have jurisdiction over the merits of the underlying dispute. *Badgerow*, 596 U.S. at 4-5. In other words, the federal court "look[s] through" the petition to the federal nature of the merits of the underlying controversy, "even though that controversy is not before the court." *Id.* (discussing *Vaden v. Discover Bank*, 556 U.S. 49, 62 (2009)).

Sections 9, 10, and 11 of the FAA, in turn, provide procedures for petitioning a court to confirm, vacate, or modify the result of an arbitration. But while Congress provided for broad federal jurisdiction to ensure that any arbitrable disputes within the jurisdiction of federal courts would be arbitrated, it declined to "provide federal courts with comprehensive control over the arbitration process." *Badgerow*, 596 U.S. at 16.

Rather, Congress left "enforcement of the Act … in large part to the state courts." *Moses H. Cone*, 460 U.S. at 25 n.32; *see Vaden*, 556 U.S. at 59; *Hall St. Assocs., L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 582

(2008). In contrast to the look-through jurisdiction that it provided in § 4, Congress limited jurisdiction over post-arbitration petitions under §§ 9-11 to instances where a court has an "independent … basis" for federal subject-matter jurisdiction over "the application itself." *Badgerow*, 596 U.S. at 9. Congress thus intended for applications to confirm or vacate arbitration awards under §§ 9 and 10 to "go to state, rather than federal, courts when they raise claims between non-diverse parties involving state law." *Id.* at 18.

### *Petitioners File Suit In Court, Even Though They Concede They Agreed To Arbitrate All Claims*

Petitioners are "current and former delivery drivers" for an on-demand delivery service operated by Respondents. Pet. App. 3a. They signed contracts specifying they were "agree[ing] to resolve any justiciable disputes" with Respondents "exclusively through final and binding arbitration instead of filing a lawsuit in court." J.A. 16 (Martinez contract); J.A. 36 (Smith contract); J.A. 56 (Turner contract).

The arbitration agreements were comprehensive in scope. They provided that they "shall apply to any and all claims arising out of or relating to this Contract, the Owner/Operator's provision of services to Customers, the payments received by Owner/Operator's provision of services to Customers, the payments received by Owner/Operator for providing services to Customers, the termination of this Contract, and all other aspects of the Owner/Operator's relationship with Broker, past or present, whether arising under federal, state or local statutory and/or common law." J.A. 16, 36, 56.

Eventually the drivers had an employment dispute with Respondents. Yet despite having agreed to resolve any justiciable disputes "through final and binding arbitration instead of filing a lawsuit in court," J.A. 16, 36, 56, Petitioners filed suit in Arizona state court, alleging violations of federal and state law, J.A. 61-86 (Complaint).

Petitioners have never justified their decision to sue in court rather than honor their arbitration agreements. They do not contend that they or their lawyers were unaware of their arbitration agreements. Nor that they had any theory on which the expansive arbitration agreements did not reach their dispute.

To the contrary, after Respondents removed the case to federal court and then moved to compel arbitration, Pet. App. 3a; J.A. 87-90 (Motion to Compel), Petitioners "agree[d] that this action is subject to arbitration." J.A. 92. Before the Ninth Circuit, they again acknowledged their claims were all "subject to agreements to arbitrate disputes." Appellants' Opening Br., *Smith v. Spizzirri*, No. 22-16051, 2022 WL 4537940, at *3-4 (9th Cir. Sept. 20, 2022). And in their cert. petition, they once more "conceded that the claims were indeed arbitrable." Pet. 4.

Nevertheless, Petitioners opposed Respondents' request that the district court dismiss the lawsuit that Petitioners had promised not to file. They urged the court to "stay, not dismiss" the action. J.A. 92. Petitioners offered two hypothetical reasons to keep their lawsuit in court pending the parties' agreed-upon arbitration. Each sought to justify an indefinite parking space on the federal court's docket so as to

have the district court on standby for a contingent future event. First, Petitioners argued that they wanted a stay to retain, if and as needed, an eventual federal "forum in which they can seek to have the arbitration award reviewed and confirmed." J.A. 97. Second, they argued that they wanted a stay so they could have a federal court on standby in which to potentially litigate their claims, if the arbitration fell through at some undetermined point in the future. J.A. 98.

### *The District Court Compels Arbitration And Dismisses The Case Without Prejudice, And The Ninth Circuit Affirms*

The district court granted Respondents' motion to compel arbitration and dismissed Petitioners' action without prejudice. Pet. App. 9a. In doing so, the court rejected Petitioners' position that the FAA required the court to keep the action parked on its docket to be ready to address their hypothetical future contingencies. The court explained that the fact that it might in the future be asked "to confirm an award does not weigh in favor of staying the action as the parties remain free to bring an action for confirmation under 9 U.S.C. § 9 even if the action is dismissed." Pet. App. 11a. If an application to confirm an arbitral award were actually filed, the court explained that at that point "it will consider such an action under the applicable statutory standards," but only, of course, if it "has jurisdiction" to do so under *Badgerow*. *Id.*

The Ninth Circuit unanimously affirmed. Pet. App. 1a-7a. It relied on longstanding Ninth Circuit precedent "establish[ing] that district courts may dismiss suits when, as here, all claims are subject to

arbitration." Pet. App. 2a, 5a (relying on *Johnmohammadi v. Bloomindale's, Inc.,* 755 F.3d 1072, 1074 (9th Cir. 2014); *Thinket Ink Info. Res., Inc. v. Sun Microsystems, Inc.*, 368 F.3d 1053, 1060 (9th Cir. 2004); *Sparling v. Hoffman Constr. Co.*, 864 F.2d 635, 638 (9th Cir. 1988); *Martin Marietta Aluminum, Inc. v. Gen. Elec. Co.*, 586 F.2d 143, 147 (9th Cir. 1978)). Two judges on the panel filed a separate concurrence expressing the view that, despite Ninth Circuit precedent, "the plain text of the FAA appears to mandate a stay." Pet. App. 8a.

## SUMMARY OF THE ARGUMENT

**A.** Section 3 of the FAA provides that "the court … shall on application of one of the parties stay the trial of the action." Nothing in that plain statutory text prohibits a district court from dismissing a case without prejudice after concluding every claim in the case must be arbitrated and nothing remains for the court to do. That is for two reasons—one general, and the other specific to the circumstances of this case where both sides agree that all claims must be arbitrated.

When § 3 requires a court to "*stay* the trial of the action," it means only that the court must stop in-court litigation. A court stops litigation and fulfills that command when it dismisses without retaining jurisdiction. Lead definitions of stay from when Congress enacted the FAA include "stopping," "arresting a judicial proceeding," and "to restrain." And dictionaries even defined "stay" to include "a total discontinuance of the action," akin to a dismissal.

