

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**

SUPPLEMENTAL 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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Respondent's last-minute and unfounded suggestion of mootness creates no basis to depart from the proper path forward in this case: a GVR in light of *Jules v. Andre Balazs Properties*, 146 S. Ct. 1209 (2026).

The question presented to this Court is whether the Third Circuit erred in holding that it lacked subject-matter jurisdiction over petitioners' motions to stay (FAA Section 3) and to compel arbitration (FAA Section 4). As *Jules* teaches, the district court's undisputed jurisdiction over respondent's Section 1782 application gave the court subject-matter jurisdiction over petitioners' FAA motions as well. With the benefit of *Jules*, the panel majority likely would not have mistakenly held to the contrary. The arbitral award does not bear on this question. It did not address subject-matter jurisdiction and thus does not change the appropriateness of a GVR.

Nor is this Court the proper forum for respondent's late-breaking suggestion of mootness. No lower court has ever passed on that issue, and this Court is a court of review, not first view. Courts, including this one, routinely defer mootness claims to the merits, after subject-matter jurisdiction is determined. Once the Third Circuit reconsiders subject-matter jurisdiction in light of *Jules*, it can address respondent's mootness claim. This Court need not decide it at this stage.

At any rate, this arbitral award clearly does not moot this case. Mootness occurs when a court is incapable of granting the prevailing party relief. Here, nothing in the arbitral award prevents the courts from granting the relief that petitioners sought in their motion in the district court: that respondent's Section 1782 application be referred to arbitration

(and the Section 1782 proceeding be otherwise stayed).

Respondent’s supplemental brief actually raises a *merits* argument: that the arbitral tribunal “agreed with the core premise that Section 1782 applications are simply not the type of proceeding contemplated by arbitration.” Resp. Supp. Br. 3. That is the issue that the lower court should address after a GVR; it does not warrant allowing the Third Circuit’s erroneous subject-matter jurisdiction ruling to stand.

To be clear, respondent’s brief misleadingly disguises the broader context of the tribunal’s discussion: a breach-of-contract claim brought by BGF (but not the other petitioners) seeking damages for respondent’s filing in the U.S. courts in the first place. While the tribunal declined to find liability in that specific instance, it decisively found for BGF on almost all its other claims. Moreover, the arbitral award is not binding on the district court—or on the other two petitioners that were not parties. In all events, the impact of the arbitral award is a matter for the courts below after remand.

INTRODUCTION

FRC filed a Section 1782 application for foreign discovery in support of a spurious (and now-dismissed) German case against the three petitioners: BGF, German Litigation Solutions LLC, and Burford Capital LLC. Because that application should have been filed in a private arbitral forum, not openly in federal court, all three petitioners moved to stay the case (under FAA Section 3) and to compel arbitration of the dispute (under FAA Section 4).

Some time later, BGF initiated an arbitration against FRC alleging a variety of claims—including breach of contract. During that arbitration, FRC filed

a bevy of counterclaims, including challenging the validity of the parties' agreement. But FRC never submitted its Section 1782 application for the tribunal's consideration. And it never filed its own arbitration against Burford Capital or German Litigation Services. It instead maintained that only a court could adjudicate its Section 1782 application.

Proceedings thus continued unabated in federal court. Despite the arbitral proceedings occurring in parallel, FRC never suggested that those proceedings could or should affect any court's consideration of the issues in this petition. Indeed, it never mentioned the proceedings at all.

All that changed last week. An arbitral tribunal found for BGF on nearly all of its claims. Although the arbitral tribunal agreed that FRC had not breached its agreement merely by filing the Section 1782 application, it found that it had breached the agreement in *the manner* in which it filed and litigated its Section 1782 application.

Respondent's supplemental brief¹—and its newfound assertion that this unrelated arbitration might affect these proceedings—followed.

¹ Respondent failed to follow this Court's rules. It filed a "Supplemental Brief under Supreme Court Rule 15.8," Resp. Supp. Br. 1, rather than a suggestion of mootness under Rule 21. Such supplemental briefs are meant to alert the Court "to new cases[] [or] new legislation" that were "not available at the time of the party's last filing." Sup. Ct. R. 15.8. But "a suggestion of mootness" is subject to this Court's rules for motions: Rule 21. Sup. Ct. R. 21.2(b).

