No.

In the Supreme Court of the United States

BRADLEY WESTON TAGGART, PETITIONER

v.

SHELLEY A. LORENZEN, ET AL.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

This case presents a clear and intractable conflict regarding an important question of federal bankruptcy law.

According to the Ninth Circuit, a "creditor's good faith belief that the [Bankruptcy Code's] discharge injunction does not apply * * * precludes a finding of contempt," even if the creditor acted "unreasonbl[y]" in violating a debtor's rights. That holding directly conflicts with the decisions of three courts of appeals, two bankruptcy appellate panels, and dozens of lower courts. Contrary to the Ninth Circuit, these other courts hold that the Code authorizes relief for discharge violations, irrespective of a creditor's good faith: "'the focus of the court's inquiry in civil contempt proceedings is not on the subjective beliefs or intent of the alleged contemnors in complying with the order, but whether in fact their conduct complied with the order at issue.'"

This "ineluctabl[e]" conflict was recognized by the panel, and it has since been acknowledged by multiple judges and expert commentators. The question presented was the sole basis for the decision below, and the relevant facts are clean and undisputed. Its correct disposition is vital to the proper administration of the Code, and this case is the ideal vehicle for resolving the entrenched conflict.

The question presented is:

Whether, under the Bankruptcy Code, a creditor's good-faith belief that the discharge injunction does not apply precludes a finding of civil contempt.

PARTIES TO THE PROCEEDING BELOW

Petitioner is Bradley Weston Taggart.

Respondents are Shelley A. Lorenzen, executor of the estate of Stuart Brown; Terry W. Emmert; Keith Jehnke; and Sherwood Park Business Center, LLC.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

Cases—continued:

Page

Cases—continued:

Page

Constitution and statutes:

Miscellaneous:

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Bradley Weston Taggart respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a-15a) is reported at 888 F.3d 438. The opinion of the bankruptcy appellate panel (App., *infra*, 21a-51a) is reported at 548 B.R. 275. The opinion of the bankruptcy court regarding contempt liability (App., *infra*, 52a-64a) is reported at 522 B.R. 627. The opinion of the bankruptcy court regarding contempt damages (App., *infra*, 65a-75a) is unreported but available at 2015 WL 1320163.

JURISDICTION

The judgment of the court of appeals was entered on April 23, 2018. A petition for rehearing was denied on September 7, 2018 (App., *infra*, 16a-20a). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

Section 524 of the Bankruptcy Code, 11 U.S.C. 524, provides in pertinent part:

(a) A discharge in a case under this title—

* * * * *

(2) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived * * *.

Section 105 of the Bankruptcy Code, 11 U.S.C. 105, provides in pertinent part:

(a) The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

INTRODUCTION

This case presents an important and recurring question of federal bankruptcy law that has squarely divided

the lower courts. According to the Ninth Circuit, a creditor's "good faith" is sufficient to excuse a discharge violation, "even if the creditor's belief is unreasonable." In so holding, the Ninth Circuit departed from the opposite rule applied in three circuits, two bankruptcy appellate panels, and dozens of lower courts. In those courts, unlike the Ninth Circuit, a creditor who violates the discharge is liable in contempt, and the creditor's "subjective beliefs or intent" are irrelevant to that analysis.

This case easily satisfies all the traditional criteria for granting review. The conflict is obvious, acknowledged, and entrenched. It has already been recognized by multiple courts and commentators.[1] Indeed, the panel below observed at oral argument that its holding would "ineluctably create a split with the Eleventh Circuit[]," and counsel for one respondent conceded the conflict. The full Ninth Circuit refused to reconsider its position on rehearing (without any judge requesting a vote), and other circuits have maintained their contrary position for decades—including one circuit that reaffirmed its views after the Ninth Circuit's decision here. This untenable division will persist without this Court's intervention.

This case is also a perfect vehicle for resolving the conflict. The question presented was decided by all three courts below, and it was the sole basis of the Ninth Circuit's decision. Every material fact is undisputed: there is

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[1] See, *e.g.*, *IRS* v. *Murphy*, 892 F.3d 29, 47 n.12 (1st Cir. 2018) (Lynch, J., dissenting) (flagging the conflict); *In re Witt*, No. 18-3023, 2018 WL 3966692, at *3 & n.4 (Bankr. N.D. Ohio Aug. 15, 2018) (same); Bill Rochelle, *Raising a Circuit Split, Ninth Circuit's Taggart Opinion Heads for a 'Cert' Petition*, ABI (Sept. 11, 2018) <tinyurl.com/taggartcircuitsplit> (same); Elizabeth L. Gunn & Caleb Chaplain, *When Acting In Good Faith Isn't Enough: A Taxing Decision For IRS*, 37 Am. Bankr. Inst. J. 14, 14 & nn.2-3 (Sept. 2018) (same).

no dispute that respondents acted in good faith, and one respondent even concedes the discharge was violated. The question was outcome-determinative below, and there are no conceivable obstacles to resolving it here.

And the importance of the issue is obvious. A holding that a "good faith belief, even if unreasonable, insulate[s]" creditors from contempt (App., *infra*, 13a) eviscerates the Bankruptcy Code's key mechanism for enforcing the discharge injunction and securing a debtor's fresh start. It asks innocent debtors to absorb the costs of creditor mistakes, and it deprives debtors of the essential tool for ending discharge violations and recovering their losses. Those losses are especially intolerable for debtors who have just emerged from bankruptcy, and whose finances remain in a fragile state. There is a reason that the relevant stakeholders already weighed in with multiple amicus briefs below. See C.A. Docs. 75, 78, 80.

The question presented raises legal and practical issues of surpassing importance, and its correct disposition is essential to the Code's effective administration. Because this case presents an optimal vehicle for resolving this significant issue of federal law, the petition should be granted.

STATEMENT

1. a. The "principal purpose" of the Bankruptcy Code is granting debtors a "fresh start"—"'a new opportunity in life and a clear field of future effort, unhampered by the pressure and discouragement of preexisting debt.'" *Grogan* v. *Garner*, 498 U.S. 279, 286 (1991). To achieve that objective, the Code "discharges" most pre-petition debts (*e.g.*, 11 U.S.C. 727(b)), and "enjoins" creditors from trying to collect discharged debts (*e.g.*, *Bessette* v. *Avco Fin. Servs., Inc.*, 230 F.3d 439, 444 (1st Cir. 2000)). The scope of the protection is broad and automatic: once

granted, a discharge "operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor." 11 U.S.C. 524(a)(2).

