No. 19-

IN THE

Supreme Court of the United States

CITY OF CHICAGO,

Petitioner,

v.

ROBBIN L. FULTON, JASON S. HOWARD, GEORGE PEAKE, AND TIMOTHY SHANNON,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether an entity that is passively retaining possession of property in which a bankruptcy estate has an interest has an affirmative obligation under the Bankruptcy Code's automatic stay, 11 U.S.C § 362, to return that property to the debtor or trustee immediately upon the filing of the bankruptcy petition.

PARTIES TO THE PROCEEDING

Petitioner is the City of Chicago.

Respondents are Robbin L. Fulton, Jason S. Howard, George Peake and Timothy Shannon.

DIRECTLY RELATED PROCEEDINGS

1. This case arises out of four bankruptcy cases filed in the U.S. Bankruptcy Court for the Northern District of Illinois:

A. *In re Fulton*, Bankr. N.D. Ill. No. 18-02860. The bankruptcy court entered judgment on May 25, 2018.

B. *In re Howard*, Bankr. N.D. Ill. No. 17-25141. The bankruptcy court entered judgment on April 19, 2018.

C. *In re Peake*, Bankr. N.D. Ill. No. 18-16544. The bankruptcy court entered judgment on August 15, 2018.

D. *In re Shannon*, Bankr. N.D. Ill. No. 18-04116. The bankruptcy court entered judgment on September 7, 2018.

2. Each case was certified for direct appeal to the United States Court of Appeals for the Seventh Circuit. The Seventh Circuit entered judgment in the consolidated appeals on June 19, 2019. The docket numbers of the four cases in the Seventh Circuit were:

A. *In re Fulton*, Seventh Cir. No. 18-2527.

B. *In re Howard*, Seventh Cir. No. 18-2793.

C. *In re Peake*, Seventh Cir. No. 18-2835.

D. *In re Shannon*, Seventh Cir. No. 18-3023.

3. There are no other directly related proceedings within the meaning of this Court's Rule 14.1(b)(iii).

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PETITION FOR A WRIT OF CERTIORARI

The City of Chicago respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit.

INTRODUCTION

This case presents a recurring question of federal bankruptcy law on which the courts of appeals are sharply and openly divided: Does the Bankruptcy Code's "automatic stay" affirmatively require creditors, on pain of sanctions, to turn over lawfully repossessed property of the debtor as soon as the debtor files for bankruptcy, or may creditors with statutory defenses to turnover assert them and retain possession pending an order of the bankruptcy court resolving the issue?

Five courts of appeals, including the Seventh Circuit below, have adopted the former position, while two courts of appeals—one directly and another by clear implication—have adopted the latter position. The question is both fundamental and of significant practical importance—particularly in the common scenario of a consumer bankruptcy filed in response to a creditor's repossession or impoundment of a car.

Under the Bankruptcy Code, the filing of a bankruptcy petition creates a bankruptcy estate composed of all the debtor's legal or equitable interests in property. 11 U.S.C. § 541(a)(1). The petition also "operates as a stay" of certain acts by creditors to collect on debts owed by the debtor, *id.* § 362(a), including "any act … to exercise control over property of the [bankruptcy] estate," *id.* § 362(a)(3). The stay is referred to as the "automatic stay" because it is created by the bankruptcy filing itself and does not require any court order. *Id.* § 362(a). Creditors who violate the automatic stay are subject to sanctions. *Id.* § 362(k).

A separate Code provision, the "turnover" provision, requires any entity in possession of property of the estate that the trustee could use, sell, or lease to deliver that property to the trustee, subject to certain exceptions. 11 U.S.C. § 542(a). Unlike the automatic stay provision, the turnover provision is not self-executing. To compel turnover, a trustee must file an adversary proceeding. Fed. R. Bankr. P. 7001(1). An entity in possession of estate property—such as a creditor who has lawfully repossessed its collateral—is thus entitled to assert defenses to turnover, as well as its right to "adequate protection" of its interest in the property. 11 U.S.C. § 361. The creditor can be sanctioned for failing to turn over its collateral only once the bankruptcy court has ruled on those issues and ordered it to do so.

Against that backdrop, the question that has divided courts of appeals is whether the automatic stay requires creditors to do what the turnover provision itself does not, and immediately surrender any property in which the estate has an interest, before obtaining adequate protection and on pain of sanctions.