Petitioners incorrectly assume that "stay" must mean "keep a case on the court's docket." That is not the meaning of stay Congress intended. When Congress in the FAA wanted to require courts to "retain jurisdiction," it said so expressly, as it did in § 8.

The understanding of "stay" that permits dismissals also reflects the prevailing understanding of courts' powers to halt litigation for arbitration when Congress adopted the FAA. Courts in both the United States and the United Kingdom recognized that, where all claims in a case are subject to an agreement to arbitrate, dismissing an action was a permissible way to stop parallel in-court litigation to allow arbitration to proceed.

The narrower textual argument applies to the smaller category of cases where, as here, the parties *agree* that all claims in the case are subject to arbitration and no party is asking the court to try anything. In that situation § 3 simply does not apply because no party is seeking a "trial of the action," so there is no "trial of the action" to stay.

**B.** Any doubt about § 3's meaning must be resolved in favor of courts' discretion to dismiss. District courts have the traditional, inherent power to manage their dockets and dismiss cases, where appropriate. And this Court will not conclude that Congress intended to countermand such inherent power absent the clearest of statements.

Petitioners do not dispute that their interpretation of § 3 would negate inherent powers of the district courts. Indeed, they agree that absent § 3, courts

would have the "default choice (stay or dismiss)." Pet. Br. 23. Petitioners cannot establish a clear congressional intent to support their interpretation when the interpretation that respects courts' inherent powers gives meaning to every word in the statute and aligns with Congress's purpose of ensuring that courts stop parallel litigation to allow arbitration to proceed, and when Congress expressly required courts to retain jurisdiction in FAA § 8 but not in § 3.

**C.** Reading § 3 to require courts to retain jurisdiction over a case containing wholly arbitrable claims after stopping those claims from proceeding also makes no sense in the context of the broader statutory scheme.

This Court has repeatedly explained that Congress enacted the FAA to "overcome courts' refusals to enforce agreements to arbitrate." *Allied-Bruce*, 513 U.S. at 270. Specifically, with § 3, Congress put an end to the judicial resistance to arbitration by *requiring* courts to stop litigation with respect to claims that are subject to mandatory arbitration. Our interpretation of § 3 maps perfectly onto that clear purpose. In contrast, there is no evidence that Congress was worried that courts were stopping litigation by dismissing cases upon concluding all the claims were arbitrable.

Permitting dismissal when a case contains only arbitrable claims also respects the FAA's division of labor between state and federal courts and the FAA's jurisdictional limits. This Court has repeatedly recognized that, in enacting the FAA, Congress left "enforcement of the Act … in large part to the state courts." *Moses H. Cone*, 460 U.S. at 25 n.32. It has

stressed that the FAA reflects a "normal—and sensible—judicial division of labor" between state and federal courts. *Badgerow*, 596 U.S. at 18. In particular, Congress intended that applications to confirm or vacate arbitral awards under §§ 9 and 10 "go to state, rather than federal, courts when they raise claims between non-diverse parties involving state law." *Id.*

Petitioners turn that careful balance on its head by reasserting the argument this Court rejected in *Badgerow*—that Congress "explicit[ly] reserv[ed] … a federal forum" "to enforce the FAA's other procedural" provisions. Pet. Br. 20-21. Given the FAA's orientation *against* federal jurisdiction, it makes no sense to urge that Congress intended to *mandate* a backdoor to a federal forum for enforcing the FAA's procedural provisions, so long as a plaintiff files an unnecessary lawsuit.

A rule requiring courts to retain jurisdiction also does not square with the fact that parties to an arbitration may never return to the federal court that stays proceedings under § 3. They might settle the matter and have no reason to return to court, or elect to return to a different venue if they do go to court. It makes no sense to posit that a Congress that granted parties flexibility concerning whether to return to court and which court to return to would nonetheless require the original court that stays proceedings to retain jurisdiction throughout the arbitration.

Petitioners advance another structural argument this Court has already rejected. They contend that FAA § 16(b) reflects a congressional imperative never to allow an appeal of an order to arbitrate until after

the arbitration has concluded. Section 16(b) provides that "[e]xcept as otherwise provided in [28 U.S.C.] section 1292(b) …, an appeal may not be taken from an interlocutory order … granting a stay of any action under section 3." 9 U.S.C. § 16(b). Petitioners ignore that Congress enacted § 16 more than 60 years after § 3. And the original practice was that orders halting court proceedings under § 3 *were* usually appealable as interlocutory appeals. So insofar as appellate practice is relevant, it cuts against Petitioners. Congress did not somehow effect a "sub silentio" amendment to § 3's text through an entirely different and separate provision.

Petitioners also misread § 16(b). They say § 16 "expressly bar[s] immediate appeals of orders granting arbitration." Pet. Br. 8. But this Court has rejected Petitioners' effort to extend § 16 beyond its interlocutory focus. In *Green Tree*, this Court explained that § 16(a)(3) "preserves immediate appeal of any '*final decision* with respect to an arbitration,' *regardless of whether the decision is favorable or hostile to arbitration*." 531 U.S. at 86 (emphasis added).

Finally, discretion to dismiss promotes the FAA's underlying objective to foster efficient dispute resolution. Congress intended for parties who have agreed to arbitration to proceed to an arbitral forum "as quickly and easily as possible." *Id.* at 85. In defiance of these objectives, Petitioners' rule incentivizes plaintiffs to impose additional time, cost, and complexity on the process by bringing suit in court first rather than proceeding directly to arbitration.

## ARGUMENT

### DISTRICT COURTS MAY DISMISS CASES AFTER COMPELLING ARBITRATION

#### A. The Plain Text Of The FAA Does Not Deprive Courts Of Their Authority To Dismiss Cases Without Prejudice.

Section 3 of the FAA provides in relevant part that:

> the court … 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.

9 U.S.C. § 3. That plain text supports the district court's decision to dismiss without prejudice on either of two grounds—one general and the other more specific. As a general matter, when § 3 requires a court to "*stay* the trial of the action," it means only that the court must stop parallel in-court litigation, which a court may achieve by dismissing without retaining jurisdiction. § A.1. More specifically, § 3 does not require a stay in a case like this one, where the parties agree that all claims must be arbitrated and there is no "*trial* of the action" to stay. § A.2.

### 1. Section 3's plain text requires courts to stop litigation in favor of arbitration, without requiring them to retain jurisdiction.

