

IN THE
Supreme Court of the United States

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

v.

FINANCIALRIGHT CLAIMS GMBH,
Respondent.

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

REPLY BRIEF FOR PETITIONERS

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RULE 29.6 STATEMENTS

Petitioners' Statements pursuant to Rule 29.6 were set forth at p. iii of the petition for a writ of certiorari, and there are no amendments to those Statements.

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INTRODUCTION

A divided panel of the Third Circuit rejected the argument that a matter properly pending in federal court can serve as a “jurisdictional anchor” for motions in that same matter to stay the proceeding (under FAA Section 3) or compel arbitration (under FAA Section 4). Shortly afterwards, this Court decided *Jules v. Andre Balazs Properties*, 608 U.S. 200 (2026), which confirmed that the majority was wrong to have done so: “[I]n a case originally filed in federal court . . . , the court may assess its jurisdiction [to resolve FAA motions] by looking at the suit that is already before it.” *Id.* at 209. Because the Third Circuit’s decision rested on a premise now conclusively rejected by this Court, a GVR is the proper remedy. See *Lawrence ex rel. Lawrence v. Chater*, 516 U.S. 163, 167 (1996) (per curiam).

Rather than engage with these points, respondent resorts to distraction. The plurality of its brief in opposition is dedicated to telling a fictionalized narrative about litigation in Germany—that it has already lost—or misrepresenting the status and import of separate proceedings not before this Court. (Of course, petitioners disagree with these mischaracterizations in the strongest terms. But because they have nothing to do with the petition at hand, petitioners will not respond to these irrelevant comments.) Absent from respondent’s brief, however, is any serious engagement with petitioners’ question presented, the majority’s flawed analysis of it below, or even any mention of Judge Matey’s cogent dissent.

Jules is an “intervening development[]” that presents a “reasonable probability” the Third Circuit would reconsider its decision, if given the chance. *Lawrence*, 516 U.S. at 167. A GVR is the correct path forward.

ARGUMENT

I. GVR Is Appropriate in Light of *Jules*

1a. In *Jules*, this Court provided lower courts—for the first time—definitive guidance on how to assess whether they have subject-matter jurisdiction to consider motions under the FAA. If the FAA motion is brought in a “pre-existing” case properly pending in federal court, the jurisdictional analysis is straightforward: “the court may assess its jurisdiction by looking at the suit that is already before it.” *Jules*, 608 U.S. at 209. In other words, when a court already has jurisdiction over the case, there is no need for the court to hunt for another basis of jurisdiction over any FAA motions later brought to the court for resolution: the court can “secure[] federal jurisdiction, in one of the most usual ways imaginable, based on the federal claims . . . filed in federal court.” *Id.* at 213.

Jules also describes how a court should assure itself of jurisdiction over “FAA motions filed as ‘freestanding’ actions in federal court.” *Id.* at 205. Those often involve a more complex jurisdictional inquiry. A free-standing petition to compel arbitration under Section 4, for example, requires courts “to assess jurisdiction by ‘looking through’ a motion to compel arbitration to the underlying dispute.” *Id.* (citing *Vaden v. Discover Bank*, 556 U.S. 49, 62 (2009)). *Badgerow v. Walters*, 596 U.S. 1 (2022), and *Vaden*, *Jules* explains, addressed this more complex category of “‘freestanding’ actions.” 608 U.S. at 205-06, 209, 213.

No complex analysis was required in this case. There is no dispute that the district court had subject-matter jurisdiction to consider respondent’s 28 U.S.C. § 1782 petition. As a result, the Third Circuit should have determined that this exercise of jurisdiction *also*

established jurisdiction over petitioners’ motions to stay (under FAA Section 3) and compel arbitration (under FAA Section 4).

Instead, the Third Circuit’s decision wrestled with how best to apply *Badgerow* and *Vaden* to motions filed in a case already pending in federal court. App. 16a-18a. The majority misread those cases as layering *additional* jurisdictional hurdles for FAA movants. See App. 16a (rejecting argument that, “where ‘a case is 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’”). And the majority did not separately analyze Section 3 at all.

The majority below likely would not have erred with the benefit of *Jules*. *Jules* described exactly how courts ought to avoid this misstep: “[A]ssessing jurisdiction over a § 9 or § 10 motion in a case originally filed in federal court does not require ‘looking through’ the filed action. Instead, the court may assess its jurisdiction by looking at the suit that is already before it.” 608 U.S. at 209-10. And *Jules* makes plain that, in contrast to the majority’s reasoning, no additional jurisdictional hurdles exist: If a federal suit is properly in federal court, and the respondent argues that “the dispute is arbitrable,” then “the court *must stay proceedings* pending arbitration under § 3.” *Id.* at 204 (emphasis added).

Because the majority lacked this guidance, and, because this guidance will likely lead it to reverse course, a GVR is appropriate.

1b. A GVR is also appropriate to correct a glaring error in the decision below. The majority conducted no independent analysis of petitioners’ motion to stay under FAA Section 3. Instead, the majority subsumed

its analysis of its jurisdiction over Section 3 in its jurisdictional analysis of Section 4. App. 16a-18a.