Congress designed this injunction "to give complete effect to the discharge": it "eliminate[s] any doubt concerning the effect of the discharge as a total prohibition on debt collection efforts," and "insure[s] that once a debt is discharged, the debtor will not be pressured in any way to repay it." H.R. Rep. No. 595, 95th Cong., 1st Sess. 365-366 (1977); see also S. Rep. No. 989, 95th Cong., 2d Sess. 80 (1978). The discharge, in short, "is the 'legal embodiment * * * of the fresh start.'" *In re Ybarra*, 424 F.3d 1018, 1022 (9th Cir. 2005).

b. Congress enforced these rights with Title 11's statutory contempt powers. Under 11 U.S.C. 105(a), courts may issue "any" order "necessary or appropriate" to "carry out the provisions of this title," and may "tak[e] any action or mak[e] any determination necessary or appropriate" to "enforce or implement court orders or rules." 11 U.S.C. 105(a). When the discharge is violated, Section 105 authorizes the provision of "'full remedial relief.'" *Bessette*, 230 F.3d at 445; see also *Espinosa* v. *United Student Aid Funds, Inc.*, 553 F.3d 1193, 1205 n.7 (9th Cir. 2008) ("sanctions" are authorized to "make [the debtor] whole") (citing 2 *Collier Bankruptcy Manual* (3d rev. ed.) ¶ 524.02[2][c]), aff'd, 559 U.S. 260 (2010).

2. This case's procedural history is "complex" (App., *infra*, 4a), but the few pertinent facts are straightforward. The case arises out of a business dispute over membership interests in a LLC. Respondents sued petitioner in state court for allegedly transferring petitioner's interest in the LLC without honoring the agreement's right of first refusal. On the eve of trial, petitioner filed for Chapter 7

bankruptcy. The trial was stayed, and petitioner ultimately received a discharge. *Id.* at 4a-5a.

Thereafter, petitioner, citing the discharge, sought to be dismissed from the state-court litigation. (The proceedings were otherwise going forward against petitioner's attorney, who had paid for the LLC interest.) The trial court refused, finding petitioner was a necessary party, but the parties agreed not to pursue a money judgment against him. App., *infra*, 5a-6a. After respondents prevailed at trial, however, they sought attorney's fees from petitioner, alleging that his post-bankruptcy participation in the case (which respondents themselves had demanded) fell outside the discharge injunction. *Id.* at 6a-7a.

Petitioner moved to reopen his bankruptcy case, and sought to hold respondents in contempt for violating the discharge injunction. App., *infra*, 7a. The issue was simultaneously litigated in state and federal court. After separate appeals in each system, both the state appellate court and the federal district court found that respondents had indeed violated the discharge injunction. *Id.* at 8a-9a.[2]

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[2] The state trial court initially found that respondents' request for post-petition attorney's fees fell outside the discharge; that ruling was reversed by the Oregon court of appeals. See *Sherwood Park Bus. Ctr., LLC* v. *Taggart*, 267 Or. App. 217, 230 (Or. Ct. App. 2014) (finding petitioner "sought to extricate himself from the litigation and thereby obtain the fresh start the bankruptcy was intended to afford him"; his "minimal" actions sought "to shield himself from the continued litigation"). The bankruptcy court also found (relying in part on the state trial court's decision) that respondents' conduct fell outside the discharge; that ruling was reversed by the federal district court. *Taggart* v. *Brown*, No. 3:12-cv-236-MO, 2012 WL 3241758, at *4-*5 (D. Or. Aug. 6, 2012) (finding petitioner sought "to extricate himself from the lawsuit altogether"; his "actions were reactionary" and "in response to a potential judgment against him for attorney fees").

3. a. The bankruptcy court subsequently held respondents in contempt for their willful violation of the discharge injunction. App., *infra*, 52a-64a.

The bankruptcy court noted that discharge violations are enforced "by a motion invoking the contempt remedies allowed for in § 105(a)." App., *infra*, 55a n.5. As the court explained, a creditor's violation must be "'willful'" to qualify for sanctions, and willfulness is determined by a two-part test: "[the court] must find first, that the alleged contemnor knew that the discharge injunction applied, and second, that the alleged contemnor intended the actions that violated the discharge injunction." *Id.* at 58a.

In applying that test, the court specifically rejected respondents' assertion that a creditor's "good faith belief" forecloses liability. App., *infra*, 58a-63a; see also *id.* at 59a-60a (expressly grounding its holding in "the Eleventh Circuit's willfulness test" from *In re Hardy*, 97 F.3d 1384 (11th Cir. 1996)). As the court explained, "[w]hether the Respondents knew the discharge was 'invoked' is a simple fact-based inquiry." *Id.* at 59a. And that inquiry "does not allow for the subjective belief, good faith or otherwise," regarding whether the discharge applied. *Id.* at 59a-60a.

With respondents' good-faith defense out of the picture, the bankruptcy court easily found a "willful" violation: (i) "it is not disputed that Respondents had actual knowledge that [petitioner's] bankruptcy discharge had been entered" when they pursued post-petition fees (App., *infra*, 61a-62a); and (ii) "[t]here is no dispute in the record that [respondents] intended" the actions that violated the discharge (*id.* at 63a). The court accordingly held respondents "in contempt" for "violating [the] discharge injunction." *Id.* at 64a.

b. The bankruptcy court next determined petitioner's actual damages from the discharge violation. App., *infra*, 65a-75a. Based on testimony and evidence developed at a

hearing, the court entered an award of $5,000 for petitioner's "substantial harm in terms of his emotional distress," and an award of $105,593.71 for the fees and costs petitioner incurred as a result of the discharge violation. *Id.* at 69a, 73a.

The court also entered a $2,000 punitive-damages award for respondents' failure to timely vacate the state-court judgment hitting petitioner with post-petition fees. App., *infra*, 74a-75a. As the court explained, respondents failed to correct the problem on their own—even after their conduct was declared unlawful—and "it ultimately required an order of this court * * * to get the supplemental attorneys' fees judgment vacated." *Id.* at 75a. The court found "mild[] coercive punitive damages" were "appropriate as a sanction to insure that [petitioner's] discharge order is observed in [the] future." *Id.* at 74a-75a.

4. The bankruptcy appellate panel (BAP) reversed. App., *infra*, 21a-51a.

Like the bankruptcy court, the BAP found the key facts undisputed: respondents were aware of petitioner's discharge and intended their actions in state court (pursuing discharged attorney's fees against petitioner). App., *infra*, 36a-37a, 49a. But the BAP found the bankruptcy court applied "an incorrect legal standard" in holding respondents in contempt. *Id.* at 24a-25a.