**a.** Petitioners argue at length that "shall" signals a "mandatory" command that "permits no discretion." Pet. Br. 10-13. But they gloss over an ambiguity in *what* § 3 mandates: "*stay* the trial of the action." Consistent with § 3's purpose of requiring courts to stop litigation to allow arbitration to proceed, *supra* 3-7, "stay the trial" requires courts to stop litigation from proceeding, without prescribing exactly how and without mandating that the court retain jurisdiction.

A lead definition of "stay" when Congress enacted § 3 was simply "[a] stopping" or an "act of arresting a judicial proceeding." Black's Law Dictionary 1109 (2d ed. 1910); *see Stay*, Webster's International Dictionary 1407 (1890) ("4. To hold from proceeding; to withhold; to restrain; to stop ...."); *In re Schwarz*, 14 F. 787, 788 (S.D.N.Y. 1882) ("Although, in a certain technical sense, the term 'stay' may be said to apply to proceedings already commenced, yet its general meaning is 'to forbear to act;' 'to stop.'"). Current legal definitions also include "[t]he postponement *or halting* of a proceeding …." *Stay*, Black's Law Dictionary (11th ed. 2019) (emphasis added). Under this definition, the word "stay" does not preclude dismissal—a court that dismisses an action stops it from continuing.

Indeed, legal dictionaries back then even defined "stay" to mean dismiss. As one dictionary explained: "In English practice," from which the FAA arose, "'stay of proceedings' also sometimes means a total

discontinuance of the action …. Before decree or judgment the proper way of disposing of an action is either by discontinuance (*q. v.*) or by an order dismissing the action." *Stay* § 2, A Dictionary of American and English Law with Definitions of the Technical Terms of the Canon and Civil Laws 1221 (1888); *see Stay*, A Dictionary of English Law 840 (1923) (similar). As one court put it: "Two views may be taken of the nature of a stay; first, that it is a discontinuance … ; and secondly, that it … may be removed if proper grounds are shewn." *Selig v. Lion* (1891) 1 Q.B. 513, 515 (Eng.).

This understanding of a stay as permitting dismissal is consistent with modern practice in other contexts. The primary jurisdiction doctrine, for example, requires courts to "stay[] further proceedings so as to give the parties reasonable opportunity to seek an administrative ruling" that is a condition precedent to the suit. *Reiter v. Cooper*, 507 U.S. 258, 268 (1993). This Court has recognized that to achieve the required "stay[] [of] further proceedings," a court "has discretion either to retain jurisdiction or, if the parties would not be unfairly disadvantaged, to dismiss the case without prejudice." *Id.* at 268-69. Similarly, by statute, a bankruptcy petition "operates as a stay" of any "action or proceeding against the debtor." 11 U.S.C. § 362(a)(1). Federal Circuit rules permit "[a]n appeal stayed in accordance with the bankruptcy [automatic] stay … [to] be dismissed by the clerk of court without prejudice to the appellant reinstating the appeal." Fed. Cir. R. 47.10. In that circumstance, the dismissal is a form of "stay," in that the case does not proceed against the debtor. And courts may issue "permanent" or "irremovable" "stay[s]" that are a total bar to proceedings ever continuing. *See, e.g.*, *Selig*

*v. Lion*, 1 Q.B. at 515 (holding stayed proceedings could not be restarted); *State Farm Mut. Auto. Ins. Co. v. Diaz*, 223 A.D.3d 674, 675 (N.Y. App. Div. 2024) ("permanently stay[ing]" arbitration when claims not arbitrable).

Under the definition of "stay" that only requires stopping, § 3 does not speak to how a court must halt litigation, or what if anything a court must or can do after directing a cessation of the litigation. In some circumstances, like where some of the issues in a case must be arbitrated and others remain for adjudication in court, it is most sensible for a court to stop proceedings and retain jurisdiction to adjudicate the non-arbitrable claims after the arbitration "has been had." § 3. But where (as here) all claims in the case are subject to mandatory arbitration and there are no claims to be tried in court, there is nothing left for the district court to do after referring the matter to arbitration. In that scenario, nothing in § 3 prohibits a district court from stopping or "staying" the arbitrable claims from proceeding in court and then dismissing the case, without prejudice, in the sound exercise of its judicial discretion. Dismissing in this setting neither "depart[s] from the actual statutory text," nor entails a "judicially-created exception" from it. Pet. Br. 11.

Petitioners offer no definition of their own. But they evidently define "stay" to mean "stop proceedings" *and* also "retain jurisdiction and maintain the case on the court's docket, with no exceptions whatsoever." They maintain that the phrase "shall … stay" categorically overrides the courts' "inherent discretion" to dismiss. Pet. Br. 23. No doubt there are contexts in which one might use the word "stay" to mean

keeping a case on the docket without dismissing. But Petitioners cite nothing that establishes the word "stay" *always* forecloses dismissal or requires keeping a case on the court's docket without exception.

That is most certainly not what it means in the context of § 3. *See Davis v. Michigan Dep't of Treasury*, 489 U.S. 803, 809 (1989) (holding words "must be read in their context and with a view to their place in the overall statutory scheme"). When Congress in the FAA wanted to require courts to retain jurisdiction over a matter pending arbitration, it said so explicitly and did not leave courts and parties guessing about any implicit limitation in the word "stay." For admiralty proceedings begun by "libel and seizure of the vessel," Congress directed that "the court shall … have jurisdiction to direct the parties to proceed with the arbitration *and shall retain jurisdiction* to enter its decree upon the [arbitration] award." 9 U.S.C. § 8 (emphasis added).

By directing courts to retain jurisdiction only in that one specific circumstance, Congress indicated that it was not requiring courts to retain jurisdiction whenever they stay proceedings under § 3. "When Congress includes particular language in one section of a statute but omits it in another section of the same Act, [this Court] generally take[s] the choice to be deliberate." *Badgerow*, 596 U.S. at 11 (citation and quotation marks omitted); *Loughrin v. United States*, 573 U.S. 351, 358 (2014) (accord); *see Dep't of Homeland Sec. v. MacLean*, 574 U.S. 383, 391 (2015) ("[C]ongress generally acts intentionally when it uses particular language in one section of a statute but omits it in another."). Indeed, if § 3 required courts to retain

jurisdiction over a case whenever staying litigation for arbitration to proceed, then Congress would have had no need to specifically require courts to "retain jurisdiction" over certain maritime cases in § 8. Those courts would already be required to retain jurisdiction, and the § 8 language would be superfluous.

**b.** The understanding of "stay" that permits dismissals where appropriate also reflects the prevailing understanding of courts' powers to halt litigation for arbitration when Congress adopted the FAA.

