Nos. 19-1402 and 19-1411

IN THE

Supreme Court of the United States

ANTONIO JUBIS ZACARIAS, *et al.*,
Petitioners,
v.
RALPH S. JANVEY, *et al.*
Respondents.

BARRY L. RUPERT, *et al.*,
Petitioners,
v.
RALPH S. JANVEY, as Court-Appointed Receiver for Stanford Receivership Estate, *et al.*
Respondents.

On Petitions for Writs of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF FOR RESPONDENTS RALPH S. JANVEY, *ET AL.*, IN OPPOSITION

Evan A. Young
Scott D. Powers
Delaney J. McMullan
BAKER BOTTS L.L.P.
98 San Jacinto Blvd.
Suite 1500
Austin, Texas 78701
(512) 322-2500

Kevin M. Sadler
Counsel of Record
BAKER BOTTS L.L.P.
1001 Page Mill Road
Building One, Suite 200
Palo Alto, California 94304
(650) 739-7500
kevin.sadler@bakerbotts.com

Counsel for Respondent Ralph S. Janvey
(additional counsel located inside front cover)

ADDITIONAL COUNSEL

Edward C. Snyder
Jesse R. Castillo
CASTILLO SNYDER, P.C.
One Riverwalk Place
700 N. St. Mary's
Suite 405
San Antonio, Texas 78205
(210) 630-4200

Patrick J. Neligan Jr.
Douglas J. Buncher
NELIGAN LLP
3600 Republic Center
325 N. St. Paul Street
Dallas, Texas 75201
(214) 840-5320

Peter Michael Jung
Counsel of Record
CLARK HILL STRASBURGER
901 Main Street
Suite 6000
Dallas, Texas 75202
(214) 651-4724
jungm@clarkhill.com

Judith R. Blakeway
CLARK HILL STRASBURGER
2301 Broadway
San Antonio, Texas 78215
(210) 250-6000

Counsel for Respondents Official Stanford Investors Committee, Samuel Troice, and Manuel Canabal

QUESTIONS PRESENTED

Courts of appeals uniformly recognize the power of a district court, overseeing a federal equity receivership, to enjoin satellite litigation that interferes with the court's jurisdiction over the receivership. Here, as part of a settlement among respondents, the district court issued two such "bar orders," enjoining litigation by investors in the Stanford Ponzi scheme against two third-party defendants for claims relating to those defendants' roles in the Ponzi scheme. The Fifth Circuit expressly noted that barring individual claims is *only* permissible when they are duplicative, derivative, or entangled with the claims of the Receivership entities, and affirmed the bar orders based on the factual determination that the individual claims against the defendants on this record satisfied that standard. After further clarifying its opinion on rehearing, the Fifth Circuit ordered the mandate to issue forthwith and directed petitioners to seek any timely relief in this Court.

The questions presented are:

1. Whether this Court has jurisdiction to entertain petitions for writs of certiorari filed after this Court's statutory jurisdiction had already expired.

2. Whether the investors' claims were sufficiently similar to the Receiver's claims to fall within the scope of the district court's equitable authority to enjoin further litigation, or whether the investors' claims were too distinct or independent to be subject to a bar order under the facts of this case.

PARTIES TO THE PROCEEDINGS AND RULE 29.6 DISCLOSURE

Petitioners in No. 19-1402—referred to collectively as the "Zacarias petitioners"—comprise five groups of individual investors who filed lawsuits against the Willis respondents in Florida state court and were appellants below. They are identified individually in the appendix to their petition. Zacarias Pet. App. 124a-125a.

Petitioners in No. 19-1411—collectively, the "Rupert petitioners," except when separately referring to the Able petitioners—comprise two groups of individual investors. The Rupert petitioners filed a lawsuit against the Willis and Bowen, Miclette, & Britt, Incorporated respondents in Texas state court. The Able petitioners filed a lawsuit against Willis in the Northern District of Texas. They were appellants below and are identified individually in the Rupert petition. Rupert Pet. iii-ix.

Respondents are Ralph S. Janvey, in his capacity as Court-Appointed Receiver for the Stanford Receivership Estate; the Official Stanford Investors Committee; Samuel Troice and Manuel Canabal, individually and on behalf of a class of all others similarly situated; Willis Ltd.; Willis Group Holdings Ltd.; Willis North America, Inc.; Willis Colorado; Amy S. Baranoucky; and Bowen, Miclette, & Britt, Incorporated. They were appellees below.

Respondent Ralph S. Janvey confirms that, as an individual and a court-appointed receiver, he has no further disclosure under this Court's Rule 29.6. Respondents the Official Stanford Investors Committee, Samuel Troice, and Manuel Canabal likewise confirm that they have no such further disclosure.

STATEMENT OF RELATED PROCEEDINGS

This Court's Rule 14.1(b)(iii) requires the parties to identify all proceedings "directly related" to the case in this Court. It further defines a case as "'directly related' if it arises from the same trial court case as the case in this Court." Like any other complex receivership, the Stanford Receivership has generated many "directly related" cases. Because neither petition includes the full list of directly related cases, respondents supply a complete list here.

Proceedings in this Court:

- *Sasser* v. *SEC*, No. 11-194, Oct. 11, 2011
- *Chadbourne & Parke, LLP* v. *Troice*, Nos. 12-79, 12-86, 12-88, Feb. 26, 2014
- *Becker* v. *Janvey*, No. 19-919, Mar. 30, 2020

Proceedings in the U.S. Court of Appeals for the Fifth Circuit:

- *In re Nen*, No. 09-10325, Apr. 7, 2009
- *SEC* v. *Stanford Int'l Bank*, No. 09-10392, Aug. 4, 2009
- *SEC* v. *Stanford Int'l Bank*, No. 09-10394
- *SEC* v. *Stanford Int'l Bank*, No. 09-10847, Dec. 31, 2009
- *SEC* v. *Stanford Int'l Bank*, No. 09-10963, Dec. 17, 2010 (revised Dec. 20, 2010)
- *SEC* v. *Stanford Int'l Bank*, No. 09-11028, Mar. 18, 2010
- *SEC* v. *Stanford Int'l Bank*, No. 10-10336, May 5, 2011
- *SEC* v. *Stanford Int'l Bank*, No. 10-10387, June 20, 2011
- *SEC* v. *Stanford Int'l Bank*, No. 11-10355, Mar. 8, 2012

- *SEC* v. *Stanford Int'l Bank, Ltd.*, No. 11-10480, July 22, 2011
- *SEC* v. *Stanford Int'l Bank, Ltd.*, No. 12-10822, Jan. 8, 2014
- *SEC* v. *Stanford Int'l Bank*, No. 15-10066, June 22, 2015
- *SEC* v. *Stanford Int'l Bank*, No. 18-10692, Aug. 24, 2018
- *SEC* v. *Stanford Int'l Bank*, No 17-10663, June 17, 2019
- *SEC* v. *Stanford Int'l Bank*, No 17-11073, Dec. 19, 2019
- *Official Stanford Inv'rs Comm.* v. *Willis of Colo.*, No. 17-11114, Dec. 19, 2019
- *Able* v. *Willis of Colo., Inc.*, No. 17-11122, Dec. 19, 2019
- *Zacarias* v. *Willis Grp. Holdings Pub.*, No. 17-11127, Dec. 19, 2019
- *Nuila de Gadala-Maria* v. *Willis Grp. Holdings Pub.*, No. 17-11128, Dec. 19, 2019
- *Tisminesky* v. *Willis Grp. Holdings Pub.*, No. 17-11129, Dec. 19, 2019
- *In re Stanford*, No. 19-11336, Jan. 24, 2020

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On Petitions for Writs of Certiorari to the United States Court of Appeals for the Fifth Circuit

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BRIEF FOR RESPONDENTS RALPH S. JANVEY, *ET AL.*, IN OPPOSITION

Respondents Ralph S. Janvey, as Court-Appointed Receiver for the Stanford Receivership Estate, the Official Stanford Investors Committee, Samuel Troice, and Manual Canabal respectfully request that the Court deny the petitions for writs of certiorari.

