Supreme Court of the United States

2025 BANKRUPTCY CASE REVIEW

LOU JONES

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CASE DECIDED IN THE LAST TERM

I. *United States v. Miller*, 145 S. Ct. 839 (2025), No. 23-824.

A. Issue:

Whether a bankruptcy trustee may avoid a debtor's tax payment to the United States under 11 U.S.C. § 544(b) when no actual creditor could have obtained relief outside of bankruptcy, under the applicable state fraudulent-transfer law, due to sovereign immunity?

11 U.S.C. § 544(b)(1) provides:

Except as provided in paragraph (2), the trustee may avoid any transfer of an interest of the debtor in property or any obligation incurred by the debtor that is ***voidable under applicable law*** *by a creditor holding an unsecured claim that is allowable under section 502 of this title or that is not allowable only under section 502(e) of this title. (Emphasis added.)*

11 U.S.C. § 106(a) provides that *"sovereign immunity is abrogated as to a governmental unit to the extent set forth in this section* ***with respect to****" 59 enumerated sections of the Code, including § 544. (Emphasis added.)*

11 U.S.C. § 106(a)(5) provides that *"Nothing in this section shall create any substantive claim for relief or cause of action not otherwise existing under this title, the Federal Rules of Bankruptcy Procedure, or nonbankruptcy law."*

B. Factual Background:

1. The case arises out of bankruptcy proceedings commenced by All Resort Group, Inc. (ARG) in 2017. In 2014, before it filed for bankruptcy protection, ARG paid approximately $145,000 to the IRS to be applied to the personal tax obligations of two of its principals, both of whom were ARG shareholders, officers and directors.

2. An analysis prepared during the subsequent bankruptcy proceedings showed that ARG was insolvent when it made the IRS payments. Among ARG's debts when it filed for bankruptcy was an unpaid judgment resulting from a discrimination lawsuit brought by a former employee.

3. The case was converted from chapter 11 to chapter 7, and the trustee brought an adversary proceeding against the United States under sections 544(b) and 548(a), seeking to avoid and recover the IRS payments.

4. The bankruptcy court held that because the payments were made more than two years before the bankruptcy filing, the trustee could not avoid the IRS payments under section 548. But the bankruptcy court granted summary judgment to the trustee on his § 544(b) claim, which relied on the Utah Uniform Fraudulent Transfer Act and a four-year statute of limitations period.

5. The trustee argued that there existed an actual creditor (the former employee) who could bring a lawsuit under Utah law. The government did not dispute that the tax payments satisfied the Utah law's fraudulent transfer definition because the company paid its principals' taxes, not its own.

6. But as the trustee conceded, sovereign immunity would bar the former employee's suit against the United States. So the government argued that the challenged payments were not "voidable under applicable law" by a creditor holding an unsecured claim.

7. The bankruptcy court held that 11 U.S.C. § 106(a) abrogates that sovereign immunity in the bankruptcy context, not just within the bankruptcy proceeding, but also for purposes of interposing immunity as a defense to the underlying state cause of action.

8. The bankruptcy court also rejected the government's argument that the Internal Revenue Code would preempt a suit of this kind because it implicates the field of federal tax collection.

9. The bankruptcy court awarded judgment against the United States, and the district court affirmed, adopting the bankruptcy court's reasoning in full.

10. The court of appeals also affirmed, holding that § 106(a) "reaches the underlying state law cause of action that § 544(b)(1) authorizes the trustee to rely on in seeking to avoid the transfers." Section 106(a) waives sovereign immunity "with respect to" § 544, which "generally has a broadening effect," reflecting Congress' intent that the waiver "reach any subject that has a connection with . . . the topics the statute enumerates."

11. The court of appeals' decision is consistent with the Ninth Circuit's decision in *Zazzali v. United States (In re DBSI, Inc.)*, 869 F.3d 1004, 1009 (9th Cir. 2017), but conflicts with the Seventh Circuit's holding in *In re Equipment Acquisition Res., Inc.*, 742 F.3d 743 (7th Cir. 2014).

12. The court of appeals rejected the government's argument that the Internal Revenue Code preempted the field, holding that if Congress thought that another federal statute posed an obstacle to its objectives, it surely would have added an express preemption provision.

C. Petitioner's Argument:

1. The trustee invoking § 544(b) is subject to the same limitations that would have applied to the existing creditor who could have sought relief outside of bankruptcy. If the actual creditor could not have succeeded for any reason (statute of limitations, estoppel, res judicata, waiver, etc.), the trustee is similarly barred.

2. It is undisputed that no actual creditor could have brought a successful suit against the IRS to avoid the tax payments at issue, so the trustee cannot accomplish more by stepping into such a creditor's shoes.

3. The waiver in § 106(a) relating to § 544 allows a trustee to bring a § 544(b) claim against the government, but the bankruptcy court

must actually adjudicate the merits of the trustee's claim, just as it would under the other enumerated sections of the Code. In doing so, the court must determine whether the source of the substantive law upon which the trustee relies provides an avenue for relief. The latter question is "analytically distinct" from the inquiry whether there has been a waiver of sovereign immunity.

4. Section 106(a)(5) instructs that nothing in § 106 creates a substantive claim for relief or cause of action not otherwise existing under this title, the FRBP or non-bankruptcy law. Section 544(b) does not ordinarily subject a transferee of estate property to an avoidance claim to which the transferee was not already vulnerable.