Before Congress enacted the FAA, courts in both the United States and the United Kingdom recognized that, where all claims in a case are subject to an agreement to arbitrate, dismissing an action was a permissible way to stop parallel in-court litigation to allow arbitration to proceed. *Wilson v. Glasgow Tramways and Omnibus Company*, for example, explained that a judge confronted with an effort to try wholly arbitrable claims "may take several courses[:] He may dismiss the action, leaving the parties to go to their arbiter and come back again, if necessary, for execution or for powers, or he may remit to the arbitrator, or suspend proceedings …." (1878) 5 R. 981, 992 (Scot.). In another decision, two Lords observed, respectively, that "the more regular course [was] dismissing the action," and that dismissal was the "right" "course … if the record raise[s] directly a question falling within the terms of the clause of arbitration." *Caledonian Ry. Co. v. Greenock & Wemyss Bay Ry. Co.*, (1872) 10 M. 892, 895-96 (Scot.).

The New York Court of Appeals cited *Wilson* as illustrative when describing the operation of the New

York Arbitration Law, which had identical "stay the trial" language, and on which Congress modeled the FAA. *See Berkovitz v. Arbib & Houlberg, Inc.*, 230 N.Y. 261, 275 (1921); *Hall Street,* 552 U.S. at 589 n.7 (FAA modeled on New York Arbitration Law). And other New York courts at the time of the FAA's enactment likewise elected to "*decline jurisdiction* and stay proceedings" under the New York Arbitration Law. *Kelvin Eng'g Co. v. Blanco*, 125 Misc. 728, 734 (N.Y. Sup. Ct. 1925) (emphasis added).

**c.** Petitioners point out that "Congress did not merely say to stay the trial of the action—it said to impose that stay until the arbitration has concluded." Pet. Br. 13 (emphasis omitted). But specifying how long the court must forbear is not the same as requiring the court to keep the case on its docket for the duration of the arbitration. On both interpretations, the court will refrain from conducting any "trial of the action" for the duration of the arbitration. The durational language thus merely establishes that any remaining dispute between the parties may be litigated in court when the arbitration is over. By way of analogy, imagine a sports league suspends player Green for five games for fighting and directs, "The team shall keep Green from playing until the suspension has concluded." That is not an order to keep Green on the team during the suspension. The team is fully in compliance with the order if it releases Green before the five games are up.

### 2. At a minimum, § 3 by its plain terms does not apply where it is undisputed that all claims must be arbitrated.

The narrower textual argument applies to the smaller category of cases where, as here, the parties *agree* that all claims in the case are subject to arbitration and no party is asking the court to try anything. Section 3 has nothing to say about this scenario because § 3 requires a stay only with respect to "*the trial* of the action." 9 U.S.C. § 3 (emphasis added). When no party is seeking a trial of the action, there is nothing to stay under § 3.

This is not a case where a dispute will go to arbitration with one party still fighting to litigate its claims in court. Nor is this a case where some claims are subject to mandatory arbitration and others are not. All parties in this case acknowledge that the entire dispute is subject to binding arbitration under the plain terms of their agreements. J.A. 16, 36, 56. No one here is seeking a trial or any in-court adjudication of the merits of the underlying controversy. So § 3 simply does not require a court to do anything with respect to staying any trial proceedings where there are no such proceedings to stay. Therefore, whatever § 3 might contemplate about courts retaining jurisdiction in other circumstances, it does not constrain a court from dismissing a case where the stay provision does not apply.

Petitioners' only answer to this point is that the § 3 analysis does not turn on whether the parties are *presently* seeking a trial, because "there is no way to know if *there will be a trial* until the arbitration has

concluded." Pet. Br. 13. Of course there is a "way to know" when a contract clearly requires arbitration and both parties agree that the claims must be arbitrated. In that scenario, the court can reasonably conclude there will be an arbitration and not a trial. Courts do not need to keep cases on their dockets based on rare and unlikely possibilities. And the possibility of rare occurrences does not overcome how the statutory language should be read in the broad category of cases represented by this scenario. Moreover, Petitioners' argument misses the point. When no one is presently seeking a trial, there is still no trial to stay even if it is hypothetically possible that one of the parties might attempt to seek a trial in the future (at which point § 3 could, hypothetically, require a stay if its conditions are then met).

This reading of § 3 also comports with the pre-FAA practice of courts that properly enforced arbitration agreements. For decades leading up to the passage of the FAA, when parties to litigation agreed to arbitrate their claims, the agreement operated to discontinue—i.e., dismiss—the litigation. By 1884, it was "well settled that mere submission to arbitration [was] a discontinuance of the suit" *regardless* of whether the arbitration actually occurred. *McNulty v. Solley*, 95 N.Y. 242, 244 (1884); *see Camp v. Root*, 18 Johns. 22, 23 (N.Y. Sup. Ct. 1820) ("The submission to arbitration [is] a discontinuance of the suit."); *Draghicevich v. Vulicevich*, 18 P. 406, 407 (Cal. 1888) ("[T]he submission of the cause to arbitrators operated as a discontinuance of the action, and … after such discontinuance the proceedings of the court were without jurisdiction."); *Travelers' Ins. Co. v. Pierce Engine Co.*, 123 N.W. 643, 645 (Wis. 1909) ("[A]n

agreement to submit to arbitration the matters involved in a pending action ipso facto dismisses that action.").[1] So Congress would have understood that where, as here, the parties have explicitly agreed not to litigate in court and instead to arbitrate all of their claims, the litigation could be dismissed.

### B. Petitioners' Reading Must Be Rejected Because Congress Provided No Clear Statement Stripping District Courts Of Their Inherent Authority To Dismiss Cases.

Any doubt about § 3's meaning must be resolved in favor of maintaining a court's traditional discretion to dismiss cases when appropriate. It is improper to conclude Congress abrogated such powers absent the clearest of statements, which Congress did not provide here.

