No. 24-1172

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Teamsters Local Union No. 107,

Plaintiff-Appellee,

v.

Madison Concrete Construction,

Defendant-Appellant,

v.

Anthony Sgrillo,

Third Party-Appellee.

On Appeal from the
United States District Court for the Eastern District of Pennsylvania
Case No. 2:22-cv-03721, Judge John R. Padova

BRIEF OF GEORGETOWN LAW APPELLATE COURTS IMMERSION CLINIC AS COURT-APPOINTED AMICUS

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Role of Amicus

The Appellate Courts Immersion Clinic is a clinic at Georgetown University Law Center in which students, under faculty supervision, litigate appeals in circuit courts nationwide and in the Supreme Court. On January 7, 2026, this Court appointed the Clinic as Amicus to discuss whether the Court has jurisdiction over this appeal.

Issues Presented

In its order dated January 7, 2026, this Court directed the Clinic to address the following:

> Whether the Court has jurisdiction under 9 U.S.C § 16. The parties contend that the Court has jurisdiction under *George v. Rushmore Serv. Ctr.*,114 F.4th 226 (3d Cir. 2024). Amici should address whether *George* is distinguishable because the Union's Complaint to confirm the award remains pending. Amici may also address whether there is any alternative basis for jurisdiction.

Appointment Ord., CA3 ECF 42.

Facts and Procedural History Relevant to Jurisdiction

I. Facts

A collective bargaining agreement (CBA) authorizes Teamsters Local Union No. 107 to bring grievances on behalf of its members against their employer, Madison Concrete Construction. App. 36-39, 52-53, 69-70. In June 2022, Teamsters presented a grievance alleging that one of its members, Anthony Sgrillo, had been unjustly discharged. App. 83. Madison had fired Sgrillo for theft, alleging that Sgrillo used a company

credit card to purchase fuel for personal use. App. 15-16, 74. Sgrillo denies these allegations, maintaining that he used the card to purchase gas only for commuting to work. App. 104-05.

In August 2022, a Grievance Committee found that Madison failed to provide Teamsters with written notice of Sgrillo's discharge as required under the CBA. App. 85; Summ. J. Reply, Attach. 1 to Ex. 1 ¶ 6 & Attach. to Ex. 2 ¶¶ 6-14, D. Ct. ECF 47; *see* App. 57 (setting out CBA notice requirement). The Committee issued an arbitration decision ordering Sgrillo's reinstatement with pre-termination seniority, back pay, and benefits. App. 85. But Madison did not reinstate him. Compl. 4 ¶ 17, D. Ct. ECF 1.

II. Procedural history

Seeking to effectuate the Grievance Committee's arbitration decision, Teamsters sued Madison in September 2022 in the Eastern District of Pennsylvania, alleging that Madison had breached the CBA by failing to abide by the Committee's decision. Compl. 4 ¶¶ 18-19, D. Ct. ECF 1. Teamsters sought confirmation of the Committee's arbitration decision and attorney's fees and costs. *Id.* ¶ 19(a)-(f).

For its part, Madison moved the district court to vacate the arbitration decision, arguing, among other things, that: (1) no notice was required, and, even if it were, Madison had cured any failure to provide notice, App. 8 ¶ 16, 10 ¶ 26, 11 ¶ 33; (2) the Committee erred in refusing to hear

pertinent and material evidence, App. 11-12 ¶ 34; and (3) the Committee exhibited "evident partiality" toward Teamsters, App. 12 ¶ 35. Madison also filed a cross-claim and third-party complaint against Sgrillo for conversion, seeking to recover the amount it asserts Sgrillo spent on fuel for personal use. Answer, Crossclaim & Third Party Compl. 5-6 ¶¶ 1-14 (page numbers assigned by CM/ECF), Dist. Ct. ECF 14.

Finally, Madison raised six affirmative defenses to Teamsters' breach-of-the-CBA claim. Answer, Crossclaim & Third Party Compl. 4-5 ¶¶ 1-6. Three affirmative defenses reprised the notice arguments just discussed. *Id.* at 4-5 ¶¶ 4-6. Madison's other three defenses were failure to state a claim; contractual defenses including laches, release, accord and satisfaction, payment, justification, estoppel, waiver and/or unclean hands; and failure to mitigate damages. *Id.* at 4 ¶¶ 1-3.