5. Section 106(a) may be broad, but there is no evidence that Congress intended it to alter § 544(b)'s substantive requirements. The "clear statement" rule removes any doubt: there is nothing in § 106(a) to suggest that the waiver extends to the underlying state-law suit on which § 544(b) is predicated.

6. Federal tax collection is a matter of federal constitutional law, to which any contrary state law must yield under the Supremacy Clause. A state-law fraudulent transfer action brought by a creditor against the government would be preempted, regardless of how § 106(a) is interpreted.

7. Respondent waived its argument that a creditor avoids sovereign immunity if it can avoid a transfer against another defendant, like the principals, and then recover the payment from the IRS under § 550. The argument was neither pressed nor passed upon below.

D. Respondent's Argument:

1. Section 106(a)'s clear waiver of sovereign immunity "with respect to" § 544 covers all aspects of § 544(b) claims, including the "applicable law" that forms the basis of the trustee's cause of action. Congress waived immunity for any subject with a direct relation to or impact on section 544. Because the elements of § 544(b) claims relate to § 544, the waiver extends to such claims.

2. Congress instructed courts to proceed "notwithstanding an assertion of sovereign immunity" and told them to "hear and determine any issue arising with respect to the application of" § 544 to governments. This means that courts must adjudicate § 544(b) claims without regard to sovereign immunity.

3. In the government's world, no § 544(b) claims against governments can ever succeed. Nor could trustees invoke against governments any of the other bankruptcy provisions that incorporate state law. Congress could not have intended these results.

4. The government argues that Congress must pass two waivers of sovereign immunity: one for the federal claim in § 544(b) and another for the applicable law that supplies the elements of that cause of action. This "two-waiver" argument was rejected last term in *Dep't. Agriculture Rural Dev. Rural Hous. Serv. v. Kirtz*, 601 U.S. 42 (2024).

5. Section 544(b) only asks whether a transfer is "voidable under applicable law by a creditor," not whether the creditor could sue the § 544(b) defendant. Here, all Utah-law requirements for fraud and avoidance are undisputedly met. The creditor never needed to sue the United States to avoid the transfers; she could have instead sued the principals for a money judgment or the debtor for an injunction, and then sought to collect from the government under § 550. The government itself raised this issue in district court, and respondent engaged on the merits.

6. The government is elevating itself to super-creditor status by allowing it, and it alone, to keep ill-gotten windfalls. Reversal would create a playbook for fraud: pay personal tax debts with corporate funds first, and let the IRS hide behind sovereign immunity later.

7. Congress did not plausibly preempt the elements of a federal claim. This Court has never applied field preemption to the Internal Revenue Code.

E. Amici Arguments:

1. A ruling against the United States likely means that such claims may also proceed over the sovereign immunity of individual states. But when the states ratified the Constitution, they agreed that their sovereign immunity could be abrogated by laws enacted under the Bankruptcy Clause only when such laws are uniform. Here, § 544(b) is not uniform with respect to the statute of limitations for bringing such actions. This Court should, under the doctrine of constitutional avoidance, reverse the court of appeals (*23 States and the District of Columbia*).

2. The government's position violates the long-standing presumption against ineffectiveness: a textually permissible interpretation that furthers rather than obstructs the document's purpose should be favored. The government's position would render § 106(a) unenforceable as it pertains to § 544(b). Further, the government's position is inconsistent with the long-standing bankruptcy axiom of "equality of distribution" because if only the government is immune from avoidance, the bankruptcy distribution system becomes unequal (*Wedoff and Law Professors*).

3. Section 106(b) provides that when a governmental unit files a proof of claim in a bankruptcy proceeding, it has waived any defense of sovereign immunity in compulsory counterclaims. By filing a proof of claim, the IRS waived any claim of sovereign immunity. Further, avoidance actions are merely declaratory, *in rem* actions; they do not seek the recovery of property, which is governed by § 550. An *in rem* declaratory action has no bearing on federal tax collection and assessment (*Nat'l. Assoc. Bankruptcy Trustees*).

F. Opinion of the Court by Justice Jackson:

1. Court holds that § 106(a)'s sovereign-immunity waiver applies only to the § 544(b) claim itself, and not to any state-law claims nested within that federal claim.

2. Sovereign immunity is jurisdictional in nature; it does not create any new substantive rights or alter any pre-existing ones. This

principle is supported by the Court's precedents, but also § 106(a)(5) itself.

3. Respondent's reading would transform § 106(a) from a jurisdiction-creating provision into a liability-creating provision.

4. Waivers of sovereign immunity are to be read narrowly. The phrase "with respect to" is not enough to overcome this established rule.

5. Trustees still have claims under § 544(a), which do not include the actual creditor requirement.

6. The dissent cannot recast § 106(a) as merely waiving an affirmative defense, but not altering the elements of § 544(b). No one doubts that § 106(a) precludes the government from raising an affirmative *jurisdictional* defense to a § 544(b) claim, but the question here is whether § 106(a) prevents the government from relying on sovereign immunity to show the trustee cannot establish a *core substantive requirement* of the underlying § 544(b) claim—namely, that the challenged transfer is "voidable under applicable law" by an actual creditor.

G. Dissenting Opinion by Justice Gorsuch:

1. Justice Gorsuch observed that, "[w]hether pursued by a private creditor or a bankruptcy trustee, a good substantive claim for relief exists. No one disputes that a fraudulent transfer took place."

2. Can the federal government defeat the claim by raising sovereign immunity as a defense? Yes, in a case brought by a private creditor seeking relief in state court. No, in a case brought in bankruptcy court by a trustee.