**1.** "It has long been understood that '[c]ertain implied powers must necessarily result to our Courts of justice from the nature of their institution.'" *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991) (quoting *United States v. Hudson*, 11 U.S. (7 Cranch) 32, 34

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[1] *See also, e.g.*, *Radway v. Duffy*, 79 A.D. 116, 118-19 (N.Y. App. Div. 1903); *People ex rel. Martin v. Cnty. of Westchester*, 53 A.D. 339, 342 (N.Y. App. Div. 1900); *Niagara Falls & L.R. Co. v. Brundage*, 7 A.D. 445, 449 (N.Y. App. Div. 1896); *Claflin v. Meyer*, 75 N.Y. 260, 266 (1878); *Gunter v. Sanchez*, 1 Cal. 45, 47 (1850); *Heslep v. City of San Francisco*, 4 Cal. 1, 4 (1852); *Larkin v. Robbins*, 2 Wend. 505, 506 (N.Y. Sup. Ct. 1829); *Wells v. Lain*, 15 Wend. 99, 103 (N.Y. 1835); *Mooers v. Allen*, 35 Me. 276, 278 (1853); *Eddings v. Gillespie*, 59 Tenn. (12 Heisk.) 548, 550 (1873); *Jewell v. Blankenship*, 18 Tenn. (10 Yer.) 439, 440 (1837).

(1812)). These "inherent powers" "are 'governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases.'" *Dietz v. Bouldin*, 579 U.S. 40, 45 (2016) (quoting *Link v. Wabash R.R. Co.*, 370 U.S. 626, 630-31 (1962)). And they are fundamental to the orderly administration of justice.

One of those powers is "the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936); *see, e.g., Chambers*, 501 U.S. at 51 (misconduct); *Link*, 370 U.S. at 629-30 (failure to prosecute); *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 511-12 (1947) (forum non conveniens); *Far East Conf. v. United States*, 342 U.S. 570, 577 (1952) (parallel agency proceedings).

Dismissing a case containing only arbitrable claims is central to the courts' discretionary authority to manage their dockets, and to do so sensibly and economically. When the parties agree a case contains only arbitrable claims and the court sends the case to arbitration, there is no longer any active litigation between the parties, and the court might never be called upon to take any further action in the case.

This Court does "not lightly assume that Congress has intended to depart from established principles." *Chambers*, 501 U.S. at 47. "Congress 'is understood to legislate against a background of common-law … principles,'" including a court's inherent powers, and this Court operates "with the presumption that

Congress intended to retain the substance of the common law." *Samantar v. Yousuf*, 560 U.S. 305, 320 n.13 (2010) (quoting *Astoria Fed. Sav. & Loan Ass'n v. Solimino*, 501 U.S. 104, 108 (1991)). The "normal rule of statutory construction is that if Congress intends for legislation to change the interpretation of a judicially created concept, it makes that intent specific." *Midlantic Nat'l Bank v. New Jersey Dep't of Envt'l Protection*, 474 U.S. 494, 501 (1986) (citing *Edmonds v. Compagnie Generale Transatlantique*, 443 U.S. 256, 266-67 (1979)). This Court has thus rejected efforts to limit a court's inherent powers where Congress did not provide a "clear[] expression of purpose." *Link*, 370 U.S. at 631-32; *see Gulf Oil*, 330 U.S. at 511-12.

**2.** Petitioners do not dispute that their interpretation of § 3 would negate fundamental and inherent powers of the district courts. Pet. Br. 23. They even concede that courts generally have the "default choice (stay or dismiss)." *Id.* Yet they ignore the legal consequence of that concession, insisting that "any inherent powers are beside the point because Congress countermanded those powers by statute." Pet. Br. 23 (emphasis omitted). That is just a restatement of Petitioners' statutory reading. Petitioners cannot demonstrate that is the only plausible reading just by declaring it more emphatically. Pet. Br. 23.

For the reasons given, Petitioners' reading is far from the only plausible one. Our interpretation gives meaning to every word in the statute and aligns perfectly with Congress's purpose of ensuring that courts stop parallel litigation to allow arbitration to proceed. *Supra* 3-7; *infra* 28-29. In fact, Petitioners' interpretation is highly implausible. Petitioners read § 3 to

"categorically require[]" courts to keep cases in arbitration on their dockets "until such arbitration has been had." Pet. Br. 7, 13. It "permits no discretion" and "no exceptions." Pet. Br. 10, 12. That means courts lose the power, for example, to dismiss a case for failure to prosecute, *Link*, 370 U.S. at 631; to dismiss a case for the convenience of parties or witnesses when an alternative forum is available or when the parties have agreed on another forum, *Gulf Oil*, 330 U.S. at 511-12; and to dismiss a case because of parties' misconduct, *Chambers*, 501 U.S. at 51.

Petitioners' reading also strips a district court of the power to dismiss a case where the plaintiff persistently declines to provide status updates. Or lies to the court. Or if the arbitration has never "been had" and never will be had, whether because the case is moot or because the parties settled.

Nothing in FAA § 3 evidences the required clear congressional intent to establish that Congress considered and intended to override a court's inherent power, in its discretion, to dismiss a case where dismissal is otherwise appropriate. The absence of such a clear statement is especially stark in light of Congress's decision to direct courts to "retain jurisdiction" pending arbitration in § 8, but not in § 3.

### C. The FAA's Structure And Purposes Support District Courts' Discretion To Dismiss Cases Without Prejudice.

Reading § 3 to require courts to retain jurisdiction over a case containing wholly arbitrable claims after stopping those claims from proceeding also makes no

sense in the context of the broader statutory scheme. We have already discussed § 8, in which Congress expressly directed district courts to retain jurisdiction in certain admiralty cases in stark contrast to § 3's silence about retaining jurisdiction. *Supra* 19-20. Multiple other features of the statutory scheme demonstrate Congress through § 3 did not prohibit dismissals when appropriate. Permitting dismissals comports with Congress's stated purpose, furthers the FAA's carefully crafted division of labor between state and federal courts, aligns with the fact that parties to an arbitration may never return to court (much less federal court) at all, and, contrary to Petitioners' contentions, is fully consistent with FAA § 16's appellate review provisions.

### 1. Discretion to dismiss comports with Congress's specific purpose for enacting § 3.

Petitioners declare that "the entire reason that Congress would mandate a stay [was] to override th[e] inherent discretion" to dismiss. Pet. Br. 23. That was not even *a* reason for § 3, much less the *entire* reason. This Court has repeatedly explained that Congress enacted the FAA to "overcome courts' refusals to enforce agreements to arbitrate." *Allied-Bruce*, 513 U.S. at 270; *see* 9 U.S.C. § 2 (requiring courts to treat arbitration agreements as "valid, irrevocable, and enforceable"). Before the FAA, some courts refused to stop litigation in deference to arbitration. *See Red Cross Line*, 264 U.S. at 121. With § 3, Congress put an end to the judicial resistance to arbitration by *requiring* courts to stop the litigation on the merits when a plaintiff files suit in court with respect to claims that

are subject to mandatory arbitration. *See Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 218 (1985) ("[T]he 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."). Doing so effectively compels arbitration because "the plaintiff can never get relief unless he proceeds to arbitration." *The Anaconda v. Am. Sugar Ref. Co.*, 322 U.S. 42, 45 (1944).