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-45)[1] is

[1] References to "Pet. App." are to the Appendix in No. 19-1411 (*Rupert*) unless otherwise noted.

reported as *Zacarias* v. *Stanford International Bank, Ltd.*, 945 F.3d 883. The Fifth Circuit's initial opinion (Zacarias Pet. App. 40a-77a), dated July 22, 2019, is reported at 931 F.3d 382. After petitioners sought rehearing *en banc*, the panel treated the petition as a petition for panel rehearing, granted the petition, withdrew its original opinion, and issued its substituted opinion (Pet. App. 1-45) on December 19, 2019. The court simultaneously issued its mandate. App., *infra*, 1a-12a.

Petitioners then filed a motion for extension of time to file a second petition for rehearing *en banc*. In denying that motion, the Fifth Circuit expressly disclaimed further jurisdiction and clarified that the relevant date for measuring the timeliness of a petition for a writ of certiorari was December 19, 2019. App., *infra*, 17a. Petitioners nonetheless filed a subsequent petition for rehearing, which the Fifth Circuit denied. Pet. App. 114-119.

The relevant orders from the Northern District of Texas (Pet. App. 46-60, 61-76, & 88-102), are unreported but available at 2017 WL 6442190, 2017 WL 6442191, and 2017 WL 9989250, respectively.

JURISDICTION

This Court's jurisdiction is—at the least—in serious doubt. The Fifth Circuit expressly noted that the time for pursuing certiorari started to run on December 19, 2019, when the court issued its mandate. App., *infra*, 17a. That made the petitions due on March 18, 2020—the day before this Court provided a blanket extension for all petitions due thereafter. Even if petitioners *had* received the maximum possible extension of sixty days, however, the deadline would have run on May 18, 2020. See 28 U.S.C. § 2101(c). Both petitions were filed on June 19. Neither petition mentions the resulting jurisdictional problem, which respondents address in greater detail below. See *infra* pp. 11-15.

STATUTORY PROVISIONS INVOLVED

A district court's jurisdiction over an SEC receivership case arises under statutes, including 15 U.S.C. §§ 77v(a), 78aa(a). These statutes are included at Zacarias Pet. App. 122a-123a.

PRELIMINARY STATEMENT

Petitioners cast themselves as earnest defenders of a rigorous approach to subject-matter jurisdiction. That role would be more plausible and less ironic had they not disregarded a jurisdictional defect of their own making: Their petitions are jurisdictionally out of time. The Fifth Circuit expressly told petitioners when the clock for certiorari began to tick. App., *infra*, 17a. Petitioners ignored that guidance. Their petitions are untimely with or without this Court's blanket extension of time. At the least, their insouciant approach to jurisdiction makes these petitions poor vehicles for reviewing any question—particularly one concerning jurisdiction.

Regardless, the judgment below implicates no question of law dividing the circuits—and certainly not one of Article III import. The only real question involves a factbound application of an uncontroversial legal framework to this particular record: are *petitioners'* claims sufficiently independent and distinct from any of the *Receiver's* claims to make it improper for a court sitting in equity to bar the former?

This question implicates no disputed legal issue. No court—including the Fifth Circuit *in the judgment below*—deems bar orders proper when individual claims are entirely independent of those being settled. Pet. App. 25. Likewise, no court doubts the propriety of bar orders in the presence of interdependent claims.

Stated differently, the Fifth Circuit *embraces* petitioners' core legal theory that truly independent claims may not be barred. The dissenting judge below dis-

claimed any disagreement with the majority as to this legal framework. Pet. App. 43.

So what is left here? Nothing more than reweighing the Fifth Circuit's assessment of whether petitioners' particular claims are entangled with and derivative of the Receiver's claims. The Fifth Circuit undertook that task—a routine one for lower courts—and properly found, for a host of reasons, that the claims were sufficiently entangled. Petitioners' disagreement is with that factbound assessment. And the brief dissent below described the disagreement as "narrow" and based on the specific facts of the case. *Ibid.* That is presumably why neither the dissenting judge on the panel nor any other Fifth Circuit judge even sought a poll for any rehearing petition and why "[h]olds on the mandate were lifted" so that it could issue along with the "clarifying opinion and revised dissent [that] were filed on December 19, 2019 * * *." App., *infra*, 17a.

Petitioners recognize that this Court is unlikely to grant certiorari to review such a granular dispute, so they attempt to manufacture relevant circuit splits, injecting words that sound very cert-worthy—"Article III," "federalism," "standing," etc. But the legal test used below has generated no differences of opinion among the circuits and implicates neither Article III, federalism, nor standing.

Even assuming for argument's sake that the panel *did* change the law—something that both it and the dissenting judge disclaimed—all that petitioners would be challenging would be an *intracircuit* split. The Fifth Circuit already has unambiguously held—*in cases from this very receivership*—that federal equity receivers lack standing to litigate claims on behalf of, or belonging to, investors. *Janvey* v. *Democratic Senatorial Campaign Comm., Inc.*, 712 F.3d 185, 190 (5th Cir. 2013) ("*DSCC*");

Janvey v. *Alguire*, 539 F. App'x 478, 480 (5th Cir. 2013) *(per curiam)*. *If* the judgment below actually meant what petitioners try to make it mean, then the problem would not be the Fifth Circuit against other circuits, but the Fifth Circuit against itself. And if the opinion *really* meant what petitioners say, then, in this and other receiverships, the Fifth Circuit will soon be forced to resolve its internal division.

At bottom, the Fifth Circuit plowed no new legal ground and, moreover, reached a correct, sensible result. Nothing in either petition even remotely supports including these cases on this Court's merits docket.

STATEMENT

This case arises from the infamous Ponzi scheme of R. Allen Stanford and the resulting receivership of the Stanford entities (the "Receivership"). Pet. App. 5-6. After nearly a decade of litigation, respondent Ralph S. Janvey, as Receiver for the Stanford entities (the "Receiver"), settled his claims against respondents Willis Ltd. and its affiliates ("Willis") and Bowen, Miclette & Britt, Incorporated ("BMB") for Willis and BMB's alleged role in Stanford's Ponzi scheme. *Id.* at 18. (Respondents the Official Stanford Investors Committee ("OSIC") and a putative class of plaintiffs simultaneously agreed to dismiss their claims against Willis and BMB.)

After months of negotiation, Willis agreed to pay $120 million and BMB agreed to pay nearly $13 million to the Receivership estate. In exchange, the Receiver agreed to release his claims against Willis and BMB. *Ibid.* The parties conditioned the settlement on the district court's issuance of a bar order, enjoining all claims against Willis and BMB arising from their alleged role in the Stanford Ponzi scheme. *Id.* at 18-19. Through the Receiver's court-supervised distribution process, the settlement proceeds will be distributed to investor-claimants—

including the vast majority of petitioners.

Finding the settlements "adequate, fair, reasonable, and equitable," and the bar orders appropriate, the district court approved the settlement agreement and issued the bar orders over petitioners' objections. *Id.* at 65, 92. The Fifth Circuit affirmed. *Id.* at 6. The propriety of the bar orders forms the basis of the dispute now brought to this Court.

