No. 22-105

IN THE
Supreme Court of the United States

COINBASE, INC.,
Applicant,
v.
ABRAHAM BIELSKI,
Respondent.

COINBASE, INC.,
Applicant,
v.
DAVID SUSKI, *et al.*,
Respondents.

REPLY IN SUPPORT OF CONDITIONAL MOTION TO EXPEDITE CONSIDERATION OF JOINT PETITION FOR A WRIT OF CERTIORARI

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RULE 29.6 STATEMENT

Pursuant to Supreme Court Rule 29.6, Coinbase, Inc. hereby states that it is a wholly-owned subsidiary of Coinbase Global, Inc. No publicly held corporation owns 10% or more of its stock.

Coinbase's joint petition for certiorari seeks this Court's review of a 6-3 circuit split regarding whether district court proceedings should be automatically stayed pending appeal of a district court's denial of a motion to compel arbitration. In the two cases, the Ninth Circuit—on the minority side of the split—denied automatic stays to Coinbase, allowing litigation to proceed while the issue of arbitrability is on appeal. The split presented by this case is widely acknowledged by the courts of appeals; essentially conceded by Respondents[1]; consequential for every case in which a party appeals from an order refusing to compel arbitration; and certain to continue absent this Court's intervention. The question presented is also prone to mootness before resolution by this Court given the temporary nature of stays pending appeal: for instance, if the party opposing arbitration voluntarily agrees to stay lower-court proceedings pending appellate review of arbitrability in order to avoid this Court's review (as has happened recently in other cases, Pet. 4–5), or if the court of appeals issues its arbitrability decision prior to a ruling by this Court on the stay standard (the risk presented by this case and in every case in this posture).

[1] Respondents in *Suski* do not oppose Coinbase's motion to expedite, stay applications, or joint petition—effectively acknowledging both the split and its importance. Respondent in *Bielski* concedes that "[t]he Ninth Circuit's application of *Griggs* [*v. Provident Consumer Discount Co.*, 459 U.S. 56 (1982) (per curiam)] comports with that of the Second and Fifth Circuits, but it differs from the approach employed in the Third, Fourth, Seventh, Tenth, Eleventh, and D.C. Circuits." Opp. to Motion to Expedite 3. This "application of *Griggs* to one particularized procedural scenario," *id.*, *is* a legal question on which the circuits are sharply divided—as Respondent Bielski accepts.

To ensure this Court's continuing jurisdiction over Coinbase's joint petition, Coinbase filed applications to stay district court proceedings pending this Court's review, as well as a motion to expedite. The motion to expedite requested that this Court either (1) expedite review of Coinbase's joint petition, or (2) construe the stay applications as petitions for certiorari, grant the stays, grant certiorari, and expedite merits briefing. Coinbase also offered that this Court could, alternatively, stay the Ninth Circuit proceedings and avoid the need for expedition. Coinbase proposed these options to allow this Court to resolve the important, recurring question raised by the joint petition prior to potential mootness.

1. Respondent Bielski ignores the context of Coinbase's motion to expedite.[2] Instead, Respondent makes the off-base claim that Coinbase seeks "preferential treatment" or to "cut in line," claiming priority over other important matters. Opp. to Motion to Expedite 2, 4. Of course, Coinbase seeks no such thing. Coinbase did not propose expedition—either through expedited review of its joint petition or through treating the stay applications as petitions for certiorari—to delay the resolution of other important issues. Rather, Coinbase sought expedition because, absent expedition, the important issue concerning a stay presented by the joint petition could be mooted by the Ninth Circuit issuing decisions prior to this

[2] Because Respondent Bielski is the only Respondent to have opposed Coinbase's motion to expedite, references to "Respondent" herein are to Respondent Bielski.

Court deciding the question presented on the merits. That urgency is an entirely appropriate and ordinary factor for this Court to consider in assessing whether to expedite. *See infra*.

