No. 25-1269

IN THE

Supreme Court of the United States

BURFORD GERMAN FUNDING LLC, *et al.*,

Petitioners,

v.

FINANCIALRIGHT CLAIMS GMBH,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF IN OPPOSITION

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September 14, 2026

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QUESTION PRESENTED

Whether a Section 1782 proceeding is a "civil action" that may be compelled to arbitration under Section 4 of the Federal Arbitration Act.

RULE 29.6 STATEMENT

Pursuant to this Court's Rule 29.6, respondent financialright claims GmbH states the following: financialright claims GmbH is wholly owned by Cars s.r.o., a privately held company organized under the laws of the Czech Republic. No publicly held corporation owns 10% or more of financialright claims GmbH's stock.

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INTRODUCTION

This petition concerns "an unusual appeal" that presented a question that "will not often recur." App. at 19a.

Nearly three years ago, Petitioners moved to compel arbitration of a Section 1782 proceeding under Section 4 of the Federal Arbitration Act ("FAA"). The district court denied their motion based on Section 4's plain language, which requires an underlying "civil action" for the court to grant relief. The Third Circuit affirmed, holding that "in the limited context of § 4, Burford has failed to show that ancillary discovery proceedings pursuant to § 1782 would have been viewed by Congress as civil actions." *Id.* Notably, the panel explicitly declined to reach "difficult and far-reaching" issues regarding the "general definition" of terms like "suit" and "civil action," or whether Section 4's "civil action" requirement is "best understood as a jurisdictional element, as a non-jurisdictional claims-processing rule, or as a substantive element of a § 4 motion." *Id.* at 18a n.52, 19a.

Petitioners now recast that narrow holding as implicating the entire jurisdictional framework of the FAA, claiming it conflicts with this Court's decision in *Jules v. Andre Balazs Props.*, 146 S. Ct. 1209 (2026). But *Jules* has nothing to do with the decision below, and it cannot serve as a basis for GVR as a result. *Jules* addressed the authority of district courts to grant post-award relief under Sections 9 and 10 of the FAA—provisions that lack Section 4's distinctive "civil action" requirement, on which the Third Circuit's holding rests. *Jules* said nothing about what types of proceedings qualify as "civil actions" because no one contested that the underlying employment discrimination lawsuit in that case was one.

Nor does the Third Circuit's decision warrant review. It conflicts with no circuit authority and no decision of this Court. Petitioners cannot cite a single other case in which anyone has sought to compel a Section 1782 application to arbitration under Section 4 of the FAA. In any event, resolving the question Petitioners present would have no impact on this dispute: Section 4 independently requires that arbitration take place "within the district" where relief is sought, and the arbitration clause here designates London, not Delaware.

What is really going on is that the scarce judicial resources of this Court (as well as of the Third Circuit and District Court) are being misused by Petitioners—the litigation funder Burford Capital LLC and Respondent's former German counsel, Hausfeld—who hope to delay for as long as possible discovery into their fraudulent scheme, in which they concealed from Hausfeld's client (financialright claims, or "FRC") that its lawyers were also investors in its litigation funder and had a secret stake in the outcome of German antitrust litigation on which Hausfeld was obligated to provide FRC with unconflicted, informed advice. Through dubious appeals coupled with serial motions to compel arbitration (and concomitant stay applications) the likes of which this Court likely never contemplated when it decided *Coinbase, Inc. v. Bielski*, 599 U.S. 736 (2023), Petitioners have kept the full details of their scheme hidden for nearly three years, with no sunlight in sight as the Third Circuit is now burdened with an appeal of the denial of their second motion to compel arbitration by the District Court.

The petition is without merit and should be denied.

STATUTORY PROVISIONS INVOLVED

Relevant provisions of the Federal Arbitration Act not included in Petitioners' appendix are reproduced at Respondent's Appendix ("Resp't. App.") 29a–31a.

STATEMENT OF THE CASE

I. Statutory Framework

A. *9 U.S.C. §§ 3 and 4*

Section 4 of the Federal Arbitration Act ("FAA") allows a district court to compel arbitration only if it "would have jurisdiction under title 28, *in a civil action* or in admiralty of the subject matter of a suit arising out of the controversy between the parties." 9 U.S.C. § 4. (emphasis added). Section 4 thus requires a district court to determine whether the parties' underlying dispute is a civil action before it may exercise its jurisdiction to grant a motion to compel arbitration. This Court has long held that a federal court must satisfy itself that the statutory requirements of Section 4 are met before granting a motion to compel arbitration. *See, e.g.*, *Vaden v. Discover Bank*, 556 U.S. 49, 52–54 (2009). Section 3 of the FAA in turn provides that when a "suit or proceeding" is brought "in any of the courts of the United States *upon any issue referable to arbitration*," the court "shall on application of one of the parties *stay the trial* of the action until such arbitration has been had." 9 U.S.C. § 3 (emphasis added). That is, Section 3 requires the court to stay litigation of arbitrable claims pending arbitration. *See Smith v. Spizzirri*, 601 U.S. 472, 478 (2024).

B. *9 U.S.C. §§ 9 and 10*

Sections 9 and 10 of the FAA exclusively govern post-arbitration relief, an issue entirely inapplicable here. Section 9 allows the court to enter "an order confirming the award" from an arbitration. 9 U.S.C. § 9. And Section 10 allows a court to vacate an arbitral award under specified conditions. 9 U.S.C. § 10(a). Because Sections 9 and 10 apply post-arbitration, they entail a different legal analysis than Sections 3 and 4, which apply pre-arbitration. *See Badgerow v. Walters*, 596 U.S. 1, 7–11 (2022).

Jules v. Andre Balazs Props., 146 S. Ct. 1209 (2026), addressed the requirements of Sections 9 and 10, not Sections 3 and 4. *Jules* was an employment-discrimination action over which the district court had federal-question jurisdiction. *Id.* at 1217–18. The district court stayed the action under Section 3 pending arbitration. *Id.* at 1217. After arbitration, the parties moved, respectively, to confirm the award under Section 9 and vacate the award under Section 10 in the same district court. *Id.* at 1213–14. This Court unanimously held that the district court had jurisdiction over *those* motions—brought under different sections of the FAA than Petitioners' motion here—because it had jurisdiction over the original action and "[n]othing in the FAA eliminated that jurisdiction while the parties arbitrated." *Id.* at 1218.

C. *28 U.S.C. § 1782*

Section 1782 authorizes courts to order discovery in aid of foreign proceedings. 28 U.S.C. § 1782. A proceeding under Section 1782 is a limited discovery tool, not itself a litigation to resolve a cause of action. *See United States v. Zubaydah*, 595 U.S. 195, 214 (2022) (describing a Section 1782 application as "purely evidentiary").[1] A Section 1782 proceeding is like a subpoena proceeding or a state-law pre-suit discovery petition—it is a discovery proceeding ancillary to a litigation, not itself a "civil action." *See Doe v. Trump Corp.*, 6 F.4th 400, 416–418 (2d Cir. 2021) (a subpoena proceeding is not a "civil action" under FAA Section 4); *Teamsters Loc. 404 Health Servs & Ins. Plan v. King Pharms., Inc.*, 906 F.3d 260, 266–67 (2d Cir. 2018) (a state-law pre-suit discovery petition is not a "civil action" under the federal removal statute). This fits with Section 1782's purpose "to provide federal-court assistance in gathering evidence for use in foreign tribunals," rather than creating a cause of action in U.S. court. *Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241, 247 (2004).