In contrast, there is no evidence that Congress, or anyone else, was worried that some courts were stopping litigation by dismissing cases upon concluding all the claims were arbitrable. There is no indication that anyone thought the solution to the anti-arbitration bent of some courts was to park parallel cases on courts' dockets for the duration of an arbitration. "Put simply," that "was not the particular problem to which Congress was responding" when it enacted the FAA. *Turkiye Halk Bankasi A.S. v. United States*, 598 U.S. 264, 275 (2023) (quoting *Samantar*, 560 U.S. at 323 (declining to read statute more broadly than the problem Congress was addressing)).

### 2. Discretion to dismiss furthers Congress's division of labor between federal and state courts.

Permitting dismissal when a case contains only arbitrable claims respects the FAA's division of labor between state and federal courts and the FAA's jurisdictional limits. This Court has repeatedly recognized that, in enacting the FAA, Congress left "enforcement of the Act … in large part to the state courts." *Moses*

*H. Cone*, 460 U.S. at 25 n.32; *see Vaden*, 556 U.S. at 59; *Hall Street*, 552 U.S. at 582. In *Badgerow*, this Court stressed that the FAA reflects a "normal—and sensible—judicial division of labor" between state and federal courts. 596 U.S. at 18. In particular, Congress intended that applications to confirm or vacate arbitral awards under §§ 9 and 10 "go to state, rather than federal, courts when they raise claims between non-diverse parties involving state law." *Id.* After all, many litigants' attempts at invoking judicial authority under the FAA "concern[] the contractual rights provided in the arbitration agreement, generally governed by state law," and "adjudication of such state-law contractual rights … typically belongs in state courts." *Id.*

Congress achieved this balance by declining to provide freestanding federal jurisdiction to enforce the FAA's provisions. *See Badgerow*, 596 U.S. at 8 ("provisions … do not themselves support federal jurisdiction"); *see also, e.g.*, *Hall Street*, 552 U.S. at 581-82; *Vaden*, 556 U.S. at 59. Instead, "[a] federal court may entertain an action brought under the FAA only if the action has an 'independent jurisdictional basis.'" *Badgerow*, 596 U.S. at 8. For a motion to compel arbitration under § 4, Congress expressly provided that the independent jurisdictional basis could be supplied by the underlying merits of the action; this is called "look-through" jurisdiction. *Id.* at 4; *see supra* 7. But as this Court explained in *Badgerow*, Congress declined to provide "look-through" jurisdiction to make the underlying merits of the action a source of jurisdiction for other FAA provisions. *Id*. at 18-19.

Interpreting § 3 to permit discretion to dismiss when all claims in a case are subject to mandatory arbitration furthers Congress's design. Consistent with Congress's decision to provide "look-through" jurisdiction for federal courts to compel arbitration, a federal court may order arbitration by halting in-court litigation and directing the parties to an arbitral forum. Then, pursuant to Congress's design, the parties will go to state court to resolve post-arbitration disputes, absent diversity of citizenship or a federal question on the face of the FAA application. As Petitioners correctly observe, *Badgerow* understood the FAA as codifying a congressional intention that it should be "the rare dispute that can return to federal court merely to invoke the FAA's rights and protections." Pet. Br. 21.

Petitioners turn that careful balance on its head by asserting that § 3 "explicit[ly] reserv[ed] … a federal forum" "to enforce the FAA's other procedural" provisions. Pet. Br. 20-21 (citing 9 U.S.C. §§ 5, 7, 9-11). There is no way to square *Badgerow* with Petitioners' contention that § 3 *guarantees* a parking spot on a federal court's docket for every arbitration implicating federal claims, so as to permit the district court to exercise "supervisory authority" over the arbitration in the hypothetical event that a party at some future point wants to ask for such "oversight." Pet. Br. 8, 21-22.

Nor can Petitioners' position be reconciled with decades of this Court's precedent holding that Congress left "enforcement of the Act … in large part to the state courts" and intended post-arbitration disputes to "go to state, rather than federal, courts when they raise claims between non-diverse parties

involving state law." *Badgerow*, 596 U.S. at 18 (quoting *Moses H. Cone*, 460 U.S. at 25 n.32; and citing *Vaden*, 556 U.S. at 59; *Hall Street*, 552 U.S. at 582). The very notion that "a stay" to preserve federal jurisdiction "is effectively the only game in town," Pet. Br. 21, is at war with Congress making state courts the primary game in town. Under the FAA, the federal courts simply do not have the overarching "supervisory" or "oversight" role that Petitioners urge. Pet. Br. 21.

Given the FAA's orientation *against* federal jurisdiction, it makes no sense to urge that Congress intended to *mandate* a backdoor to a federal forum for enforcing the FAA's procedural provisions, so long as a plaintiff files an unnecessary lawsuit. It is even more implausible that Congress would offer that backdoor only to *plaintiffs* who disregard arbitration obligations and not *defendants* who comply with them (because defendants do not have control over filing suit). The FAA, after all, was intended to encourage arbitration, not to encourage unnecessary lawsuits. If Congress intended broadly to provide a federal forum to hear petitions under the FAA involving federal claims, it would simply have extended the look-through jurisdiction it provided in § 4 to the FAA's other provisions.[2]

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[2] Petitioners may argue that Congress needed to separately provide look-through jurisdiction under § 4 because § 4 petitions may be brought independent of an underlying federal action. But that cannot explain why Congress would adopt the roundabout § 3 path that requires parties to disregard their arbitration obligation to get into federal court instead of simply providing look-through jurisdiction for all FAA provisions.

Nor do Petitioners explain why Congress would have considered it important to guarantee a federal forum "to 'facilitate' the FAA's neighboring provisions" in §§ 5, 7, and 9-11 for every case. Pet. Br. 20 (citation omitted). Sections 5 and 7 allow parties to ask a court to "designate and appoint an arbitrator" and compel witnesses to appear. 9 U.S.C. §§ 5, 7. Those functions are not uniquely suited to federal courts.

Petitioners' position is also based on a legal premise that is false or at best highly questionable: that a federal court would have jurisdiction to grant relief under any of those provisions just because it issued a stay under § 3. Everyone agrees that a federal court would not have jurisdiction over a claim filed under any of those provisions without an "independent [federal] jurisdictional basis," *Badgerow*, 596 U.S. at 8, and that §§ 9-11 do not supply that basis. Just because a court had jurisdiction to issue a stay under § 3 does not mean that jurisdiction persists to cover motions under §§ 9-11 for which the court would not otherwise have jurisdiction. The Fourth Circuit recently held, citing *Badgerow*, that a district court does not necessarily retain jurisdiction on that basis. *See SmartSky Networks, LLC v. DAG Wireless, LTD.*, 93 F.4th 175, 178, 181-84 (4th Cir. 2024). If that view prevails, then it makes even less sense to mandate that a court keep a case on its docket where there is nothing left for the court to do and nothing that the court has jurisdiction to do.