According to the BAP, although the bankruptcy court referenced the Ninth Circuit's "correct" standard for finding a "willful[]" violation, it erred in "instead us[ing] the [Eleventh Circuit's] test from *Hardy*." App., *infra*, 36a; see also *id.* at 48a ("the bankruptcy court erred when it relied on the *Hardy* test rather than using the Ninth Circuit's test"). As the court explained, "the Ninth Circuit has crafted a strict standard" in this setting: it "requires evidence showing the alleged contemnor was aware of the discharge injunction *and* aware that it applied to his or

her claim." *Id.* at 43a-44a. The latter showing, the court continued, requires "a fact-based inquiry which implicates a party's subjective belief, even an unreasonable one." *Id.* at 44a. Accordingly, as the BAP concluded, "in order to recover for a violation of the discharge injunction, the debtor must establish the actor's subjective state of mind." *Id.* at 47a n.13.

The BAP thus held the bankruptcy court erred in declaring that respondents' "subjective or good faith beliefs were irrelevant." App., *infra*, 49a. It thus reversed the bankruptcy court and vacated the sanctions award. *Id.* at 51a.

5. a. The Ninth Circuit affirmed, holding that respondents could "[]not be held in contempt" because they believed in "good faith" that the discharge injunction was inapplicable. App., *infra*, 1a-15a.[3]

The Ninth Circuit initially noted that bankruptcy courts "may enforce the discharge injunction by holding a party in contempt for knowingly violating the discharge." App., *infra*, 10a; *id.* at 12a n.4 (recognizing Section 105(a) as the source of contempt authority). But it found the bankruptcy court applied "an incorrect rule of law" in holding respondents in contempt. *Id.* at 12a.

According to the Ninth Circuit, a creditor's "good faith belief" excuses a discharge violation, "even if the creditor's belief is unreasonable." App., *infra*, 12a. The court

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[3] The parties had filed a series of cross-appeals, with petitioner challenging the BAP's determination that good faith precludes a sanctions award, and respondents challenging the district court's determination that they had violated the discharge. App., *infra*, 9a. As explained below, one respondent eventually conceded that the discharge injunction was violated (*id.* at 14a & n.6), and the Ninth Circuit "decline[d]" to reach the other respondents' cross-appeals due to its dispositive holding on the good-faith defense. *Id.* at 14a.

acknowledged its holding "appears to be somewhat in tension" with other decisions. *Id.* at 13a & n.5.[4] But it found itself bound by circuit precedent, "where [the circuit] stated that even an unreasonable belief that the discharge injunction did not apply to a creditor's claims would preclude a finding of contempt." *Id.* at 12a (citing *In re Zilog, Inc.*, 450 F.3d 996, 1009 n.14 (9th Cir. 2006)). As the panel understood its past authority, the circuit's decisions did not merely ask whether a creditor *knew* of a discharge, but instead whether the creditor knew "the discharge injunction [was] 'applicable'" to their claims. *Id.* at 13a. As the court concluded, "*Zilog*'s statement of the law is clear, directly addresses the question at issue in here, and is binding on this court." *Ibid.* Thus, in the Ninth Circuit, "the creditor's good faith belief that the discharge injunction does not apply to the creditor's claim precludes a finding of contempt, even if the creditor's belief is unreasonable." *Id.* at 12a.

Because the court found it uncontested that "the [c]reditors possessed a good faith belief that the discharge injunction did not apply to their claims," it concluded "their good faith belief, even if unreasonable, insulated them from a finding of contempt." App., *infra*, 13a. With that sole holding disposing of the appeal, the court declined to reach a cross-appeal by certain respondents (challenging whether the discharge injunction was indeed

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[4] In expressly acknowledging this "tension," the panel flagged language from an earlier circuit decision articulating the legal standard for violations of the automatic stay, which the panel admitted was a direct quote from the Eleventh Circuit's decision in *Hardy*. App., *infra*, 13a. As the panel commented at oral argument, there is no doubt it understood its decision would "ineluctably" create a circuit conflict. 9th Cir. Oral Arg. Recording 27:24-27:36 <https://tinyurl.com/taggart-CA9-OA>.

violated), and reversed the sanctions award. *Id.* at 14a-15a.[5]

b. Petitioner filed a petition for rehearing, arguing that the court's decision conflicted with the decisions of multiple circuits. The full court of appeals denied rehearing without a single judge requesting a vote. App., *infra*, 16a-20a.

REASONS FOR GRANTING THE PETITION

A. The Decision Below Creates A Direct, Intolerable Conflict Over An Important Question Of Bankruptcy Law

The Ninth Circuit's decision creates a square conflict over whether a creditor's "good faith belief" precludes liability for discharge violations. App., *infra*, 12a. That decision stands directly at odds with decisions of multiple circuits, two bankruptcy appellate panels, and countless lower courts. The conflict has already been acknowledged by judges and expert commentators, and it was admitted by the panel at oral argument and effectively conceded by one respondent below. This stark division on a core bankruptcy issue is untenable. The conflict is both undeniable and entrenched, and it should be resolved by this Court.

1. The Ninth Circuit's decision conflicts with the decisions of multiple court of appeals.

a. The decision below squarely conflicts with established law in the Eleventh Circuit. In *In re Hardy*, 97 F.3d 1384 (11th Cir. 1996), the government tried to collect a

[5] As noted above, one respondent (Lorenzen) ultimately conceded that, in light of intervening circuit precedent, the discharge injunction was in fact violated. App., *infra*, 14a n.6. The finding of a discharge violation is now conclusive for that respondent, and the court's "good faith" holding is thus indisputably outcome-determinative. *Id.* at 14a-15a & n.6.

"discharged tax liability," and the debtor, as here, responded by seeking sanctions "for alleged violations of the discharge injunction of § 524." 97 F.3d at 1387.

On appeal, the Eleventh Circuit held that Section 105 authorizes relief for discharge violations, irrespective of a creditor's good faith: "'the focus of the court's inquiry in civil contempt proceedings is not on the subjective beliefs or intent of the alleged contemnors in complying with the order, but whether in fact their conduct complied with the order at issue.'" 97 F.3d at 1390. Although sanctions "under a court's *inherent* powers" may require "'bad faith'" (*ibid.*) (emphasis added)),[6] the court explained that the threshold is lower for Section 105's "statutory contempt": the creditor need only (i) be "aware of the discharge injunction," and (ii) have "intended the actions" that violated it. *Ibid.* (adopting the analogous "two-pronged test" for "determin[ing] willfulness in violating [Section 362's] automatic stay").