II. Factual and Procedural Background

Respondent FRC is a claims aggregator in Germany that has asserted over 150,000 antitrust claims in German court on behalf of about 11,000 truck owners against a cartel of truck manufacturers. To finance these claims,

1. *See also Republic of Ecuador v. Connor*, 708 F.3d 651, 655 (5th Cir. 2013) (explaining that a Section 1782 proceeding is "ancillary" to the foreign litigation and "adjudicates nothing"); *In re Edelman*, 295 F.3d 171, 179 (2d Cir. 2002) (Section 1782 "is simply a discovery mechanism and does not subject a person to liability"); *Akebia Therapeutics, Inc. v. FibroGen, Inc.*, 793 F.3d 1108, 1110 (9th Cir. 2015) (describing Section 1782 as a "discovery mechanism"); *In re Accent Delight Int'l Ltd.*, 869 F.3d 121, 134 (2d Cir. 2017) (Section 1782 was enacted to provide "efficient means of assistance to participants in international litigation in our federal courts").

FRC entered into a litigation funding agreement with Petitioner Burford German Funding LLC ("Burford"), under which Burford agreed to pay FRC's litigation expenses in exchange for a portion of recoveries from the claims. The funding agreement includes an arbitration clause requiring arbitration in the London Court of International Arbitration, seated in London.

FRC retained Hausfeld Rechtsanwälte LLP ("Hausfeld") as its counsel by a separate engagement agreement. FRC did not know then—and was never told by Burford or Hausfeld—that Hausfeld partners were secretly indirect owners of Burford. FRC subsequently learned from a whistleblower that Burford is owned by Petitioner Burford Capital LLC ("Burford Capital") and Petitioner German Litigation Solutions LLC ("GLS"), which is an entity set up and controlled by the Hausfeld firm. The upshot of this structure is that Hausfeld had a right to share in recoveries from FRC's antitrust claims that it never disclosed to its client: proceeds from the claims would flow to FRC and then to Burford, GLS, and ultimately to Hausfeld partners.

Putting aside the enormous ethical implications of Burford Capital's and Hausfeld's concealed scheme to defraud their client, that is effectively a contingency fee arrangement—FRC's lawyers could recover if the claims they litigated succeeded. But German law prohibits contingency fee arrangements as contrary to public policy. After a whistleblower exposed this scheme, FRC fired Hausfeld and sued it in German court given the risks that the illegal Burford-Hausfeld scheme had posed to the viability of the antitrust claims FRC asserted for its truck owner clients.

FRC also applied for Section 1782 discovery in the District of Delaware, seeking evidence from Petitioners for use in the German litigation against Hausfeld. Petitioners moved to compel arbitration of FRC's Section 1782 application under Sections 3 and 4 of the FAA. App. 3a (noting that "[w]hen pressed at a motion hearing, Burford confirmed that the statutory bases for its motions were §§ 3 and 4"). The District Court denied that motion, holding that it lacked authority to grant the petition because Section 1782 proceedings are not "civil actions" capable of resulting in a trial. *Id.* at 5a. The District Court separately granted FRC's Section 1782 application on the merits. By this point, nearly eleven months had passed since FRC filed its German lawsuit and Section 1782 application, and the German lawsuit continued to move forward.

Petitioners appealed to the Third Circuit and obtained an automatic stay under *Coinbase, Inc. v. Bielski*, 599 U.S. 736 (2023). The Third Circuit affirmed fourteen months later. It held that a court may not compel arbitration of, nor stay, a Section 1782 proceeding under FAA Sections 3 and 4, because those proceedings "are ancillary to a foreign suit, initiated without pleading or summons, granted without notice, and concluded without a judgment" and therefore "are not civil actions." App. 15a. The court also rejected Petitioners' argument, raised for the first time on appeal, that the court should compel arbitration under different provisions in Chapter 2 of the FAA. App. 18a–19a. With trial in Germany approaching (now two years after suit was filed there), Petitioners then bought more time in the Third Circuit to extend their *Coinbase* stay, seeking *en banc* review and to stay the mandate pending their petition in this Court, all of which was denied by January 2026. App. 39a–40a (denying petition for rehearing); Resp't App. 1a (denying motion to stay mandate).

On remand, Petitioners continued to refuse to provide discovery and thus enable FRC to learn information such as the scope of the Burford Capital-Hausfeld scheme (which may well exist with respect to Burford Capital's entire German portfolio), their knowledge of its illegality and their intent to conceal it from FRC, and the anticipated magnitude of the financial stake that Burford gave to Hausfeld for its participation. FRC accordingly moved to compel compliance from Burford Capital and GLS, as neither has an arbitration agreement with FRC nor could even colorably argue that FRC's discovery requests must be arbitrated.[2] With the clock running down before the German trial, they nonetheless moved to compel arbitration again, on the very same grounds they tried and lost in the first motion and on appeal. Resp't App. 11a (describing Petitioner's motion to compel). The result was unsurprisingly the same—the District Court denied the motion to compel arbitration and ordered Burford Capital's and GLS's immediate production of documents and witness testimony. Resp't App. 15a. Petitioners again appealed and obtained a second *Coinbase* stay,[3]

2. Petitioners falsely advise this Court that "Petitioners and [R]espondent entered into an agreement to govern their relationship." Petition for Certiorari ("Pet.") at 9. FRC has no agreement with Burford Capital nor GLS. Indeed, Burford Capital and GLS explicitly refused to cooperate in disclosure in the arbitration between FRC and Burford on the basis of a lack of any agreement with FRC giving the arbitrators jurisdiction.

3. It is questionable whether this Court intended to permit serial *Coinbase* stays, which enable recalcitrant parties like

then moved to stay their own appeal in the Third Circuit pending resolution of this petition. Resp't App. 16a. That appeal is pending.[4]

Almost three years have passed since FRC sued Hausfeld and filed its Section 1782 application. The District Court has now twice granted that application and ordered Petitioners to provide discovery. Yet Petitioners have resisted at every level of the federal judiciary and produced nothing. The full scope of their reprehensible scheme remains concealed.

REASONS FOR DENYING THE PETITION

I. *Jules* Does Not Provide a Basis for GVR

GVR is appropriate only if there is a "reasonable probability that the decision below rests upon a premise that the lower court would reject if given the opportunity for further consideration." *Lawrence ex rel. Lawrence v. Chater*, 516 U.S. 163, 167 (1996) (per curiam). The Third Circuit's decision below is not at all premised on anything

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Burford Capital and GLS that have lost in the District Court and the Circuit Court to simply refile a new motion to compel arbitration and thereby continue to stay judicial proceedings indefinitely, but given the language of *Coinbase*, the District Court felt compelled to grant such request, and thus the second stay will continue until Burford Capital and GLS's second appeal inevitably fails. Resp't App. 27a–28a. Thus, *Coinbase* appears to unintentionally allow for abuse of the judicial process.

4. While no stay has been granted by the Third Circuit, Burford Capital and GLS have declined to file their long overdue Third Circuit brief until resolution of its pending petition for a writ of certiorari.

decided in *Jules*, which therefore gives no reason to GVR. *See Wellons v. Hall*, 558 U.S. 220, 227 (2010) (Scalia, J., dissenting) (objecting to GVR where "the decision below does *not* 'rest upon' the objectionable faulty premise, but is independently supported by other grounds") (emphasis in original).