3. Section 106(a) demonstrates that in one setting, but not another, Congress has chosen to waive an affirmative defense to an otherwise valid claim.

CASES SET FOR ARGUMENT IN THIS TERM

I. *Coney Island Auto Parts Unlimited, Inc. v. Jeanne Ann Burton, Chapter 7 Trustee for Vista-Pro Automotive, LLC*, No. 24-808 (Petition granted June 6, 2025; Oral Argument November 4, 2025)

A. Issue:

Whether Federal Rule of Civil Procedure 60(c)(1) imposes any time limit to set aside a void default judgment for lack of personal jurisdiction?

F.R.B.P. 9024 provides:

Relief from a Judgment or Order

(a) ***In General.*** *Fed. R. Civ. P. 60 applies in a bankruptcy case—except that:*

(1) the one-year limitation in Fed. R. Civ. P. 60(c) does not apply to a motion to reopen a case or to reconsider an uncontested order allowing or disallowing a claim against the estate;

(2) a complaint to revoke a discharge in a Chapter 7 case must be filed within the time allowed by § 727(e); and

(3) a complaint to revoke an order confirming a plan must be filed within the time allowed by § 1144, 1230, or 1330.

(b) ***Indicative Ruling.*** *In some instances, Rule 8008 governs post-judgment motion practice after an appeal has been docketed and is pending.*

F.R.C.P. 60 provides in pertinent part:

(b) ***Grounds for Relief from a Final Judgment, Order, or Proceeding.*** *On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons: . . .*

(4) the judgment is void . . . .

(c) ***Timing and Effect of the Motion****.*

(1) Timing. A motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a

year after the entry of the judgment or order or the date of the proceeding.

B. Factual Background:

1. Chapter 11 debtor-in-possession, Vista-Pro Automotive, filed an adversary proceeding against Coney Island Auto Parts in February 2015 for unpaid invoices. Debtor served the complaint via first class U.S. mail, but without addressing the mail to "an officer, a managing or general agent, or an agent authorized by appointment or by law to receive service." F.R.B.P. 7004(b)(3).

2. Having received no response to the complaint, debtor obtained a $48,000 default judgment against Coney Island in May 2015, from the bankruptcy court for the district of Tennessee. In early 2016, debtor's case was converted to chapter 7, and trustee Jeanne Burton was appointed.

3. The Trustee commenced a proceeding in the Bankruptcy Court for the S.D.N.Y. in July 2020, more than five years after the judgment was obtained, to register the judgment in that court.

4. In early 2021, the Trustee served upon Coney Island's bank an information subpoena with restraining notice under New York law. The bank placed a hold on Coney Island's account in the approximate amount of $100,000.

5. Following unsuccessful negotiations, in October 2021, Coney Island moved the bankruptcy court in New York to vacate the judgment for lack of personal jurisdiction. The New York court denied the motion, stating that recourse lies with the Tennessee court. In December 2021, Coney Island's bank transferred funds to the New York City Marshal to satisfy the judgment.

6. Coney Island appealed to the District Court, S.D.N.Y., which affirmed on grounds that relief should be pursued in Tennessee. Coney Island thereafter moved to vacate the judgment in Tennessee, which was denied in September 2022. The Tennessee

bankruptcy court held that it was bound by Sixth Circuit precedent, while recognizing a circuit split.

7. Coney Island appealed to the Tennessee district court, which affirmed in September 2023. The district court, too, believed it was bound by precedent from the Court of Appeals for the Sixth Circuit.

8. In July 2024, a panel of the Court of Appeals for the Sixth Circuit affirmed in a split decision. The panel majority held that the decision in *United States v. Dailide*, 316 F.3d 611 (6th Cir. 2003) was controlling precedent. *Dailide* held that a four-year delay between entry of judgment and a motion collaterally attacking the district court's subject matter jurisdiction was untimely pursuant to F.R.C.P. 60(c)(1). The panel majority believed its decision was most consistent with the text of the rule.

9. Judge David McKeague dissented, observing that for a variety of reasons, the court of appeals should not adhere to *Dailide*, and that the "reasonable time" limit applies only to voidable judgments, not ones that were void *ab initio*.

C. Petitioner's Argument:

1. It has been settled law for more than 150 years that a judgment entered without personal jurisdiction is void *ab initio*. The adoption of Rule 60 did not change the principle that a judgment void *ab initio* remains void regardless of the passage of time. Cases both before and after the 1938 adoption of Rule 60(b) and its amendment in 1946 hold that litigants may move at any time to vacate judgments void for lack of personal jurisdiction.

2. A "reasonable time" is when plaintiff seeks to enforce the judgment. The Court should treat the moment of enforcement as the measure of a "reasonable time."

3. The Rules Enabling Act provides that the Federal Rules of Civil Procedure shall not "abridge, enlarge or modify any substantive right." 28 U.S.C. § 2072(b). Per Supreme Court precedent, the

Rules are valid only insofar as they transgress neither the Rules Enabling Act nor constitutional restrictions.

4. Coney Island "does not contend that Rule 60 or Rule 60(c)(1) are unconstitutional," but only that "motions pursuant to Rule 60(b)(4) relating to judgments void *ab initio* are of a special class and not bound by the timeliness standard in Rule 60(c)(1)." Yet Coney Island does argue that the Federal Rules of Civil Procedure do not "override constitutional strictures," and cites cases suggesting that judgments void *ab initio* violate the due process clause.

