No. _____

IN THE

Supreme Court of the United States

VALARIE DAVIS,

Petitioner,

v.

FIAT CHRYSLER AUTOMOBILES U.S., LLC,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The doctrine of judicial estoppel holds that "where a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter, simply because his interests have changed, assume a contrary position, especially if it be to the prejudice of the party who has acquiesced in the position formerly taken by him." *New Hampshire v. Maine*, 532 U.S. 742, 749 (2001). Over the past 20 years, judicial estoppel has grown from an obscure and seldom-used doctrine to a fearsome judge-made rule invoked in thousands of cases. *See* 18B Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, Federal Practice and Procedure: Jurisdiction § 4477 ("Wright & Miller"). Nowhere has this sudden change been felt more acutely than in the area of bankruptcy law. There, some circuits have adopted "a basic default rule: If a plaintiff-debtor omits a pending (or soon-to-be-filed) lawsuit from [her] bankruptcy schedules and obtains a discharge (or plan confirmation), judicial estoppel bars [the plaintiff-debtor from pursuing] the action." *See Ah Quin v. Cnty. of Kauai Dept. of Transp.*, 733 F.3d 267, 271 (9th Cir. 2013).

The question presented is:

Whether a plaintiff who fails to disclose her civil claim in bankruptcy is barred, under the doctrine of judicial estoppel, from pursuing her claim—even where there is no evidence that the plaintiff made the omission in bad faith.

PARTIES TO THE PROCEEDINGS

Petitioner Valarie Davis was the plaintiff before the district court and appellant before the court of appeals. Respondent Fiat Chrysler Automobiles U.S., LLC was the defendant in the district court and appellee in the court of appeals.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Valarie Davis respectfully requests that this Court issue a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit is available at *Davis v. Fiat Chrysler Autos. U.S., LLC*, No. 17-2016, 2018 WL 4026445 (6th Cir. Aug. 22, 2018) and is reproduced at App. 1a. The district court's opinion is available at *Davis v. FCA US LLC*, No. 15-13773, 2017 WL 3601946 (E.D. Mich. Aug. 22, 2017) and is reproduced at App. 16a.

STATEMENT OF JURISDICTION

The United States Court of Appeals for the Sixth Circuit issued its Opinion and Final Judgment on August 22, 2018. App. 1a. The Sixth Circuit denied Petitioner's timely-filed petition for rehearing *en banc* on October 11, 2018. App. 35a. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

This case principally concerns the common law doctrine of judicial estoppel. Relevant provisions of the bankruptcy code are contained in this petition.

STATEMENT OF THE CASE

This case involves the intersection of bankruptcy law and the judge-made doctrine of judicial estoppel. Each is explained here briefly.

1. Bankruptcy laws are designed to "give[ ] . . . the honest but unfortunate debtor . . . a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of pre-existing

debt." *Local Loan Co. v. Hunt*, 292 U.S. 234, 244 (1934). The filing of a bankruptcy petition creates a bankruptcy estate that includes "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. §§ 301, 541(a). A Chapter 7 bankruptcy estate becomes the owner of all of the debtor's nonexempt assets on the date the petition is filed. *See* 11 U.S.C. §§ 704(1), 726. The estate then liquidates those assets and distributes the proceeds to the creditors, and the debtor receives a discharge. *Id.* Under Chapter 13, by contrast, the bankruptcy court confirms a plan to repay the debtor's debts. 11 U.S.C. §§ 1325-26. Once the payments contemplated by the plan are complete, the debtor receives a discharge. 11 U.S.C. §§ 1328(a). Unlike a Chapter 7 debtor, a debtor traveling under Chapter 13 remains under a continuing obligation to disclose assets acquired during the pendency of the bankruptcy proceeding. 11 U.S.C. §§ 1306.

Section 521(1) of the bankruptcy code requires a debtor to file "a schedule of assets and liabilities, a schedule of current income and current expenditures, and a statement of the debtor's financial affairs." 11 U.S.C. § 521(1). "It is well-settled that a cause of action is an asset that must be scheduled under § 521(1)." *See Lewis v. Weyerhaeuser Co.*, 141 Fed. App'x 420, 424 (6th Cir. 2005) (citing *Eubanks v. CBSK Financial Group, Inc.*, 385 F.3d 894, 897 (6th Cir. 2004)).