Jules said nothing about the issues that the Third Circuit resolved below. It held that the FAA does not preclude a court that stayed a civil action under Section 3 from later resolving a motion to confirm or vacate an award under Sections 9 and 10. 146 S. Ct. at 1223. The decision does not address Section 4's statutory and jurisdictional framework, much less whether a Section 1782 proceeding is a "civil action" under Section 4. Those were the bases for the decision below, and *Jules* therefore has no bearing on them. *See* App. 15a.

The question addressed below was never raised or disputed even in the lower courts in *Jules*. The plaintiff filed federal employment discrimination claims over which the district had federal-question jurisdiction under 28 U.S.C. § 1331. *See Jules*, 146 S. Ct. at 1218. Neither party could claim that this was not a "civil action" or that it did not involve "subject matter referable to arbitration," since the claims were paradigmatic examples of both. The Third Circuit resolved a different issue in analyzing whether a discovery application under Section 1782 fit that standard.

Nor would *Jules*'s discussion of Sections 9 and 10 shed any light on the Third Circuit's analysis under Section 4. The applicable legal standards under these sections differ materially, foremost because Sections 9 and 10 lack Section 4's "civil action" requirement on which the result below rested. 9 U.S.C. §§ 9–10. This Court has repeatedly emphasized that each section of the FAA, including Sections 3 and 4, has unique requirements which must be satisfied before a district court can grant the relief under that particular section. *See, e.g.*, *Badgerow*, 596 U.S. at 5 (discussing "distinctive language" of Section 4); *Jules*, 146 S. Ct. at 1220 (discussing "'highly unusual' look-through rule"); *Smith v. Spizzirri*, 601 U.S. 472, 476 (2024) (discussing "plain statutory text" of Section 3).

Petitioners try to justify a GVR by simplistically conflating the statutory requirements under Sections 3 and 4 with those under Sections 9 and 10. They argue that the District Court's jurisdiction over the Section 1782 application gave it the same authority to grant Petitioners' Section 4 motion that the district court in *Jules* had over the Section 9 and 10 motions. *See* Supplemental Brief for Petitioners at 2–3. But that runs contrary to the well-settled precedent cited above. Petitioners brought their motion to compel under Sections 3 and 4, and they therefore need to satisfy the unique requirements of Sections 3 and 4. The Third Circuit held that they cannot, analyzing the "civil action" language that is absent from Sections 9 and 10. *Jules* simply did not address the statutory provisions at issue here, and accordingly, provides no basis for the Third Circuit to revisit its holding.

II. This Case Does Not Warrant Review

1. There is no conflict on the question presented. The Third Circuit's decision below is the first circuit-level decision to consider whether a Section 1782 proceeding is a "civil action" under Section 4 of the FAA. App. 2a. Petitioners cite no other circuit directly addressing that question.

For that matter, while no circuit has construed Section 4's "civil action" requirement in particular, the Third Circuit relied on—and is consistent with—other circuits' interpretation of "civil action" language in other statutes. App. 11a–12a. And the Third Circuit's decision is consistent with other circuits' discussion of Section 1782's statutory purpose and history. App. 6a–8a; *see also Republic of Ecuador*, 708 F.3d at 655 (Section 1782 proceeding "addresses an interlocutory discovery application that is ancillary to a non-domestic proceeding" and "'adjudicates' nothing else"); *In re Edelman*, 295 F.3d at 179 (Section 1782 is "simply a discovery mechanism"); *Akebia Therapeutics*, 793 F.3d at 1110 (same).

2. As the Third Circuit recognized, the question presented is "unusual" and "will not often recur." App. 19a. This makes sense, as nearly all motions under Sections 3 and 4 of the FAA address complaints asserting causes of action, which clearly are "civil action[s]" under Section 4. Petitioners cite only two other cases where a party has ever even sought to compel arbitration of a Section 1782 application. *See* Pet. at 9–10. But the motions in those cases were brought under Chapter 2 of the FAA, which has different legal requirements from the Chapter 1 sections at issue here. *See Sanchez v. Adverit*, 2025 WL 2171607, at *8 (S.D. Fla. July 31, 2025); *In re Motransa S.A.*, 2020 WL 4251147 (S.D. Fla. June 24, 2020). The issue resolved below is not known to have arisen in any District before, and may never recur. It does not warrant the Court's review.

Petitioners inflate this case's importance by broadly defining the question presented as "[w]hether a federal court that has subject-matter jurisdiction over a pending matter also has subject-matter jurisdiction to resolve motions to stay and compel arbitration of that matter under Sections 3 and 4 of the Federal Arbitration Act." Pet. at i. That sweeps far beyond the granular analysis of Section 4's text that the Third Circuit performed. *See* App. 19a. ("[I]n the limited context of § 4, Burford has failed to show that ancillary discovery proceedings pursuant to § 1782 would have been viewed by Congress as civil actions."). Indeed, as it is unclear whether Section 4's "civil action" requirement is jurisdictional, App. 18a n.52, the Court could answer Burford's question presented without even reaching the "civil action" requirement that resolved the case below.

Petitioners also overstate the Third Circuit's holding—it did not decide that under *Vaden*, "Section 4 *always* requires a court to look through the motion" to the underlying dispute to determine jurisdiction. Pet. at 10, 12; *Vaden*, 556 U.S. at 62. To the contrary, the Third Circuit did not rule on "look through" grounds at all, instead focusing on the "limitations expressly delineated in [Section 4]." App. 17a–18a.

Petitioners barely engage with the Third Circuit's actual holding or its well-reasoned analysis. They say nothing about the Third Circuit's extensive analysis of the FAA's and Section 1782's text, purpose, and history. And they do not rebut much of the authority from this Court and other circuits supporting the result below. *See* App. 11a–13a. They instead try to make this case into something it is not, no doubt to stall further in the hope that they can evade complying with the discovery the District Court has repeatedly ordered and continue to conceal the full truth until final resolution of the German litigation moots it altogether. The case does not warrant review.

III. This Case Is a Poor Vehicle for Review

1. The complex proceedings in this case make it a poor vehicle for further review. This petition arises from the first of now two appeals to the Third Circuit, following Petitioners' strategy of duplicative motions practice before the District Court. The second appeal is still pending in the Third Circuit. Even if the Court were interested in reviewing the question presented here, that issue would still be live after the Third Circuit resolves the second appeal. There is no reason to review now while the case is again before the Third Circuit.

2. The parties have also not preserved issues that could have been dispositive without need to resolve the question presented. This underscores the Third Circuit's conclusion that the issue presented "will not often recur." App. 19a.

a. Even setting aside the "civil action" issue, the District Court could not have compelled arbitration of FRC's Section 1782 application under the Burford–FRC arbitration clause. Section 4 only allows a district court to compel arbitration "within the district in which the petition for an order directing such arbitration is filed." 9 U.S.C. § 4. Here, that would be Delaware, but the arbitration clause specifies a London seat. *See Control Screening LLC v. Tech. Application & Prod. Co. (Tecapro)*, 687 F.3d 163, 171 (3d Cir. 2012) (Section 4's "requirement that arbitration take place in the district court where the petition is filed is clear and unequivocal"). This is an independent bar that would preclude the relief Petitioners sought below.[5] *See Jules v. Andre Balazs Props.*, 2021 WL 2183098, at *6 (S.D.N.Y. May 28, 2021) (denying motion to compel arbitration due to venue outside the district and collecting cases).

b. Petitioners waived their arguments under Chapter 2 of the FAA. App. 18a–19a. They have asserted ever since that Chapter 2 authorizes the District Court to compel arbitration, and they apparently intend to present that argument to the Third Circuit in their second appeal notwithstanding their waiver. If Petitioners are right, there would be no need to resolve the Chapter 1 issue presented here, which has not yet generated any conflict of authority and may never do so.