The government was accordingly exposed to "contempt under § 105" without regard to its subjective intent: "If the court on remand finds, as the plaintiff claims, that [the government] received notice of [the debtor's] discharge in bankruptcy, and was thus aware of the discharge injunction, [the debtor] will then have to prove *only* that [the government] intended the actions which violated the [discharge]." 97 F.3d at 1390-1391 (emphasis

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[6] Section 105's statutory powers are independent of a court's inherent contempt authority. See, *e.g.*, *Jove Eng'g, Inc.* v. *IRS*, 92 F.3d 1539, 1554 (11th Cir. 1996); see also, *e.g.*, *In re Terrebonne Fuel & Lube, Inc.*, 108 F.3d 609, 612-613 (5th Cir. 1997). Under Section 105, "Congress has empowered bankruptcy courts broadly to 'issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of' the Bankruptcy Code," "including sanctions to enforce the discharge injunction." *In re McLean*, 794 F.3d 1313, 1320 (11th Cir. 2015).

added). Under the court's holding, good faith was irrelevant to the analysis. *Id.* at 1390.

Hardy has been settled law in the Eleventh Circuit for over two decades. Accordingly, unlike in the Ninth Circuit, "to find contempt, the bankruptcy court needed only to find that [the creditor] was aware of the discharge injunction and intended the action that violated it." *In re McLean*, 794 F.3d 1313, 1323 (11th Cir. 2015) (citing *Hardy*, 97 F.3d at 1390); accord *Alderwoods Group, Inc.* v. *Garcia*, 682 F.3d 958, 967 n.18 (11th Cir. 2012) (cabining "bad faith" to "contempt under the court's inherent powers," not statutory "contempt under § 105") (citing *Hardy*, 97 F.3d at 1390). In direct conflict with the decision below, "[t]he subjective beliefs or intent of the creditor are irrelevant." *In re Roth*, 568 B.R. 139, 142 (M.D. Fla. 2017) (citing *Hardy*, 97 F.3d at 1390); see also, *e.g.*, *In re Thal*, No. 09-12434-LMI, 2018 WL 2182304, at *3 (Bankr. S.D. Fla. May 9, 2018) ("not knowing that the [collection attempt] was a violation does not excuse the IRS's intentional violation of the discharge injunction") (citing *Hardy*, 97 F.3d at 1390); *Roth*, 568 B.R. at 146 (the creditor's "intent * * * is irrelevant to the court's determination of whether its conduct was a willful violation of the discharge order").

Nor did the Ninth Circuit create this conflict by accident. The decision below expressly acknowledged the "tension" between its holding and *Hardy* (see App., *infra*, 13a & n.5), and the panel recognized at oral argument that "adopting" its position would "ineluctably cause there to be a split between the Ninth Circuit and the Eleventh Circuit[]." 9th Cir. Oral Arg. Recording 27:24-27:36 <https://tinyurl.com/taggart-CA9-OA>. In response to this admission, counsel for one of the respondents conceded the Ninth Circuit has indeed "adopted a different test than *Hardy*." *Id.* at 27:40-27:50.

b. The Ninth Circuit's decision also directly conflicts with settled law in the First Circuit. In *In re Pratt*, 462 F.3d 14 (1st Cir. 2006), the debtors, as here, moved to reopen their bankruptcy case to seek relief for a discharge violation. See 462 F.3d at 16.

The First Circuit initially stressed the "important federal interest" in protecting the debtors' "'fresh start,'" and affirmed the statutory authority "'to invoke § 105 to enforce the discharge injunction imposed by § 524.'" 462 F.3d at 17, 19. In confronting the question presented here, the First Circuit held that the creditor's violation was actionable despite the lack of "bad faith." *Id.* at 19-21. The court explained that it had already "rejected the proposition that a stay violation could not be actionable (*viz.*, 'willful') if the creditor had made a good faith mistake," and instead held that "'the standard for a willful violation'" is met "'if there is knowledge of the stay and the defendant intended the actions which constituted the violation.'" *Id.* at 21. Applying that same standard in the discharge setting, the court held that the creditors' "presum[ptive]" lack of "bad faith" (*id.* at 20) was irrelevant:

> [The creditor] has not suggested—nor could it plausibly do so on these record facts—that it did not know of the existence of the [debtors'] chapter 7 discharge, or that it did not intend to [engage in the actionable conduct]. Given the clarity of the present record as to both the "notice" and "general intent" elements, therefore, we conclude that the [debtors] adduced sufficient evidence that [the creditor's] violation of the discharge injunction was "willful."

Id. at 20-21. Thus, despite finding no "evidence that [the creditor] acted in bad faith," the court held that the debtors were "entitled to establish and recover their compensatory damages, together with other appropriate relief under Bankruptcy Code § 105(a)." *Id.* at 20. That holding

is directly at odds with the Ninth Circuit's decision. App., *infra*, 12a (finding that a creditor's "good faith * * * precludes a finding of contempt").

The First Circuit reaffirmed *Pratt* in *IRS* v. *Murphy*, 892 F.3d 29 (1st Cir. 2018), a case decided after the decision below. As *Murphy* explained, in the First Circuit, unlike the Ninth Circuit, there is no "'good faith'" defense for discharge violations. 892 F.3d at 40 (citing *Pratt*, 462 F.3d at 21). It also found this rule was "established" for decades: under settled law, when courts "evalut[e] violations of both automatic stays and discharge orders," "[a] good faith belief in a right to the property" is "not relevant to determining whether the creditor's violation was willful." *Id.* at 38-39; see also *ibid.* (citing, inter alia, the Eleventh Circuit's *Hardy* decision, and explaining that "bankruptcy courts from outside the Eleventh Circuit followed its lead").[7]

The First Circuit also noted this rule was supported by "compelling policy justifications." 892 F.3d at 41. It explained that "discharge orders 'ensure that debtors receive a "fresh start" and are not unfairly coerced into repaying discharged prepetition debts,'" important objectives that would be frustrated if "good faith" creditors are let off the hook. *Ibid.* And it noted that creditors had little excuse for violating the injunction: "[i]f [a creditor] found

[7] The First Circuit retraced the liability standards for discharge violations to determine the proper interpretation of 26 U.S.C. 7433(e), which authorizes "damages" where IRS employees "willfully violate[]" the discharge injunction. Based on its review of settled law, the court concluded that "'willful violation' had an established meaning in 1998 [when Section 7433(e) was enacted] and that Congress used that established meaning in § 7433(e) to set the standard for evaluating violations of both automatic stays and discharge orders." 892 F.3d at 39. The court further concluded that "post-1998 decisions * * * confirm that the generally accepted definition of willful violation should control." *Id.* at 39-40 (citing, inter alia, *Pratt*, 462 F.3d at 21).

the[] discharge order ambiguous," it always had "a variety of processes available" to "determine whether [the debtor's] obligations had been discharged." *Id.* at 41-42. Finally, it explained that a contrary rule would render a debtor's legal protections "a near nullity": if a creditor "encounters no risk" for pursuing discharged debts "as long as it has a 'good faith' or 'reasonable belief' for its conclusions," "it is hard to imagine a case where a [debtor] could ever collect * * * for a violation of the automatic stay or discharge order." *Id.* at 42.