Failures to disclose assets in bankruptcy, unfortunately, "happen[] all the time, especially with claims." *Kane v. National Union Fire Ins. Co.*, 535 F.3d 380, 385 (7th Cir. 2008) (quoting *In re Miller*, 347 B.R. 48, 53 (Bankr. S.D. Tex. 2006)). Such failures, of course, run the gamut from good faith mistakes to negligent omissions to full-fledged bankruptcy fraud.

For that reason, the bankruptcy code, along with other provisions of the U.S. Code, contain a wide range of flexible tools designed to encourage complete disclosures, protect the interests of creditors, and punish genuine bankruptcy fraud. An estate may opt to "abandon" a scheduled cause of action—effectively returning the claim to the debtor. 11 U.S.C. § 554. However, undisclosed assets, including undisclosed claims, cannot be abandoned; they remain property of the estate even after discharge. *Id.* Section 350(b) of the bankruptcy code explicitly allows courts to reopen bankruptcy cases to administer previously undisclosed assets for the benefit of the creditors. 11 U.S.C. §§ 350(b); Fed. R. Bank. P. 1009. A bankruptcy court can impose sanctions for nondisclosures, including monetary penalties, loss of exemptions, and denial of a discharge. *See* Fed. R. Bankr. P. 9011. And, of course, courts may refer dishonest debtors to the United States Attorney's office for criminal prosecution. *See* 18 U.S.C. § 152 (criminalizing the concealment of assets, false oaths, and claims); 18 U.S.C. § 1621 (perjury). These provisions "adequately deter nondisclosure." *Ah Quin v. Cnty. of Kauai Dept. of Transp.*, 733 F.3d 267, 275 (9th Cir. 2013) (quoting *Oneida Motor Freight, Inc. v. United Jersey Bank*, 848 F.2d 414, 423 (3d Cir. 1988) (Stapleton, J., dissenting)).

2. This Court has described the doctrine of judicial estoppel as follows: "[W]here a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter, simply because his interests have changed, assume a contrary position, especially if it be to the prejudice of the party who has acquiesced in the position formerly taken by him." *New Hampshire v. Maine*, 532 U.S. 742, 749 (2001) (internal quotation marks omitted). The doctrine's "purpose is to protect the integrity of

the judicial process by prohibiting parties from deliberately changing positions according to the exigencies of the moment." *Id.* at 749–50 (citation and internal quotation marks omitted).

Although the application of the doctrine is not "reducible to any general formulation of principle," *id.* at 750, the Court has outlined several relevant factors. First, "a party's later position must be 'clearly inconsistent' with its earlier position." *Id.* Second, "courts regularly inquire whether the party has succeeded in persuading a court to accept that party's earlier position, so that judicial acceptance of an inconsistent position in a later proceeding would create the perception that either the first or the second court was misled." *Id.* Third, courts examine "whether the party seeking to assert an inconsistent position would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped." *Id.* at 751. Finally, courts should "resist application of judicial estoppel when a party's prior position was based on inadvertence or mistake." *Id.* at 753.

3. Petitioner Valarie Davis, an African-American woman, has been employed as a clay modeler with respondent Fiat Chrysler Automobiles US, LLC ("Fiat") since 2000. MSJ Resp., R.14, PageID.380.

In April 2008, Davis petitioned for Chapter 13 bankruptcy. *Id.*, PageID.382. In October 2008, the bankruptcy court confirmed a five-year plan to repay her creditors. *Id.*

In or around April 2013—now four-and-a-half years into her five-year repayment plan—Davis began to experience racial harassment at work. Specifically, co-workers began hanging stuffed monkeys—some by their necks—near Davis' workstation. *Id.*, R.14, PageID.383.

But the timing of the harassment is significant: only a handful of incidents involving a stuffed monkey occurred before Davis' bankruptcy plan was discharged on December 10, 2013. Discharge Letter, R.14-13, PageID.783. Davis reported the initial April 2013 incident to Fiat's human resources department, which concluded that the monkey was not objectively offensive. MSJ Order, R.17, PageID.1026.