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5. This independent bar applies even when the district court has jurisdiction over the underlying case, as illustrated by the district court's denial of the *Jules* defendant's Section 4 motion. That aligns, not conflicts, with the Third Circuit's conclusion here: Section 4 has "limiting language" that can preclude a court's ability to compel arbitration. App. 17a.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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Dated: September 14, 2026
New York, New York

APPENDIX

TABLE OF APPENDICES

APPENDIX 1 — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT, FILED JANUARY 16, 2026

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 24-3171

In re: Application of financialright claims GmbH

For an Order Pursuant to 28 U.S.C. 1782 to Conduct Discovery for Use in a foreign Proceeding

BURFORD GERMAN FUNDING LLC; GERMAN LITIGATION SOLUTIONS LLC; BURFORD CAPITAL LLC,

Appellants.

(D. Del. No. 1:23-cv-01481)

Present: MATEY, FREEMAN, and ROTH, *Circuit Judges*

1. Motion by Appellants Burford Capital LLC, Burford German Funding LLC and German Litigation Solutions LLC to Stay the Mandate*.

Respectfully,
Clerk/kr

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* Judge Matey would have granted this motion.

Appendix 1

ORDER

The foregoing motion is **DENIED**.

By the Court,

s/ Jane R. Roth
Circuit Judge

Dated: January 16, 2026

APPENDIX 2 — MEMORANDUM OPINION OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE, FILED MAY 12, 2026

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

Miscellaneous Action No. 26-184-CFC

FINANCIALRIGHT CLAIMS GMBH,

Petitioner,

v.

BURFORD CAPITAL LLC AND GERMAN LITIGATION SOLUTIONS LLC,

Respondents.

MEMORANDUM OPINION

May 12, 2026
Wilmington, Delaware

/s/ Colm F. Connolly
COLM F. CONNOLLY
CHIEF JUDGE

I have two motions pending before me. The first motion was filed by Petitioner financialright claims GmbH (Financialright). Financialright seeks by the motion an order compelling Respondents Burford Capital LLC and German Litigation Solutions LLC (collectively, Burford) to comply with subpoenas issued by this Court on November 18, 2024 for documents and deposition testimony for use in connection with a lawsuit filed by Financialright in Germany. *See* D.I. 2 at 1. I issued the Order granting Financialright leave to serve the four subpoenas in question in a related and now closed *ex parte* action (the Section 1782 Action) upon Financialright's application under 28 U.S.C. § 1782. *In re financialright claims GmbH*, No. 23-1481, D.I. 51 (granting Financialright leave to serve the subpoenas filed as D.I. 28-1 through 28-6); *see also* § 1782(a) (providing that "upon the application of any interested person" a district court "may order" "a person [who] resides or is found" in the district "to give his testimony or statement or to produce a document or other thing for use in a proceeding in a foreign or international tribunal").

The second motion was filed by Burford and nonparty Burford German Funding LLC (Burford Germany, and together with Burford, the Burford entities) in response to Financialright's motion. D.I. 15. Because Burford Germany is not a party to this action and did not seek leave under Federal Rule of Civil Procedure 24 to intervene as a party, and I see no reason to add it as a party on my own, I will the treat the motion as Burford's motion. *See* Fed. R. Civ. P. 24 (requiring and permitting nonparties to intervene in certain circumstances, but only "[o]n timely motion"); Fed. R. Civ. P. 21 ("On motion or on its own, the court may at any time, on just terms, add or drop a party."). Burford seeks by its motion "an Order . . . compelling arbitration of Petitioner financialright claims GmbH's application for discovery under 28 U.S.C.

§ 1782, and staying any further court proceedings on that application, including Petitioner's pending Motion to Compel Respondents Burford Capital LLC's and German Litigation Solutions LLC's Compliance with Subpoenas." D.I. 15 at 1. Burford argues that I must stay this action and send the closed Section 1782 Action and Financialright's motion before me in this action to an arbitrator because of an arbitration agreement in a Capital Provision Agreement (CPA) between Financialright and Burford Germany. *See* D.I. 16 at 1,6-7; D.I. 20 at 3-4.

I.

Before getting to the merits of the pending motions and to understand why I am writing in May 2026 about subpoenas issued in November 2024, a few words need to be said about the protracted and convoluted history that led to this action. In the words of Financialright's counsel, "[I]t's a mess in terms of how we've gotten here." *financialright claims GmbH v. Burford German Funding LLC*, No. 24-929, 12.10.24 Hr'g Tr. (docketed as D.I. 31) 18:22-23.

The mess traces its roots to January 30, 2024. On that date, Financialright filed in the Section 1782 Action a motion titled "Unopposed Motion for Stay to Allow Parties Time to Discuss Potential Resolution." No. 23-1481, D.I. 12. Keep in mind that the Section 1782 Action was an *ex parte* action. Financialright had sought in that action an order under § 1782 permitting it to serve subpoenas on the Burford entities. No. 23-1481, D.I. 2-1 at 1. There was only one party to the action—Financialright. But instead of waiting until after I had issued an order granting the straightforward application and Financialright had served the requested subpoenas on the Burford entities, Financialright asked me in its "Unopposed Motion" to stand down and "stay[] [the action] unless and until [Financialright] notifies the Court that discussions of a potential resolution of the Application have been unsuccessful." No. 23-1481, D.I. 12-1 at 1. I granted the motion and signed that day Financialright's proposed order staying the case. No. 23-1481, D.I. 13.

Four months passed. On May 31, 2024, Financialright "notifie[d] [me] that the stay imposed by [my] January 30, 2024 Order is hereby ended, as discussions of a potential resolution of [its] application pursuant to 28 U.S.C. § 1782 have been unsuccessful." No. 23-1481, D.I. 19 at 1 (internal quotation marks and citation omitted). Financialright further informed me that day that it "intend[ed] to supplement its Application with additional discovery requests" and that it "intend[ed] to provide an advance copy of those requests to [the Burford entities] . . . and [to] meet and confer with them in the hope of obtaining either their voluntary compliance or an agreement on a briefing schedule to present to the Court." No. 23-1481, D.I. 19 at 3.

Later that day, the Burford entities filed in the Section 1782 Action a Motion to Compel Arbitration and to Stay Further Proceedings Pending Arbitration. No. 23-1481, D.I. 20. On June 14, Financialright filed a "Stipulation and Proposed Order" for my signature that set a briefing schedule for the motion to compel arbitration. No. 23-1481, D.I. 29. The stipulation was "by and between the parties," No. 23-1481, D.I. 29 at 1, even though Financialright was the only party, as the Burford entities had not requested, and I had not granted them, leave to intervene in the Section 1782 Action. I signed the proposed order that day. No. 23-1481, D.I. 30.

On June 27, Financialright filed an answering brief in opposition to the Burford entities' motion to compel arbitration. No. 23-1481, D.I. 36. It argued among other things in its brief that "[e]ven were [Financialright's § 1782] Application covered by the CPA's arbitration agreement, [Financialright] was fraudulently induced to enter into that arbitration agreement, and thus it is unenforceable." No. 23-1481, D.I. 36 at 2.

