

# Resolving Circuit Split, U.S. Supreme Court Says Courts ‘Shall’ Stay Cases Sent to Arbitration

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“Shall” means “shall” in the Federal Arbitration Act (FAA), a unanimous U.S. Supreme Court held in *Smith v. Spizzirri*, No. 22–1218 (May 16, 2024). The Court explained the language in the FAA providing a court “shall on application of one of the parties stay the trial of the action until [the] arbitration” requires courts to stay, not dismiss, actions subject to valid arbitration agreements.

## Background

The case involved misclassification claims of current and former delivery drivers against their employer. In response to the defendants’ motion to compel arbitration and dismiss the complaint, the plaintiffs agreed the claims were subject to an enforceable arbitration agreement, but they argued the FAA required the court to stay, rather than dismiss, the action.

The district court rejected these arguments and dismissed the complaint. The court relied on precedent in the U.S. Court of Appeals for the Ninth Circuit holding courts had the option to stay or dismiss an action when all claims were subject to arbitration.

On appeal, the Ninth Circuit affirmed the district court decision, but it explained its decision was based on binding circuit precedent despite the FAA’s plain language appears to mandate a stay.

## Circuit Split

The U.S. Courts of Appeals for the First, Fifth, Eighth, and Ninth Circuits have held that courts have discretion to stay or dismiss actions that are subject to arbitration agreements.

The U.S. Courts of Appeals for the Second, Third, Seventh, Tenth, and Eleventh Circuits have held that the FAA mandates a stay when all claims are subject to arbitration.

## “Stay” Means “Stay”

Delivering the opinion for the unanimous Supreme Court, Justice Sonia Sotomayor held the language of Section 3 of the FAA that provides courts “shall on application of one of the parties stay the trial of the action” requires just that, stating, “[j]ust as ‘shall’ means ‘shall,’ ‘stay’ means ‘stay.’”

The Court reasoned that when a court dismisses an action, the plaintiff has an immediate right to appeal, whereas there is no similar right to appeal the grant of a motion to compel arbitration. By dismissing the action, the district court effectively confers a right to appeal a decision otherwise foreclosed by the FAA.

Moreover, the Court said requiring a stay rather than dismissal promotes efficiency

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by allowing the court to maintain a supervisory role to assist the parties with issues such as appointment of an arbitrator, enforcement of subpoenas, and facilitation of recovery of an arbitration award.

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