Petitioners also argue that a guaranteed federal forum is necessary to protect plaintiffs' claims from possible statute of limitations problems that could

arise if the arbitration falls through and they have to return to court later. Pet. Br. 21-22. Petitioners identify no limitations issue in this case. Pet. Br. 3 n.1, 5 n.2 (abandoning all "case-specific" arguments). There will never be a limitations issue in those jurisdictions where the filing of an arbitration or lawsuit tolls by operation of statute or for equitable reasons any limitations period.[3] In any event, Petitioners' argument proves too much. On their view, every plaintiff should file a federal proceeding parallel to an arbitration to ensure a judicial "backstop" if the arbitration does not pan out, which Congress most certainly did not intend. *Supra* 29-31.

Nor would Congress have expected that statute of limitations concerns would categorically block district courts from dismissing cases where all claims are encompassed by an agreement to arbitrate disputes. A court is free to take limitations concerns into account, where such issues actually exist, in deciding whether to retain jurisdiction or to dismiss in the circumstances of a particular case. *See, e.g.*, *Stewart v. Acer Inc.*, No. 22-cv-04684, 2023 WL 1463413, at *1 (N.D. Cal. Feb. 1, 2023) (retention of jurisdiction may be "more appropriate than dismissal" when parties have identified a statute of limitations concern); *Green v. SuperShuttle Int'l, Inc.*, 653 F.3d 766, 770 (8th Cir. 2011) (finding in a § 3 case that the district court abused its discretion in dismissing an action, rather than staying it pending arbitration, because the

[3] *See, e.g.*, *Rowland v. Patterson*, 882 F.2d 97, 99 (4th Cir. 1989); *Galindo v. Stoody Co.*, 793 F.2d 1502, 1510-11 (9th Cir. 1986); *Fransden v. Bhd. of Ry., Airline & S.S. Clerks*, 782 F.2d 674, 681-84 (7th Cir. 1986).

statute of limitations "may run and bar" the plaintiffs from refiling their complaints).

Alternatively, a district court may, where appropriate and in its discretion, make a dismissal conditional on tolling the applicable limitations period pending arbitration, *see, e.g.*, *Hopkins & Carley, ALC v. Thomson Elite*, No. 10-cv-5806, 2011 WL 1327359, at *8 (N.D. Cal. Apr. 6, 2011), and/or on the parties' agreeing to toll the statute of limitations or waive any statute-of-limitations defense that may arise in a future suit, *see, e.g.*, *Ins. Co. of N. Am. v. ABB Power Generation, Inc.*, 925 F. Supp. 1053, 1057 (S.D.N.Y. 1996).

### 3. Discretion to dismiss avoids retaining cases on a court's docket that may never return to court.

A rule requiring courts to retain jurisdiction also does not square with the fact that parties to an arbitration may never return to the federal court that stays proceedings under § 3. This is so for several reasons. The parties might resolve the matter in arbitration and have no reason to return to court. Moreover, as contemplated by § 9, the parties' arbitration agreement in a particular case may not require "a judgment of the court … upon the award," in which case the parties might for that reason not return to court. And even when a party wants to confirm or contest an award, it might elect to go to a different court to do so. In § 9, Congress recognized that some parties would "specify the court" to confirm the award, and it rendered that choice binding. 9 U.S.C. § 9; *see Atl. Marine Constr. Co. v. U.S. Dist. Court for the W. Dist. of Tex.*,

571 U.S. 49, 63 (2013) ("valid forum-selection clause [should be] given controlling weight in all but the most exceptional cases"); *Cortez Byrd Chips, Inc. v. Bill Harbert Constr. Co.*, 529 U.S. 193, 200 (2000). And FAA §§ 10 and 11 provide venue to challenge awards "in and for the district wherein the award was made," which may well not be the same district that stayed proceedings. Congress did not say the parties must return to the court that stayed proceedings under § 3.

It makes no sense that a Congress that granted parties flexibility concerning whether to return to court and which court to return to would nonetheless require the original court that stays proceedings to retain jurisdiction throughout the arbitration. Doing so would infringe upon parties and courts alike, in derogation of the statute and the permissible scope of parties' agreements.

#### 4. Discretion to dismiss is consistent with § 16.

Petitioners' remaining structural argument is yet another argument this Court has already rejected. Petitioners contend that the FAA reflects a congressional imperative never to allow an appeal of an order to arbitrate until after the arbitration is over. Pet. Br. 19-20. Petitioners purport to see that imperative in § 16(b), which provides that "[e]xcept as otherwise provided in [28 U.S.C.] section 1292(b) …, an appeal may not be taken from an interlocutory order … granting a stay of any action under section 3." 9 U.S.C. § 16(b). But § 16 does not help Petitioners for two reasons.

As an initial matter, Petitioners ignore that Congress enacted § 16 in 1988—more than 60 years after § 3. *Compare* United States Arbitration Act, 43 Stat. 8838, 886, ch. 213, § 14 (original enactment of the FAA in 1925), *with* Access to Justice Act, 102 Stat. 4642, 4671 (subsequent and relevant amendment of the FAA in 1988, now codified at 9 U.S.C. § 16). Before 1988, orders halting court proceedings under § 3 *were* usually appealable as interlocutory appeals whether or not the court also dismissed the case. *See Shanferoke Coal & Supply Corp. v. Westchester Serv. Corp.*, 293 U.S. 449, 451-52 (1935). Thus, even assuming rules of appellate jurisdiction should inform § 3's meaning at all, the prior availability of appellate review over a decision to stop trial proceedings even when a court kept the case on its docket strongly cuts against Petitioners.

Congress's enactment of § 16 more than a half-century later did not somehow alter § 3's meaning. Congress would not have effected a "radical" and "sub silentio" amendment to § 3's text through an entirely different and separate provision governing the jurisdiction of the courts of appeals. *Dir. of Revenue of Missouri v. CoBank ACB,* 531 U.S. 316, 323-24 (2001). If Congress wanted to change the meaning of § 3, it would have amended § 3.