That same day, Financialright sued Burford Germany in the Superior Court of the State of Delaware. No. 24-929, D.I. 1-1 at 2. It asked in the Complaint in that case (the 929 Action) for a declaratory judgment that "(i) [Burford Germany] fraudulently induced [Financialright] into agreeing to the Arbitration Agreement; and (ii) as a result of [Burford Germany]'s fraud, the Arbitration Agreement is invalid and unenforceable." No. 24-929, D.I. 1-1 at 12.

On July 23, Burford Germany filed in Superior Court a motion to dismiss the case for lack of subject matter jurisdiction, or, in the alternative, to stay that action pending resolution of the Section 1782 Action (the Superior Court Motion). No. 24-929, D.I. 1-1 at 79-80. On August 9, Burford Germany exercised its right to remove the 929 Action from the Superior Court to this Court. *See* No. 24-929, D.I. 1. Neither party filed a motion in this

Court in the ensuing four weeks. Then, on September 11, Financialright filed an "Opposition to Burford [Germany]'s Motion to Dismiss, or in the Alternative, to Stay Proceedings." No. 24-929, D.I. 12. A week later, on September 18, Burford Germany filed a "Reply Brief in Support of [Its] Motion to Dismiss, or in the Alternative, Stay." No. 24-929, D.I. 14.

At this point, I was thoroughly perplexed by the procedural posture of both the Section 1782 Action and the 929 Action. In my mind, there was no motion pending before me in the 929 Action for Financialright to oppose or Burford Germany to support. And I did not understand why I was being asked to resolve a dispute among four entities in an *ex parte* proceeding initiated by one of them in the Section 1782 Action. To try to sort things out, I held a joint hearing for both actions on November 1.

At the outset of the November 1 hearing, I explained that I had been prepared early in the year to rule on Financialright's § 1782 application when it filed its motion to stay; and that as a result of the motion to stay, Financialright's application had moved "to the bottom of the pile" of the hundreds of motions pending before me. No. 23-1481, 11.1.24 Hr'g Tr. (docketed as D.I. 49) 4:19-25. I then turned to "sort[ing] out what motions we have pending" and heard argument from the parties. No. 23-1481, 11.1 Tr. 6:6-7.

On November 18, I issued a Memorandum Opinion and Order in the Section 1782 Action, denying the Burford entities' motion to compel arbitration for lack of jurisdiction and granting Financialright's § 1782 application for permission to issue the requested subpoenas to the Burford entities. *See* No. 23-1481, D.I. 50; No. 23-1481, D.I. 51. I had expected that Financialright would immediately serve on the Burford entities the subpoenas and that either the Burford entities would move to quash those subpoenas or Financialright would move to compel compliance with the subpoenas, thereby giving rise to a justiciable controversy over which I would have jurisdiction. I was wrong.

Financialright did serve the subpoenas on the Burford entities the next day. *See* No. 23-1481, D.I. 53 at 3; No. 23-1481, D.I. 54 at 3; No. 23-1481, D.I. 55 at 3. But instead of moving to quash the subpoenas, the Burford entities filed that afternoon an appeal of the November 18 Order with the Third Circuit. No. 23-1481, D.I. 52.

On December 2, the Burford entities filed a motion to stay the Section 1782 Action pending the appeal of my November 18 Order. No. 23-1481, D.I. 57. Because the Section 1782 Action was closed on November 18 and thus there were no proceedings to stay, I denied the motion as moot on January 13, 2025. No. 23-1481, D.I. 61 at 1. On January 15, the Burford entities filed in the Third Circuit a motion to stay the Section 1782 Action pending appeal. *See In re Financialright Claims GmbH*, No. 24-3171, 2025 U.S. App. LEXIS 27545, D.I. 41.

While the appeal of the Section 1782 Action was pending, I turned my attention back to the 929 Action. I held a hearing on December 10, 2024 and denied the

Superior Court Motion without prejudice. No. 24-929, 12.10 Tr. 35:15-16. Financialright filed an Amended Complaint in the 929 Action on December 11, No. 24-929, D.I. 29, and Burford Germany filed a motion to compel arbitration of that case on December 20, No. 24-929, D.I. 32. The parties completed briefing on that motion on January 10, 2025. *See* No. 24-929, D.I. 36. I started work on the motion, but on February 10, the Third Circuit scheduled oral argument in the appeal of the Section 1782 Action for March 4. No. 24-3171, D.I. 50. Accordingly, I decided to hold off in ruling on Burford Germany's motion to compel in the 929 Action. The Third Circuit held oral argument in the appeal of the Section 1782 Action on March 4 as scheduled. *See* No. 24-3171, D.I. 57. A week later, on March 11, the Third Circuit granted the Burford entities' motion to stay the Section 1782 Action pending the appeal. No. 24-3171, D.I. 58.

On August 11, I granted Burford Germany's motion to compel arbitration of the 929 Action and stayed that case pending completion of the arbitration. No. 24-929, D.I. 40. On August 25, Financialright filed a motion for reargument and/or reconsideration of my August 11 Order. No. 24-929, D.I. 41. I later denied Financialright's motion. No. 24-929, D.I. 45.

On October 22, a panel of the Third Circuit affirmed my decision in the Section 1782 Action to deny the Burford entities' motion to compel arbitration for lack of jurisdiction. *See In re Financialright Claims GmbH*, 2025 U.S. App. LEXIS 27545, 2025 WL 2977513, at *8 (3d Cir. Oct. 22, 2025). The Burford entities petitioned for rehearing by the panel and then for rehearing by the

Third Circuit sitting en banc. No. 24-3171, D.I. 67. The Third Circuit denied those petitions, No. 24-3171, D.I. 75, and issued on January 16, 2026 its mandate to this Court, No. 23-1481, D.I. 64.

Almost a month later, on February 11, 2026, Financialright filed in the closed Section 1782 Action the motion to compel compliance with subpoenas now pending before me in this action. *See* No. 23-1481, D.I. 66. Because the filing of the motion in the Section 1782 Action violated the Court's Local Rules and its CM/ECF procedures, I ordered the Clerk of Court to open this miscellaneous action and to transfer the motion and the subsequent docket entries of the Section 1782 Action to this action. No. 23-1481, D.I. 85.

II.

I turn first to Burford's motion. According to Burford, its seeks by the motion "to compel arbitration of (a) whether [Financialright]'s Section 1782 application was improvidently granted under *Intel [Corp. v. Adv. Micro Devices, Inc.*, 542 U.S. 241, 124 S. Ct. 2466, 159 L. Ed. 2d 355 (2004)]; (b) whether the scope of the subpoenas are too broad; and (c) whether this Court can adjudicate [Financialright]'s motion to enforce its subpoenas." D.I. 20 at 3-4.

