

No. ____

IN THE
Supreme Court of the United States

COINBASE, INC.,
Petitioner,

v.

ABRAHAM BIELSKI,
Respondent.

COINBASE, INC.,
Petitioner,

v.

DAVID SUSKI, *et al.*,
Respondents.

**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. (“Coinbase”) hereby states that it is a wholly-owned subsidiary of Coinbase Global, Inc. No publicly held corporation owns 10% or more of the stock of either company.

Pursuant to Supreme Court Rule 21, Petitioner (“Coinbase”) respectfully seeks expedited consideration of its joint petition for certiorari. Expedited consideration will ensure that this Court can decide this case before it becomes moot.

Coinbase’s joint petition for certiorari seeks the Court’s resolution of an entrenched circuit split regarding whether district court proceedings should be automatically stayed pending an appeal of a district court’s refusal to compel arbitration. Six courts of appeals—the Third, Fourth, Seventh, Tenth, Eleventh, and D.C. Circuits—hold that a non-frivolous appeal of the denial of a motion to compel arbitration divests the district court of jurisdiction, automatically staying proceedings in the district court. By contrast, three courts of appeals—the Second, Fifth, and Ninth Circuits—hold that such an appeal does not divest the district court of jurisdiction. In the three circuits on the minority side of the split, litigation proceeds during the appeal of a denied motion to compel arbitration unless the court concludes that the defendant has satisfied the traditional, exacting test for a discretionary stay pending appeal.

Coinbase’s joint petition for certiorari seeks review in two cases—*Coinbase, Inc. v. Bielski*, and *Coinbase, Inc. v. Suski*—where the District Court and the Ninth Circuit denied Coinbase’s motions for stays pending appeal of the District Court’s refusal to compel arbitration. In both *Bielski* and *Suski*, the lower courts adhered to Ninth Circuit precedent holding that district court proceedings are not automatically stayed upon an appeal of the denial of a motion to compel arbitration. See *Britton v. Co-op Banking Grp.*, 916 F.2d 1405 (9th Cir. 1990). Had Coinbase’s stay motions

been presented to one of the six circuits that follow the majority rule, Coinbase would have been entitled to automatic stays.

The issue presented by Coinbase's joint petition for certiorari will become moot once the Ninth Circuit issues its decisions on Coinbase's underlying arbitrability appeals in *Bielski* and *Suski*. If the Court grants certiorari, it should ensure that the case is decided before it becomes moot.

In *Suski*, Coinbase filed its notice of appeal in the Ninth Circuit on February 9, 2022, and its opening brief on May 11, 2022; respondents filed their answering brief on July 11, 2022. On the current briefing schedule, the case will be fully briefed on August 31, 2022. Based on typical practice, the Ninth Circuit is likely to hold oral argument before the end of 2022, with a decision possible shortly thereafter.

In *Bielski*, Coinbase filed its notice of appeal in the Ninth Circuit on April 18, 2022, and its opening brief on July 27, 2022. On the current briefing schedule, the case will be fully briefed on September 16, 2022. Based on typical practice, the Ninth Circuit is likely to hold oral argument during the winter or early spring of 2023, with a decision possible shortly thereafter.

Because Coinbase files a joint petition for certiorari seeking review in both *Bielski* and *Suski*, the question presented by the joint petition will not become moot until the Ninth Circuit resolves the appeals in both *Bielski* and *Suski*. To avoid mootness, Coinbase respectfully requests that this Court grant certiorari and decide the question presented expeditiously, before the Ninth Circuit has resolved both

appeals. Coinbase respectfully submits that either of the following two options would allow the Court to review the important question presented before it becomes moot:

First, and preferably, the Court may construe Coinbase's separately-filed stay applications in *Bielski* and *Suski* as petitions for certiorari, grant certiorari, consolidate the cases, issue an expedited briefing schedule, and schedule the case for argument at the earliest opportunity. The Court took a similar approach in *Nken v. Holder*, 556 U.S. 418 (2009), this Court's most recent merits decision addressing the legal standard for stays pending appeal. In *Nken*, the applicant filed a stay application seeking review of a circuit split on the appropriate legal standard for stays pending appeal and, as here, the issue presented would have been mooted by an interim ruling from the court of appeals. The Court granted the stay application in *Nken*, treated that application as a petition for certiorari, granted certiorari, and set an expedited briefing schedule that allowed the case to be argued less than two months after the stay application was granted. Were the Court to proceed similarly here, Coinbase would dismiss its separately filed joint petition for certiorari and would be prepared to brief this case on whatever expedited timeline this Court deems appropriate.

Second, in the event the Court declines to treat the stay applications in *Bielski* and *Suski* as petitions for certiorari, Coinbase respectfully requests that the Court grant the stay applications and grant this motion to expedite consideration of the joint petition for certiorari. Coinbase would propose that the Court set a briefing schedule that would allow the Court to act on the joint petition expeditiously. If the

joint petition is granted, Coinbase respectfully requests a briefing schedule that would allow the case to be argued as soon as possible.¹

CONCLUSION

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

Respectfully submitted,

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July 29, 2022

¹ Alternatively, the Court could stay not only the District Court proceedings, but also the Ninth Circuit appeals in *Bielski* and *Suski*. With proceedings in both the District Court and the Ninth Circuit stayed, there would be no need for this Court to expedite its disposition of the joint petition, and Coinbase would withdraw this motion to expedite.