I. FACTUAL BACKGROUND

The details of the Ponzi scheme have been described in various opinions by the Fifth Circuit, see, *e.g.*, *United States* v. *Stanford*, 805 F.3d 557, 563-564 (5th Cir. 2015), and even this Court, see *Chadbourne & Parke LLP* v. *Troice*, 571 U.S. 377, 384-385 (2014).

A. The Stanford Ponzi Scheme

Stanford sold over $7 billion in fraudulent certificates of deposits to more than 18,000 people over two decades. Pet. App. 8-9. To do this, he used what are called the "Stanford entities" or the "Receivership entities"—*i.e.*, Stanford International Bank, Ltd. ("SIBL") and various securities-brokerage companies. Stanford's central marketing pitch was that the CDs "were highly liquid and achieved consistent double-digit annual returns, all under the protection of extensive insurance coverage." *Id.* at 7.

Stanford implemented a classic Ponzi scheme. As the 2008 financial crisis unfolded, Stanford's investors sought to redeem their investments faster than Stanford could peddle new CDs, and the Ponzi scheme began to collapse. *Id.* at 9.

In February 2009, the district court placed all assets of the Stanford entities in receivership and appointed the Receiver to "marshal, conserve, hold, manage and preserve the value of the receivership estate." *SEC* v. *Stanford Int'l Bank, Ltd.*, 424 F. App'x 338, 340 (5th Cir. 2011) *(per curiam)*. This case arises out of lawsuits the

Receiver initiated to pursue that objective. Through a court-supervised distribution process, the Receiver distributes money that he recovers through litigation and settlements pro rata to the approximately 18,000 defrauded investor-claimants, including nearly all of the approximately 500 petitioners. Pet. App. 11.

B. The Receiver's lawsuit against Willis and BMB

Central to perpetuating the Ponzi scheme was persuading investors that their deposits in SIBL, an offshore Antiguan bank, were secure and insured investments. In fact, SIBL held "no meaningful coverage of deposits in the Bank." *Id.* at 9.

The Receiver sued Willis and BMB, alleging their centrality in perpetuating the fraud in two ways. First, the Stanford entities purchased insurance policies with the assistance of Willis and BMB, then touted these policies in widely distributed marketing materials, which perpetuated the (false) impression that the insurance protected investors' deposits. *Id.* at 7. Second, Willis and BMB provided letters (often called the "Safety & Security letters") that allegedly touted SIBL's management and insurance coverage. See *id.* at 7-8. The Stanford entities' actual and prospective investors routinely received these letters, which also affected general market perceptions of the investments. *Id.* at 8.

The Receiver asserted six causes of action, including fraudulent transfer, unjust enrichment, and aiding, abetting, or participating in breaches of fiduciary duty, for injuries allegedly caused to the Receivership estate. *Id.* at 14-16. The Receiver sought to recover (1) the full amount of any fraudulent transfers that third parties received from the Stanford entities, on the basis that Willis and BMB had allegedly aided, abetted, or participated in these fraudulent transfers to third parties, (2) CD proceeds allegedly paid to Willis and BMB that belong to the

Receivership estate, and (3) damages that Willis and BMB allegedly caused to the Stanford entities by increasing the liabilities of the Stanford entities. ROA.17-11114.198-200, 233.[2] Each of these injuries allegedly resulted, at least in part, from Willis and BMB's provision of the Safety & Security letters.

C. Petitioners' lawsuits against Willis and BMB

Petitioners (among others) also filed lawsuits against Willis and BMB.[3] Petitioners invoke various causes of action, but their claims are based on *exactly the same* conduct as the Receiver's claims—Willis and BMB's issuance of Safety & Security letters that allegedly vouched for Stanford investments. ROA.17-11073.72876-72877 (Rupert petitioners' complaint); ROA.17-11127.39-40 (Zacarias petitioners' complaint); ROA.17-11122.23-24, 31 (Abel petitioners' complaint).

Indeed, had Willis and BMB never provided the Safety & Security letters, petitioners would have no claim against Willis and BMB, and nearly all of the Receiver's claims would likewise be non-existent. Or, had what Willis and BMB allegedly represented in the letters been true—*i.e.*, Stanford offered well-protected, insured, and safe investments—then neither the Receiver nor any of the petitioners would have any claim to assert against Willis and BMB in the first instance.

II. PROCEEDINGS BELOW

A. The district court's approval of the settlements and issuance of bar orders over petitioners' objections

After years of litigation, including extensive discovery and briefing, the Receiver entered into protracted set-

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[2] "ROA" refers to the Fifth Circuit's electronic "Record on Appeal."

[3] The Fifth Circuit described the procedural history of the lawsuits, including removal and stay. Pet. App. 16-18.

tlement negotiations with Willis and BMB. Pet. App. 18. The Receiver reached a settlement with Willis, exchanging the release of claims for a $120 million payment to the Receivership estate. *Ibid.* The BMB settlement was similar and for $12.85 million, which includes virtually all of BMB's available insurance coverage. *Id.* at 18, 33.

The settlements were conditioned upon the issuance of bar orders, enjoining related claims against the defendants arising from the Stanford Ponzi scheme. *Id.* at 18-19. To be clear, no one "settled" the claims being barred or asserted standing to do so. Those claims were simply subjected to an anti-suit injunction.[4]

The Receivership court provided notice of the settlements after motions to approve them had been filed, invited objections to the settlements, and set the motions for hearing. The court considered objections from the petitioners.

After hearing and considering the objections and responses, the district court overruled the objections, issued the bar orders, and approved the settlements. *Id.* at 65, 92. When consummated, the settlements will be the largest single recovery by settlement for the Receivership to date.

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[4] The receivership court has approved six other materially indistinguishable bar orders *in this very receivership*, which have allowed significant recovery for the Receivership Estate, leading to pro rata distributions accepted by nearly every petitioner here. *E.g.*, ROA.17-11073.61989-61997 ($4.9 million Adams & Reese Settlement); ROA.17-11073.62046 ($40 million BDO Settlement); ROA.17-11073.66590 ($24 million Kroll Settlement); ROA.17-11073.66605-66606 ($35 million Chadbourne & Parke Settlement). The only distinction between those bar orders and these orders is the identity of one of the settling defendants or, more accurately, the perception that the primary settling defendant (Willis) has the means to satisfy a judgment in favor of investors in addition to the settlement proceeds it pays to the receiver.

B. The Fifth Circuit appeal

Discontented with a pro-rata share in the settlement proceeds, equitably divided among all defrauded investors, the objectors appealed the settlement and bar orders. They maintained that the district court lacked subject-matter jurisdiction to issue the bar orders, and that the bar orders violated due process, Rule 23's class-action requirements, the Anti-Injunction Act, and even the Takings Clause. *Id.* at 19, 39-42. As in this Court, they repeatedly described the bar orders as a "settlement" of their claims. *Id.* at 29.

The objector-appellants acknowledged the relatedness of the Receiver's claims with their own. The Able objectors noted, for example, that "[t]he primary damages of the receivership entities are derivative of the injuries sustained by the Stanford investors—that is, if the investors had suffered no injury, then damage to the receivership entities would be eliminated or at least dramatically reduced." Able Br. 17. Notably, no objector-appellant disputed that the claims asserted by the Receiver against Willis and BMB belong to the Receivership entities and that the Receiver had standing to assert those claims.