With respect to the first two issues, Burford is in effect asking me to consent to having a private arbitrator exercise appellate review of five orders issued by this Court—the order granting Financialright's § 1782 application and four subpoenas. (A subpoena is itself a court order. *Pennwalt Corp. v. Durand-Wayland, Inc.*, 708 F.2d 492, 494 n.5 (9th Cir. 1983) ("[A] subpoena duces tecum is itself a court order[.]"); *Vitalis v. Sun Constructors, Inc.*, 2020 U.S. Dist. LEXIS 151121, 2020 WL 4912298, at *14 (D.V.I. Aug. 20, 2020) ("[A] subpoena is a valid court order."); *In re Subpoena to Creeden & Assocs. Inc.*, 2012 U.S. Dist. LEXIS 141163, 2012 WL 4580841, at *2 (N.D. Ill. Sept. 28, 2012) ("[A] subpoena ... is a command of the Court.").) Burford cites no legal authority that allows for appellate review of a federal court order by a private party. That is not surprising because federal court orders are "subject to review only by superior courts in the Article III hierarchy." *Plaut v. Spendthrift Farm*, 514 U.S. 211, 218-19, 115 S. Ct. 1447, 131 L. Ed. 2d 328 (1995); *see also id*. at 218 ("Congress cannot vest review of the decisions of Article III courts in officials of the Executive Branch."); *Hayburn 's Case*, 2 U.S. 409, 410, 1 L. Ed. 436, 2 Dall. 409 (1792) (opinion of Iredell, J., and Sitgreaves, D.J.) ("[N]o decision of any court of the United States can, under any circumstances,... be liable to a revision, or even suspension, by the legislature itself, in whom no judicial power of any kind appears to be vested[.]"); *Chi. & S. Air Lines v. Waterman S. S. Corp.*, 333 U.S. 103, 113, 68 S. Ct. 431, 92 L. Ed. 568 (1948) ("Judgments, within the powers vested in courts by the Judiciary Article of the Constitution, may not lawfully be revised, overturned or refused faith and credit by another Department of Government."). Since Congress itself cannot engage in appellate review of a federal court's decision, it cannot delegate that power to a private party through the Federal Arbitration Act (FAA).

With respect to the third issue, enforcement of a subpoena issued by a federal district court is also a power vested exclusively in the federal courts under the Constitution. *United States v. Trs. of Bos. Coll.*, 718 F.3d 13, 23 (1st Cir. 2013) ("[T]he enforcement of subpoenas is an inherent judicial function which, by virtue of the doctrine of separation of powers, cannot be constitutionally divested from the courts of the United States."); *see also In re Premises Located at 840 140th Ave. NE, Bellevue, Wash.*, 634 F.3d 557, 572 (9th Cir. 2011) ("The enforcement of a subpoena is an exercise of judicial power."). "[C]ourts have inherent power to enforce compliance with their lawful orders through civil contempt." *Shillitani v. United States*, 384 U.S. 364, 370, 86 S. Ct. 1531, 16 L. Ed. 2d 622 (1966). "The power to punish for contempts is inherent in all courts; its existence is essential to the preservation of order injudicial proceedings, and to the enforcement of the judgments, orders, and writs of the courts, and consequently to the due administration of justice." *Ex parte Robinson*, 86 U.S. 505, 510, 22 L. Ed. 205 (1873); *see also Michaelson v. United States ex rel. Chicago, St. P., M. & O. Ry. Co.*, 266 U.S. 42, 65, 45 S. Ct. 18, 69 L. Ed. 162 (1924) ("That the power to punish for contempts is inherent in all courts, has been many times decided and may be regarded as settled law. It is essential to the administration of justice."). And "while the exercise of the contempt power is subject to reasonable regulation, the attributes which inhere in that power and are inseparable from it can neither be abrogated nor rendered practically inoperative," and the prosecution of contempt can only "proceed at the instigation of the court." *Young v. United*

States ex rel. Vuitton et Fils S.A., 481 U.S. 787, 799, 107 S. Ct. 2124, 95 L. Ed. 2d 740 (1987) (internal quotation marks and citation omitted). Because Congress cannot abrogate a federal court's power to enforce a subpoena, it cannot delegate that power to a private arbitrator. *Trs. of Bos. Coll.*, 718 F. 3d at 23; *In re Y& A Grp. Sec. Litig.*, 38 F.3d 380, 385 (8th Cir. 1994) (Arnold, C.J., concurring) ("[T]he Federal Arbitration Act should not be construed to divest courts of their traditional powers to punish for contempt."); *PRL USA Holdings, Inc.* v. *U.S. Polo Ass'n Inc.*, 2015 U.S. Dist. LEXIS 40238, 2015 WL 1442487, at *6 (S.D.N.Y. Mar. 27, 2015) ("[F]ederal courts alone, possess the inherent authority to enforce their judgments, and the FAA may not be construed to divest courts of their traditional powers to police their own orders[.]") (internal quotation marks and citations omitted).

Accordingly, I will deny Burford's motion to compel arbitration.

III.

I turn then to Financialright's motion to compel compliance with the subpoenas. Except for a single sentence in a footnote, Burford's brief in opposition to the motion is dedicated entirely to its argument that I should stay this action and require Financialright to arbitrate the motion. *See generally* D.I. 16. That sentence reads: "Respondents expressly reserve all objections to [Financialright]'s requests and subpoenas, including under 28 U.S.C. § 1782, the *Intel* factors, the Federal Rules of Civil Procedure, and principles of relevance, proportionality, privilege, confidentiality, and applicable arbitral or contractual limitations." D.I. 16 at 15 n.8. Accordingly, Burford has forfeited all arguments that the subpoenas are not enforceable except for its argument that I should abstain from ruling on the motion and send it to an arbitrator. *See Kalu v. Spaulding*, 113 F.4th 311, 344 n.21 (3d Cir. 2024) ("[A]rguments raised in passing (such as, in a footnote), but not squarely argued, are considered forfeited[.]") (brackets and citation omitted). And since, for the reasons discussed above, I have rejected the latter argument, I will grant Financialright's motion to compel compliance.

IV.

For the reasons discussed above, I will deny Burford's motion to compel arbitration (D.I. 15) and grant Financialright's motion to compel compliance with the subpoenas (D.I. 2).

The Court will issue an Order consistent with this Memorandum Opinion.

APPENDIX 3 — MOTION OF DEFENDANT-APPELLANTS FOR A STAY OF BRIEFING, UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT, FILED JULY 20, 2026

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 26-2232, 26-2233

FINANCIALRIGHT CLAIMS GMBH,

Plaintiff-Appellee,

v.

BURFORD GERMAN FUNDING LLC *et al.*,

Defendant-Appellants.

MOTION OF DEFENDANT-APPELLANTS FOR A STAY OF BRIEFING

Pursuant to Federal Rule of Appellate Procedure 27, Defendant-Appellants Burford German Funding LLC, et al. ("Appellants") respectfully seek a stay of briefing in the above-captioned appeal pending the Supreme Court's review of Appellants' petition for certiorari in a related case from this Court, *Burford German Funding v. financialright claims* (25-1269). Appellants' opening brief in this appeal is currently due August 3, 2026. The Supreme Court has called for a response from Appellee, and Appellants have suggested that the Supreme Court grant, vacate, and remand (GVR) the case in light of its decision this term in *Jules v. Andre Balazs Properties*, 146 S. Ct. 1209 (2026), which bears directly on this case. Appellants expect that, absent any request for extension by Appellee financialright claims GmbH ("FRC"), the Supreme Court will rule on Appellants' petition in early October, shortly after the Justices' opening conference of the October 2026 Term on September 28, 2026. Appellants propose that the parties provide a status report to the Court within 5 business days of the Supreme Court's order disposing of Appellants' petition. FRC has informed Appellants that it opposes this motion.