After Davis' bankruptcy plan was discharged, however, the racial harassment intensified. On or near December 25, 2013, one of Davis' coworkers brought a sock monkey to the workplace and hung it in her cubicle. Davis T/C, R.14-8, PageID.689; Motion Hearing T/C, R.23, PageID.1081. Discovery revealed that the coworker hung the monkey fully aware of—indeed because of—Davis' sensitivities to monkeys. MSJ Resp., R.14, PageID.392-93; *cf. United States v. Jones*, 159 F.3d 969, 977 (6th Cir. 1998) ("Given the history of racial stereotypes against African–Americans and the prevalent one of African–Americans as animals or monkeys, it is a reasonable—perhaps even an obvious—conclusion that [the reference to monkeys is] intended [as a] racial insult . . . ."). Employees in Fiat's sculpting studio knew and understood that Davis was conscious about being compared to a monkey. *Id.*, PageID.382. Now armed with the imprimatur of Fiat's human resources department's initial finding that the first monkey was not offensive, Davis' coworkers escalated matters significantly. Over the course of the next 15 months, they displayed all manner of monkeys in the workplace, including a four-foot-tall gorilla suspended over the studio, a sock monkey that sat on top of a computer, a monkey again hung from Christmas lights, and another monkey hung from an overhead light. *Id.*; Dorothy T/C, R.14-16, PageID.832; Davis T/C, R.14-8, PageID.696; Menendez T/C, R.14-20,

PageID.893. One coworker brought a mechanical monkey to the workplace. Throughout the day he would push a button to make the monkey laugh. Wilson T/C, R.14-9, PageID.713. Yet another employee brought a monkey mold to work. Joseph Marcum, R.14-10, PageID.735-736, 739. He attempted to give the monkey mold to Davis. When she refused, he set it down next to her and said "well, I'll sit them down here." Id. Davis spoke to her supervisor about the harassment, but the monkeys remained on display. Davis T/C, R.14-8, PageID.697.

4. After exhausting her administrative remedies, Davis filed suit, alleging race discrimination under federal and state law. The district court granted summary judgment in favor of Fiat, holding (1) that Davis' failure to amend her bankruptcy schedules to include her harassment claim estopped her from proceeding, and (2) the harassment was insufficiently severe or pervasive to state a claim. MSJ Order, R.17; App. 16a-34a.

5. A panel of the Sixth Circuit affirmed, holding that Davis' claim was barred by the doctrine of judicial estoppel. *Davis*, 2018 WL 4026445, at *1; App. 1a. Despite the fact that the course of harassment barely overlapped with Davis' bankruptcy proceedings, the panel held that "she knew enough information about a possible cause of action for discrimination against [Fiat] by December 2013 to trigger her duty to disclose the claim to the bankruptcy court." *Id.* at *3; App.3a. The panel next concluded that Davis had failed to prove that her omission was the result of mistake or inadvertence because Davis, on the Court's view, understood the factual basis for her claim, and "there [was] no evidence that Davis made any disclosure about a potential claim to the bankruptcy court." *Id.* at *5; App. 14a.

REASONS FOR GRANTING THE PETITION

I. THIS COURT SHOULD GRANT REVIEW TO RESOLVE THE CONFLICT OVER THE BREADTH AND SCOPE OF THE DOCTRINE OF JUDICIAL ESTOPPEL.

This Court should grant review to resolve a longstanding circuit split over the breadth and scope of the judicial estoppel doctrine as a mechanism to bar civil claims that were not disclosed in bankruptcy.

Some circuits, including the Sixth Circuit below, have developed a body of caselaw that requires dismissal in the vast run of cases. The Sixth Circuit, for example, examines whether (1) a party "assumed a position that was contrary to the one that she asserted under oath in the bankruptcy proceedings," (2) "the bankruptcy court adopted the contrary position either as a preliminary matter or as part of a final disposition," and (3) the omission "did not result from mistake or inadvertence." *See, e.g.*, *White v. Wyndham Vacation Ownership, Inc.*, 617 F.3d 472, 478 (6th Cir. 2010).