5. A decision that Rule 60(c)(1) does not bar motions to vacate void judgments will not have an untoward effect on litigants. Dismissal will be without prejudice; if the statute of limitations is an issue, a plaintiff may seek relation back under Rule 15. Plaintiffs can carefully scrutinize the validity of service of process, especially when seeking a judgment by default. Plaintiffs can also act promptly to enforce their judgments; here, the Trustee's efforts were sporadic. The possibility of gamesmanship exists on plaintiff's side as well.

6. Whether Coney Island was on notice of the judgment is a contested fact. Coney Island's principal testified that he first became aware of the judgment in 2021, when Coney Island's bank seized funds sufficient to satisfy the judgment. That was only six months before Coney Island filed papers with the New York bankruptcy court.

7. Lack of proper service is not remediable through actual or constructive notice of a pending action. Notice does not confer personal jurisdiction.

8. Respondent's concern about fading memories and mislaid documents is a problem of Respondent's own creation.

D. Respondent's Argument:

1. The text of Rule 60(c)(1) is clear: even Rule 60(b)(4) motions must be made "within a reasonable time." Historical practice cannot surmount unambiguous text. Comments from members of the

Advisory Committee or lower court decisions do not justify ignoring the text.

2. The drafters knew how to subject various grounds for relief to different timing rules. There is no one-year time limit for motions made under Rule 60(b)(4), nor are such motions placed under Rule Rule 60(d).

3. The drafting history confirms what the text says. The Advisory Committee rejected a proposal that imposed no time limit on motions to set aside void judgments. Petitioner's rule would help only movants who unreasonably delay.

4. Petitioner forfeited any free-standing due process argument below. In any event, defendants can waive personal-jurisdiction challenges under Rule 60(b)(4) by having actual notice of a default judgment and failing to timely file. Waiver does not infringe on due process.

5. An amended complaint would be barred if a court grants a Rule 60(b)(4) motion and either dismisses the entire proceeding and enters judgment or dismisses the complaint with prejudice. Rule 15's relation-back doctrine does not render timely a new complaint filed in a new case after the statute of limitations has run. In any event, if defendants wait long enough, plaintiffs will no longer have the witnesses or evidence necessary to sustain judgments.

6. The trustee properly relied on the statements in the entry of default and default judgment that petitioner had been properly served. She first addressed claims owed to the estate before turning to the default judgment. Petitioner inexplicably waited seven years to complain about improper service.

E. Oral Argument:

1. Lasted only 35 minutes; no amicus briefs; case generated little commentary. Yet the justices seemed interested in the question presented, which has been asked and answered by courts around the country for decades.

2. Thomas, Roberts and Jackson question whether Petitioner is conflating the validity of judgments with the procedures for attacking judgments. Respondent argues that only the latter are at issue here, and there are limitations in other contexts that have the effect of permitting void judgments to remain final, such as res judicata and forfeiture.

3. Alito questions whether a void judgment can be appealed one year later; Barrett whether laches can apply to an effort to vacate a void judgment?

4. Gorsuch: can Petitioner use Rule 60(d)(1), which allows a court to entertain an independent action to relieve a party from a judgment?

5. Alito: if we adopt the "reasonable time" standard, shouldn't there be a lot more flexibility with regard to reasonableness when we are dealing with a void judgment?

II. *Keathley v. Buddy Ayers Construction, Inc.*, No. 25-6 (Petition granted October 20, 2025; Oral Argument TBD).

A. Issue:

Whether the doctrine of judicial estoppel can be invoked to bar a plaintiff who fails to disclose a civil claim in bankruptcy filings from pursuing that claim when there is a *potential* motive for nondisclosure, regardless of whether there is *evidence* that the plaintiff in fact acted in bad faith?

B. Factual Background:

1. In December 2019, the Keathleys filed for chapter 13 bankruptcy in the Eastern District of Arkansas. The court confirmed a modified repayment plan in April 2020, providing for 100%, interest-free repayment of the Keathleys' creditors.

2. In August 2021, more than one year after the bankruptcy court approved the chapter 13 plan, Mr. Keathley suffered serious

injuries when a truck driven by Buddy Ayers' employee collided with Keathley's truck.

3. Mr. Keathley informed his bankruptcy counsel of the accident and the basis for his personal injury claims a few weeks after the accident. His bankruptcy counsel did not inform the bankruptcy court.

4. In December 2021, Mr. Keathley filed a personal injury suit against Buddy Ayers in the District Court for the Northern District of Mississippi, alleging negligence and vicarious liability, and seeking damages for his injuries.

5. In 2022, Keathley's bankruptcy counsel filed amended bankruptcy plans in the bankruptcy court which did not include a schedule of assets or list the personal injury suit. In December of that year, Keathley settled a workers' compensation claim for injuries sustained in the accident.

6. In March 2023, Buddy Ayers moved for summary judgment based on judicial estoppel, asking the district court to bar Keathley's claims because he did not disclose them to the bankruptcy court. Less than one week later (but 19 months after the accident), Keathley filed an amended schedule notifying the bankruptcy court of the pending lawsuit. No creditor moved to modify the chapter 13 plan and the bankruptcy court did not sanction Keathley for any delay. In April 2023, Keathley first informed the bankruptcy court of his workers' compensation settlement.

