

**In the
Supreme Court of the United States**

COINBASE, INC.,

Petitioner,

v.

ABRAHAM BIELSKI,

Respondent.

COINBASE, INC.,

Petitioner,

v.

DAVID SUSKI, ET AL.,

Respondents.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit**

**SUPPLEMENTAL BRIEF
OF RESPONDENT ABRAHAM BIELSKI**

Sabita J. Soneji
Wesley M. Griffith
TYCKO & ZAVAREEI LLP
1970 Broadway, Suite 1070
Oakland, CA 94612
(510) 254-6808

Hassan A. Zavareei
Counsel of Record
Glenn E. Chappell
Dia Rasinariu
Spencer S. Hughes
TYCKO & ZAVAREEI LLP
2000 Pennsylvania Ave., NW
Suite 1010
Washington, DC 20006
(202) 973-0900
hzavareei@tzlegal.com

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
SUPPLEMENTAL BRIEF OF RESPONDENT ABRAHAM BIELSKI.....	1
I. The district court’s stay in <i>Suski</i> further illustrates why Coinbase’s petition presents no certiorari-worthy issue.....	1
II. The district court’s stay further confirms that <i>Suski</i> is an unsuitable vehicle for deciding the issue presented in Coinbase’s joint petition.	3
CONCLUSION.....	6

TABLE OF AUTHORITIES

Page

CASES

Gingras v. Rosette,
No. 5:15-cv-101, 2016 WL 4442792
(D. Vt. Aug. 22, 2016) 3

Hansen v. Rock Holdings, Inc.,
No. 2:19-cv-00179, 2020 WL 3867652
(E.D. Cal. July 9, 2020) 3

Murphy v. Hunt,
455 U.S. 478 (1982) 5

Nurre v. Whitehead,
559 U.S. 1025 (2010) 1

Vine v. PLS Fin. Servs., Inc.,
226 F.Supp.3d 708 (W.D. Tex. 2016) 3

STATUTES

9 U.S.C. § 16..... 2

**SUPPLEMENTAL BRIEF
OF RESPONDENT ABRAHAM BIELSKI**

The joint petition in this case presents a single issue: When a party files an interlocutory appeal of the denial of its motion to compel arbitration, does the district court retain discretion to conduct proceedings unrelated to the arbitrability questions presented to the appellate court, or must it automatically stay all proceedings—involving all aspects of the case—until that interlocutory appeal is resolved?

The district court in *Suski*—one of the two cases Coinbase, Inc. included in its joint petition—recently stayed district court proceedings in that case “pending the appeal before the Ninth Circuit.” *Coinbase Supp. Br.* at App.4a. This ruling underscores that the practical impacts of the question presented in this case are extremely limited, making this case unworthy of certiorari. See *Nurre v. Whitehead*, 559 U.S. 1025 (2010) (Alito, J., dissenting from denial of certiorari) (a case’s “important practical implications” contribute to certiorari worthiness). And in any event, the stay further confirms that the *Suski* appeal is a poor vehicle for deciding the issue presented.

I. The district court’s stay in *Suski* further illustrates why Coinbase’s petition presents no certiorari-worthy issue.

The district court’s discretionary stay demonstrates why Coinbase struggled to find a vehicle with which to present the issue it wants reviewed—a reason having nothing to do with the so-called “mootness” concerns manufactured by Coinbase and everything to do with the extraordinarily limited impact the issue has on

the law and litigants in federal court. Having anticipated this series of events, Coinbase admits that it filed a joint petition presenting two cases “to ensure that, even if an unforeseen complication arose as to one, it would not prevent this Court’s review.” *Coinbase Supp. Br.* at 2. What Coinbase delicately characterizes as an “unforeseen complication” is the discretionary stay which happened in *Suski*.

In combination with other factors, such routine discretionary stays render the issue presented salient to a tiny subset of litigants. To even be implicated by the issue, a party must be (1) a defendant, (2) in a case within the Second, Fifth, or Ninth Circuits, (3) who moved to compel arbitration, (4) whose motion to compel was denied, (5) who appealed that denial under 9 U.S.C. § 16(a), (6) who actually moved for a stay of district court proceedings pending appeal, and (7) who was again denied. Few parties satisfy all these criteria. *See Bielski Resp. Br.* at 14-16. Here, Coinbase satisfied the first six criteria in *Suski* but failed to satisfy the seventh. This illustrates why the reach of the issue presented in this case is tightly constrained to only a narrow set of litigants.