The Fifth Circuit affirmed, with Judge Willett dissenting. Zacarias Pet. App. 73a. Appellant-objectors petitioned for rehearing *en banc*, asserting that the decision in this case conflicted with the Fifth Circuit's near-simultaneous decision in *SEC* v. *Stanford International Bank, Ltd.*, 927 F.3d 830 (5th Cir. 2019) ("*Lloyds*"), cert. denied sub nom. *Becker* v. *Janvey*, 140 S. Ct. 2567 (2020). Appellants' Joint Pet. for Reh'g *En Banc* 1. *Lloyds* also arose from the Stanford Receivership proceedings and involved a settlement agreement and bar order. 927 F.3d at 835-836. The panel treated the *en banc* petition as one for panel rehearing, withdrew its original opinion, substi-

tuted the operative opinion, and directed that the mandate issue forthwith. Pet. App. 5.

The court again affirmed the district court's issuance of the bar order and approval of the settlement, on the same basis as its original opinion. *Id.* at 42-43. It explained that its decision and *Lloyds* were harmonious—factual differences drove the outcome in each. *Id.* at 33-36. In upholding the bar orders, the court relied on the district court's jurisdiction under the securities laws to coordinate federal equity receiverships, and in so doing to "coordinate the interests in a troubled entity and to ensure that its assets are fairly distributed to investors." *Id.* at 20. To effectuate the Receiver's task, a district court has power to issue "orders preventing interference with its administration of the receivership property." *Id.* at 18 (citation omitted).

The court also recognized the limitations on a receivership court's powers—the court "cannot reach claims that are independent and non-derivative and that do not involve assets claimed by the receivership." *Id.* at 25. But here, the court explained, the objector-appellants' "claims are derivative of and dependent on the receiver's claims, and their suits directly affect the receiver's assets." *Ibid.*

Judge Willett again dissented. He agreed with the legal principle that a district court has jurisdiction to issue a bar order as long as the creditors' claims to be barred are "substantially identical," but, in his view, the investors' and Receiver's legal claims rested on distinct facts and different legal claims. *Id.* at 43. The court directed that the mandate issue immediately, without noted dissent or objection from any judge.

REASONS FOR DENYING THE PETITION

I. THIS COURT'S JURISDICTION IS DOUBTFUL AT BEST

Petitioners present no substantial merits question.

Regardless, the Court would have to determine its own jurisdiction before it could consider petitioners' contentions. *At best*, the jurisdictional issue presents a substantial complication.

A. The Fifth Circuit did everything possible to give petitioners ample opportunity to timely file in this Court. Yet petitioners ignored the Fifth Circuit—they actually omit from their petitions and appendices the documents that illustrate the jurisdictional defect.

In granting rehearing and releasing its clarifying opinion, the Fifth Circuit expressly ordered that the mandate issue along with that opinion and judgment on December 19, 2019. See App., *infra*, 1a-12a. As this Court's Rule 13.3 makes clear, the time for seeking review does not pause while parties *await* the mandate. But when the mandate *issues*, as here, the finality that triggers the period for seeking certiorari is clear. "[T]he court [of appeals] can grant rehearing only while it still has jurisdiction of the case and its jurisdiction ends when the mandate issues." 16AA Charles Alan Wright et al., Federal Practice and Procedure § 3986, at 596-597 (4th ed. 2008).

Despite the Fifth Circuit's express acceleration of the mandate's issuance, cf. Fed. R. App. P. 41(b), petitioners actually asked that court for additional time to file another petition for rehearing. The Fifth Circuit therefore provided an explicit warning: a December 31, 2019 order denying any extra time for another rehearing petition, precisely because the court no longer had jurisdiction to consider such a petition. App., *infra*, 17a. That order unambiguously recounted that the mandate's issuance was purposeful: "Holds on the mandate were lifted, and the clarifying opinion and revised dissent were filed on December 19, 2019, with the direction that the mandate issue forthwith," thus "commencing the time for Peti-

tioners to file a petition for a writ of certiorari, 90 days from December 19, 2019." *Ibid.* "Further motions for extension of time," the court added for good measure, "shall be addressed to the Supreme Court of the United States." *Ibid.*

Petitioners ignored these warnings and filed another rehearing petition (and, tellingly, a request to recall the mandate). On January 21, 2020, the Fifth Circuit used its standard form for denials. Pet. App. 118. This outcome could hardly be surprising, given the December 31 order's warning, combined with the rarity of a mandate's recall.[5]

B. Both petitions in this Court omit this background, thus bypassing this Court's Rule 13.2: "The Clerk will not file any petition for a writ of certiorari that is jurisdictionally out of time." Petitioners made it seem as though their petitions were timely when they were not.[6]

The requisite "certainty that the judgment below will not be altered," Stephen M. Shapiro et al., Supreme Court Practice 6-27 (11th ed. 2019), appeared when the Fifth Circuit released its mandate, as that court itself stated. This Court's Rule 13.3 delays the clock for certiorari until a decision is in fact final: "if the lower court appropriately entertains an untimely petition for rehearing or *sua sponte* considers rehearing, the time to file the pe-

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[5] A "recall is not a vehicle for correcting alleged erroneous rulings of law." 16AA Charles Alan Wright et al., Federal Practice and Procedure § 3987, at 621 (4th ed. 2008); see also Fifth Circuit Local Rule 41.2.

[6] When an untimely petition slips through, even when a lower court *tries* to extend the time, the Court denies the petition as jurisdictionally out of time. "Certiorari was denied in *Allegrucci* v. *United States*, 372 U.S. 954 (1963), 'for the reason that the petition was not timely filed,'" even though the Third Circuit had "entertain[ed] an out-of-time petition for rehearing * * *." Stephen M. Shapiro et al., Supreme Court Practice 6-20 (11th ed. 2019).

tition for a writ of certiorari * * * runs from the date of the denial of rehearing or, if rehearing is granted, the subsequent entry of judgment." See, *e.g.*, *Hibbs* v. *Winn*, 542 U.S. 88, 97-98 (2004) (emphasizing the effects of various actions on "finality" of the judgment sought to be reviewed). The court of appeals did not and could not "appropriately entertain[]" the second petition for rehearing, given that it had released and never recalled the mandate. This common-sense principle is longstanding practice. Cf. *Young* v. *Harper*, 520 U.S. 143, 147 n.1 (1997) (the petition for certiorari was not untimely when the court of appeals "treated [the petition for rehearing] as timely *and no mandate issued until after the petition was denied*") (emphasis added). The court denied (rather than "dismissed") the untimely petition for rehearing *en banc*, just as this Court "denies" rather than "dismisses" petitions for writs of certiorari over cases where the Court lacks jurisdiction. *E.g.*, *Allegrucci*, 372 U.S. at 954.

Said another way, "[t]he consistent practice of the Court has been to treat petitions for rehearing that are *timely and properly* presented to the federal or state court below as tolling the start of the period in which a petition for certiorari must be sought * * *." Shapiro, Supreme Court Practice, *supra*, at 6-26 (emphasis added). This Court should "deny" the petitions here for want of jurisdiction just as the Fifth Circuit "denied" the petition for rehearing *en banc*.

C. This Court's March 19, 2020 order extended "the deadline to file any petition for a writ of certiorari *due on or after the date of this order* * * * to 150 days" from the triggering event below. (Emphasis added.) Because petitioners' deadline was March 18, 2020—*before* the "date of this order"—the extension did not affect their deadline. But even if the order had come a day earlier, the outcome would remain unchanged—another sixty days would have extended the deadline to Monday, May 18.