7. Mr. Keathley submitted an affidavit to the district court attesting that he "never intended to make any misrepresentations" about the existence of his personal injury claims and that he "believed [he] had done everything [he] needed to do" after notifying his bankruptcy counsel about the suit. Bankruptcy counsel also submitted an affidavit to the district court indicating that disclosing the claims would have had no material effect on confirmation of the amended plan and that Keathley "received no benefit monetarily, or otherwise, from the nondisclosure."

8. In August 2023, the district court granted summary judgment and dismissed Mr. Keathley's action, holding that judicial estoppel barred the claims. The district court relied on Fifth Circuit precedent which considers only whether the debtor knew of the facts underlying the claim and had a possible motive for concealing the claim. Because some potential financial benefit *(not paying interest on creditors' claims)* could result from the concealment, summary judgment was appropriate.

9. The district court acknowledged that the Fifth Circuit's "stringent approach" would "no doubt" bar the "potentially meritorious tort claims" of many debtors who made "honest mistakes," but this was a "regrettable yet unavoidable result of the policy decision" made by the Court of Appeals for the Fifth Circuit.

10. Keathley moved for reconsideration, submitting an affidavit from a staff attorney for the chapter 13 trustee, who attested there was nothing unusual or misleading about the failure to disclose the personal injury suit while it was pending, and that it was not uncommon for debtors to amend their bankruptcy filings to disclose post-petition claims prior to the settlement or resolution of the action. The staff attorney further attested that the Keathleys received no benefit from the nondisclosure, and that immediate disclosure would have had no effect on the administration of the bankruptcy, the amount the Keathleys would have had to pay or the time they would have had to pay it. The district court denied the motion for reconsideration, saying it had "no power" to change the Fifth Circuit's approach.

11. A panel of the Fifth Circuit affirmed, reiterating that, to determine whether the nondisclosure was "inadvertent," it was bound by Fifth Circuit precedent to consider only whether Keathley lacked knowledge of the undisclosed claims or stood to potentially benefit from their concealment. Keathley had a plausible motive to mislead because his chapter 13 plan was interest-free and had been extended. Judge Haynes concurred but would have dissented had she not been bound by Fifth Circuit precedent. She expressed doubt that the goals of judicial estoppel were being advanced, and

opined that respondent would receive an "unwarranted windfall" assuming it caused the crash that injured Keathley.

12. In late 2024, the Keathleys completed their chapter 13 plan, received a discharge, and their case was closed.

13. There is a clear circuit split on this issue: five circuits (including the Seventh) hold that courts must find a debtor had subjective intent to mislead the court before barring a claim, even if debtor knew about the underlying claim and had a theoretical motive to conceal it. The Fifth and Tenth Circuits hold that judicial estoppel is warranted when a debtor fails to disclose a claim, regardless of subjective intent.

C. Petitioner's Argument (Brief Due December 12, 2025):

1. The Fifth Circuit's minority position on the question presented is wrong because it flouts Supreme Court precedent, the equitable principles judicial estoppel seeks to vindicate, and Congress' policy decisions about the bankruptcy system.

2. The Supreme Court has held that judicial estoppel is designed to thwart "deliberate" and "intentional" switches in a litigant's position, aimed at securing an unfair advantage. The Fifth Circuit's test ignores subjective intent altogether, relying instead on the mere existence of a "potential" motive to mislead.

3. Judicial estoppel is designed to yield equitable results. The result here benefits a wrongdoer at the expense of an innocent debtor and creditors. Dismissing claims that may have real value to creditors does more to undermine the "integrity of the courts" than permitting a debtor to temporarily adopt (and then clarify or correct) two allegedly contrary positions.

4. The Fifth Circuit's rule is inflexible, where a court's equitable powers should not be mechanical, but exercised on a case-by-case basis.

5. The Bankruptcy Code and Rules liberally permit debtors to amend their disclosures when an omission is discovered.

6. Bankruptcy courts already have tools at their disposal to punish debtors who purposefully hide assets, including sanctions, denial of discharge, and referrals for criminal prosecution. The Fifth Circuit's rule is unnecessary for deterrence.

7. The Fifth Circuit's rule is contrary to the bankruptcy policy of granting debtors a "fresh start."

D. Respondent's Argument (Brief Due January 20, 2026):

1. Keathley filed for bankruptcy protection on three prior occasions, in 2001, 2003, and 2015. He knew he had to disclose personal injury claims on his schedules.

2. Keathley did not notify the bankruptcy court of his claims when the accident happened, when he filed suit against respondent, when he filed modified chapter 13 plans on two separate occasions, or when he settled his workers' compensation claims. Keathley only disclosed the claims when respondent filed a motion for summary judgment based on failure to disclose. This was not an "honest mistake." Keathley was a "sophisticated and experienced bankruptcy debtor."

3. Keathley's failure to disclose the claims constituted an "inconsistent position" with his stance in the personal injury case and Keathley gained an advantage by remaining silent.

SEVENTH CIRCUIT PETITION TO WATCH

I. *Bush v. United States,* No. 25-108, *appeal from* 100 F.4th 807 (7th Cir. 2024) and No. 24-2996 (7th Cir. April 29, 2025) (Distributed for Conference on December 5, 2025).

A. Issues:

1. Whether 11 U.S.C. § 505(a)(1) confers jurisdiction on the bankruptcy court to adjudicate the amount and legality of a debtor's tax liabilities?

2. Whether the bankruptcy court has jurisdiction under 28 U.S.C. § 1334(b) to determine the amount of a debtor's non-dischargeable debt, even when the court's decision will not impact distributions to the debtor's other creditors?