Judge Lynch dissented from the majority's construction of Section 7433(e). 892 F.3d at 43. In doing so, she expressly acknowledged the conflict created by the Ninth Circuit's decision below: "[T]here is no consensus on the definition of 'willful' in the § 524 discharge injunction context." *Id.* at 47 n.12 (Lynch, J., dissenting). As Judge Lynch explained, unlike other courts, "[t]he Ninth Circuit has held that a good faith belief that one is not violating a discharge injunction is sufficient to show that there was no 'willful violation' of the discharge injunction. * * * Indeed, the Ninth Circuit does not even impose a reasonableness requirement." *Ibid.* (citing *Lorenzen* v. *Taggert (In re Taggart)*, 888 F.3d 438, 444 (9th Cir. 2018) (App., *infra*, 12a-13a)); see also *id.* at 47 n.11 (acknowledging that the Eleventh Circuit adopted the opposite rule in *Hardy*).

Murphy thus not only cements the obvious conflict between the Ninth Circuit and First Circuit, but confirms that the conflict is both open and entrenched.[8]

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[8] At the rehearing stage, petitioner filed a letter under Fed. R. App. P. 28(j) calling the Ninth Circuit's attention to *Murphy*. As noted earlier, the full Court denied rehearing without a single judge calling for a vote on the petition.

c. The Fourth Circuit in *In re Fina*, 550 F. App'x 150 (4th Cir. 2014) (per curiam), likewise endorsed the approach of other circuits and rejected the Ninth Circuit's position: "'In a civil contempt proceeding, the state of mind with which the contemnor violated a court order is irrelevant and therefore good faith, or the absence of an intent to violate the order, is no defense.'" 550 F. App'x at 154 (quoting *In re Cherry*, 247 B.R. 176, 187 (Bankr. E.D. Va. 2000)). In short, "'[t]he focus of the court's inquiry * * * is not on the subjective beliefs or intent of the alleged contemnors in complying with the order, but whether in fact their conduct complied with the order at issue.'" *Id.* at 155 (quoting *Hardy*, 97 F.3d at 1390).

In *Fina*, as here, a chapter 7 debtor sought to hold creditors in contempt for engaging in state-court litigation in violation of the discharge injunction. 550 F. App'x at 153-154. On appeal, the Fourth Circuit held that "contempt sanctions" in the discharge context are controlled by a "two-part test": "(1) whether the creditor violated the injunction, and (2) whether he or she did so willfully." *Id.* at 154 (citing, *e.g.*, *Hardy*, 97 F.3d at 1390). As the court explained, "[t]he willfulness prong requires only that the acts taken in violation of the injunction be intentional. In other words, a good faith mistake is generally not a valid defense." *Ibid.* Applying that standard, the court held that the creditors had willfully violated the discharge: there was "no dispute that the [creditors] and their counsel were aware of the injunction at the time they filed the amended [state-court] complaint," which "is sufficient to establish that the violation was willful." *Id.* at 155. In contrast to the Ninth Circuit, the Fourth Circuit held that the

creditors' "intentions and their apparent attempts to comply with the law are irrelevant." *Ibid.*[9]

2. The Ninth Circuit's decision is also irreconcilable with the decisions of two bankruptcy appellate panels.[10]

First, in *In re Martin*, 474 B.R. 789 (B.A.P. 6th Cir. 2012) (unpublished), the court reviewed a sanctions award against a creditor for "violating the debtor's discharge injunction." 474 B.R. at *1. The court explained that sanctions were authorized if "the creditor's actions were willful, '*i.e.*, whether the creditor deliberately acted with [actual] knowledge of the bankruptcy case.'" *Id.* at *6. Unlike the Ninth Circuit, the court specifically held that "[a] creditor's mistaken belief as to the validity of its actions is not a defense." *Id.* at *10. On the contrary, "'[a] willful violation of the * * * discharge injunction may still exist even though the creditor believed in good faith that its actions were lawful.'" *Id.* at *6.

Applying that standard, the court noted that "Section 524(a)(2) specifically enjoins a creditor from filing a lawsuit to collect a discharged debt as a personal liability of the debtor." 474 B.R. at *10. Because the creditor there had filed suit in state court despite knowing the debtor

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[9] The Fifth Circuit has likewise adopted the same legal standard without any hint that "subjective intent" has a role in the analysis: "To show a willful violation of her discharge, [the debtor] must show [the creditor] both knew about, and intended the actions that violated, the discharge." *Banco Popular, N.A.* v. *Kanning*, 638 F. App'x 328, 342 (5th Cir. 2016) (citing *Hardy*, 97 F.3d at 1390). Unlike the Ninth Circuit, the Fifth Circuit did not ask whether the creditor was aware that its conduct would indeed *violate* the discharge or suggest "good faith" would "insulate[]" a violation. Contra App., *infra*, 13a.

[10] This Court routinely considers decisions of bankruptcy appellate panels in describing conflicts warranting the Court's review. See, *e.g.*, *Schwab* v. *Reilly*, 560 U.S. 770, 778 & n.4 (2010); *Grogan* v. *Garner*, 498 U.S. 279, 283 & n.7 (1991).

had "received a chapter 7 discharge," the court found contempt was appropriate: the creditor's "mistaken belief that his actions were somehow outside the scope of § 524(a)(2)" does not excuse the violation. *Ibid.* As the court explained, the "[d]ebtor clearly suffered injuries as a result of [the creditor's] state court lawsuit. She had to not only take action in state court, but also in the bankruptcy court in order to protect herself." *Ibid.* Indeed, the court found, "[t]his case appears to be a classic situation in which an award of attorney's fees was 'necessary to effectuate the purposes of the discharge injunction.'" *Ibid.* The court's rationale and disposition cannot be squared with the Ninth Circuit's opposite holding below.

Second, in *In re Culley*, 347 B.R. 115 (B.A.P. 10th Cir. 2006) (unpublished), the court likewise held that good faith is irrelevant, again rejecting the Ninth Circuit's position: a creditor's "state of mind is not relevant to whether his actions violated the discharge injunction." 347 B.R. at *4. The court thus upheld the bankruptcy court's contempt finding because the creditor's violation was "willful": "'Willful' connotes conduct that was 'volitional and deliberate' as opposed to unintentional or accidental." *Ibid.* As the court explained, it was enough that the creditor "filed the [state-court] collection action knowing [the debtor] had filed bankruptcy." *Ibid.* Unlike the Ninth Circuit, the Tenth Circuit BAP rejected that the creditor's "state of mind mattered," whether his conduct was " reasonable" or otherwise. *Id.* at *3-*4.