Petitioners both filed on June 19. In other words, the petitions are either one month or three months late. Either way, they are jurisdictionally out of time given 28 U.S.C. § 2101(c)'s unyielding stricture. See Shapiro, Supreme Court Practice, *supra*, at 6-19.

Petitioners easily could have avoided this consequence either by timely filing or by requesting sixty extra days before the filing period had expired. See this Court's Rule 13.5. They did neither. Before the Court could reach the merits—even if inclined to do so—it therefore would have to resolve this jurisdictional question. And if respondents are correct about jurisdiction, the Court would have invested its energy in reviewing this case only to ultimately dismiss it.

II. THE FIFTH CIRCUIT'S DECISION IMPLICATES NO CIRCUIT SPLIT REGARDING BAR ORDERS

Even if the Court were persuaded that its jurisdiction is secure, the petitions do not advance a question that implicates a division among the circuits.

The issue presented to the Fifth Circuit was whether the district court had authority to issue the bar orders, which enjoin claims—including petitioners'—against BMB and Willis that arise out of their alleged role in the Stanford Ponzi scheme. The courts of appeals uniformly agree with the Fifth Circuit that a district court overseeing a federal equity receivership has authority to enjoin satellite litigation that interferes with the administration of the receivership estate through bar orders in appropriate circumstances. Crucially, courts agree as to the relevant considerations and parameters for assessing bar orders. Applying those considerations in a given case, as here, entails a factbound and case-specific inquiry.

A. The Fifth Circuit is part of the consensus about bar orders, which requires fact-intensive analysis

There is no conflict regarding the existence of authority to issue bar orders, the actual judicial act that supposedly harms petitioners. Petitioners avoid the question, and indeed cite only *one* case that even considers the propriety of a bar order. See Rupert. Pet. 14. That case—*SEC* v. *DeYoung*, 850 F.3d 1172 (10th Cir. 2017)—unambiguously supports the Fifth Circuit, as do multiple additional cases that petitioners ignore. *No* case has repudiated a bar order under circumstances like these.

1. Circuits universally approve bar orders, and none has repudiated one in circumstances like these

a. In *DeYoung*, the Tenth Circuit considered the very question facing the Fifth Circuit here: whether the district court had authority and jurisdiction to issue bar orders prohibiting further claims against settling defendants. 850 F.3d at 1178. The Tenth Circuit concluded that the district court had authority to bar claims that were "substantially identical" to those belonging to the receiver. *Id.* at 1176. The court considered the circumstances of the case and concluded the issuance of the bar order was within the district court's "inherent powers of an equity court to fashion relief." *Id.* at 1182-1183 (citation omitted).

Likewise, the Fifth Circuit held here that the district court could bar further claims against Willis and BMB. Pet. App. 32-33. Citing *DeYoung* as illustrative of the limits on a receivership court's authority, the court held that the bar orders "fall squarely" within those limits. *Id.* at 25.

While the Rupert petitioners correctly acknowledge that *DeYoung* supports the judgment below, Rupert Pet.

14, the Zacarias petitioners apparently resist this conclusion, Zacarias Pet. 18-20. They argue that, even considering *DeYoung*, the Fifth Circuit "is the only circuit ever to find that the lack of standing poses no obstacle to the receiver confiscating investor misrepresentation claims." Zacarias Pet. 20. If these assertions were true, of course, that would only paint this case as a novel outlier, militating against certiorari.

In fact, however, the argument rests on two unsupportable premises. First, it appears to assume that receivers are categorically prohibited from pursuing certain types of claims. See *ibid.* No court has held that a receiver cannot assert claims for misrepresentations, if the misrepresentation resulted in an injury *to the receivership entity*. See *infra* Section III.B.3. Second, the argument mistakenly equates the receiver's standing to pursue a claim with the district court's authority to enjoin satellite litigation. See *infra* Section III.B.2.

b. Instead of the inapposite cases involving receiver standing, petitioners should have addressed other cases considering bar orders. Cases that consider bar orders uniformly recognize the broad equitable authority of receivership courts to enjoin satellite litigation. Along with the Fifth Circuit here and in other cases, and the Tenth Circuit in *DeYoung*, at least the Second, Sixth, Ninth, and Eleventh Circuits have done so. No court of appeals has ever held that a district court lacks such authority.

In the seminal case of *SEC* v. *Wencke*, then-Judge Kennedy held for the Ninth Circuit that a district court could issue an anti-litigation stay against non-parties to a proceeding. 622 F.2d 1363, 1369 (9th Cir. 1980). The court looked to federal courts' "inherent equitable authority to issue a variety of 'ancillary relief' measures in actions brought by the SEC to enforce the federal securities laws," and noted that authority "derives from the in-

herent power of a court of equity to fashion effective relief." *Ibid.* Various lines of precedent led to the conclusion that the bar order was proper, including this Court's precedent that "has repeatedly emphasized the broad equitable powers of the federal courts to shape equitable remedies to the necessities of particular cases." *Id.* at 1371. The court further held that "a federal court may assert control over property and enjoin persons from further proceedings in a state court where the subject matter of the two suits is different or the jurisdiction is not concurrent, at least where, as here, the state court has not taken actual possession of the property." *Id.* at 1371-1372.

The Sixth Circuit in *Liberte Capital Group, LLC* v. *Capwill* ("*Liberte I*") upheld a district court's finding of contempt for violating an anti-litigation injunction similar to the one here. 462 F.3d 543, 546-547 (6th Cir. 2006). In reviewing the finding of contempt, the court first confirmed the propriety of the district court's "issu[ance of] a blanket injunction." *Id.* at 551. In so concluding, the court relied on the district court's "broad equitable powers to appoint a receiver over assets disputed in litigation before the court." *Ibid.* "Once assets are placed in receivership," it explained, "a district court's equitable purpose demands that the court be able to exercise control over claims brought against those assets. The receivership court has a valid interest in both the value of the claims themselves and the costs of defending any suit as a drain on receivership assets." *Ibid.*

In *SEC* v. *Byers*, the Second Circuit concluded that "district courts may issue anti-litigation injunctions barring bankruptcy filings as part of their broad equitable powers in the context of an SEC receivership." 609 F.3d 87, 91 (2d Cir. 2010). Citing *Wencke* and *Liberte I*, the court upheld a district court's authority to issue anti-litigation injunctions, and looked to "the inherent power

of a court of equity," and the necessity of exercising control over the property in receivership. *Ibid.*

The Tenth Circuit in *DeYoung*, and the Fifth Circuit in *SEC* v. *Kaleta*, 530 F. App'x 360 (5th Cir. 2013) *(per curiam)*, *Lloyds*, and this case, agree that a receivership court has "equitable power to fashion appropriate remedies as 'ancillary relief' measures," which includes "discretion to issue bar orders." *Lloyds*, 927 F.3d at 840; see also *DeYoung*, 850 F.3d at 1183; *Kaleta*, 530 F. App'x at 362; Pet. App. 23-24.

Even the courts of appeals that have overturned bar orders recognize a district court's authority to issue the order but reversed the order on the basis that a bar order was improper *in that circumstance*. See *Lloyds*, 927 F.3d at 843 (district court's *in rem* jurisdiction over the receivership estate does not "serve as a basis to permanently bar and extinguish *independent, non-derivative* third-party claims that do not affect the *res* of the receivership estate") (emphasis added)[7]; *SEC* v. *Quiros*, 966 F.3d 1195 (11th Cir. 2020) (recognizing the district court's authority to issue a bar order, but reversing the entry of a bar order because it was not "integral to settlement").