11 U.S.C. § 505(a)(1) provides:

Except as provided in paragraph (2) of this subsection, the court may determine the amount or legality of any tax, any fine or penalty relating to a tax, or any addition to tax, whether or not previously assessed, whether or not paid, and whether or not contested before and adjudicated by a judicial or administrative tribunal of competent jurisdiction.

B. Factual Background:

1. In 2013(!), the IRS demanded that Donald and Kimberly Bush pay $107,000 in taxes, plus $80,000 in fraud penalties, for tax years 2009, 2010, and 2011(!). The Bushes petitioned the Tax Court for review. By the time of trial, the parties had stipulated that the Bushes owed $100,000 in taxes, but penalties remained in dispute: the IRS sought a 75% fraud penalty while the Bushes proposed a 20% negligence penalty.

2. On the date set for trial, the Bushes filed for bankruptcy protection in the Southern District of Indiana. The bankruptcy court declined

to lift the stay, and the IRS filed a proof of claim seeking taxes on a priority basis and penalties on a non-dischargeable basis pursuant to 11 U.S.C. § 523(a)(7).

3. The Bushes filed a motion asking the bankruptcy court to set the penalty at 20% of their unpaid taxes, relying on § 505(a)(1) to supply jurisdiction. The IRS moved to dismiss the tax penalty motion, arguing that that § 505(a)(1) is not a jurisdictional statute and that the bankruptcy court lacked jurisdiction under 28 U.S.C. § 1334(b) to determine the tax penalties because the amount of the penalties, being subordinated to other creditor claims under 11 U.S.C. § 726(a)(4), would not impact what other creditors would receive from the estate. Alternatively, it asked the bankruptcy court to abstain in favor of the Tax Court.

4. In 2015, the bankruptcy court concluded that it could determine the amount of the Bushes' nondischargeable tax liability, and scheduled a trial on the merits. The bankruptcy court reasoned that a decision on the Bushes' non-dischargeable tax liability is "part and parcel" of the debtors' request for a fresh start. As the bankruptcy court saw it, limiting jurisdiction to only those instances where the tax claim might impact the payments made to other creditors would except a large segment of the debtor population from relief under § 505(a)(1) because most chapter 7 cases result in no distributions to creditors.

5. While the tax penalty motion was pending, the Bushes also filed an adversary proceeding, contending that the IRS' tax penalty claims were made too late to support an exception from discharge. The bankruptcy court ruled that the 2009 and 2010 penalties were dischargeable, but the 2011 penalty was not. The district court affirmed; a subsequent appeal to the Seventh Circuit was later voluntarily dismissed, but the amount of the 2011 penalty was "to be determined," presumably by the tax motion.

6. Following an interlocutory appeal, the district court reversed, holding that the bankruptcy court lacked jurisdiction to decide the tax penalty dispute. The Bushes appealed; in the Court of Appeals' initial decision, issued in 2019, the Seventh Circuit rejected

§ 505(a)(1) as a basis for bankruptcy jurisdiction and instead concluded that the bankruptcy court had "related to" jurisdiction under 28 U.S.C. § 1334(b)—not because the dispute impacted the extent of the debtors' discharge (this argument was rejected), but only because, at the time the Bushes filed their tax penalty motion, a decision could have affected the allocation of assets among creditors. Despite finding jurisdiction, the Seventh Circuit ordered the bankruptcy court to abstain from hearing the dispute.

7. All parties petitioned for a rehearing, which the Seventh Circuit granted in 2024(!). (The panel included Chief Judge Sykes, and Judges Easterbrook and Flaum.) The Court of Appeals issued an amended decision in 2024 (**Easterbrook, J.**), holding as follows:

   a. It is "unfortunate" the Bushes refer to § 505(a)(1) as a jurisdictional provision, though the Court of Appeals acknowledges that other circuits have done the same.

   b. "We do not see what § 505 has to do with jurisdiction, a word it does not use. Section 505 simply sets out a task for bankruptcy judges." "The Supreme Court insists that judges distinguish procedural and substantive rules from jurisdictional ones. . . . The rule in § 505 is on the non-jurisdictional side."

   c. "Most genuine jurisdictional rules appear in Title 28, the Judicial Code, and that's true of bankruptcy too. The Bankruptcy Code itself tells us this." (citing 11 U.S.C. § 105(c)).

   d. There is no "arising in" jurisdiction here because a tax dispute is not exclusive to bankruptcy. There is no "arising under" jurisdiction because this dispute depends on the Internal Revenue Code, not the Bankruptcy Code.

   e. As for "related to" jurisdiction, language in *In re Collazo*, 817 F.3d 1047 (7th Cir. 2016) (Posner, **Easterbrook**, Kanne, JJ.), suggesting that entry of a money judgment following the conclusion of a bankruptcy always is "related to" that bankruptcy is "unreasoned and has the quality of a drive-by ruling, subject to ready reexamination. . . . We do not think that

the unreasoned language of *Collazo* can be given effect," particularly in light of *Marathon* and *Stern v. Marshall.*

f. The Court of Appeals rejected the IRS' argument that the potential effect of the tax debt should be measured later in the case after claims are filed (an "*ex post*" view) because it contradicts the norm that jurisdictional issues must be resolved *ex ante*, not in light of how things turn out. This is consistent with how the Supreme Court addressed "related to" jurisdiction in *Celotex Corp. v. Edwards*, 514 U.S. 300, 308 n.6 (1996) (holding that a matter comes within "related to" jurisdiction if it "could conceivably have any effect on the estate being administered in bankruptcy.")

