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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 developments in the proceedings below.

On December 9, 2022, this Court granted certiorari to resolve a circuit split over whether district courts are divested of authority to proceed with the merits pending appeal from the district court's refusal to compel arbitration. This Court agreed to review 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. Because this case concerns the proper standard for stays pending appeal, and because the underlying appeals are ongoing in the Ninth Circuit, I write to apprise the Court of developments in the underlying appeals.

The Ninth Circuit held oral argument in *Suski* on November 18, 2022, while Coinbase's joint certiorari petition was pending before this Court. One week after this Court granted certiorari, the Ninth Circuit issued an opinion in *Suski* affirming the district court's refusal to compel arbitration. Coinbase has received an extension of time until January 30 to file a rehearing petition, and intends to seek rehearing en banc.

The Ninth Circuit has scheduled oral argument in *Bielski* for February 14, 2023. On December 10, one day after this Court granted certiorari, Coinbase asked the Ninth Circuit to

hold *Bielski* in abeyance pending this Court's disposition of this case, to ensure that ongoing Ninth Circuit proceedings do not interfere with this Court's review. In the alternative, Coinbase explained that the Ninth Circuit could proceed with oral argument but wait to issue an opinion until after this Court decides this case. Coinbase explained that this approach would ensure that the Ninth Circuit does not resolve the appeal before this Court has an opportunity to address the antecedent question that has divided the circuits: whether a stay pending appeal is required. On January 20, 2023, the Ninth Circuit issued an order denying Coinbase's motion to hold the appeal in abeyance, and informed the parties that it would hear oral argument as scheduled on February 14. The order did not indicate whether the Ninth Circuit would wait to issue its opinion until after this Court's disposition of this case.

Even if the Ninth Circuit issues opinions in both *Suski* and *Bielski* before this Court resolves this case, neither appeal will conclude until seven days after the Ninth Circuit resolves any petitions for rehearing en banc. *See* Fed. R. App. P. 41(b) (mandate does not issue until seven days after disposition of rehearing petition). No question of mootness in this Court will arise at least until then. Even if the Ninth Circuit issues the mandate in both *Suski* and *Bielski* before this Court resolves this case, the case would fall within the category of cases "that are not moot because the underlying dispute is capable of repetition, yet evading review." *Turner v. Rogers*, 564 U.S. 431, 440 (2011) (quotation marks omitted). That is because the challenged action—the refusal to grant a stay pending appeal—would be "in its duration too short to be fully litigated prior to its cessation or expiration," and there is "a reasonable expectation" that Coinbase will again be denied a stay pending an arbitrability appeal in the Ninth Circuit. *See id.* at 439-440 (quotation marks omitted). Accordingly, ongoing Ninth Circuit proceedings do not threaten to moot this case and will not jeopardize this Court's ability to resolve the question presented.

If the Ninth Circuit resolves both appeals before this Court issues its decision, however, *Bielski* informed this Court that he would argue that the Ninth Circuit's decisions moot the question presented. *See* *Bielski Opposition to Motion to Expedite* at 5 n.5 (Aug. 8, 2022) ("Respondent does not agree that" the capable-of-repetition-yet-evading-review exception to mootness would apply). While Coinbase would dispute that contention, the dispute would likely force this Court to address a threshold dispute over mootness before addressing the question presented. *See Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 101 (1998). Given that this Court normally "will not decide a constitutional question if there is some other ground upon which to dispose of the case," *Bond v. United States*, 572 U.S. 844, 855 (2014) (quotation marks omitted), this Court may prefer to avoid addressing a threshold dispute over Article III jurisdiction. If so, the Court could order the Ninth Circuit to hold the appeal in abeyance pending this Court's disposition of this case, which would avoid any question of mootness. *See* *Bielski Opposition to Motion to Expedite* at 2 (arguing that to avoid mootness the Ninth Circuit could "hold its appeals in abeyance pending this Court's review," and that "[a]ppeals courts do this all the time").

Sincerely,

/s/ Neal Kumar Katyal
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