ARGUMENT

I. Respondent's Mootness Suggestion Does Not Alter the Appropriateness of a GVR

Respondent's mootness argument should be litigated in the courts below after a GVR. It does not warrant denial of the petition. As the petition sets forth, the Third Circuit's determination that the district court lacked subject-matter jurisdiction clearly rests on a premise that *Jules* undercuts. Over Judge Matey's dissent, the majority below rejected the argument that a matter properly pending in federal court can serve as a "jurisdictional anchor" for motions to stay the proceeding (under FAA Section 3) or compel arbitration (under FAA Section 4). *Jules* confirms that this was a mistake: "[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." 608 U.S. 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). Respondent's supplemental brief does not contend that the arbitral award affects that analysis, and it does not. The arbitral award says nothing about the courts' subject-matter jurisdiction over petitioners' motion.

The appropriate course is therefore to GVR, so that the Third Circuit can reconsider whether it has subject-matter jurisdiction. In the course of those further proceedings, the courts below can address respondent's contention that the arbitral award renders the case moot. Indeed, a GVR "leaves it to the lower courts to revisit their judgments, including possible alternative grounds for those judgments, in

the first instance.” *Grzegorzczuk v. United States*, 142 S. Ct. 2580, 2585 (2022) (Sotomayor, J., dissenting from denial of a GVR). And deciding mootness *after* deciding subject-matter jurisdiction is consistent with this Court’s practice. See *City of Los Angeles v. Lyons*, 457 U.S. 1115, 1115 (1982) (declining to dismiss a case on the papers as moot and “deferr[ing]” the question of mootness “to the hearing of the case on the merits”).

That course is preferable to this Court having to decide whether the case has become moot. After all, no court has ever considered respondent’s newly surfaced arguments that an unrelated arbitral proceeding might moot this litigation. And this Court is “a court of review, not of first view.” *Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005). Moreover, respondent’s supplemental brief provides but a tiny snippet of the arbitral tribunal’s 148-page award—hardly an adequate record on which to adjudicate whether the award actually moots the case.

II. The Arbitral Award Does Not Moot Petitioners’ Request To Stay and Compel Arbitration

If the Court were to address respondent’s mootness contention, it should reject it. As respondent acknowledges, a case becomes moot only if “‘it is *impossible* for a court to grant *any* effectual relief whatever’ to the prevailing party.” Resp. Supp. Br. 2 (quoting *Mission Prod. Holdings, Inc. v. Tempnology, LLC*, 587 U.S. 370, 377 (2019)) (emphases added). But as in *Mission Product Holdings*, “[t]hat demanding standard is not met here.” 587 U.S. at 377.

Petitioners’ motion in the district court sought two forms of relief: a stay of the Section 1782 proceeding (under FAA Section 3) and an order compelling it to arbitration (under FAA Section 4). Nothing in the

arbitral award makes it impossible for the district court to grant that relief. Instead, respondent contends that the tribunal's award means that it will win the motion on the merits (because the tribunal viewed the Section 1782 application as non-arbitrable). That does not moot the case because it does not disable the lower courts from referring respondent's Section 1782 application to arbitration—relief that FRC has steadfastly opposed.

Respondent is also wrong that the arbitral award would predetermine how the district court would resolve the merits of petitioners' motion. As FRC acknowledges, the parties in the arbitration proceedings are not the same parties to the Section 1782 application or to this appeal. BGF commenced the arbitration against FRC. German Litigation Solutions and Burford Capital had nothing to do with it. It is “the general consensus in Anglo-American jurisprudence,” “part of our deep-rooted historic tradition,” that every person “should have his own day in court.” *Richards v. Jefferson Cnty.*, 517 U.S. 793, 798 (1996) (cleaned up). “A judgment or decree among parties to a lawsuit” thus “does not conclude the rights of strangers to those proceedings.” *Id.* (cleaned up).²

In addition to the parties being different, the issues presented to the arbitral tribunal and this Court are distinct. The arbitral tribunal was adjudicating a breach-of-contract claim. Respondent never presented the arbitrability of the Section 1782 application to

² In a footnote, respondent argues that German Litigation Solutions and Burford Capital “surely have no right to arbitrate in light of the tribunal's ruling” in the unrelated arbitration. Resp. Supp. Br. 4 n.3. That conclusory assertion is wrong. But more importantly, that is a merits argument—it does not make it impossible for the district court to grant petitioners' motion.

the arbitral tribunal. Rather, that issue was before the district court. The arbitral award is thus not preclusive on that question, which, again, bears at most on the *merits* of petitioners' motion.

The courts below can certainly afford petitioners the relief they seek by granting petitioners' motion to stay and to compel arbitration. But, first, this Court must vacate the Third Circuit's decision for reconsideration in light of *Jules*, so that it can reassess its erroneous conclusion that it lacked subject-matter jurisdiction over petitioners' motion.

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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