Teamsters then moved to strike all six affirmative defenses as untimely under the Pennsylvania Arbitration Act, which requires motions to vacate an arbitration decision to be filed within 30 days of the decision. Mot. to Strike Aff. Defenses, Dist. Ct. ECF 16; *see* 42 Pa. Cons. Stat. § 7314(b).

In December 2023, the district court denied Madison's motion to vacate the award, upholding the Grievance Committee's determination that Madison's failure to provide written notice of Sgrillo's discharge prior to the hearing justified his reinstatement. App. 141-45. The district court also rejected Madison's arguments that the Committee failed to

hear pertinent and material evidence and appeared partial to Teamsters. App. 145-48.

The district court also struck Madison's three notice-related affirmative defenses. App. 151. The court concluded that Madison's defenses purporting to establish that it was not required to provide notice of Sgrillo's discharge, or had cured any failure to do so, "challenge[d] the validity and enforceability" of the arbitration decision. *Id.* Accordingly, they were barred by the Pennsylvania Arbitration Act's 30-day statute of limitations. *Id.*; *see* 42 Pa. Cons. Stat. § 7314(b).

But the district court took a different view of Madison's other three affirmative defenses noted earlier—failure to state a claim, contractual defenses, and failure to mitigate damages—because they "do not attack the validity" of the arbitration decision. App. 151. The statute of limitations did not bar those defenses, the court explained, because they challenge how Teamsters drafted its complaint and actions taken with respect to the arbitration. *Id.* Thus, those three defenses could proceed. *Id.*

In January 2024, Teamsters filed a motion for summary judgment, asking the district court to reject Madison's remaining affirmative defenses and confirm the arbitration award. Mot. for Summ. J., D. Ct. ECF 43. Just days after Teamsters filed that motion, Madison appealed the district court's order declining to vacate the award and striking three of Madison's defenses. App. 1. Madison posited in its notice of appeal—

and argued in its subsequent jurisdictional letter—that this Court has jurisdiction under the Federal Arbitration Act, 9 U.S.C. § 16(a)(1)(D). *Id.*; Madison Jurisdictional Ltr., CA3 ECF 7.

Though this appeal was pending before this Court, the district court litigation continued. The summary-judgment briefing was completed. *See generally* Opp'n to Summ. J., D. Ct. ECF 46-2; Summ. J. Reply, D. Ct. ECF 47. In its opposition to summary judgment, Madison argued that the unclean-hands doctrine prevents it from being compelled to reinstate an employee who allegedly stole from the company. Opp'n to Summ. J. at 7. Madison also asserted that remaining issues of material fact on which it is entitled to discovery preclude the calculation of damages at this stage. *Id.* at 8-9. These issues are (1) the extent of Teamsters' and Sgrillo's failure to mitigate; (2) whether Sgrillo's unused contractual sick, vacation, and personal days should be recovered as lost wages; and (3) whether the award should be offset by the amount of Sgrillo's alleged theft. *Id.*

More than ten months later, Madison moved the district court under Rule 60(b) to vacate its decision declining to vacate the award and to remand the case to the Grievance Committee for further consideration of Teamsters' grievance. Rule 60(b) Mot., D. Ct. ECF 48. Then, the district court stayed consideration of Teamsters' summary-judgment motion and Madison's Rule 60(b) motion until this Court "complete[s] its consideration" of this appeal. Ord., D. Ct. ECF 49.

While this appeal was pending, this Court issued *George v. Rushmore Serv. Ctr., LLC*, 114 F.4th 226 (3d Cir. 2024), which concluded that the district court's denial of a motion to vacate an arbitration award there qualified as a "final decision" under 28 U.S.C. § 1291 and 9 U.S.C. § 16(a)(3). *See id.* at 233. The parties then informed this Court that it has jurisdiction, maintaining that, under *George*, the district court's ruling is a "final decision" under 28 U.S.C. § 1291 and "a final decision with respect to an arbitration" under 9 U.S.C. § 16(a)(3). Madison Br. 1-2, CA3 ECF 21; Teamsters Br. 4 n.5, CA3 ECF 29.