In addition to these decisions from the courts of appeals that establish the power of district courts to issue bar orders, scores of district courts have issued bar orders that were never appealed, demonstrating the routine and unobjectionable nature of bar orders. See, *e.g.*, *Gordon* v. *Dadante*, 336 F. App'x 540, 551 (6th Cir. 2009) (affirming entry of settlement that included a bar order, though the bar order was not in issue on appeal); *SEC* v. *Alleca*, No. 1:12-cv-3261-WSD, 2015 WL 11199076, at *3

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[7] *Lloyds* also approved a bar order to the extent that it satisfied the very circumstances that the Fifth Circuit found in this case. 927 F.3d at 850.

(N.D. Ga. Oct. 15, 2015); *Harmelin* v. *Man Fin. Inc.*, Nos. 06-1944, 05-2973, 2007 WL 4571021, at *4 (E.D. Pa. Dec. 28, 2007); *CFTC* v. *Equity Fin. Grp.*, No. 04-1512 (RBK), 2007 WL 2139399, at *2 (D.N.J. July 23, 2007); *SEC* v. *Capital Consultants, LLC*, No. Civ.00-1290-KI, 2002 WL 31470399, at *2-3 (D. Or. Mar. 8, 2002).

2. The propriety of a bar order often implicates highly factbound inquiries

Given the widespread and reasoned consensus that a receivership court has authority to enjoin satellite litigation, the only question remaining is whether the district court appropriately exercised its discretion in issuing a bar order *here*, under these particular facts and circumstances. That factbound, case-specific inquiry hardly merits Supreme Court review when the legal framework applied by the courts of appeals is not in disarray, much less in conflict. The propriety of a bar order is reviewed for an abuse of discretion and turns on circumstances such as the relatedness of the proceedings being barred to the receivership and the necessity of doing so to protect and effectuate the district court's jurisdiction and the receivership's vitality.

It is undisputed that claims identical to those being settled may properly be barred by a district court. It is likewise undisputed—certainly not by the court below, see Pet. App. 25; *id.* at 43 (dissenting opinion agreeing with this point)—that a receivership court lacks authority to bar claims unrelated to and independent of the receivership entities and its claims. To take one hypothetical, if petitioners had a personal-injury claim against Willis suffered at a Willis-owned building, the Receiver could not settle the Ponzi scheme liability with a bar order that covered petitioners' premises-liability suit. The closer a case is to one end of the spectrum—perfectly identical claims on one end, entirely unrelated claims on the oth-

er—the easier it is to assess a bar order's propriety.

The majority below correctly found that this was not a particularly challenging case. See *id.* at 25.[8] But even if it were, there is no demonstrable confusion in application that necessitates this Court's plenary review. The considerations the Fifth Circuit employed here are broadly consistent with those other circuits in examining the propriety of a bar order. See, *e.g.*, *Liberte I*, 462 F.3d at 552-553 (courts "consider such factors as litigation costs as a tax on the receivership estate, the ability of the parties to resolve their claims in the receivership court versus elsewhere, any culpability on the part of the claimant, and the implications for any satisfaction of an award on other claimants to the estate"); *Byers*, 609 F.3d at 93 (considering the sprawling nature of the entities in and assets belonging to the receivership, the need to "maintain maximum control over the assets," and the propriety of preventing a small group of creditors from "removing assets from the receivership estate to the potential detriment of all"); *DeYoung*, 850 F.3d at 1183 (considering whether the defendant would settle without the bar order, the ability of the defendant to satisfy a judgment after protracted litigation and other attendant risks of protracted litigation, the vast majority of investors' failure to object to the settlement, and the defendant's right of indemnification against the receivership entity that might reduce the recovery of investor-claimants). Even in reversing a bar order, the Eleventh Circuit relied on the familiarly narrow, factual basis illustrated above. See *Quiros*, 966 F.3d at 1200.

Judge Willett's dissent focused on this same factual

[8] Only claims "derivative of and dependent on" the Receiver's claims are barred, thus assuring that the court has not exceeded its jurisdiction to bar claims within the scope of its inherent equitable authority. Pet. App. 32.

and "narrow" issue of whether the claims being barred were, in fact, "substantially identical" to the Receiver's claims. Pet. App. 43. Neither Judge Willett, nor any court that has reversed a bar order, has asserted that the district court lacked any authority to issue a bar order or that the framework for analyzing the question was itself wrong.

Petitioners themselves inadvertently demonstrate the dispute's factbound nature. The Zacarias petitioners simultaneously argue that no factbound dispute or overlapping claim "complicate[s] the analysis here," yet *also* demand that the Court consider that "[t]here was also no threat that receivership entities might be damaged by allowing the investor claims to go forward," because there is no "wasting asset" and "Willis has a market capitalization today of over $25 billion." Zacarias Pet. 22-23. Indeed, they pursue *only* Willis, apparently because of those deep pockets. Similarly, the Rupert petitioners argue that "[i]f the district court had approved the Receiver's settlement but refused to enter the Bar Order * * * [n]othing about such a scenario would have affected the receivership estate's assets." Rupert Pet. 19. Such assertions betray the only point that matters: ultimately, the lower courts' *factual* analysis is essential to determining where this case fits on a spectrum that all courts—and even petitioners, at least accidentally—acknowledge.

B. The consensus about bar orders is also correct on the merits

The nature of a receivership all but guarantees that a receivership has insufficient assets to satisfy the claims against it or cover defrauded investors' losses. Litigation against the receivership estate or that competes for the same assets properly directed to the estate, can only further dissipate the assets and reduce many investors' recovery. As the Fifth Circuit explained, Congress author-

ized full equitable authority—something that Article III also expressly provides—to allow receiverships to avoid failure, including concentrating all related litigation in a single court. Pet. App. 20-24. Enjoining competing litigation allows the court to meaningfully exercise its jurisdiction. See *id.* at 21-22.

This Court has long recognized these principles, even before the modern legislation expanding federal courts' authority. *E.g.*, *Barton* v. *Barbour*, 104 U.S. 126, 129 (1881) (recognizing that centralizing receivership litigation in a single court was essential to respecting the rights of all involved). Relatedly, the Court has long recognized "that where a federal court has first acquired jurisdiction of the subject-matter of a cause, it may enjoin the parties from proceeding in a state court of concurrent jurisdiction where the effect of the action would be to defeat or impair the jurisdiction of the federal court." *Kline* v. *Burke Constr. Co.*, 260 U.S. 226, 229 (1922).

Depriving a receivership court of authority to enjoin litigation that competes for the assets available to the receivership—with claims derivative of the receivership's own claims—would greenlight the hostage-taking efforts reflected by petitioners' litigation strategy. Article III and the broad statutory underpinnings for federal courts' equitable authority are not so weak that they must yield to efforts like petitioners' here.

* * *

Perhaps more may be said of the jurisprudence governing bar orders. But petitions that seek to overturn a bar order while failing to address the relevant law governing bar orders are unlikely to provide a sound vehicle for this Court's review of *any* question.

III. EVEN THE PETITIONS' INAPPOSITE ISSUES IMPLICATE NO DISAGREEMENT AMONG THE CIRCUITS

Petitioners provide the Court with no meaningful dis-

cussion of the actual issue, but instead attempt to reframe it as one of constitutional proportions about receivers' "standing." The two petitions conceptualize the alleged splits differently,[9] but both rest on the proposition that the Fifth Circuit's decision disregarded or created an exception to the principle that a receiver may not assert or settle claims that belong to the investors or creditors of a receivership entity. *E.g.*, Rupert Pet. 7-8 ("The Fifth Circuit * * * has created a rule of standing that allows a receiver to *bring* claims of third parties so long as the receiver's actions increase the amount of assets a receivership may recover.") (emphasis added); Zacarias Pet. i ("The Fifth Circuit holds that a receiver who lacks standing to bring investor claims can nonetheless *settle* those claims * * * .").