Five courts of appeals—the Second, Seventh, Eighth, Ninth and Eleventh Circuits—have held that the automatic stay *does* impose that requirement. These courts reason that a creditor's passive retention of property in which the estate has an interest is "an[] act … to exercise control over" property of the estate, barred by § 362(a)(3). *See In re Weber*, 719 F.3d 72, 81 (2d Cir. 2013); *Thompson* v. *General Motors Acceptance Corp.*, 566 F.3d 699, 703 (7th Cir. 2009); *In re Rozier*, 376 F.3d 1323, 1324 (11th Cir. 2004) (per curiam); *In re Del Mission Ltd.*, 98 F.3d 1147, 1151 (9th Cir. 1996); *In re Knaus*, 889 F.2d 773, 775 (8th Cir. 1989).

On the other side of the divide, two federal courts of appeals—the Tenth and District of Columbia Circuits—have concluded that a creditor's passive retention of property in which the estate has an interest does not violate the automatic stay because it is not an "act" to exercise control over estate property. This is a square holding of the Tenth Circuit. *See In re Cowen*, 849 F.3d 943, 950 (10th Cir. 2017) ("[O]nly affirmative acts to gain possession of, or to exercise control over, property of the [debtor's bankruptcy] estate violate § 362(a)."). And that conclusion follows unmistakably from the reasoning of the D.C. Circuit. *United States* v. *Inslaw, Inc.*, 932 F.2d 1467, 1474 (D.C. Cir. 1991) ("The automatic stay, as its name suggests, serves as a restraint only on acts to gain possession or control over

property of the estate. Nowhere in its language is there a hint that it creates an affirmative duty[.]").[1]

In the decision below, the Seventh Circuit acknowledged the division of authority and reaffirmed its agreement with the position of the Second, Eighth, Ninth, and Eleventh Circuits. App. 14a. But the rule those courts have adopted is unsound. The automatic stay does not require a party already lawfully in possession of property in which the estate has an interest to turn that property over or face sanctions. By its terms, the statute bars only affirmative "acts" to exercise control over estate property—not mere passive retention of property already in the creditor's possession. That makes sense: The automatic stay is a negative injunction designed to maintain the status quo as of the petition date. Once bankruptcy is filed, the automatic stay bars creditors from taking action to seize or liquidate property of the debtor or of the estate or to assert claims against the debtor outside bankruptcy. The stay thus ensures that all the debtor's assets and liabilities can be marshaled and addressed in a single centralized proceeding, enabling the trustee or debtor-in-possession to maximize the value of the estate and divide that value fairly among the debtor's creditors. *See In re VistaCare Grp., LLC*, 678 F.3d 218, 231 (3d Cir. 2012); S. Rep. No. 95-989, at 50 (1978); H.R. Rep. No. 95-595, at 341 (1977).

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[1] The question is also now before the Third Circuit in a pending appeal, *In re Denby-Peterson*, No. 18-3562, which was argued on May 23, 2019. Before being retained in this matter, counsel to petitioner was appointed by the Third Circuit as *amicus curiae* to defend the district court's judgment in that case. Order, *Denby-Peterson* (Feb. 4, 2019). After being retained in this matter, counsel promptly disclosed the engagement to the Third Circuit. Letter to Clerk, *Denby-Peterson* (July 23, 2019).

The courts that have reached a contrary conclusion rely in part on the turnover provision, reasoning that it "indicates that turnover of a seized asset is compulsory." *Thompson*, 566 F.3d at 704; *accord* App. 11a. But if the automatic stay by itself affirmatively required turnover of property in which the estate has an interest, the turnover provision would be superfluous. Moreover, the procedural protections inherent in the turnover process, including the opportunity to assert defenses to turnover and to seek adequate protection of the creditor's interest in its collateral before relinquishing that collateral, would go by the wayside.

