No. 16-1215

In the Supreme Court of the United States

LAMAR, ARCHER & COFRIN, LLP,

Petitioner,

v.

R. SCOTT APPLING,

Respondent.

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

SUPPLEMENTAL BRIEF FOR RESPONDENT

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SUPPLEMENTAL BRIEF FOR RESPONDENT

Notwithstanding the views of the Solicitor General, the Court should deny certiorari. Review of the question presented is premature, and the decision below is correct.

1. The issue presented does not currently warrant review. To begin with, the United States agrees with our demonstration (Opp. 10-11) that the Eighth Circuit "did not expressly interpret" the relevant statutory text. U.S. Br. 11 n.3.

As to the Fifth and Tenth Circuits, the government contends that their failure to "place significant weight on the word 'respecting' reflects only that those courts deemed other considerations more persuasive in interpreting the statutory text." *Id.* at 12. But there is no evidence that those courts considered the effect of the word "respecting" *at all*. Indeed, the government does not identify a single passage in either decision that so much as hints at consideration of the argument that the Eleventh Circuit found dispositive.

As we said earlier (Opp. 11), review is premature until another circuit considers—and rejects—the reasoning adopted below. Granting review now would deprive the Court the benefit of careful consideration of this issue by the lower courts.

Review is particularly unwarranted because a case currently pending in the Fifth Circuit provides that court an opportunity to align with the decision below. Indeed, the debtor in that case dedicated most of his brief to arguing that the Fifth Circuit should overrule *Bandi*. See Appellant Br. 18-37, *In re Haler*, No. 17-40229 (5th Cir.). If the Fifth Circuit declines that request, other opportunities to address the ques-

tion presented assuredly will arise. See U.S. Br. 11 ("the question presented arises regularly").

2. Additionally, the Court should deny review because the decision below is correct.

The government agrees with all aspects of our position on the merits. The statutory text, which includes the term "respecting," compels the construction adopted by the Eleventh Circuit. U.S. Br. 14-15; see also Opp. 12-18. The statute's lineage confirms this result. U.S. Br. 15-17; see also Opp. 24-27. The Eleventh Circuit's interpretation advances the manifest statutory purpose of encouraging written instruments, which bring certainty and ease of adjudication to bankruptcy disputes. U.S. Br. 17-18; see also Opp. 18-21. And it precludes the "substantial line-drawing problems" entailed by petitioner's alternative construction. U.S. Br. 18-21; see also Opp. 21-24.

Indeed, the government acknowledges that, in its role as an institutional creditor, it "might benefit in some circumstances from" petitioner's construction. U.S. Br. 22. The government nonetheless recognizes that "the better reading of the statutory text is that a statement concerning a single asset, when tendered as evidence of the debtor's ability to pay, is a 'statement respecting the debtor's * * * financial condition within the meaning of Section 523(a)(2)." *Ibid*.

Review is unnecessary when the decision below is so clearly correct.

CONCLUSION

The petition should be denied.

Respectfully submitted.

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