This Court later appointed Amicus to brief whether this Court has jurisdiction. Appointment Ord., CA3 ECF 42.

Summary of Argument

This Court does not have appellate jurisdiction under 28 U.S.C. § 1291, 9 U.S.C. § 16(a)(3), or 9 U.S.C. § 16(a)(1)(D), so it must dismiss this appeal.

First, the district court's order denying vacatur of the Grievance Committee's arbitration decision is not appealable under 28 U.S.C. § 1291 because it is not final. A motion to confirm, three affirmative defenses, a cross-claim, and a Rule 60(b) motion for relief from the judgment all remain unresolved in the district court.

This Court's recent decision in *George v. Rushmore Serv. Ctr., LLC*, 114 F.4th 226 (3d Cir. 2024), involved different circumstances. There, the

district court's order denying vacatur was final because it left nothing to do but enforce the judgment. No pending motions to confirm the arbitration award nor any claims or defenses remained for district-court resolution.

Second, the district court's order is not appealable under 9 U.S.C. § 16(a)(3) because it is (again) not final, but this time, "*with respect to an arbitration*." *Id.* (emphasis added). Caselaw indicates that Section 16(a)(3) finality is coextensive with Section 1291 finality. *See, e.g.*, *Green Tree Fin. Corp.-Ala. v. Randolph*, 531 U.S. 79, 84-89 (2000).

But even if Section 16(a)(3)'s scope is broader than Section 1291's and demands finality only as to decisions "with respect to an arbitration," the order here is not appealable. That's because Madison's remaining affirmative defenses will determine whether the arbitration award is confirmed. These defenses are thus "with respect to an arbitration," negating jurisdiction under Section 16(a)(3).

Third, the district court's order is not appealable under 9 U.S.C. § 16(a)(1)(D) because that Section authorizes appeals only from an order confirming or denying confirmation of an arbitration award, not from an order refusing to vacate an arbitration award, which is the type of interlocutory order that Madison seeks to appeal here.

Argument

I. The district court's order is not final under Section 1291.

The district court's order denying Madison's motion to vacate the arbitration award is not a "final decision[]" under 28 U.S.C. § 1291. Teamsters' complaint seeking confirmation of the award, Teamsters' motion for summary judgment, Madison's three remaining affirmative defenses, Madison's Rule 60(b) motion, and Madison's cross-claim all remain pending in the district court. An order is final under Section 1291 "when it 'resolves the entire case'—when it 'ends the litigation' (on the merits or otherwise) and 'leaves nothing for the court to do but execute the judgment.'" *Geo Grp., Inc. v. Menocal*, 146 S. Ct. 774, 781 (2026). Considerable substantive work remains for the district court, so the order refusing to vacate the arbitration award is anything but final.

For the same reason, the precedent on which Madison relies, *George v. Rushmore Service Center, LLC*, 114 F.4th 226 (3d Cir. 2024), is distinguishable. True, *George* held that this Court had jurisdiction to review a district court's denial of a motion to vacate an arbitration award. *See* Madison Br. 1-2, CA3 ECF 21. But a review of the circumstances in *George* shows that its holding does not apply here.

After George sued a collection company for violations of the Fair Debt Collection Practices Act, the district court compelled arbitration of her claims. *George*, 114 F.4th at 231-32. George then lost before the arbitrator. *Id.* at 232-33. She returned to the district court and moved to

vacate the arbitration decision. *Id.* at 233. The district court denied her motion. *Id.* George appealed, and this Court considered whether it had jurisdiction to review the district court's decision declining to vacate the arbitration award. *Id.*

This Court concluded that it had jurisdiction under 28 U.S.C. § 1291, reasoning that the district court's order "'terminate[d] the litigation between the parties on the merits' and left nothing to do but 'enforce by execution what has been determined.'" *George*, 114 F.4th at 233 (quoting *Robinson v. Hartzell Propeller, Inc.*, 454 F.3d 163, 168 (3d Cir. 2006)). Although the district court had not confirmed the arbitration award or entered judgment for the defendant "before terminating the case," *id.*, this Court appeared to view those remaining tasks as ministerial. The defendant had not timely filed a motion to confirm the arbitration award, in response to which additional defenses could have been raised. *See id.* at 233 n.9. In the absence of any remaining challenge to confirmation, the denial of George's motion to vacate was "final under § 1291" because it left "nothing 'for the district court to do but ... confirm the arbitration award and enter judgment.'" *Id.* at 233 (quoting *Alpine Glass, Inc. v. Ill. Farmers Ins. Co.*, 643 F.3d 659, 663-64 (8th Cir. 2011)). In *George*, then, the district court had nothing of substance left to do.