Respondent provides no authority for his claim that expedited review is appropriate in "only the most extraordinary cases in which a standard procedural schedule would result in devastating and irreparable consequences." Opp. to Motion to Expedite 1. For one thing, the notion that expedition is only warranted for "extraordinary cases" is inconsistent with this Court's rules, which allow post-certiorari expedition "as circumstances require," Supreme Court Rule 25.5, without any limitation to matters of "extraordinary" importance. For another, Respondent's own presentation confirms that his proposed standard is incorrect. He cites six cases involving supposed "issues of great importance." Opp. to Motion to Expedite 7. In three cases, this Court expedited review; in the other three, it did not. As these examples illustrate, expedition does not turn on how "extraordinary" a case is, but on whether a certiorari-worthy question is presented and on whether the *timing* of the ordinary schedule is problematic—due to the nature of the harm, potential mootness, or some other factor.[3] Indeed, this Court has expedited on issues far more mundane

[3] *Compare*, *e.g.*, Order, *California v. Texas*, No. 19-840 (Jan. 21. 2020) (cited at Opp. to Motion to Expedite 7) (denying motion to expedite where motion highlighted the "practical importance" of the questions presented); Order, *Christian Civic League of Maine, Inc. v. Fed. Election Comm'n*, No. 05-1447 (May 15, 2006) (cited at Opp. to Motion to Expedite 7) (denying motion to expedite for review of preliminary injunction where the district court's final

than those in the cases Respondent collects. *See*, *e.g.*, *Martinez v. United States*, 557 U.S. 931 (2009) (granting motion to expedite case involving whether a conviction for aggravated identity theft required the defendant to know the identification at issue belonged to another).

Here, as Coinbase has demonstrated, expedition is warranted because, absent expedition, this Court's review of the question presented regarding a stay may be rendered moot by the Ninth Circuit's arbitrability decisions. An analogous situation was presented by *Nken v. Holder*, 556 U.S. 418 (2009), which involved, as here, a question regarding the proper standard for stays pending appeal (there, in the immigration context). In *Nken*, this Court granted a stay motion (thus precluding the petitioner's immediate removal); construed the stay motion as a petition for certiorari and granted review; and expedited briefing so as to decide the case

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judgment could be appealed in due course); *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 547 (1976) (cited at Opp. to Motion to Expedite 7) (denying motion to expedite where doing so did "not moot" the merits of the case for the Court's later review), *with* Order, *Trump v. New York*, No. 20-366 (Sept. 30, 2020) (cited at Opp. to Motion to Expedite 7) (granting motion to expedite where the movant argued that "the district court's relief will become moot before it ever has any constraining legal effect"); Order, *Biden v. Texas*, No. 21-954 (Feb. 18, 2022) (cited at Opp. to Motion to Expedite 7) (condensing briefing schedule where petitioner noted that "[d]elaying review until next Term would likely postpone resolution . . . until sometime in 2023," and in the "meantime, the government would be forced"—immediately—to "negotiat[e] with Mexico to maintain a controversial program that it ha[d] already twice determined is no longer in the best interests of the United States"); Order, *Dep't of Homeland Sec. v. Regents of Univ. of Cal.*, No. 17-1003 (Jan. 23, 2018) (cited at Opp. to Motion to Expedite 7) (granting motion to expedite where movant underscored the "urgent need for a prompt resolution" given that delayed resolution would force the government to—immediately—administer a program it had deemed unlawful).

promptly (with argument heard less than two months after the stay was granted and before the Fourth Circuit addressed the underlying removal petition). Order, *Nken v. Mukasey*, No. 08A413 (Nov. 25, 2008). Respondent's discussion of *Nken*, Opp. to Motion to Expedite 6, misses the point, erroneously suggesting that the inherent seriousness of removal from the country was the reason for expedition. To the contrary, the imminent removal warranted the *stay* (just as the denial of Coinbase's arbitrability right warrants a stay here). Expedition, on the other hand, was warranted because—absent expedition—the Fourth Circuit's decision on the merits could have preceded this Court's decision on the stay standard.[4]

2. Respondent's claim that Coinbase should instead seek review from the Ninth Circuit is equally misplaced. To begin, Coinbase *already* sought a stay from the Ninth Circuit in both cases at issue, and the Ninth Circuit denied a stay. Accordingly, Coinbase is—appropriately—seeking relief from this Court, including a stay pending this Court's review and expedition. None of the four cases cited by Respondent for the proposition that circuit courts should issue stays rather than this

[4] Contrary to Respondent's suggestion, Opp. to Motion to Expedite 5 n.1, Coinbase is not, at this time, invoking the "capable of [re]petition yet evading review" exception to mootness. That exception applies only when there is a "'reasonable expectation that the same complaining party will be subject to the same action again,'" *id.* (quoting *Davis v. Federal Election Comm'n*, 554 U.S. 724, 735 (2008)). In any event, a potential exception to potential mootness has little bearing on the propriety of this Court expediting consideration to avoid a jurisdictional spoiler.