BACKGROUND

In April 2017, Appellant Burford German Funding ("BGF") and FRC executed a Capital Provision Agreement ("CPA"); pursuant to the CPA, BGF agreed to provide funding for FRC to pursue claims on behalf of truckers injured by the anticompetitive conduct of a cartel of truck manufacturers in Germany. The CPA required the parties to arbitrate "[a]ny dispute, controversy or claim arising out of or in connection with [the CPA]."

A. The Prior Appeal (*In re Financialright Claims*)

In December 2023, FRC sued its German lawyers in the Berlin Regional Court. That same day, it filed an *ex parte* application in the District of Delaware for discovery in aid of the Berlin lawsuit pursuant to 28 U.S.C. § 1782. Specifically, the application sought an order authorizing FRC to serve document and deposition subpoenas on BGF, as well as BGF's two member-owners, Appellants German Litigation Solutions and Burford Capital LLC.

In May 2024, after the parties attempted unsuccessfully to resolve the discovery requests informally, Appellants moved to compel arbitration of the § 1782 proceeding and stay the proceeding pending arbitration. In November 2024, the district court denied the motion on the ground – never raised by FRC – that it lacked subject-matter jurisdiction under FAA § 4 to decide it. The district court simultaneously granted the § 1782 application.

The next day, Appellants filed a notice of appeal and FRC served its subpoenas on Appellants. On March 11, 2025, this Court granted Appellants' motion to stay further proceedings in the district court under the automatic stay provided for under the Federal Arbitration Act (FAA) § 16 and *Coinbase, Inc. v. Bielski*, 599 U.S. 736 (2023).

In October 2025, a divided panel affirmed the district court's denial of Appellants' motion to compel arbitration. *See In re Financialright Claims GmbH,* 2025 WL 2977513 (3d Cir. Oct. 22, 2025). It held that FAA § 4 did not confer subject-matter jurisdiction over Appellants' motion to compel arbitration. It also specifically rejected Appellants' argument that separate subject-matter jurisdiction under FAA § 4 was unnecessary because the district court already had subject-matter jurisdiction over FRC's § 1782 application. *See id.* at *7 (rejecting argument that, in "a case . . . already properly in federal court, the court's jurisdiction over that case gives it jurisdiction to hear a motion to compel arbitration under FAA § 4").

On January 2, 2026, this Court denied panel rehearing and rehearing *en banc*. And on January 16, 2026, this Court issued the mandate.

On May 4, 2026, Appellants filed a petition for certiorari asking the Supreme Court to grant certiorari, vacate the panel's decision, and remand for further consideration in light of the forthcoming decision in *Jules* – or, in the alternative, grant certiorari and review the panel's decision on the merits. Ten days later, the Supreme Court decided *Jules*, holding that a district court need not have an independent basis for subject-matter jurisdiction over FAA motions if the motion is filed in an action over which the court already has subject-matter jurisdiction. *See Jules*, 146 S. Ct. at 1218 (noting that for FAA motions brought in a case properly pending in federal court, there is an "obvious" place that a court should "look for jurisdiction: the original claims themselves"). That is precisely the argument that the divided panel in *In re Financialright* rejected. Had the panel had the benefit of *Jules*, it would have concluded that the district court's (uncontested) subject-matter jurisdiction over FRC's § 1782 application also conferred subject-matter jurisdiction over Appellants' motion to compel arbitration under FAA § 4.

FRC then waived its response to Appellants' petition for certiorari. On July 15, 2026, however, the Supreme Court called for a response from FRC; FRC's response is due August 14, 2026. Absent any extension request by FRC, the petition will be distributed for the September 28 conference, and likely decided in early October.

B. This Appeal

This is a follow-on appeal necessitated by the fact that FRC has insisted on seeking to compel compliance with the subpoenas sought by the § 1782 application at issue in *In re Financialright* – despite Appellants' petition for certiorari and the very real doubts about whether the order granting the § 1782 application is valid.

In February 2026, immediately after this Court issued its mandate in *In re Financialright*, FRC filed a motion to compel compliance with the subpoenas issued pursuant to its § 1782 application. To preserve its position that this entire discovery dispute is subject to arbitration, Appellants filed a motion to compel arbitration of that motion on February 25, 2026. *See* Motion to Compel Arbitration, No. 23-cv-01481-CFC (D. Del. Feb. 25, 2026), Dkt. 79.[1]

On May 12, 2026, the district court denied Appellants' motion to compel arbitration and granted FRC's motion to compel compliance with the subpoenas. As a matter of first impression in this Circuit, it held that motions to compel enforcement of a § 1782 application cannot, as a matter of law, be arbitrated.[2] Appellants promptly appealed,

1. Indeed, had Appellants not done so, adjudication of FRC's motion to compel compliance of the subpoenas might have mooted Appellants' appeal in *In re Financialright*.

2. After the parties completed briefing that motion, the district court ordered the Clerk of Court to open a miscellaneous action and transfer FRC's motion and subsequent docket entries of the § 1782 Proceeding to this miscellaneous action. *See* Dkt. 85. Notwithstanding the pending motion to compel arbitration filed on behalf of all three Appellants, the Clerk of Court did not include BGF as a party in the miscellaneous action. Accordingly, the district court considered Appellants' motion to compel arbitration only as a motion brought by Burford and GLS. *See* Memorandum

and the district court granted an automatic stay pending appeal. On June 18, 2026, the Court granted Appellants an extension of time to file their opening brief to and including August 3, 2026.

LEGAL STANDARD

"[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Landis v. North Am. Co.*, 299 U.S. 248, 254 (1936). Whether to hold a case in abeyance is a matter of discretion which must consider the optimal use of judicial resources as well as the "competing interests" of the parties. *Id.* at 254–55. *Cf. Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976) (explaining that "wise judicial administration," requires "giving regard to conservation of judicial resources and comprehensive disposition of litigation" (quoting *Kerotest Mfg. Co. v. C-O-Two Fire Equip. Co.*, 342 U.S. 180, 183 (1952)). Courts have recognized that, "the primary reason for holding a case in abeyance is to promote judicial economy" and that, "[e]ven when abeyance is opposed and a party points to some hardship, the possibility of inconvenience will not categorically outweigh the need for the sound use of judicial resources. The court will instead consider the nature and degree of any alleged hardship." *U.S. Steel Corp. v. EPA*, No. 24-1172, Doc. 2114107 at 2-3 (D.C. Cir., May 2, 2025) (Order) (internal citation omitted).

Opinion at 2-3, No. 26-mc-00184-CFC (D. Del. May 12, 2026), Dkt. 24.

This Court regularly holds appeals in abeyance to await the outcome of pending cases that present issues relevant to the appeal. *See*, *e.g.*, *Ginther v. Farmers New Century Ins. Co.*, 324 F. App'x 172, 174 (3d Cir. 2009) (appeal held in abeyance pending a Pennsylvania Supreme Court case); *USX Corp. v. Adriatic Ins. Co.*, 345 F.3d 190, 198 (3d Cir. 2003) (parties filed a joint motion to hold the case in abeyance until the Supreme Court decided *Dole Food Co. v. Patrickson,* 538 U.S. 468 (2003) because the parties thought "that *Dole* would resolve an aspect of the jurisdictional question we were to consider on the appeal"); *United States v. Morelli*, 169 F.3d 798, 802 (3d Cir. 1999) (appeal stayed after oral argument pending the Supreme Court's decision in *Salinas v. United States,* 522 U.S. 52 (1997)); *Swistock v. Jones*, 884 F.2d 755, 756 (3d Cir. 1989) ("Because the issue of what constitutes sufficient allegations of a RICO pattern was then pending before the Supreme Court, we held the appeal in abeyance.").