3. Dozens of lower courts from jurisdictions nationwide have reached the same conclusion. Indeed, in unambiguous terms, these courts confronted the identical question as the Ninth Circuit and adopted the opposite legal standard:

- "bankruptcy courts in the Sixth Circuit routinely hold that an alleged contemnor's subjective good faith belief that its actions did not violate the discharge is not a defense in a contempt action" (*In re Witt*, No. 18-3023, 2018 WL 3966692, at *3 & n.4 (Bankr. N.D. Ohio Aug. 15, 2018) (also expressly recognizing conflict with the Ninth Circuit's "contrast[ing]" authority));
- "'under prevailing precedent, "the state of mind with which the contemnor violated the court order is irrelevant and therefore good faith, or the absence of intent to violate the order is no defense"'" (*In re Beschloss*, No. 15-12139, 2018 WL 2138276, at *5 & n.1 (Bankr. S.D.N.Y. May 8, 2018));
- "a debtor need not prove that the defendant subjectively intended to violate the discharge"; "the creditor's good faith is not relevant to determining whether [the] act violated the discharge injunction" (*In re Renfrow*, No. 17-1027, 2017 WL 6541136, at *3 & n.19 (Bankr. N.D. Okla. Dec. 20, 2017));
- "'[a] willful violation [of § 524(a)] does not require any specific intent'"; "'[a] creditor's mistaken belief that its actions were lawful or did not violate § 524(a) is not a defense to a contempt action'" (*In re Van Winkle*, No. 15-01047, 2017 WL 2729069, at *4-*5 (Bankr. D.N.M. June 23, 2017));
- "[c]ourts have found that a creditor's good faith is not relevant when deciding whether there was a violation of §§ 362 or 524" (*In re Slater*, 573 B.R. 247, 256 (Bankr. D. Utah 2017));
- "'[t]he state of mind of the party at the time the party violates the court's order is irrelevant as to a finding of contempt'"; "there is no affirmative defense of bona fide error for violation of discharge injunction actions" (*In re Ritchey*, 512 B.R. 847, 858-859 (Bankr. S.D. Tex. 2014));

- "[a] creditor may be found in contempt if it (a) knew of the discharge and (b) intended the actions that violated the discharge"; "[i]f a creditor's conduct violates the injunction, good faith is no defense" (*In re Butler*, No. 09-8101, 2011 WL 806078, at *9 (Bankr. C.D. Ill. Mar. 2, 2011) (citing, *e.g.*, *Hardy*, 97 F.3d at 1390));
- "[a] mistaken belief that the debt at issue was not discharged (or was reaffirmed) does not negate a finding that a creditor willfully violated the discharge injunction" (*In re DiGeronimo*, 354 B.R. 625, 642-643 (Bankr. E.D.N.Y. 2006)); and
- "[b]ecause civil contempt is remedial in nature, the subjective intent of the alleged offender in doing the act is unimportant"; "the debtor must show that the defendant knew of the order and knowingly committed the offending act" (*In re Cochran*, No. 83-1393, 2000 WL 35799020, at *4 (Bankr. S.D. Iowa Aug. 8, 2000) (citing *Hardy*, 97 F.3d at 1390)).

These lower-court decisions overwhelmingly reject the proposition that subjective intent excuses a discharge violation. That consistent view is impossible to square with the Ninth Circuit's conflicting rule that a "good faith belief, even if unreasonable, insulate[s] [creditors] from a finding of contempt." App., *infra*, 13a.

4. At the rehearing stage below, one of the respondents argued that the Ninth Circuit does not "stand[] alone" in holding that "good faith" precludes liability. C.A. Doc. 83, at 2. According to respondent, the Third Circuit "also recognize[s] that a party's 'colorable argument' that its claim had not been discharged freed it from contempt for violating the discharge injunction." *Ibid.* (quoting *In re Ben Franklin Hotel Assocs.*, 186 F.3d 301, 309 (3d Cir. 1999)).

This assertion is twice curious. First, even if correct, it would only confirm the existence of a *deeper* circuit conflict (3-2) on an important and recurring question of bankruptcy law. That supports, not diminishes, the need for this Court's immediate review.

In any event, the Third Circuit's so-called "holding" came in a single paragraph at the tail end of the court's opinion; it did not include any supporting rationale or citations, and it did not refute (or even acknowledge) the opposite rule faithfully applied by multiple courts of appeals, two bankruptcy appellate panels, and dozens of lower courts. See *Ben Franklin*, 186 F.3d at 309. On the contrary, the Third Circuit held that the bankruptcy court did not "abuse [its] discretion" in declining contempt in light of the "unusual facts" before it. *Ibid.* The Ninth Circuit deliberately departed from the unambiguous rule applied in other circuits; the Third Circuit's decision, at most, reinforces the case for certiorari.

* * *

This conflict is indisputable and entrenched, and it is ripe for the Court's review. The Ninth Circuit squarely held that "good faith" precludes contempt liability for discharge violations; multiple courts of appeals (and dozens of lower courts) have reached the opposite conclusion, some now for decades. The Ninth Circuit recognized it was bound by circuit precedent, and it acknowledged its view would "ineluctably" create a circuit conflict. Yet on rehearing, the full court was presented with contrary authority, and it denied rehearing without a single judge requesting a vote. The First Circuit, in turn, has since recognized the conflict and reaffirmed the majority position. The split is entrenched.

These issues have been fully ventilated, and there is no realistic prospect that either side of the split will back down. The conflict over this important issue will persist

until this Court intervenes. Further review is plainly warranted.

B. Whether Discharge Violations Are Excused By Good Faith Is A Recurring Question Of Great Importance

The legal and practical importance of this case is difficult to overstate. It presents a clear, entrenched conflict on a significant legal question that arises repeatedly in bankruptcies nationwide. The Ninth Circuit's holding frustrates the Code's effective administration, and invites intolerable confusion in an area that demands uniformity. The issue will continue generating conflicts and uncertainty until this Court provides a definitive answer. Certiorari is warranted.

1. A "primary purpose[]" of bankruptcy is to "'relieve the honest debtor from the weight of oppressive indebtedness, and permit him to start afresh free from the obligations and responsibilities consequent upon business misfortunes.'" *Local Loan Co.* v. *Hunt*, 292 U.S. 234, 244 (1934). The Code's discharge injunction is essential to securing that fresh start. It is the single tool that best protects debtors as they seek to rebuild from financial misfortune and avoid the financial stress that drove them into bankruptcy. *In re Hyman*, 502 F.3d 61, 66 (2d Cir. 2007). Its protection is so fundamental that Congress declared acts that violate the discharge "void[]" (11 U.S.C. 524(a)(1))—not merely voidable—and courts recognize broad authority to redress violations with "'full remedial relief'" (*Bessette*, 230 F.3d at 445).