Court providing for expedition, Opp. to Motion to Expedite 5, are remotely on point. In all four cases, the court of appeals held proceedings in abeyance to await this Court's decision in a *separate* case that would dictate the outcome for the court of appeals.[5] Here, by contrast, a stay would not have the effect of allowing the Ninth Circuit to await guidance from this Court, as the Ninth Circuit has *already* decided the question that Coinbase asks this Court to review and has denied the stay. In any event, as Coinbase noted in its Motion to Expedite, this Court "could stay . . . the Ninth Circuit appeals in *Bielski* and *Suski*," if it wishes. Motion to Expedite 4 n.1.

3. Respondent is simply wrong to assert that Coinbase asks this Court to "short-circuit[] [the] parties' and amici's ability to fully develop their arguments and present the most complete possible picture to the Court," or to "truncat[e] this Court's review process." Opp. to Motion to Expedite 1, 6. Expediting consideration of

[5] *Hamby v. Walker*, No. 14-35856, Dkt. 20 (9th Cir. Feb. 27, 2015) (cited at Opp. to Motion to Expedite 5) (holding appeal regarding Alaska same-sex marriage law in abeyance pending this Court's decision in *DeBoer v. Snyder*, No. 14-571, which considered the constitutionality of an analogous state law); *In re Embry*, 831 F.3d 377, 382 (6th Cir. 2016) (cited at Opp. to Motion to Expedite 5) (transferring habeas petition to district court to be held in abeyance pending this Court's decision in *Beckles v. United States*, No. 15-8544, as the *Embry* petitioner claimed the Sentencing Guidelines were void for vagueness in relevant respects and *Beckles* was slated to address that same question); *Does v. Williams*, No. 01-7162, 2002 WL 1298752, at *1 (D.C. Cir. June 12, 2002) (cited at Opp. to Motion to Expedite 5) (holding in abeyance an appeal from a due process ruling pending this Court's decision in *Connecticut Dep't of Pub. Safety v. Doe*, No. 01-1231, which later foreclosed the district court's due process ruling, *Does 1-5 v. Williams*, No. 01-7162, 2003 WL 21466903, at *1 (D.C. Cir. June 19, 2003)); *Williams v. Virginia Emp. Comm'n*, 542 F.2d 1170 (4th Cir. 1976) (cited at Opp. to Motion to Expedite 5) (holding in abeyance an appeal from a ruling that an employment discrimination suit was barred by the Eleventh Amendment pending this Court's decision in *Fitzpatrick v. Bitzer*, No. 75-251, "which raised this identical question").

Coinbase's Joint Petition and/or merits briefing in this matter would not in any way prevent this Court from appropriately reviewing these cases. Much the opposite: expedited consideration would allow full merits briefing—and amicus participation—while ensuring that this Court has the actual opportunity to weigh in on a significant and enduring circuit split before that question arguably becomes moot.

4. Finally, Respondent maintains that this Court should forego expedition because even if the case is mooted, according to Respondent, "the only harm Coinbase might suffer would be . . . litigation expenses." Opp. to Motion to Expedite 6. This is both wrong and irrelevant. It is wrong because, as described in Coinbase's stay applications and reply, Coinbase's harm is not just the pecuniary hit of litigation, but the more fundamental harm of forfeiting its contracted-for right not to be litigating in court *at all*. *Bielski* Stay App. 22–25; *Suski* Stay App. 25–29; *Bielski* Stay Reply 2. And it is irrelevant because irreparable harm is a factor that bears on whether to grant a stay, not whether to expedite a case. Coinbase seeks to stay proceedings to avoid irreparable harm; it seeks to expedite proceedings to protect this Court's jurisdiction.

CONCLUSION

This Court should treat Coinbase's stay applications as petitions for a writ of certiorari and grant review. Alternatively, the Court should grant both stay applications and Coinbase's conditional motion to expedite consideration of its joint

petition. As a further alternative, this Court may choose to stay not only the district court proceedings, but the Ninth Circuit appeals as well, obviating the need to expedite disposition of Coinbase's joint petition.

Respectfully submitted,

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