The staleness of the issue presented is also indicative of its limited impact, and *Suski* shows one of the reasons why it is stale. The Ninth Circuit articulated the standard Coinbase challenges 32 years ago, the Second Circuit followed suit 18 years ago, and the Fifth Circuit did the same 11 years ago. *Bielski Resp. Br.* at 15. Yet this standard has not had a significant impact over these decades. District courts have ably managed litigation proceedings during the pendency of interlocutory appeals challenging the denial of motions to compel arbitration. And, as evidenced by

Suski and the many cases cited in Mr. Bielski’s brief in opposition to certiorari,¹ have often stayed these proceedings where a stay was *actually* warranted under the circumstances. Indeed, prior to two petitions filed two terms ago by a single petitioner, Coinbase can point to no petition raising the issue filed over the course of those three decades since the Ninth Circuit first addressed the issue. Put simply, one of the reasons why it took this many years for the issue to reach this Court is that discretionary stays are often granted even in the circuits where litigants are not entitled to an automatic stay pending appeal. *See Bielski Resp. Br.* at 14-17.

Accordingly, Coinbase’s joint petition does not present a certiorari-worthy issue.

II. The district court’s stay further confirms that *Suski* is an unsuitable vehicle for deciding the issue presented in Coinbase’s joint petition.

In the alternative, if the Court grants review of Coinbase’s petition (for all the reasons described, it shouldn’t), it still should not grant it as to the *Suski* appeal. *Suski* is rife with issues that make it a poor vehicle. Even before the stay of district court proceedings, it was a poor vehicle because the district court ruled that the Coinbase “sweepstakes” giving rise to the *Suski* plaintiffs’ suit was governed by a contract that doesn’t contain an arbitration agreement and

¹ *See, e.g., Hansen v. Rock Holdings, Inc.*, No. 2:19-cv-00179, 2020 WL 3867652 at 3–4 (E.D. Cal. July 9, 2020); *Gingras v. Rosette*, No. 5:15-cv-101, 2016 WL 4442792, at *6–7 (D. Vt. Aug. 22, 2016); *Vine v. PLS Fin. Servs., Inc.*, 226 F. Supp. 3d 708, 718–19 (W.D. Tex. 2016).

instead expressly called for resolution of all disputes *in court*. *Bielski Resp. Br.* at 6. Coinbase thus asks this Court to review a case where the district court denied the motion to compel arbitration because no arbitration agreement *existed* with respect to the challenged conduct. Granting certiorari in these circumstances would embolden frivolous attempts to delay litigation with appeals over other irrelevant “contracts” purporting to require arbitration.

The district court’s stay in *Suski* adds to these factual issues. The stay means that no live controversy exists at present with respect to *Suski*, as Coinbase has now obtained the relief it sought in its stay motions in the district court, the Ninth Circuit, and here. Coinbase asserts that its petition is not moot as to *Suski* because the district court’s stay order *might* not remain in effect pending “the disposition of a petition by Coinbase for rehearing in the Ninth Circuit or for certiorari in this Court,” *Coinbase Supp. Br.* at 2, but this argument is speculative at best. The district court’s order stayed proceedings “pending the appeal before the Ninth Circuit.” *Coinbase Supp. Br.* at App.4a.

Thus, it is unlikely or at most speculative as to whether the district court would lift the stay pending a petition for rehearing in the Ninth Circuit, which is unquestionably part of Coinbase’s “appeal before the Ninth Circuit.” And it is equally speculative to assert that the stay would not remain in effect during the pendency of a future petition for certiorari in this Court, because Coinbase could move for a stay in the future if it decides to pursue such a petition and there is no way to prophesy concerning how the district court would rule on such a stay. Simply asserting an

injury *could* occur in the future is not enough to unring the mootness bell. *See Murphy v. Hunt*, 455 U.S. 478, 482-83 (1982) (rejecting argument that “a mere physical or theoretical possibility” of future harm is sufficient to avoid mootness and instead requiring a “reasonable expectation or a demonstrated probability that the same controversy will recur involving the same complaining party”) (internal quotation mark omitted).

Thus, *Suski* is not certiorari-worthy even if the Court decides to review the question presented by Coinbase.

CONCLUSION

As there are no compelling reasons for this Court's review, this Court should deny Coinbase's petition for a writ of certiorari.

Respectfully submitted,

Hassan A. Zavareei

Counsel of Record

Glenn E. Chappell

Dia Rasinariu

Spencer S. Hughes

TYCKO & ZAVAREEI LLP

2000 Pennsylvania Ave., NW, Suite 1010

Washington, DC 20006

(202) 973-0900

hzavareei@tzlegal.com

gchappell@tzlegal.com

drasinariu@tzlegal.com

shughes@tzlegal.com

Sabita J. Soneji

Wesley M. Griffith

TYCKO & ZAVAREEI LLP

1970 Broadway, Suite 1070

Oakland, CA 94612

(510) 254-6808

ssoneji@tzlegal.com

wgriffith@tzlegal.com

Counsel for Respondent Abraham Bielski

November 29, 2022