Here, on the other hand, the district court has plenty of substantive work to do. Unlike in *George* and the precedent on which it relies, Madison did not raise *all* its defenses to confirmation in its motion to

vacate. *See Alpine Glass*, 643 F.3d at 664. Instead, as discussed above (at 3-4), Madison also raised affirmative defenses to the district-court complaint that could prevent confirmation. Three of those defenses remain. App. 151. Madison's cross-claim against Sgrillo also is pending. App. 134 n.1. And several motions are unresolved: a summary-judgment motion, a motion to confirm the award, and a Rule 60(b) motion. *See generally* Compl., D. Ct. ECF 1; Mot. for Summ J., D. Ct. ECF 43; Rule 60(b) Mot., D. Ct. ECF 48.

Indeed, *George* itself suggested that a pending motion to confirm an arbitration award could render a district-court order denying vacatur nonfinal. *See George*, 114 F.3d at 233 n.9. Thus, *George* does not stand for the broad proposition, championed by Madison, that every order denying a motion to vacate an arbitration award is final and appealable. Rather, *George* holds that an order denying a motion to vacate is final only when no issues are left for the district court to resolve. *See id.* at 233. As just explained, that's not the case here.

Amicus's view is "consistent with the policy rationales underlying the final order rule." *Aluminum Co. of Am. v. Beazer E., Inc.*, 124 F.3d 551, 561 (3d Cir. 1997). Those rationales include "minimizing the possibility of piecemeal appeals, according due deference to trial court judges, and promoting the conservation of judicial resources." *Id.*

An affirmance by this Court of the district court's denial of vacatur would still permit Madison to press its remaining affirmative defenses to

confirmation of the arbitration award in the district court. And subsequent district-court rulings on any of the pending motions, or on Madison's cross-claim against Sgrillo, may permit another appeal to this Court by the losing party. That prospect of piecemeal appeals and waste of judicial resources is just what the final-decision rule seeks to avoid.

II. The district court's order is not final under Federal Arbitration Act Section 16(a)(3).

A. Madison also argues that the district court's order is appealable as a "final decision with respect to an arbitration." 9 U.S.C. § 16(a)(3). But for the same reasons that the order is nonfinal under Section 1291, it is also nonfinal under Section 16(a)(3). The two provisions demand the same level of finality.

That understanding aligns with the Supreme Court's guidance on Section 16(a)(3) in *Green Tree Fin. Corp.-Ala. v. Randolph*, 531 U.S. 79 (2000). There, the Supreme Court considered what "final decision" means in Section 16(a)(3). *Id.* at 85-86. Because the Federal Arbitration Act does not define that phrase or otherwise suggest that its ordinary meaning does not apply, the Supreme Court accorded the term "its well-established meaning." *Id.* at 86. That is, a final decision, whether under Section 1291 or Section 16(a)(3), is one that "ends the litigation on the merits and leaves nothing more for the court to do but execute the judgment." *Id.*

Applying that definition, the Supreme Court held in *Green Tree* that the district court's order compelling arbitration and dismissing plaintiff's claims was final for purposes of appeal. 531 U.S. at 86-89. In doing so, the Court rejected Green Tree's argument that an order compelling arbitration may be final under Section 16(a)(3) only when "a request to order arbitration is the sole issue before the court." *Id.* at 87. Instead, even when an action involves both a request for arbitration and other claims, an order that "plainly dispose[s] of the entire case on the merits and [leaves] no part of it pending before the court" is final. *Id.* at 86.