Petitioners also misread § 16(b). They assert that "Congress said … parties can appeal orders denying but not granting arbitration." Pet. Br. 19-20. They say § 16 "expressly bar[s] immediate appeals of orders granting arbitration." Pet. Br. 8; *see* Pet. Br. 6, 19. Section 16 does no such thing—either expressly or implicitly. That provision is about "*interlocutory*

order[s]." But, as Petitioners concede, a "dismissal" "converts a case into a final judgment," Pet. Br. 20, which, by definition, is not interlocutory, and which provided a basis for appeal here. This Court has rejected Petitioners' effort to extend § 16 beyond its interlocutory focus. In *Green Tree*, after the plaintiff filed suit in court, the defendants moved to compel arbitration, stay the action, or, in the alternative, dismiss the case. 531 U.S. at 83. The district court compelled arbitration and dismissed the case. *Id.* This Court held that that order was an appealable "final decision with respect to an arbitration." *Id.* at 86-87. It held that nothing in § 16 prohibited the appeal. The Court noted that § 16 does give preferential treatment to decisions favorable to arbitration, in that denials of motions to compel arbitration or stay proceedings are subject to interlocutory appeal, 9 U.S.C. § 16(a), while grants of such motions are not. *Id.* at 86. But this Court explained that § 16(b) "preserves immediate appeal of any '*final decision* with respect to an arbitration,' *regardless of whether the decision is favorable or hostile to arbitration*." *Id.* (emphasis added).

If Congress had intended to prohibit all appeals from decisions promoting arbitration before the arbitration concluded, it would have explicitly said that such decisions are categorically unappealable until the end of arbitration. Indeed, Congress contemplated the precise scenario of appeals from dismissals and rejected Petitioners' theory. The Senate summary of what became § 16 stated that "under the proposed statute, appealability does not turn solely on the policy favoring arbitration. Appeal can be taken from … a final judgment dismissing an action in deference to

arbitration." 134 Cong. Rec. S16284-01 (daily ed. Oct. 14, 1988) (Senate bill summary). Petitioners are therefore wrong that "Respondents have no answer for how an immediate appeal—and thus a dismissal—is consistent with Congress's statutory design." Pet. Br. 20. Section 16's text, this Court's decisions interpreting § 16, and the legislative history all confirm that Congress considered an appeal from a dismissal to be part of the statutory design.

**5. Discretion to dismiss promotes the FAA's underlying objective to foster efficient dispute resolution.**

In enacting the FAA, Congress sought to make arbitration relatively efficient, affordable, and quick. *See Green Tree*, 531 U.S. at 85; *Dean Witter Reynolds,* 470 U.S. at 221 (recognizing the FAA's goal of encouraging "efficient and speedy dispute resolution"); *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 404 (1967) (describing "the unmistakably clear congressional purpose that the arbitration procedure, when selected by the parties to a contract, be speedy and not subject to delay and obstruction in the courts"). Congress intended for parties who have agreed to arbitration to proceed to an arbitral forum "as quickly and easily as possible.'" *Green Tree*, 531 U.S. at 85; *see Moses H. Cone*, 460 U.S. at 22 (noting "expeditious and summary hearing" under §§ 3 and 4). In defiance of these objectives, Petitioners' rule incentivizes plaintiffs to impose additional time, cost, and complexity on the process by bringing suit in court first rather than proceeding directly to arbitration.

Congress also intended to validate arbitration agreements as an equal alternative to traditional courtroom litigation. *Supra* 5. A rule requiring district courts to presume they will be called upon to intervene in all arbitrable disputes would contravene this intent. *See, e.g.*, *Badgerow*, 596 U.S. at 8 (cautioning against "every arbitration in the country, however distant from federal concerns, … wind[ing] up in federal district court").

While acknowledging that "[p]arties are supposed to *exit court* and enter arbitration 'as quickly and easily as possible," Pet. Br. 22 (citation omitted; emphasis added), Petitioners insist on a rule that prohibits any exit from court and compounds inefficiencies and costs. Keeping a parallel lawsuit alive for the duration of an arbitration—often for years—is an utter waste of resources. Many district courts require parties to report periodically on the progress of the arbitration even while the case is stayed, sometimes in live status conferences. *See, e.g.*, *Spates v. Uber Techs., Inc.*, No. 21-CV-10155, 2023 WL 3506138, at *3 (S.D.N.Y. Mar. 31, 2023). This imposes costs on the parties, requiring them to prepare and file status reports and often requiring two sets of lawyers to show up in two jurisdictions—possibly on opposite sides of the country. It's almost like imposing a tax on arbitration. *See, e.g.*, *Southland Corp. v. Keating*, 465 U.S. 1, 7 (1984) (explaining that "prolonged litigation" is "one of the very risks the parties, by contracting for arbitration, sought to eliminate").

These suits also needlessly burden courts. District courts have heavy criminal and civil caseloads, and Petitioners' reading of the statute would bloat

their dockets for no good reason. Courts must track and account for cases that have been pending on their dockets for specified periods of time. *See* 28 U.S.C. § 476 (requiring Administrative Office of U.S. Courts to prepare semiannual reports showing motions pending more than six months and civil cases pending more than three years in each district court, among other things); U.S. Courts, *September 2023 Civil Justice Reform Act*, https://www.uscourts.gov/statistics-reports/september-2023-civil-justice-reform-act (reporting 71,425 civil cases pending more than three years as of September 30, 2023). And placing cases on an inactive calendar is no answer to the burdens. Pet. Br. 24. Not all courts have such mechanisms, and courts will still need to require status updates from the parties or the cases would potentially remain on the docket forever. Petitioners' statutory construction would needlessly add to the courts' recordkeeping and reporting burdens.

Petitioners do not acknowledge these costs. They merely assert that permitting dismissals generates "wasteful disputes about whether to stay or dismiss." Pet. Br. 22. But the burden of explaining to a court why a dismissal is or is not appropriate is not that significant. Petitioners' briefing here is a case in point: They offered general justifications about having "a forum in which … to have the arbitration award reviewed and confirmed" and a forum to return to if the arbitration falls through—all of which entailed only minimal explanation. J.A. 87-90 (Motion to Compel); J.A. 91-100 (Plaintiffs' Response); J.A. 101-05 (Reply). And a party that files a lawsuit when all claims are subject to arbitration can hardly complain

about the burden of having to justify why that improper lawsuit should persist indefinitely.

If anything, maintaining jurisdiction over a case that is entirely arbitrable increases the likelihood of litigation. With an open forum available for any dispute and low transaction costs to raising disputes in the district court, parties are more likely to try to invoke courts to superintend trivial disputes that do not merit judicial intervention.

## CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted,

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