The Ninth Circuit's decision debilitates these core protections. Under its holding, the cost of a creditor's good-faith mistake comes out of the debtor's pocket. Yet there is no basis for asking debtors to absorb the costs of a *creditor's* error. Debtors are a sensitive class. They often emerge from bankruptcy in a fragile economic state. The

loss of even a few hundred dollars can mean the difference between buying food and clothes for their families or struggling to meet basic needs. The correct incentive holds creditors accountable for their own misconduct, rather than shift those costs to innocent debtors who did nothing wrong. *Jove*, 92 F.3d at 1555-1556 (even "'inadvertent'" violations "cause[] actual and necessary extra expense to [the debtor]," and the "burden" must not "be shifted to [the debtor] or [its] counsel").

The Ninth Circuit's rule also "gives creditors license to disregard discharge injunctions" with "pretextual arguments," making contempt "difficult to prove in the Ninth Circuit." Bill Rochelle, *Violation of Discharge Is Now Difficult to Prove in the Ninth Circuit*, ABI (Apr. 25, 2018) <tinyurl.com/ca9discharge>; see also *Murphy*, 892 F.3d at 42 (if "good faith" excuses a discharge violation, "it is hard to imagine a case where a taxpayer could ever collect against the government").

It is not difficult for sophisticated, aggressive, well-funded creditors to conjure up pretextual reasons for pushing the discharge's limits. But it *is* difficult to expose a pretext for what it truly is. An examination into a creditor's state of mind requires hearings and testimony, and it imposes substantial costs on both parties and courts. Few attorneys will take such cases on contingency, and debtors can scarcely afford to pay for counsel on the heels of a bankruptcy. The result leaves debtors defenseless against even "unreasonable" behavior: "there is little to deter stay violations without the threat of contempt, and debtors may not be able to afford counsel to enforce their protections if contempt sanctions are generally unavailable." Bill Rochelle, *Raising a Circuit Split, Ninth Circuit's Taggart Opinion Heads for a 'Cert' Petition*, ABI (Sept. 11, 2018) <tinyurl.com/taggartcircuitsplit> (Rochelle).

Under the standard applied outside the Ninth Circuit, Section 105 serves its intended function as an essential remedial device and necessary deterrent. The Ninth Circuit's contrary decision undermines those critical objectives, wasting time and resources in a system that requires efficiency. "[G]iven the centrality of discharge * * * in the bankruptcy system," the "importance of resolving the circuit split" is obvious. Rochelle, *supra.*

2. Review is also essential to ensure the Code's effective administration. There is an overriding (even *constitutional*) importance of achieving national "uniform[ity]" in the bankruptcy context. U.S. Const. Art. I, § 8, cl. 4. For that reason, this Court routinely grants review to resolve even shallow conflicts over the interpretation or application of the Bankruptcy Code. See, *e.g.*, *Husky Int'l Elecs., Inc.* v. *Ritz*, 136 S. Ct. 1581 (2016) (2-1 split); *Baker Botts L.L.P.* v. *ASARCO LLC*, 135 S. Ct. 2158, 2163 (2015) (1-1 split); *Harris* v. *Viegelahn*, 135 S. Ct. 1829, 1836 (2015) (1-1 split); *Clark* v. *Rameker*, 134 S. Ct. 2242, 2246 (2014) (1-1 split). The existence of a *deeper* conflict here is undeniable: petitioner would have prevailed had these proceedings occurred in Florida, Ohio, Massachusetts, or Virginia, but he lost due to the happenstance that his bankruptcy case arose in Oregon. A debtor's rights under the Code should not be determined by geography. Given the constitutional and practical interests in clarity and uniformity, the existing conflict is particularly intolerable.

3. The conflict is also ripe for the Court's review. The competing arguments on each side have been ventilated and additional percolation would prove pointless. "Good faith" is either dispositive or irrelevant in establishing contempt; one view of the legal standard is correct and the other is wrong, and the debtor's discharge hangs in the balance. This untenable split will remain unresolved without this Court's intervention.

And it is unclear when the Court will find another opportunity to correct the Ninth Circuit's mistake. Bankruptcy appeals rarely reach the circuit level, despite raising important and recurring issues. Troy A. McKenzie, *Judicial Independence, Autonomy, and the Bankruptcy Courts*, 62 Stan. L. Rev. 747, 782 (2010) ("The nature of bankruptcy cases tends to discourage further appellate review in the Article III courts because of the twin concerns of delay and cost associated with prolonged litigation."). Few litigants find enough at stake to litigate in bankruptcy court and continue all the way through the appellate process. This is the unusual case where the question is directly presented at this advanced stage.

The decision below upsets Congress's scheme, cements a circuit conflict, and eliminates essential protections for vulnerable debtors. The issue has been carefully considered by multiple courts of appeals, and the conflict is not going anywhere. This Court alone can provide a clean answer. The issue cries out for the Court's review.

C. This Case Is A Perfect Vehicle For Deciding The Question Presented

This case is an ideal vehicle for deciding this significant question. The dispute turns on a pure question of law. It was squarely raised and resolved at each stage below, and all three courts (the bankruptcy court, the BAP, and the Ninth Circuit) thoroughly addressed the question and treated it as dispositive. Nor is there any doubt that this issue was outcome-determinative. The Ninth Circuit's clear holding—"good faith" precludes contempt—was the sole basis of its decision. The bankruptcy court applied the majority standard (from the Eleventh Circuit's *Hardy* decision) and petitioner won; the BAP and the Ninth Circuit applied the opposite standard and petitioner lost. The stark division over this fundamental legal issue drives the decision.

Nor are there any factual or procedural impediments to resolving the question presented. The relevant facts are undisputed and directly implicate the circuit conflict: It is uncontested that respondents acted in good faith, were aware of petitioner's discharge, and acted intentionally in state court. Indeed, one respondent (Lorenzen) has since conceded *that the discharge was violated*, leaving the good-faith defense as the sole remaining issue in dispute. App., *infra*, 14a n.6.

Petitioner would have prevailed under the established majority rule (applied in the First, Fourth, and Eleventh Circuits, the bankruptcy appellate panels in the Sixth and Tenth Circuits, and countless lower courts nationwide), but instead lost because the case arose in the Ninth Circuit. This clean presentation is the perfect backdrop for deciding this important "rule of law." App., *infra*, 12a.