They cite—as evidence of a "split"—a host of unobjectionable cases that do not contest receivers' standing to seek *bar orders*, but merely implicate ordinary standing doctrines that apply to *any* litigation. But there has never been a dispute in *this* case about which claims belong to investors and which belong to the Receivership entities. All involved have consistently accepted, and the Fifth Circuit expressly noted, that the claims asserted by the Receiver belong to the Receivership entities and the claims being barred belong to the investors.

The issue that was actually presented to and decided by the Fifth Circuit was whether the district court had

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[9] The Rupert petitioners assert that the Fifth Circuit's decision is in conflict with a long line of cases holding that "[a] party acting on its own behalf can sue only on its own claims that it has standing to assert," and thus, a receiver may not assert or settle claims that belong to investors. Rupert Pet. 8-12. The Zacarias petitioners more narrowly and specifically assert that claims for misrepresentation or mismanagement belong only to investors, and therefore cannot be asserted by a receiver. Zacarias Pet. 13-20.

authority and jurisdiction to issue bar orders enjoining the litigation of claims against the settling defendants that do not belong to the Receivership entities. There is no circuit split on *that* issue. Petitioners err by conflating two wholly distinct inquiries: a district court's authority to issue a given bar order and a receiver's standing to litigate a particular case. And on the phantom issue that petitioners insist on litigating, they are even worse off—the Fifth Circuit *agrees with them* that receivers lack standing to litigate claims that belong only to investors.

A. The Fifth Circuit and other circuits all agree on the scope of receiver standing

Petitioners' lead argument is that the judgment below conflicts with numerous other circuits' precedents that receivers lack authority to assert claims on behalf of anyone beyond the entities in receivership, including the individual claims of investors. See Zacarias Pet. 13-20; Rupert Pet. 8-15 (both citing various cases addressed below). But the Fifth Circuit takes no separate tack here. In cases arising from this very receivership, it has repeatedly *agreed* with these circuits that "a federal equity receiver has standing to assert only the claims of the entities in receivership, and not the claims of the entities' investor-creditors." *DSCC*, 712 F.3d at 190; see also *Janvey* v. *Brown*, 767 F.3d 430, 437 (5th Cir. 2014); *Alguire*, 539 F. App'x at 480. The Fifth Circuit reaffirmed that exact position *in this case*, eliminating any plausible split involving the other circuits' cases that say the same thing. Pet. App. 28-29.

But suppose that the Fifth Circuit *had* egregiously departed from its own established constraints on receiver standing in this case (and that all other Fifth Circuit judges, who repeatedly sit on receivership cases and apply the settled rule, missed it). If the panel snuck its opinion past the full court, it created an *intracircuit* split,

diverging from (at least) *DSCC*, *Alguire*, and *Brown*. And certainly the resulting intracircuit division would be addressed the next time that the issue arises. The full court would not allow a rogue panel to change circuit law, and if the court did confront competing authorities, rehearing *en banc* in a future case is designed to address such a circumstance. See, *e.g.*, Fed. R. App. P. 35(a)(1).

B. Petitioners' cited cases do not conflict with the judgment below

Petitioners contend that the decision below conflicts with the precedents of other circuits that say the *same thing* the Fifth Circuit said in *DSCC*, *Alguire*, and *Brown* (and reiterated in this very case): that receivers may not assert claims that belong to investors. As explained above, this contention is an implausible reading of the opinion. But because both petitioners devote so much energy to those circuit cases, respondents conclude by showing *why* the alleged conflicts are wholly illusory.

1. Petitioners' cited authorities almost exclusively concern receivers' standing to assert—*i.e.*, directly litigate—claims on behalf of investors. But the courts and parties have consistently agreed (and, even here, still agree) that the Receiver has standing to assert the claims detailed in *his* complaint, while the investors have standing to pursue the claims stated in *their* complaints. *E.g.*, Zacarias Pet. 4.

Based on that undisputed premise, the question presented to the Fifth Circuit was whether the Receivership court had authority to bar satellite claims that do not belong to the Receiver. Setting aside how odd it would be for a bar order to only cover claims that the Receiver *could* bring himself (he could just *settle* those, after all), a district court's authority to enjoin claims is not coterminous with a receiver's standing to bring the enjoined claims.

2. Petitioners' arguments and the relevance of their cited cases, except *DeYoung*, rest on the premise that the district court lacked authority to enjoin the investors' claims *because* the Receiver lacked standing to affirmatively press those claims. *E.g.*, Rupert Pet. 15 ("The Fifth Circuit's affirmance of the Bar Orders would not have been possible if the court had concluded that the receiver lacked standing to bring and settle the claims.").[10] Petitioners never seek to support the embedded assumption that a court's authority to bar claims is limited to the claims that the Receiver could bring.

A receivership court has the broad power to issue "orders preventing interference with its administration of the receivership property." See, *e.g.*, *Schauss* v. *Metals Depository Corp.*, 757 F.2d 649, 654 (5th Cir. 1985). Multiple circuits have affirmed bar orders pursuant to that power. See *supra* Section II.A.1.b. By definition, a bar order applies to claims not presently before the court—otherwise the parties would simply release them via settlement. Petitioners do not dispute that district courts have authority to bar claims in some circumstances, so that power cannot be ineluctably tied to a receiver's standing to assert the claims. As the Second Circuit put it—in a case that both petitions cite—prior litigants "confuse[d] two entirely separate issues" by "contending that the district court does not have jurisdiction over a claim that the Receiver lacks standing to assert." *Eberhard* v.

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[10] *Amici* likewise proceed under the mistaken view that a district court's authority to issue a bar order turns on collateral Article III standing requirements for hypothetical litigation *by* a receiver. See Senators' *Amicus* Br. 2 (rulings below "uncouple a receiver's power from Article III's immutable standing requirements"); Investors' *Amicus* Br. 4 (decision below "abandons traditional notions of Article III standing"); Bar Ass'n *Amicus* Br. 9 ("No receiver has standing to assert the investor's claim for the investor; no court should have jurisdiction to decide the investor's claim through a bar order * * * .").

Marcu, 530 F.3d 122, 128 (2d Cir. 2008). Indeed, bar orders do not only bar claims that are identified at the time an order is issued; they bar a whole class of potential claims, making it impossible to determine who has standing to assert every claim that might be barred.

DeYoung and the decision below illustrate the distinction between receiver standing and a court's authority to issue a bar order. In both, the courts treated the Receiver's standing to pursue claims, 850 F.3d at 1182; Pet. App. 28, separate from the court's power to enjoin claims that did not belong to the receivership entities, 850 F.3d at 1183; Pet. App. 25.

Petitioners' cited cases that consider only the scope of a receiver's standing have no bearing on the propriety of the bar order and certainly do not illustrate a "split" of any kind.

3. Finally, once one sheds petitioners' essential but unsupported and erroneous premise—the conflation of a district court's authority to enjoin claims and a receiver's standing to bring those claims—the cases cited for a split are rendered even more clearly unhelpful to petitioners. In light of the actual issue in this case, petitioners' cases illustrating a supposed split are either obviously consistent with or entirely distinguishable from this case on two fronts.

- First, none undermines the undisputed premise of this case, that the Receiver has standing to assert and settle claims for injuries to the Stanford entities.
- Second, other than *DeYoung*, none even considered the propriety of a bar order or the extent of a receivership court's authority beyond claims brought directly before it.