But several of these elements are essentially inoperative—met in every case involving undisclosed claims in bankruptcy. With respect to the first element—whether a party "assumed a position that was contrary to the one that she asserted under oath in the bankruptcy proceedings,"—the Sixth Circuit treats omissions as "equivalent to a statement that there were no such claims." *Stephenson v. Malloy*, 700 F.3d 265, 274 (6th Cir. 2012). The first element is therefore satisfied in every bankruptcy case where a debtor omits a claim. The Sixth Circuit treats the second element as satisfied if the bankruptcy court confirms a Chapter 13 payment plan or enters a

discharge. *See White*, 617 F.3d at 479; *Davis v. Fiat Chrysler Autos. U.S., LLC*, No. 17-2016, 2018 WL 4026445, at *4 (6th Cir. Aug. 22, 2018). The second element is therefore satisfied in every bankruptcy case reaches its conclusion. The third element—whether the omission "did not result from mistake or inadvertence"—turns on three factors: the debtor's "knowledge of the factual basis of the undisclosed claims," any "motive for concealment," and evidence "indicat[ing] an absence of bad faith"—with particular focus on any attempt "to advise the bankruptcy court of [an] omitted claim." *White*, 617 F.3d at 479. But these factors, too, are virtually always met as a matter of law. A debtor is deemed to have "knowledge of the factual basis of the undisclosed claims" if she "had sufficient information to know that she had a possible cause of action." *Davis*, 2018 WL 4026445, at *4. The Sixth Circuit has held that a "motive to conceal" exists in every bankruptcy case where an omission occurs. *See id.*; *Lewis*, 141 F. App'x at 426 ("It is always in a Chapter 13 petitioner's interest to minimize income and assets."); *White*, 617 F.3d at 479. And the debtor bears a heavy burden in the Sixth Circuit of proving "an absence of bad faith." A debtor's own testimony that the omission was innocent is deemed insufficient by the Sixth Circuit to demonstrate the absence of bad faith. *Lewis*, 141 F. App'x at 427. And evidence that the debtor attempted to correct the omission *after* a judicial estoppel motion has been filed will not help either; on the contrary, the Sixth Circuit treats such belated efforts as affirmative evidence of bad faith. *White*, 617 F.3d at 481.

In sum, while the Sixth Circuit's standards maintain the veneer of a multi-factor test, the application of judicial estoppel is rigid and "formulaic." *Id.* at 485 (Clay, J., dissenting). Stripped of its inoperative appendages, the rule applied in the

Sixth Circuit is as follows: if a debtor knows the factual basis for a potential claim, fails to disclose that claim in bankruptcy, and cannot prove the absence of bad faith by showing that he advised the bankruptcy court of the omitted claim before the judicial estoppel motion was filed, judicial estoppel bars the claim.

Like the Sixth Circuit, other circuits follow the same "basic default rule: If a plaintiff-debtor omits a pending (or soon-to-be-filed) lawsuit from the bankruptcy schedules and obtains a discharge (or plan confirmation), judicial estoppel bars the action." *Ah Quin*, 733 F.3d at 271. *See, e.g.*, *Moses v. Howard University Hosp.*, 606 F.3d 789 (D.C. Cir. 2010); *Jones v. Bob Evans Farms, Inc.*, 811 F.3d 1030 (8th Cir. 2016); *Queen v. TA Operating, LLC*, 734 F.3d 1081 (10th Cir. 2013); *Flugence v. Axis Surplus Ins.*, 738 F.3d 126 (5th Cir. 2013).

