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By Electronic Filing and Hand Delivery

The Honorable Scott S. Harris
Clerk of the Court
Supreme Court of the United States
One First Street, NE
Washington, D.C. 20543

Re: *Coinbase, Inc. v. Bielski*, No. 22-105

Dear Mr. Harris:

I represent Petitioner Coinbase, Inc. in the above-referenced matter. I respectfully submit this letter to inform the Court of a development in the proceedings below.

Coinbase's joint petition seeks review of Ninth Circuit orders in two different cases—*Bielski* and *Suski*—refusing to grant a stay pending appeal of the district court's denial of Coinbase's motion to compel arbitration. The petition presents the question whether an appeal of the denial of a motion to compel arbitration deprives a district court of jurisdiction to proceed with the litigation pending appeal and automatically triggers a stay. On December 5, this Court relisted the petition. This Court will consider the petition again at its December 9 conference.

I write to inform the Court that, on December 4, the Ninth Circuit scheduled oral argument in Coinbase's *Bielski* appeal for February 14, 2023. The Ninth Circuit previously held oral argument in *Suski* on November 18, 2022. The Ninth Circuit's scheduling of oral argument in *Bielski* underscores the urgency of this Court's review. As Coinbase explained in its joint petition, the question presented is particularly susceptible to mootness because it remains live only during the pendency of a party's appeal. *See* Joint Pet. 27. This Court's review of this recurring issue is essential to resolve the deep and longstanding split over whether stays pending appeal are mandatory in this context. Coinbase's joint petition is an excellent vehicle to address that question.

The Ninth Circuit's scheduling of oral argument in *Bielski* will not hinder this Court's review. Were this Court to grant certiorari, Coinbase would ask the Ninth Circuit to hold the case in abeyance pending disposition of the petition. Abeyance would ensure this Court can

resolve this case before the Ninth Circuit issues a decision. *See* Order, *Hamby v. Walker*, No. 14-35856 (9th Cir. Feb. 27, 2015), ECF No. 20 (holding appeal in abeyance pending this Court’s decision after certiorari was granted in a case involving a related issue). This Court could alternatively order the Ninth Circuit to hold the case in abeyance, which would similarly preserve this Court’s ability to resolve the case before the Ninth Circuit. And Coinbase would be prepared to agree to an expedited briefing schedule that would ensure this Court can resolve the case as quickly as possible this Term, including allowing for the case to be argued during the February sitting.

Even if the Ninth Circuit were to issue its decisions in both *Bielski* and *Suski* before this Court resolves the case, this Court would retain jurisdiction. As the *Suski* Respondents have now acknowledged, the issue would be capable of repetition yet evading review. *See* *Suski* Supp. Br. 3-4. Plaintiffs subject to arbitration agreements frequently sue Coinbase in both state and federal court. And “there is a reasonable expectation” Coinbase “will be subject to the same” harm again—forced to litigate in a district court while an arbitrability appeal proceeds in the Ninth Circuit. *Davis v. Fed. Election Comm’n*, 554 U.S. 724, 735 (2008) (quotation marks omitted); *Fed. Election Comm’n v. Wisconsin Right To Life, Inc.*, 551 U.S. 449, 463 (2007) (same).

Accordingly, there is no prospect that the ongoing Ninth Circuit proceedings would bar this Court’s review.

Sincerely,

/s/ Neal Kumar Katyal
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