ARGUMENT

This Court should stay this litigation pending the Supreme Court's resolution of Appellants' pending petition for certiorari in *In re Financialright*. If the Supreme Court grants Appellants' petition and vacates the panel's decision in that appeal, this appeal will likely become moot.

Upon a GVR, the panel in *In re Financialright* will need to decide whether *Jules* requires reversal of the district court's holding that it lacked subject-matter jurisdiction over Appellants' motion to compel arbitration of FRC's § 1782 application and to stay pending arbitration. The answer is almost certainly yes: *Jules*'s holding directly contradicts the panel's holding that the district court needed subject-matter jurisdiction over Appellants' FAA motion, *independent of* its undisputed subject-matter jurisdiction over FRC's § 1782 application. *See Jules,* 146 S. Ct. at 1218 (noting that for FAA motions brought in a case properly pending in federal court, there is an "obvious" place that a court should "look for jurisdiction: the original claims themselves").

At that point, the case will need to be remanded to the district court to address the merits of Appellants' motion to compel arbitration and to stay. There is a strong likelihood that the district court will conclude that FRC's § 1782 application is an arbitrable dispute under the parties' CPA. Indeed, in a related case brought by FRC in state court (which was later removed to federal court), the district court *granted* BGF's motion to compel arbitration of FRC's request for declaratory judgment that the CPA is invalid. *See Financialright Claims GMBH v. Burford German Funding LLC*, No. CV 24-929-CFC, 2025 WL 2306958, at *5 (D. Del. Aug. 11, 2025), *reconsideration denied*, 2026 WL 524099 (D. Del. Feb. 25, 2026) (concluding that the "the Arbitration Agreement [between BGF and FRC] clearly and unmistakably delegates to the arbitral tribunal the power to decide disputes over arbitrability"). In so doing, it *agreed* that the CPA's arbitration clause broadly covers all disputes "arising out of or relating to the CPA" – which FRC's § 1782 application clearly does. *Id.* at *4 n. 2 (noting that the Arbitration Agreement applies to "Any dispute, controversy or claim arising out of or in connection with this Agreement"). If – consistent with its prior ruling – the district court compels arbitration of FRC's § 1782 application, then the court's order granting that application would be vacated, and the sole authority for the subpoenas at issue in this appeal would no longer exist.

It makes little sense – for this Court or for the parties – to barrel ahead with this appeal when the Supreme Court's resolution of the petition for certiorari could well moot this appeal. Each of the three stay factors supports a stay here.

A stay will clarify the issues. For the reasons given above, a stay is likely not only to simplify the issues but to avoid the need to resolve them altogether.

Judicial economy strongly favors a stay. Similarly, a stay will promote judicial economy and conserve the parties' resources. The parties should not be required to brief – and the Court certainly should not be required to consider – an appeal that may soon become moot.

FRC Will Not Be Prejudiced. FRC's § 1782 application seeks discovery in support of its proceedings before the Berlin Regional Court. However, last month, on June 16, 2026, the Berlin Regional Court dismissed in full FRC's claims against Hausfeld, holding that FRC was not entitled to any repayment of any fees or any money and that FRC failed to demonstrate that it had incurred any damages. *See* Declaration of Maximilian Menz ("Menz Dec.") at 2. The Berlin Regional Court's decision confirms what Appellants have long argued: the German proceedings that are the claimed basis for this § 1782 proceeding are a mirage – that lawsuit was brought purely for its in terrorem value. That now-dismissed proceeding was the sole basis for FRC's request for discovery pursuant to 28 U.S.C. § 1782. FRC has appealed the Berlin Regional Court decision, and has requested an extension of its deadline to submit its initial brief in support of the appeal. *See* Menz Dec. at 2. Accordingly, FRC will suffer no prejudice from a short stay of this appeal for likely three months or less.

CONCLUSION

Appellants respectfully request that this Court stay briefing in this appeal pending the Supreme Court's resolution of Appellants' petition for certiorari in *Burford German Funding v. financialright claims* (25-1269). Appellants respectfully suggest that the parties provide a status report to this Court within 5 business days of the Supreme Court's order resolving that petition.

Dated: July 20, 2026

Respectfully submitted,

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APPENDIX 4 — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE, FILED MAY 18, 2026

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

Miscellaneous Action
No. 26-184-CFC

FINANCIALRIGHT CLAIMS GMBH,

Petitioner,

v.

BURFORD CAPITAL LLC AND GERMAN LITIGATION SOLUTIONS LLC,

Respondents.

ORDER

On May 12, 2026, I issued a Memorandum Opinion and Order denying Respondents Burford Capital LLC and German Litigation Solutions LLC's motion to compel arbitration and granting Petitioner financialright claims GmbH's motion to compel compliance with subpoenas. D.I. 24; D.I. 25. Respondents filed a notice of appeal of the Opinion and Order on May 13, 2026. D.I. 26. Pending before me is Respondents' motion "for an emergency stay of all proceedings in this action pending appeal." D.I. 28 at 1. *Coinbase, Inc. v. Bielski,* 599 U.S. 736 (2023), provides that "a district court must stay its proceedings while [an] interlocutory appeal on arbitrability is ongoing." *Id.* at 740. Accordingly, I must grant Respondents' motion. NOW THEREFORE, at Wilmington on this Eighteenth Day of May in 2026, it is HEREBY ORDERED that Respondents Burford Capital LLC and German Litigation Solutions LLC's Emergency Motion for Stay Pending Appeal (D.I. 28) is GRANTED. It is FURTHER ORDERED that all proceedings in this action are STAYED pending resolution of the appeal to the Third Circuit.

/s/ Colm B. Connolly
CHIEF JUDGE

APPENDIX 5 — RELEVANT STATUTORY PROVISIONS

9 U.S. Code § 9 - Award of arbitrators; confirmation; jurisdiction; procedure

If the parties in their agreement have agreed that a judgment of the court shall be entered upon the award made pursuant to the arbitration, and shall specify the court, then at any time within one year after the award is made any party to the arbitration may apply to the court so specified for an order confirming the award, and thereupon the court must grant such an order unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11 of this title. If no court is specified in the agreement of the parties, then such application may be made to the United States court in and for the district within which such award was made. Notice of the application shall be served upon the adverse party, and thereupon the court shall have jurisdiction of such party as though he had appeared generally in the proceeding. If the adverse party is a resident of the district within which the award was made, such service shall be made upon the adverse party or his attorney as prescribed by law for service of notice of motion in an action in the same court. If the adverse party shall be a nonresident, then the notice of the application shall be served by the marshal of any district within which the adverse party may be found in like manner as other process of the court.

9 U.S. Code § 10 - Same; vacation; grounds; rehearing

(a) In any of the following cases the United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration—

(1)

where the award was procured by corruption, fraud, or undue means;

(2)

where there was evident partiality or corruption in the arbitrators, or either of them;

(3)

where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or

(4)

where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

(b)

If an award is vacated and the time within which the agreement required the award to be made has not expired, the court may, in its discretion, direct a rehearing by the arbitrators.

(c)

The United States district court for the district wherein an award was made that was issued pursuant to section 580 of title 5 may make an order vacating the award upon the application of a person, other than a party to the arbitration, who is adversely affected or aggrieved by the award, if the use of arbitration or the award is clearly inconsistent with the factors set forth in section 572 of title 5.