The best reading of *Green Tree*, then, is that Section 1291 and Section 16(a)(3) are coextensive: When a decision is final (or not) under one provision, it is final (or not) under the other. So, the district court's order declining to vacate the arbitration award is not final under Section 16(a)(3) for the same reason it is not final under Section 1291: The district court has substantive work left to do. *See supra* at 9-10. That understanding of *Green Tree* has empirical support: Amicus's research produced no case where a court has held a case nonfinal under Section 1291 but nonetheless final (and, thus, appealable) under Section 16(a)(3).

B. *George*, however, implies that the two are not coextensive, 114 F.4th at 233-34—meaning that a final decision "with respect to an arbitration," 9 U.S.C. § 16(a)(3), could in some circumstances be appealable under Section 16(a)(3) but not under Section 1291. *George* did not explain the distinction or provide any examples illustrating it.

Arguably, that distinction could arise when a district-court order terminates the litigation on all arbitration-related claims but leaves claims wholly unrelated to the arbitration unresolved—that is, claims not "with respect to" that arbitration. 9 U.S.C. § 16(a)(3). Even on that (mis)understanding, the order in this case is not appealable because it is not a final decision "with respect to an arbitration." *Id.* That is, a decision of this Court affirming the denial of vacatur would still leave much for the district court to do "with respect to" arbitration. *Id.*

The term "with respect to" means "with reference to" or "in relation to." *With Respect To*, Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/with%20respect%20to (last visited Mar. 16, 2026); *see Colo. Motor Carriers Ass'n v. Town of Vail*, 153 F.4th 1052, 1060 (10th Cir. 2025) (explaining that "*with respect to*" is "synonymous with the term *relating to*"). It is a "broad" phrase: As "the Merriam-Webster Thesaurus makes clear, 'with respect to' is commonly interchanged with terms such as 'concerning,' 'touching,' 'towards,' 'in view of,' and 'in regard to.'" *Bailey v. Tektronix, Inc.*, 2024 WL 748521, at *7 (D. Del. Feb. 23, 2024); *see Jennings v. Rodriguez*, 583 U.S. 281, 320 (2018) (Thomas, J., concurring in part) (offering similar definition); *Morales v. Trans World Airlines*, 504 U.S. 374, 383 (1992) (same).

Under this capacious definition, Madison's three remaining affirmative defenses—raised in response to Teamsters' motion to confirm the award—certainly relate to the arbitration, whether or not they

challenge the validity of the arbitration decision. *See* App. 151. Their resolution could determine the amount of the award, which the parties acknowledge remains unresolved. *See* Mot. for Summ. J. Br. 5-7, D. Ct. ECF 43; Opp'n to Summ. J. 8-9, D. Ct. ECF 46-2. It could also determine whether the arbitration award will be enforced. For example, Madison's unclean-hands defense maintains that "it should not be forced, on procedural grounds, to reinstate an employee (Sgrillo) whom Madison alleges stole from the company." Opp'n to Summ. J. 7, D. Ct. ECF 46-2. Reinstatement is the principal relief that the Grievance Committee awarded in the arbitration, *see* App. 85, so an effort to extinguish that relief necessarily is "with respect to" the arbitration. 9 U.S.C. § 16(a)(3).[1]

III. The district court's order is not appealable under 9 U.S.C. § 16(a)(1)(D).

Madison also argued that 9 U.S.C. § 16(a)(1)(D) gives this Court jurisdiction. App. 1; Madison Jurisdictional Ltr., CA3 ECF 7. That argument runs headlong into the statutory text.

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[1] Like *George*, the cases on which *George* relies—each holding that an order declining to vacate an arbitration award was final "with respect to" arbitration under Section 16(a)(3)—nowhere mention any motions, claims, or defenses pending in the district court, as exist here. *George*, 114 F.4th at 234; *see Century Indem. Co. v. Certain Underwriters at Lloyd's*, 584 F.3d 513, 521 (3d Cir. 2009); *Selden v. Airbnb, Inc.*, 4 F.4th 148, 155 (D.C. Cir. 2021); *United States v. Park Place Assocs., Ltd.*, 563 F.3d 907, 919-20 (9th Cir. 2009).