The following chart illustrates the applicability, or lack thereof, of the cases petitioners cite:

Case:	Did the receiver allege injury to the *receivership entity*?	Did court consider propriety of a *bar order?*
This case	Yes	Yes
SEC v. *DeYoung*, 850 F.3d 1172 (10th Cir. 2017).	Yes	Yes
Eberhard v. *Marcu*, 530 F.3d 122 (2d Cir. 2008).	No	No
Liberte Capital Group, LLC v. *Capwill*, 248 F. App'x 650 (6th Cir. 2007) ("*Liberte II*").	No	No
Knauer v. *Jonathon Roberts Fin. Group, Inc.*, 348 F.3d 230 (7th Cir. 2003).	Not in issue	No
Goodman v. *FCC*, 182 F.3d 987 (D.C. Cir. 1999).	No	No
Scholes v. *Lehmann*, 56 F.3d 750 (7th Cir. 1995).	Yes	No
Jarrett v. *Kassel*, 972 F.2d 1415 (6th Cir. 1992).	Not an issue	No

Fleming v. *Lind-Waldock & Co.*, 922 F.2d 20 (1st Cir. 1990).	No (claims were not adequately pleaded)	No

The cases—cited and relied on by petitioners—illustrate that the Receiver does have standing to assert and settle the claims that *he* brought against Willis and BMB, because his claims rest on an alleged injury *to the Stanford entities*.

Indeed, in the following petitioner-cited cases, the receiver either openly attempted to bring a claim *on behalf of* the individual investors or creditors, or the factual allegations rested *only* on an injury to those individuals. The courts concluded that *those* receivers lacked standing to assert such claims:

- *Goodman*: the D.C. Circuit rejected the receiver's argument that he had the "power to sue on behalf of customers and creditors of the entity in receivership even when the entity itself would not have standing to do so." 182 F.3d at 991. The court held that the receiver lacked standing to sue the Commission, because "he [did] not represent the parties who sustained the injury of which he complain[ed], nor [was] there anything preventing the parties who were injured from themselves protecting their rights." *Id.* at 992.
- *Fleming*: the receiver alleged class claims on behalf of USIC investors and purported to represent not the entities but "all persons and other legal entities who paid over money to USIC for the purpose of engaging in the purchase and sale of [the fraudulent] contracts and whose funds were part of those funds paid over to the defendant." *Fleming* v. *Bank of Bos. Corp.*, 127 F.R.D. 30, 32 (D. Mass. 1989) (citation omitted). The First Cir-

cuit concluded the receiver could not assert the investors' claims, nor could he act as a class representative for the investors. 922 F.2d at 25.

- *Liberte II*: in an unpublished opinion, the Sixth Circuit held that the receiver did not have standing to assert claims that belonged to investors. 248 F. App'x at 655-656. In his various pleadings, the receiver sought to recover for the "investors' lost investments." *Liberte Capital Grp.* v. *Capwill*, 419 F. Supp. 2d 992, 997-998 (N.D. Ohio 2006). The receiver did not allege that *the receivership entities* suffered any injury from the defendants' actions. *Ibid.* Further, the receiver did not dispute that the claims he sought to assert *belonged to the investors*. *Liberte II*, 248 F. App'x at 662.
- *Eberhard*: the Second Circuit likewise held that the receiver lacked standing to assert claims on behalf of creditors. 530 F.3d at 133-134. There, the state fraudulent-transfer statute under which the receiver asserted his claim allowed claims to be brought *only* by the creditors of the transferor. *Id.* at 134.[11]

By contrast, courts have concluded that a receiver *does* have standing to bring a claim where—as here—it is based on an alleged injury *to the receivership estate*:

[11] While it addressed a slightly different question, in *Jarrett*, the Sixth Circuit relied on the same principle and held that the actions of a receiver on behalf of the receivership were not attributable to the individual customers of the receivership entities. 972 F.2d at 1426. And in *Knauer*, the Seventh Circuit did not consider the issue that petitioners cite it for. See Zacarias Pet. 17. There, the district court had dismissed two claims brought by the receiver "agreeing with the defendants that those claims belonged to the investors * * * rather than to the Ponzi entities themselves," but the receiver did not even appeal that dismissal. 348 F.3d at 233.

- *Scholes*: the Seventh Circuit concluded that the receiver had standing to assert the claims alleged, because the fraudulent scheme had injured the entities in receivership. 56 F.3d at 753-754.
- *DeYoung*: the Tenth Circuit concluded that the receiver had standing to sue the defendant because the receivership entity itself suffered an injury from defendant's actions. 850 F.3d at 1182.
- *Fleming*: the First Circuit agreed that the receiver had not adequately pleaded claims on behalf of the receivership entities. 922 F.2d at 24. The court did not hold that the receiver *could not have* maintained an action against the defendants had he adequately pleaded the claims.

Not *one* of these cases issued a sweeping holding prohibiting receivers from maintaining certain categories of claims. Aside from *Eberhard*, which rested on the narrow terms of a state statute, each decision turned on how the claim or injury was pleaded and whether it sought to vindicate the entities' own injuries—not on the category of claim asserted. In the cases that found a lack of receiver standing, it was simply because the receiver pleaded the claim as belonging to the investors or customers.

Here, as in *Scholes* and *DeYoung*, the Receiver alleged that the actions of BMB and Willis resulted in an injury to the Stanford entities. In the Fifth Circuit, it was undisputed that the Receiver had standing to bring their claims against Willis and BMB, and they brought "*only* the claims of the Stanford entities—not of their investors—alleging injury to the Stanford entities." Pet. App. 28-29 (emphasis added; footnote omitted).

Because a district court's authority to issue a bar order is not dependent on a receiver's standing, see *supra* Section III.B.2, cases that conclude a receiver lacks

standing to assert investor claims are unsurprising, ordinary, and—most importantly here—irrelevant to whether the district court properly issued the bar orders. They have no bearing here, and because they are the only bases that petitioners offer for the supposed circuit splits, the Court should deny the petitions—assuming it has not already denied them because of the jurisdictional default.

CONCLUSION

The petitions for writs of certiorari should be denied.

Respectfully submitted.

Evan A. Young
Scott D. Powers
Delaney J. McMullan
BAKER BOTTS L.L.P.
98 San Jacinto Blvd.
Suite 1500
Austin, Texas 78701
(512) 322-2500

Kevin M. Sadler
Counsel of Record
BAKER BOTTS L.L.P.
1001 Page Mill Road
Building One, Suite 200
Palo Alto, California 94304
(650) 739-7500
kevin.sadler@bakerbotts.com

Counsel for Respondent Ralph S. Janvey

Edward C. Snyder
Jesse R. Castillo
CASTILLO SNYDER, P.C.
One Riverwalk Place
700 N. St. Mary's
Suite 405
San Antonio, Texas 78205
(210) 630-4200

Patrick J. Neligan Jr.
Douglas J. Buncher
NELIGAN LLP
3600 Republic Center
325 N. St. Paul Street
Dallas, Texas 75201
(214) 840-5320

Peter Michael Jung
Counsel of Record
CLARK HILL STRASBURGER
901 Main Street
Suite 6000
Dallas, Texas 75202
(214) 651-4724
jungm@clarkhill.com

Judith R. Blakeway
CLARK HILL STRASBURGER
2301 Broadway
San Antonio, Texas 78215
(210) 250-6000

Counsel for Respondents Official Stanford Investors Committee, Samuel Troice, and Manuel Canabal

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