These courts' jurisprudence deviates significantly from that of other circuits, which require proof that a debtor *intentionally misled* the bankruptcy court before applying judicial estoppel. In *Slater v. United States Steel Corp., 871 F.3d 1174* (11th Cir. 2017) (en banc) ("*Slater II*"), for example, the Eleventh Circuit, sitting en banc, unanimously rejected the Sixth Circuit's approach and held that judicial estoppel requires affirmative evidence that the debtor "who failed to disclose a civil lawsuit in bankruptcy filings intended to make a mockery of the judicial system." *Slater II*, 871 F.3d at 1176-77. The Seventh Circuit requires defendants invoking the doctrine to "prove that [the debtor]'s omission . . . was an intentional effort to conceal an asset from her creditors." *Spaine v. Community Contacts, Inc.*, 756 F.3d 542, 548 (7th Cir. 2014). In the Fourth Circuit, "the party against whom judicial estoppel is to be applied must have intentionally misled the court to gain unfair advantage. This bad faith requirement is the

determinative factor." *Zinkand v. Brown*, 478 F.3d 634, 638 (4th Cir. 2007). The Ninth Circuit similarly rejects the "presumption of deceit" applied elsewhere and instead requires an inquiry into whether "the omission occurred by accident or was made without intent to conceal." *Ah Quin*, 733 F.3d at 276-77.

The Court should grant certiorari to resolve this fundamental dispute over the doctrine's breadth.

II. THIS COURT SHOULD GRANT REVIEW TO DEFINE AND DELIMIT THE SCOPE OF THE JUDICIAL ESTOPPEL DOCTRINE.

The Court should also grant certiorari to define and delimit the proper scope of the judicial estoppel doctrine.

The strict rule applied by the Sixth Circuit and other circuits, to be sure, has a simple and intuitive appeal: list you claim or lose it. Omitted your claim by accident? Then prove it. But upon closer examination, this approach is unsupported by law and inconsistent with the equitable principles the rule seeks to vindicate.

First, the Sixth Circuit's strict application of judicial estoppel stands in considerable tension with the judicial estoppel factors identified by this Court. Where a debtor, realizing his mistaken omission, re-opens his bankruptcy and discloses the claim, the bankruptcy court ultimately does not "accept that party's earlier position." *Ah Quin*, 733 F.3d at 274 (citing *New Hampshire*, 532 U.S. at 750–51); Theresa M. Beiner & Robert B. Chapman, Take What You Can, Give Nothing Back: Judicial Estoppel, Employment Discrimination, Bankruptcy, and Piracy in the Courts, 60 U. Miami L. Rev. 1, 31-33 (2005). What is more, a plaintiff "obtain[s] no [unfair] advantage" when the claim is ultimately disclosed and

administered as contemplated by the bankruptcy code. *Id.*; *White*, 617 F.3d at 481 at 485 (Clay, J., dissenting). Finally, by treating an omission as tantamount to an affirmative lie, the strict application of judicial estoppel stands in tension with the doctrine's requirement that "a party's later position must be 'clearly inconsistent' with its earlier position." *New Hampshire*, 532 U.S. at 750.

In the main, however, "the application of judicial estoppel . . . operates to the detriment primarily of innocent creditors and to the benefit of only an alleged bad actor." *Ah Quin*, 733 F.3d at 274. By stopping a lawsuit in its tracks, "the creditors lose out on a potential recovery." *Id.* Perversely, "the only 'winner' in this scenario is the alleged bad actor in the estopped lawsuit." *Id.* Because the doctrine does not account for the merits of the underlying claim, "the alleged bad actor could be someone who clearly does not warrant a windfall (e.g., someone who physically assaulted the plaintiff and badly injured him or her)." *Id.* It is difficult "to justify a policy that takes money from innocent third-party creditors and gives it, for example, to a violent criminal." *Id.*; *see Cannon–Stokes v. Potter*, 453 F.3d 446, 448 (7th Cir. 2006) (acknowledging that judicial estoppel "is an equitable doctrine, and it is not equitable to employ it to injure creditors who are themselves victims of the debtor's deceit"); *White*, 617 F.3d at 481 at 485 (Clay, J., dissenting) (The Sixth Circuit's test "ignores the fact that Defendant suffered no prejudice from Plaintiff's initial failure to disclose her claim").