Section 16(a)(1)(D) authorizes an appeal from an order "confirming or denying confirmation of an [arbitration] award or partial award." 9 U.S.C. § 16(a)(1)(D). Here, the district court's order denied Madison's motion to vacate the arbitration award; it did not confirm an award (or deny confirmation of an award). As explained above (at 4-5), Teamsters' request for confirmation of the award is pending, underscoring that the order denying the motion to vacate neither confirmed nor denied confirmation of the arbitration award. For the same reason, and because the district court must resolve Madison's affirmative defenses before calculating and enforcing the award, *see supra* at 5, 14, the order denying vacatur did not "effectively" confirm the award, either. Madison Jurisdictional Ltr. 3, CA3 ECF 7; *cf. Coleman v. Sys. One Holdings, LLC*, 117 F.4th 97, 101 (3d Cir. 2024) (holding that a district court order deferring a decision on a motion to compel arbitration pending limited discovery did not "effectively" refuse a stay as required to be appealable under 9 U.S.C. § 16(a)(1)(A)).

To be sure, this Court has described "confirmation and vacatur of an arbitration award" as "simply opposite sides of the same FAA coin," *PG Publ'g, Inc. v. Newspaper Guild of Pittsburgh*, 19 F.4th 308, 313 (3d Cir. 2021)—and courts sometimes review the two issues together. *See, e.g.*, *First Options of Chi., Inc. v. Kaplan*, 514 U.S. 938, 947 (1995) (explaining the standard of review for "a district court decision that refuses to vacate or confirms an arbitration award") (citations omitted); *Sutter v. Oxford*

Health Plans LLC, 675 F.3d 215, 219 (3d Cir. 2012) (same). That is because a denial to vacate an arbitration award often may be accompanied by "the correlative grant of a motion to confirm it." *First Options*, 514 U.S. at 941; *see* Madison Jurisdictional Ltr. 3 n.1, CA3 ECF 7. But as already explained, here, no confirmation of an award has occurred. Indeed, a motion seeking that relief is pending in the district court.

If Congress wanted to include refusals to vacate arbitration awards as grounds for immediate, interlocutory appeal under Section 16(a)(1)(D), it could have said so. Congress's decision to make appealable several categories of orders related to arbitration, *see* 9 U.S.C. § 16(a)(1), but to omit orders denying vacatur of arbitration awards, indicates that Congress intended the latter to fall outside Section 16. *See Devon Robotics, LLC v. DeViedma*, 798 F.3d 136, 142-43 (3d Cir. 2015) (applying *expressio unius* canon to hold that orders denying summary judgment are not appealable under Section 16).

"[S]tatutes authorizing appeals are to be strictly construed." *Coleman*, 117 F.4th at 100 (quoting *Off. of Senator Mark Dayton v. Hanson*, 550 U.S. 511, 515 (2007)). "That command carries extra force for statutes authorizing interlocutory appeals, which are exceptions to the final decision rule of 28 U.S.C. § 1291 and 'the long-established policy against piecemeal appeals.'" *Devon Robotics*, 798 F.3d at 142 (quoting *Gardner v. Westinghouse Broad. Co.*, 437 U.S. 478, 480 (1978)). And "[a]lthough

federal law permits interlocutory appeals more freely in the context of arbitration than elsewhere, that permission extends only to appeals taken from the types of orders enumerated in the FAA." *Coleman*, 117 F.4th at 103. Congress did not extend that permission here.

Conclusion

This Court should dismiss this appeal for lack of jurisdiction.

Respectfully submitted,

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Certificate of Compliance

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2. I certify that, on March 16, 2026, this brief was filed via CM/ECF. All participants in the case are registered CM/ECF users and will be served electronically via that system. Seven paper copies of this brief will also be filed with the Clerk of this Court.

3. In accordance with Local Rule 28.3(d), I certify that I am a member of the bar of the Third Circuit in good standing.

4. In accordance with Local Rule 31.1(c), I certify that (i) this brief has been scanned for viruses using Malwarebytes and is free of viruses; and (ii) when paper copies are required by this Court, the paper copies will be identical to the electronic version of the brief filed via CM/ECF.

/s/Brian Wolfman
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