This was a clear error. Respondent does not contest it or defend it. And a GVR would help fix it. Beyond providing the guidebook for how to properly assess subject-matter jurisdiction over FAA motions in pending matters—including petitioners’ Section 3 motion—*Jules* also provides express guidance on the role Section 3 plays in the FAA’s statutory scheme, *see* 608 U.S. at 212-13, as well as its mandatory application, *see id.* at 212 (noting that “§ 3 dictates that courts in this situation ‘shall stay’ proceedings”) (cleaned up). Indeed, *Jules* itself is an example of a circumstance in which a court might grant a Section 3 motion to stay, but not a corresponding Section 4 motion to compel. *See id.* at 207-09; *see also Jules v. Andre Balazs Props.*, 2021 WL 2183098, at *6 (S.D.N.Y. May 28, 2021) (noting that a court could “decline to compel arbitration in a venue not [in the court’s district]” while also “stay[ing] proceedings pursuant to 9 U.S.C. § 3”), *aff’d*, 2025 WL 1201914 (2d Cir. Apr. 25, 2025), *aff’d*, 608 U.S. 200 (2026). There is simply no basis—in text or in practice—for a court’s jurisdiction over an FAA Section 3 motion to rise and fall with a motion under FAA Section 4.

2. Respondent spends little time contesting the propriety of a GVR or discussing the import of *Jules*; twice as many pages in its brief are dedicated to arguing this case should not be on this Court’s merits docket. *Compare* BIO at 9-11 *with* BIO at 11-15. Those arguments do not withstand scrutiny.

a. Respondent primarily argues (at 10-11) that, because *Jules* dealt with FAA Sections 9 and 10, not Sections 3 and 4, it has no bearing on the issues decided below. That is wrong. *Jules* generally

resolved the question of how a court assesses whether it has jurisdiction over an FAA motion. *See supra* pp. 1-2. And at this stage, petitioners need not show that with certainty: a GVR is appropriate where there is an “intervening development[]” that presents a “reasonable probability” that the lower court would reconsider its decision, if given the chance. *Lawrence*, 516 U.S. at 167. There is (at least) such a “reasonable probability” here.

b. Respondent also suggests (at 9-11) that a GVR is not warranted because the decision below rests on alternative grounds—particularly, the majority’s analysis of the phrase “civil action” in Section 4. That is doubly wrong.

To begin, alternative holdings do not render a GVR inappropriate. Respondent’s support to the contrary comes from a *dissent* to a GVR. *See* BIO at 9-10 (citing *Wellons v. Hall*, 558 U.S. 220, 227 (2010) (Scalia, J., dissenting)). But as the per curiam opinion in that case explained, “the standard for” a GVR “remains as it always has been”: whether “‘intervening developments’” present a “‘reasonable probability’” that the lower court would reverse course “‘if given the opportunity for further consideration.’” 558 U.S. at 225 (quoting *Lawrence*, 516 U.S. at 167). In that case, the Court found a GVR appropriate despite the assertion of independent alternative grounds because the underlying decision was “ambiguous in significant respects,” and “[i]t would be highly inappropriate to assume away that ambiguity in respondent’s favor.” *Id.*

Here, the panel majority’s decision does *not* rest on other independently sufficient grounds. The majority rejected petitioners’ argument that a district court’s subject-matter jurisdiction over a pending matter

provides a jurisdictional hook to consider motions to stay and compel that matter to arbitration under FAA Sections 3 and 4. App. 16a. Instead, it reasoned that Section 4 motions, even when brought in pending actions, always require a court to conduct a look-through analysis. And then it inexplicably extended this look-through analysis to Section 3.

As the petition explains (at 10), this core holding resulted in a series of additional, cascading errors—including the erroneous determination that Section 1782 applications are not “civil actions” for the purposes of Section 4’s look-through provision, and therefore do not “qualify for arbitration.” App. 5a, 8a. But these additional errors lie downstream of the most important one: the majority’s rejection of the fact that the Section 1782 application provided a jurisdictional anchor in the first place. *See Jules*, 608 U.S. at 209 (“[T]he court may assess its jurisdiction by looking at the suit that is already before it.”).

* * *

Respondent acknowledges (at 11) that the core dispute in this case is whether “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” (although it forgets to include Section 3). It just disagrees that *Jules* bears on the answer to that question. For all the reasons just discussed, as well as laid out in the petition and supplemental brief, that is wrong: *Jules* undermines the divided panel’s jurisdictional analysis. This Court should thus GVR.

II. This Case Warrants the Court’s Review

Because *Jules* speaks so directly to the question presented here, and because there is a “reasonable probability” the Third Circuit would reverse course with its guidance, petitioners primarily ask this Court to GVR. Respondent spends little energy contesting the GVR request. The handful of paragraphs it does offer are curt and repetitive. Instead, the bulk of the legal arguments in respondent’s brief focuses on why this case is a poor fit for the Court’s merits docket. But even on this distinct question, respondent’s arguments fall short.