g. But *Celotex* noted that the Seventh Circuit uses a "slightly different test" (citing *In re Xonics, Inc.*, 813 F.2d 127 (7th Cir. 1987) (**Easterbrook**, Bauer, Coffey, JJ.) and *Home Insurance Co. v. Cooper & Cooper, Ltd.*, 889 F.2d 746 (7th Cir. 1989) (**Easterbrook**, Coffey, Eschbach)). These cases, as well as *In re FedPak Systems, Inc.*, 80 F.3d 207 (7th Cir. 1996) (Cummings, Bauer, Coffey), hold that a dispute is "related to" bankruptcy when resolution "affects the amount of property for distribution or the allocation of property among creditors."

h. "None of our decisions addresses the distinction between *ex ante* and *ex post* perspectives. None considers the potential difference between demanding an actual effect at the case's end and a potential effect when the claim is filed. The nine circuits that *have* addressed that subject unanimously conclude that the *ex ante* perspective is the right one. We agree. This does not imply an overruling or even a modification of circuit precedent; instead we address an issue that the circuit has not previously considered and align this circuit with the view widely held by our colleagues elsewhere: the related-to jurisdiction must be assessed at the outset of the dispute, and it is satisfied when the resolution has a potential effect on other creditors."

i. The Court of Appeals remanded to the district court to determine whether there is "related to" jurisdiction, and if so,

whether the district court should abstain under 28 U.S.C. § 1334(c).

8. Following remand, the district court found there was no potential effect on other creditors, and held that the court did not have jurisdiction to decide the tax penalty dispute. Looking at the Bushes' schedules of assets and liabilities, their total assets were worth $308,748, secured claims totaled $229,257, and exempt assets $35,705, leaving a total of $43,786 available for distribution to priority and general creditors. Because the IRS alone had a priority claim of $100,000, the district court found that the contested, subordinated claims for tax penalties could not affect the distribution.

9. On yet another appeal to the Seventh Circuit, the Bushes argued that their assets had a range of possible values, and the district court should have considered the assets' maximum value, which would have sufficed to cover all claims that had been filed. The Court of Appeals rejected this argument, saying the Bushes are "stuck" with their choices in the schedules. The district court did not err in concluding that the tax penalty dispute belongs in Tax Court. *The Seventh Circuit did not appear to say anything about the non-dischargeable 2011 penalty, but seems to have focused on the dischargeable, subordinated penalties from 2009 and 2010.*

C. Petitioner's Argument for Writ of Certiorari:

1. Petitioner presents the issue for review as follows: does a bankruptcy court have jurisdiction to determine the legality and amount of a taxing body's claim against a debtor when that determination will impact the extent of a debtor's discharge but not distributions to the debtor's other creditors from the bankruptcy estate? Thus, Petitioner concedes that the bankruptcy court's decision will not impact distributions to creditors, but argues it will impact the determination of dischargeability arising from the 2011 penalty.

2. Eight other circuits have answered this question "yes." The Seventh Circuit stands alone. The majority of circuits have held

that § 505(a)(1) confers independent jurisdiction on the bankruptcy courts to decide tax disputes involving the debtor based on its plain language and legislative history.

3. Jurisdictional statutes speak to the "power of the court rather than to the rights or obligations of the parties." *Landgraf v. USI Film Prods.*, 511 U.S. 244, 274 (1994). Section 505(a)(1) meets this definition precisely because it sets out a class of matters to be adjudicated—tax liabilities—and limits the adjudication to debtors and their bankruptcy estates.

4. The Supreme Court has distinguished jurisdictional grants from claims processing rules, which impose obligations parties must meet to invoke federal jurisdiction. Section 505(a)(1) is a type of the former, addressing only the "power of the court," and not mentioning the parties' "obligations."

5. Pre-Code practice and legislative history confirm this reading. Uniformly courts treated § 2a(2A) of the Bankruptcy Act as a grant of jurisdiction. And statements from the sponsors of the current legislation speak of § 505(a)(1) as a grant of authority to hear tax disputes.

6. Provisions on bankruptcy jurisdiction in the Judicial Code do not limit the jurisdictional provisions of the Bankruptcy Code, and § 105(c) does not negate the jurisdiction set out by the Bankruptcy Code. The effect of § 105(c) is to enforce the core/non-core distinction of 28 U.S.C. § 157(b) and (c), extending it not only to Title 28 jurisdiction but also Title 11 jurisdiction.

7. The Seventh Circuit also erred by holding that the bankruptcy court lacked jurisdiction under 28 U.S.C. § 1334(b) to decide the amount of a non-dischargeable claim unless the dispute impacts creditors. This decision conflicts with the decisions of five other circuits, all of which hold that determining the amount of a non-dischargeable debt is within the bankruptcy court's "related-to" jurisdiction because such determinations are central to the adjustment of the debtor-creditor relationship.

8. The bankruptcy court has the power to not only determine whether a debt is non-dischargeable, but also the amount of the debt that is

non-dischargeable. Holding otherwise would mean that a bankruptcy court can only answer one-half of the question: if the bankruptcy court finds the tax non-dischargeable, a different court would have to decide any contest over the amount of the debt.

9. By limiting jurisdiction to only those cases where creditors are impacted eliminates § 505(a)(1) in all but a minority of bankruptcy cases because most cases are chapter 7 liquidations, and more than 90% of those are "no-asset" cases.

