

No. 22-105

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

**RESPONDENT ABRAHAM BIELSKI'S
SUGGESTION OF MOOTNESS IN
*COINBASE, INC. v. SUSKI***

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INTRODUCTION

Respondent Abraham Bielski files this Suggestion of Mootness to alert the Court of intervening developments in the *Suski* litigation and to suggest that those developments moot the *Suski* petition.

Coinbase, Inc.'s petition for certiorari in *Suski* challenges the Ninth Circuit's denial of Coinbase's motion to stay district court proceedings pending its interlocutory appeal of the district court's denial of its motion to compel arbitration, which it took pursuant to Section 16(a)(1) of the Federal Arbitration Act. However, the Ninth Circuit has now decided the appeal and denied Coinbase's motion for rehearing *en banc*. There can be no stay "pending" a completed appeal.

No mootness exception applies, either. The Court will answer the same question presented in *Bielski*, which Coinbase included in its joint petition for certiorari. Unlike in *Suski*, there is no possibility that the Ninth Circuit will decide the appeal in which Coinbase sought a stay before this Court decides the case. The Ninth Circuit panel deferred submission of the appeal for decision until after this Court rules. As a result, the issue will not evade review.

Accordingly, the Court should dismiss *Suski* as moot.

STATEMENT OF THE *SUSKI* PROCEEDINGS

In *Suski v. Coinbase, Inc.*, No. 21-cv-4539 (N.D. Cal.), the district court denied Coinbase's motion to compel arbitration and partially granted its motion to dismiss on January 11, 2022. *Suski* Dkt 53. Coinbase then appealed, under Section 16(a), the Court's denial of its motion to compel arbitration and moved to stay district court proceedings pending that appeal. *Id.*

Dkt. 58, 59. On April 19, 2022, the district court denied Coinbase’s motion for a discretionary stay pending appeal. *Id.* Dkt. 76.

While Coinbase’s Section 16(a) appeal was pending, the *Suski* plaintiffs filed an amended complaint on May 10, 2022. *Id.* Dkt. 83. Coinbase joined in its co-defendant’s motion to compel arbitration as to the claims in that complaint on June 9, 2022. *Id.* Dkt. 88.

While the parties were briefing that second motion, Coinbase filed a petition for a writ of certiorari in this Court on July 29, 2022. Coinbase’s joint petition presented two instances in which a Section 16(a) appeal was before a Court of Appeals without a stay in the district court—*Bielski* and *Suski*.

In its August 31, 2022 order on Coinbase’s second motion to compel arbitration, the district court determined that it “no longer ha[d] jurisdiction over the issue of [arbitrability]” while Coinbase’s Section 16(a) appeal was before the Ninth Circuit. *Id.* Dkt 113 at 5. Because Coinbase’s appeal was then pending before the Ninth Circuit, the district court held that appeal “deprive[d] this Court of jurisdiction over the issue of arbitration.” *Id.* The district court then denied Coinbase’s motion because it lacked jurisdiction to consider it. *Id.* at 14.

Coinbase filed another appeal of the district court’s jurisdictional denial of its motion to compel arbitration on September 30, 2022. *Id.* Dkt 123. Coinbase explained that it did not believe the second appeal “requires additional briefing or any alteration of the schedule of its pending appeal.” *Id.* at 2. Coinbase and the *Suski* plaintiffs-appellees filed a joint motion in the Ninth Circuit to consolidate Coinbase’s two Section 16(a) appeals. *Suski v.*

Coinbase, Inc., No. 22-16506, Dkt. 5 (9th Cir. Oct. 25, 2022). The Ninth Circuit denied that motion on November 1, 2022. *Id.* Dkt. 6.

Coinbase and the *Suski* plaintiffs jointly stipulated to stay district court proceedings on November 10, 2022. *Suski* Dkt. 137. The district court entered a stay on November 14 and has extended that stay at the parties' joint request through March 31, 2023. *Id.* Dkt. 138, 144.

On December 9, 2022, this Court granted Coinbase's joint petition for certiorari in *Bielski* and *Suski*. One week later, the Ninth Circuit affirmed the district court's January 11, 2022 denial of Coinbase's motion to compel arbitration. *Suski v. Coinbase, Inc.*, No. 22-15209, Dkt. 55 (9th Cir. Dec. 16, 2022). Coinbase filed a petition for panel rehearing and rehearing *en banc*. *Id.* Dkt. 59. The Ninth Circuit denied Coinbase's motion in full on February 23, 2023. *Id.* Dkt. 62.

ARGUMENT

No live controversy remains before this Court in *Suski*. When “an event occurs while a case is pending on appeal that makes it impossible for the court to grant any effectual relief whatever to a prevailing party, the appeal must be dismissed.” *Church of Scientology of Cal. v. United States*, 506 U.S. 9, 12 (1992) (internal quotation marks omitted). That is the case here. Coinbase's certiorari petition seeks reversal of the Ninth Circuit's order denying a stay pending the appeal initiated on February 9, 2022. That appeal is complete, and the Ninth Circuit declined to rehear it. Thus, a stay pending appeal would not grant any relief—and indeed would not be possible—because no appeal remains pending. As Coinbase recognized, the question presented “will remain live only while the

underlying [appeal] remain[s] pending” before the Ninth Circuit. Pet. at 5. Thus, as to the *Suski* petition, “any opinion as to the legality of the challenged action would be advisory.” *City of Erie v. Pap’s A.M.*, 529 U.S. 277, 287 (2000).