1. Respondent first argues (at 12) that no other Circuit has addressed whether a Section 1782 proceeding is a “civil action” that can be compelled to arbitration under Section 4. But the petition seeks review of the *antecedent* question that the Third Circuit erroneously answered: whether a federal court with jurisdiction over a pending matter also has jurisdiction to resolve motions to stay and compel arbitration of that matter under Sections 3 and 4 of the FAA. The Third Circuit’s error on that question begat another: after improperly rejecting the jurisdictional-anchor theory, the Third Circuit further erred in conducting its look-through analysis to see if it could locate a *separate* jurisdictional basis for petitioners’ FAA motions. A GVR would thus allow the Third Circuit to correct the first error and avoid the second.

Respondent defends this sidestep by arguing (at 12-13) that petitioners’ question presented “overstate[s] the Third Circuit’s holding” and “sweeps far beyond the granular analysis of Section 4’s text that the Third Circuit performed.” The majority’s analysis of Section 4’s look-through clause was certainly

granular. But, again, this downstream focus on Section 4 alone ignores the majority’s core error: rejecting the jurisdictional anchor.

2. Respondent also faults petitioners for “say[ing] nothing about the Third Circuit’s extensive analysis of the FAA’s and Section 1782’s text, purpose, and history.” BIO at 13. None of this analysis is germane to the error requiring this Court’s attention. Regardless, the petition certainly did address that context. *See* Pet. 9-11.

Finally, respondent claims (at 13) that petitioners “do not rebut much of the authority from this Court and other circuits supporting the result below.” Not only is that wrong—no authority supports the result below, after *Jules*—but respondent’s three cases do not address jurisdiction at all. *Republic of Ecuador v. Connor* is a case about extending judicial estoppel to Section 1782 petitions. 708 F.3d 651 (5th Cir. 2013). *In re Edelman* dealt with applying Section 1782 to a foreign national temporarily in the United States. 295 F.3d 171 (2d Cir. 2002). And *Akebia Therapeutics, Inc. v. FibroGen, Inc.* dealt with the phrase “interested person” in Section 1782. 793 F.3d 1108 (9th Cir. 2015). There is no reason to reference irrelevant case law.

3. Respondent next attempts (at 12) to relegate the question presented in this case as an “unusual” one unlikely to recur. But there is nothing unusual about pending cases serving as jurisdictional anchors for FAA motions. Nor is there anything unusual about sending Section 1782 applications to arbitration, either. *See Sanchez v. Adverit Int’l LLC*, 2025 WL 2171607 (S.D. Fla. July 31, 2025); *In re Motransa S.A.*, 2020 WL 4251147 (S.D. Fla. June 24, 2020), *report and recommendation adopted*, 2020 WL 4251145 (S.D. Fla. July 24, 2020). Respondent tries to downplay this

authority, saying (at 12) “the motions in those cases were brought under Chapter 2 of the FAA.” Not so. *Sanchez* is explicit in its focus on Section 3 and Section 4—parts of *Chapter 1* of the FAA. 2025 WL 2171607.* And the Motion To Enforce Arbitration Provision and Stay Proceedings filed in *Motransa* identifies FAA Section 3. See, e.g., ECF No. 5, at 1, No. 1:19-mc-25026-FAM (S.D. Fla. Mar. 11, 2020) (“Navistar Inc. (‘Navistar’) moves pursuant to the Federal Arbitration Act (‘FAA’), 9 U.S.C. § 3 to stay this action pending arbitration. Applicant Motransa S.A. (‘Montransa’) was bound contractually to bring this 28 U.S.C. § 1782 action, if at all, before an arbitral panel.”).

4. Respondent concludes (at 14) by arguing that there are vehicle issues with this petition. There is none. There is no duplicative appeal in this matter waiting in the wings. The “second appeal” that respondent references involves a decision in a separate action (Mem. Op. & Order, No. 1:26-mc-00184-CFC, ECF Nos. 24, 25 (D. Del. May 12, 2026)) implicating different legal issues and featuring a completely different case number (No. 26-2232 (3d Cir.)). To the extent any relationship exists between the appeals, it is this: The Third Circuit has effectively *stayed* briefing in that other appeal pending petitioners’ request here for a GVR. See Burford’s Reply in Support of Stay at 7 n.4, No. 26-2232, ECF No. 30 (3d Cir. July 31, 2026) (noting that the “Third Circuit informed Appellants’ counsel during a phone call that it was ‘not expected’ that

* To be sure, the Court alternatively concluded that it had “independent jurisdiction” over the dispute “under the New York Convention, codified at 9 U.S.C. § 202.” *Sanchez*, 2025 WL 2171607, at *8. But its ultimate finding was that “Sections 3 and 4 of the FAA apply to these proceedings.” *Id.* at *9.

Appellants file their opening brief until [the Third Circuit] resolves [the still-pending] motion to stay the briefing schedule”). The fact that the court below appears to be *waiting* for additional guidance from this Court only further emphasizes the need for a GVR.

CONCLUSION

The Court should grant the petition for a writ of certiorari, vacate the judgment below, and remand the case for further proceedings in light of this Court’s decision in *Jules*.

Respectfully submitted,

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