Nor does the strict application of the judicial estoppel doctrine serve the doctrine's equitable goals. Although encouraging disclosure in bankruptcy vindicates the goals of the bankruptcy regime, it does not "protect[] the integrity of the courts." *Ah Quin*, 733 F.3d at 275. Simply put, "[c]ourt[s] do[] not need

protection from a litigant's assertion of an inconsistent claim (or defense)." *Slater v. United States Steel Corp.*, 820 F.3d 1193, 1237 (11th Cir. 2016) (Tjoflat, J., concurring) ("*Slater I*"). Inconsistent claims are presented in court every day without diminishing the integrity of the judicial system. *See, e.g.*, Fed. R. Civ. P. 8(d)(3); Fed. R. Evid. 801(d)(2). The Sixth Circuit's harsh formulation of judicial estoppel actually "impugn[s], rather than preserve[s], the judicial system's integrity." *Slater I*, 820 F.3d at 1235 (Tjoflat, J., concurring). Refusing to consider even meritorious claims that may have real value to innocent creditors does far more to undermine the integrity of the courts than permitting a debtor to maintain two allegedly contrary positions. *Id.*

Moreover, principles of punishment and deterrence do not justify the strict application of the doctrine. *Ah Quin*, 733 F.3d at 275; *Slater I*, 820 F.3d at 1239 (Tjoflat, J., concurring) ("[R]elieving a thief of stolen property is unlikely to deter theft. If anything, it would encourage more theft."). A harsh application of the judicial estoppel doctrine is not necessary "given the extensive range of perfectly adequate criminal and civil legal remedies with which the logic and effect of judicial estoppel are at odds." *Id.* at. 1239; 11 U.S.C. §§ 350(b) (allowing the bankruptcy court to administer omitted claims); Fed. R. Bank. P. 1009 (same); Fed. R. Bankr. P. 9011 (permitting sanctions for false statements and omissions); 18 U.S.C. § 152 (criminalizing the concealment of assets, false oaths, and claims); 18 U.S.C. § 1621 (perjury). These provisions "adequately deter nondisclosure." *Ah Quin*, 733 F.3d at 275 (quoting *Oneida Motor Freight*, 848 F.2d at 423). The "perfectly adequate range of criminal and civil legal remedies designed by Congress to apply across proceedings in the bankruptcy system" stand in clear "tension with the

invocation of judicial estoppel." *Slater v. United States Steel Corp.*, 820 F.3d 1193, 1235 (11th Cir. 2016) (Tjoflat, J., concurring) ("*Slater I*").

Judicial estoppel also undermines countless statutory regimes and frustrates the will of Congress. This case serves as a prime example. Davis, the petitioner here, brought claims alleging workplace discrimination. "The dominant purpose of [Title VII], of course, is to root out discrimination in employment." *EEOC v. Shell Oil Co.*, 466 U.S. 54, 76 (1984). By barring claims regardless of their merits or importance to congressional policy, the judge-made judicial estoppel doctrine "pursues its purposes at all costs," *see Rodriguez v. United States*, 480 U.S. 522, 525-26 (1987), and "snubs the purpose" of countless federal and state laws. *See Monroe v. FTS USA, LLC*, 860 F.3d 389, 403 (6th Cir. 2017).

By the same token, the strict application of judicial estoppel unfairly punishes innocent debtors. Take again the petitioner in this case, Valarie Davis. There is simply no evidence in this case that Davis was trying to hide anything when she failed to return to bankruptcy court to report that she was being mistreated at work and might have a legal claim. But Davis, like so many other debtors, was cast out of court because she knew *some* of the facts that would ultimately make up her claim and could not negate the Sixth Circuit's strong presumption of bad faith.

Finally, there is no question that the proper scope of the judicial estoppel doctrine is an issue of exceptional importance warranting this Court's review. Only 20 years ago, judicial estoppel was regarded by courts as an " 'obscure doctrine' " of uncertain contours and uncertain acceptance in federal courts." *See* Wright & Miller § 4477 (quoting *Nichols v. Scott*, 69 F.3d 1255, 1272 (5th Cir. 1995).

No longer. After this Court's decision in *New Hampshire*, "the number of federal appellate decisions grappling with [the doctrine of judicial estoppel] has grown dramatically" and shows no sign of abating. *See* Wright & Miller § 4477.

This Court's review is essential to define and delimit the proper scope of the doctrine.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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