No mootness exception applies. Coinbase has previously asserted that the question presented falls within the narrow mootness exception for issues capable of repetition yet evading review. *See* 1/24/2023 N. Katyal Letter at 2. But that exception “applies only in exceptional circumstances where the following two circumstances are simultaneously present: (1) the challenged action is in its duration too short to be fully litigated prior to cessation or expiration, and (2) there is a reasonable expectation that the same complaining party will be subject to the same action again.” *Spencer v. Kemna*, 523 U.S. 1, 17 (1998) (cleaned up).

Bielski ensures that the issue can be fully litigated before the issue becomes moot again, and it makes certain that review will be had before Coinbase is subjected to the same action again. *Bielski* is proceeding in the district court, and at oral argument on Coinbase’s Section 16(a) appeal, the assigned Ninth Circuit panel announced that it will defer issuing a ruling until after this Court decides this case. *Bielski v. Coinbase, Inc.*, No. 22-15566, Dkt. 75 (9th Cir. Feb. 14, 2023) (“Argued and submission deferred”) (capitalization amended); *see also* 2/15/2023 N. Katyal Letter at 1 (panel stated it has “no desire to interfere with this Court’s review and that the Ninth Circuit’s decision will be deferred pending this Court’s decision in this case”). That ensures the Court will have an opportunity and ample time to resolve the issue presented.

The presence of another appeal filed later in the *Suski* litigation does not affect the mootness analysis here. The only two cases before the Court are the Ninth Circuit’s orders denying stays pending Coinbase’s Section 16(a) appeals in *Bielski* and the appeal initiated in *Suski* on February 9, 2022. A decision by the Court reversing the Ninth Circuit’s ruling on the stay in that *Suski* appeal would provide no relief because that appeal is complete, and the subsequent appeal is not before the Court. Thus, at most, the speculative possibility that the question presented could arise in another appeal not before the Court in the *Suski* litigation might speak to the issue’s capability of repetition. But again, even if the issue were found capable of repetition in *Suski*, it will not evade review. The Court will address the question in *Bielski* in the same timeframe it would have done so if the Ninth Circuit had not decided the *Suski* appeal.

Further, the district court in *Suski* already stayed proceedings there, pursuant to the parties’ agreement. *See Suski* Dt. 137, 138. And the Court has since extended that stay (again at the parties’ joint request) to at least March 31, 2023. *See id.* Dkt. 144. Thus, Coinbase has no need to seek a stay pending the new appeal, nor could the Ninth Circuit or this Court grant such relief. Indeed, the last time the Court was presented with a certiorari petition seeking review of the question presented here, the parties “mooted the petitions by agreeing to a voluntary stay” before the Court could act. Pet. at 4-5 (citing *PeopleConnect, Inc. v. Knapke*, No. 21-725 (2021); *PeopleConnect, Inc. v. Callahan*, No. 21-885 (2021)). Just as in the *PeopleConnect* petitions, the *Suski* petition is moot.¹

¹ Because Coinbase and the *Suski* plaintiffs stipulated to a stay

The issue in the new appeal underscores why the Court should dismiss the *Suski* petition, given that *Bielski* is a clean avenue for reviewing the question presented. Coinbase appealed the district court's order holding that it lacked jurisdiction over the aspect of arbitrability while a previous Section 16(a) appeal was already pending in the Ninth Circuit. *Suski* Dkt. 113 at 5. Thus, the question in the new appeal is not the same as it was in the first appeal. Instead, the second appeal is about whether the district court properly denied Coinbase's second motion based on the absence of *jurisdiction* over arbitrability issues.

The Ninth Circuit may have recognized this distinction when it denied a joint motion by Coinbase and the *Suski* plaintiffs-appellees to consolidate those two appeals. *Suski v. Coinbase, Inc.*, No. 22-16506, Dkt. 6 (9th Cir. Nov. 1, 2022). If the issues presented by each appeal were truly identical, the Ninth Circuit would have every reason to consolidate the appeals. Because they are different, though, it would be improvident to assume that the second *Suski* appeal presents the same legal question as the first appeal (or as the *Bielski* appeal).

Coinbase's second arbitration appeal presents messy, unresolved questions of jurisdiction outside of the question presented. Because the district court found that it lacked jurisdiction to reach the arbitration merits before Coinbase's second appeal, that court may now decide that the termination of

(and the district court entered a complete stay) prior to this Court's December 9, 2022 grant of certiorari, the Court may alternatively dismiss the *Suski* petition as improvidently granted. Just like in *PeopleConnect*, the parties' voluntary stay "mooted the petition[]" here. *See* Pet. at 4-5.

Coinbase's first appeal has restored its jurisdiction over that question and may reach the merits of arbitrability. There is no need for this Court to involve itself in this jurisdictional puzzle. Rather than strain to hold onto *Suski*, the Court may instead find *Suski* is moot and cleanly address the identical question presented in *Bielski*.

CONCLUSION

No live controversy exists in this Court as to the *Suski* petition, and the issue presented in *Suski* will not evade review because the Court will decide it in *Bielski*. The Court should therefore dismiss *Suski* as moot.

Respectfully Submitted,

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