D. The Decision Below Is Incorrect

Review is also warranted because the Ninth Circuit's decision is wrong.

First, the decision contradicts bedrock contempt principles. As this Court has long held, good faith "does not relieve from civil contempt." *McComb* v. *Jacksonville Paper Co.*, 336 U.S. 187, 191 (1949). Unlike its criminal counterpart, civil contempt is designed "to enforce compliance with an order of the court or *to compensate for losses or damages sustained by reason of noncompliance*." *Ibid.* (emphasis added). Because its "purpose is remedial, it matters not with what intent the defendant did the prohibited act." *Ibid.*; accord *Jove*, 92 F.3d at 1555. Any violation, innocent or otherwise, still defeats the law's protec-

tions and causes harm. Sanctions are authorized to remedy those harms, even if the wrongdoer "had no purpose to evade the decree." *McComb*, 336 U.S. at 193.[11]

The Ninth Circuit's rationale conflicts with this controlling authority. As with any other decree, the Code's discharge injunction is "fashioned" to grant benefits to a protected class, and those benefits are not "dependent on the [violator's] state of mind." *McComb*, 336 U.S. at 191. Congress "laid on [creditors] a duty to obey specified provisions of the statute"—including the discharge—and "[a]n act does not cease to be a violation * * * merely because it may have been done innocently." *Ibid.* A rule "insulat[ing]" good-faith creditors from contempt (App., *infra*, 13a) wrongly eliminates the Code's "benefits" and shifts the costs of non-compliance to the very class the law is designed to protect. *McComb*, 336 U.S. at 191.

These longstanding remedial principles are also fair. Anyone aware of the discharge is also aware of "the risk of crossing the forbidden line." *McComb*, 336 U.S. at 193. Where, as here, "the aim is remedial and not punitive, there can be no complaint that the burden of any uncertainty in the decree is on [the violator's] shoulders." *Ibid.*; *Jove*, 92 F.3d at 1557. "They took a calculated risk when under the threat of contempt they adopted measures designed to avoid the legal consequences of the Act." *McComb*, 336 U.S. at 193. Instead of seeking preclearance from the bankruptcy court, "they acted at their peril." *Id.* at 192. It thus is entirely appropriate to order creditors

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[11] Cf. *Jerman* v. *Carlisle, McNellie, Rini, Kramer & Ulrich LPA*, 559 U.S. 573, 581-583 (2010) ("We have long recognized the 'common maxim, familiar to all minds, that ignorance of the law will not excuse any person, either civilly or criminally.' * * * Our law is therefore no stranger to the possibility that an act may be 'intentional' for purposes of civil liability, even if the actor lacked actual knowledge that her conduct violated the law.").

"to pay the damages caused by their violations of the decree" (*ibid.*), whether acting in "good faith" or not. *Fina*, 550 F. App'x at 154 (citing *Hardy*, 97 F.3d at 1390); see also *Chao* v. *Transocean Offshore, Inc.*, 276 F.3d 725, 728 (5th Cir. 2002) ("Good faith is not a defense to civil contempt; the question is whether the alleged contemnor complied with the court's order."). The Ninth Circuit cannot square its contrary position with these established principles.[12]

Second, Section 105 textually authorizes courts to enforce specific orders under the Code, including the discharge injunction. See 11 U.S.C. 105(a) ("The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title."); see also *Bennett*, 298 F.3d at 1069 (so holding).

The discharge injunction is designed to eliminate all banned collection attempts, including the costs of resisting those attempts. When a creditor violates the injunction, a contempt award is both "necessary" and "appropriate" to restore the status quo ante, which effectuates Section 524(a)'s directives. *Bessette*, 230 F.3d at 444-445; accord *Dyer*, 322 F.3d at 1193; *Jove*, 92 F.3d at 1554. Otherwise debtors are left covering the costs of correcting the creditor's mistake, leaving them in a worse condition than

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[12] Other courts have applied *McComb* in an identical fashion in a multitude of non-bankruptcy settings. *E.g.*, *SEC* v. *McNamee*, 481 F.3d 451, 455-456 (7th Cir. 2007) ("*scienter* is not required in civil-contempt proceedings"); *Food Lion, Inc.* v. *United Food & Commercial Workers Int'l Union, AFL-CIO-CLC*, 103 F.3d 1007, 1016 (D.C. Cir. 1997) ("[A] finding of bad faith on the part of the contemnor is *not* required. Indeed, the law is clear in this circuit that 'the [contemnor's] failure to comply with the court decree need not be intentional'"); accord *Harley-Davidson, Inc.* v. *Morris*, 19 F.3d 142, 148-149 (3d Cir. 1994). There is no reason to think *McComb*'s logic somehow loses its force in the bankruptcy context alone.

their proper baseline under the Code. See, *e.g.*, *McComb*, 336 U.S. at 191.

Good faith is irrelevant to these objectives. The contempt question is binary: the discharge injunction was either violated or it was not. Every uncompensated violation chips away at the debtor's rights and undermines the Code, irrespective of the creditor's intent. See *Fina*, 550 F. App'x at 156 (the debtor "had to defend the lawsuit himself," generating "a financial cost that interfered with his right to a fresh economic start"). Compensatory relief is thus necessary to "carry out the provisions of this title" by "enforc[ing] [and] implement[ing]" the discharge injunction (11 U.S.C. 105(a)). See, *e.g.*, *Terrebonne Fuel*, 108 F.3d at 613. There is no textual hook precluding the Code's operation where a creditor acts in good faith.

Third, the Ninth Circuit's decision is at odds with the Code's purpose. Congress granted debtors a fresh start, and it did not indicate any desire to stick debtors with the cost of creditor error. *Cherry*, 247 B.R. at 189 n.20. Creditors are in a better position to pay for the harm they wrongfully inflict (even by accident); there is no reason to let a good-faith creditor off the hook only to ask a *good-faith debtor* to suffer the consequences.

Moreover, creditors have little excuse for any mistake: they have the ability to seek declaratory relief *before* acting, thereby avoiding harm in the first place. *Fina*, 550 F. App'x at 156 ("As the bankruptcy judge noted in this case, he is routinely asked to consider such modifications to discharge injunctions, and he routinely grants them. The proper course for the appellants was to first seek leave of the bankruptcy court before pursuing judgment against the debtor."); see *McComb*, 336 U.S. at 192-193. If creditors decide to roll the dice, they alone should pay the costs of their miscalculations. *Jove*, 92 F.3d at 1557.

Section 105 protects the "fresh start" and deters misconduct. *McLean*, 794 F.3d at 1320; see *McComb*, 336 U.S. at 194. The Ninth Circuit eroded this essential tool for enforcing the Code, and immediate review is warranted to correct the court's mistake.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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