D. Respondent's Argument in Opposition to Writ of Certiorari:

1. A determination that has no potential to affect the bankruptcy estate is not "related to" the bankruptcy case under 28 U.S.C. § 1334(b). Section 505(a)(1)'s procedures for determining the amount of a tax penalty do not expand the bankruptcy court's subject-matter jurisdiction.

2. Even if the bankruptcy court had jurisdiction, the lower courts should abstain from reopening a long-concluded bankruptcy to decide a tax dispute that has been ready for trial in the Tax Court since September 2014.

3. Debtor's bankruptcy schedules established that the tax penalty had lower priority than claims that would and did consume all of the estate's assets. Per *Celotex*, the bankruptcy court had no jurisdiction to decide the tax penalty.

4. Petitioners wrongly argue that jurisdiction lies if the amount of the tax penalty is "related to" whether the penalty is dischargeable, but § 1334(b) only vests jurisdiction over proceedings related to "cases" under title 11. It does not supply jurisdiction over a proceeding that is related to a proceeding "arising under" title 11.

5. In any event, the amount of the penalty is not "related to" its dischargeability. To determine the amount, the court would have had to decide whether petitioners committed "fraud" on a tax return, which tax question has no relationship to dischargeability. The question of dischargeability here focused on the penalty's relation to a tax return filed within three years of the petition.

6. The Supreme Court requires a "clear statement" before treating a provision as jurisdictional, and Section 505 comes nowhere close. It does not refer to jurisdiction at all. It only identifies a task for the bankruptcy judge.

7. The "fresh start" policy cannot justify allowing bankruptcy courts to exercise jurisdiction over proceedings that, by definition, are *not* giving debtors a fresh start.

8. The Seventh Circuit's decision does not conflict with the decision of any other court of appeals. Unlike the cases cited by petitioners, determining the amount of the penalty here is not necessary to the determination of dischargeability. Further, none of petitioners' cases addressed whether Section 505(a)(1) confers jurisdiction in a case not within the bankruptcy court's jurisdiction under § 1334(b).

E. Amici Arguments:

1. In the adversary proceeding, initiated by the Bushes, to determine dischargeability of debts, the IRS conceded that jurisdiction lies under 28 U.S.C. § 1334(b) as the matter arises under Title 11 and specifically under § 523. The Supreme Court should address whether the determination of the amount of a nondischargeable debt is a "core" proceeding under 28 U.S.C. § 157(b)(2)(I) and (J). Even if non-core, the bankruptcy court still had "related-to" jurisdiction. (*Hon. Judith Fitzgerald (Ret.) and Law Professors)*

OTHER PENDING PETITIONS OF INTEREST

I. *Highland Capital Mgmt., L.P. v. NexPoint Advisors, L.P.*, No. 25-119, *appeal from* 132 F.4th 353 (5th Cir. 2025). (Solicitor General invited to file a brief.)

A. Issues presented by Petitioner:

In Harrington v. Purdue Pharma L.P., 603 U.S. 204, 227 (2024), this Court held "only that the bankruptcy code does not authorize a release and injunction that, as part of a plan of reorganization under Chapter 11, effectively seeks to discharge claims against a non-debtor without

the consent of affected claimants." Purdue cited but did not analyze 11 U.S.C. § 524(e), and its expressly limited holding did not resolve the longstanding circuit split about the meaning of that provision. The Fifth Circuit has long been on the minority side of that circuit split. Through two opinions that severely limited two protections for non-debtors who are instrumental in the bankruptcy process from liability arising from the bankruptcy case itself, the Fifth Circuit has not just entrenched but vastly extended its minority reading of section 524(e)—even while recognizing that "there is a circuit split concerning the effect and reach of § 524(e)," App., infra, 47a—and adopted the extreme position that virtually no non-debtor bankruptcy participants can receive any protection. Its holdings sharpen splits with five circuits. The questions presented are:

1. Whether a bankruptcy court can act as a gatekeeper to screen non-colorable lawsuits against non-debtor bankruptcy participants?

2. Whether a bankruptcy court can to a limited degree exculpate non-debtor bankruptcy participants from liability for conduct arising from the bankruptcy process?

II. The *Hertz Corp. v. Wells Fargo Bank, N.A.*, No. 24-1062, *appeal from* 120 F.4th 1181 (3d Cir. 2024). (Solicitor General invited to file a brief.)

A. Issue presented by Petitioner:

The Bankruptcy Code disallows claims for "unmatured interest," i.e., claims for interest that has not yet accrued when the bankruptcy petition is filed. 11 U.S.C. §502(b)(2). In the decision below, the Third Circuit unanimously (and correctly) held that this provision by its terms disallows respondents' claim for some $147 million in "make-whole" premiums that were designed to compensate respondents for future unmatured interest. But a two-judge majority then went on to hold that an unwritten "common law absolute priority rule" derived from pre-Code judicial practice overrides the plain statutory text in solvent-debtor cases, and allowed respondents to recover from petitioners both that $147 million in make-whole premiums and an

additional $125 million in post-petition interest. The decision below is the third in as many years to hold, over vigorous dissent in each case and in conflict with numerous other courts, that a judicially-created pre-Code exception supersedes the plain language of the Bankruptcy Code and permits creditors in solvent-debtor cases to recover amounts that the Code expressly disallows—and the decision below reached that unlikely result by relying on a theory that no other court has adopted and no party below raised.

The question presented is:

Whether an unwritten pre-Code exception overrides the Bankruptcy Code's express statutory text and allows creditors in solvent-debtor cases to recover amounts that the Code explicitly disallows?