The question presented arises regularly and is critical to the orderly administration of the bankruptcy process. The division of authority on the question is undisputed and has been the subject of extensive commentary within the bankruptcy community. *See, e.g.*, Brubaker, *Turnover, Adequate Protection, and the Automatic Stay: A Reply to Judge Wedoff*, 38 No. 11 Bankr. L. Letter NL 1, at 1 (Nov. 2018) (noting that the "clear circuit split" on the issue "is receiving renewed and urgent attention" and analyzing the law and commentary addressing the issue); Newman, *Possession is not 'nine tenths of the law'* ("The Seventh Circuit in *Fulton* noted that *Thompson* brought the circuit in line with the majority of circuits on this issue … [b]ut the Tenth Circuit in *In re Cowen* adopted the City's position and the minority view.")[2]; Dugan & Brusa, *The City Has My Vehicle. What Now?* ("For now, all eyes remain on *City of Chicago v. Robin L. Fulton* …. In

[2] *Available at* https://www.thompsoncoburn.com/insights/blogs/credit-report/post/2019-07-11/possession-is-not-nine-tenths-of-the-law-impounded-vehicles-must-be-returned-when-a-bankruptcy-petition-is-filed.

the meantime, the circuit split on the issue remains.").[3] And the question is cleanly presented in this case. The petition should be granted.

OPINIONS BELOW

The Seventh Circuit's opinion (App. 1a-27a) is reported at 926 F.3d 916. The decision resolved a consolidated direct appeal from four judgments entered by bankruptcy courts in separate cases. The bankruptcy court decision in *In re Howard* (App. 29a-41a) is reported at 584 B.R. 252. The bankruptcy court decision in *In re Peake* (App. 63a-100a) is reported at 588 B.R. 811. The bankruptcy court decision in *In re Shannon* (App. 101a-147a) is reported at 590 B.R. 467. The bankruptcy court decision in *In re Fulton* (App. 43a-62a) is reported at 2018 WL 2570109.

JURISDICTION

The Seventh Circuit entered judgment on June 19, 2019. App. 1a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The appendix (App. 157a-203a) reproduces 11 U.S.C. §§ 361, 362, 363, 541, and 542 and Federal Rule of Bankruptcy Procedure 7001.

STATEMENT

A. Statutory Background

1. *Property of the estate.* The filing of a bankruptcy case operates to create a "bankruptcy estate," 11 U.S.C. § 541(a), which includes "all legal or equitable

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[3] *Available at* https://www.financialservicesperspectives.com/2019/05/the-city-has-my-vehicle-what-now/.

interests of the debtor in property as of the commencement of the case," *id.* § 541(a)(1). In a Chapter 7 case, the trustee marshals and liquidates all estate property that is not protected by an applicable federal or state law exemption and then distributes the value realized to creditors in accordance with the Bankruptcy Code's priority scheme. *Id.* §§ 522(b)(1), 704(a)(1), 725, 726. In a Chapter 11, 12, or 13 case, the debtor typically retains possession of property of the estate and enjoys some rights to use or dispose of that property as the debtor formulates and seeks court approval for a plan to repay creditors. *Id.* §§ 363(b)-(c), 1107, 1203, 1207, 1303, 1306.

2. *The turnover power.* Sometimes, at the outset of a bankruptcy case, a debtor may have a "legal or equitable interest[]," 11 U.S.C. § 541(a)(1), in property that is in the legal possession of a creditor or a third party. That often occurs when a secured creditor has repossessed collateral belonging to the debtor before the filing of the bankruptcy petition but has not yet completed the steps necessary to sell or foreclose on the property or otherwise extinguish the debtor's interest in it under applicable non-bankruptcy law. It is also common (as in this case) for municipalities to be in possession, as of the date of a bankruptcy filing, of vehicles they have impounded on account of a debtor's having accumulated unpaid fines for speeding, red light violations, parking, or similar violations before the bankruptcy filing.

Section 542 of the Bankruptcy Code addresses this situation, providing that when a creditor or third party is in possession of property that the trustee may use, sell, or lease under § 363 of the Code, the creditor or third party shall deliver the property to the trustee or debtor or otherwise account for its value. 11 U.S.C.

§ 542(a); *United States* v. *Whiting Pools, Inc.*, 462 U.S. 198, 205 (1983). The duty to turn over property in which the estate has an interest, however, is not absolute. Turnover is not required, for example, if the property at issue is of "inconsequential value or benefit to the estate." 11 U.S.C. § 542(a). A party that held estate property also is not required to turn it over to the trustee if that holder, without knowledge of the bankruptcy, has transferred the property in good faith to another person. *Id.* § 542(a), (c); *Whiting Pools*, 462 U.S. at 206 n.12. In other cases, the question whether the debtor held an interest in the property as of the petition date may be disputed. In such cases, the holder of the property is not required to turn that property over to the trustee if the court determines that the debtor no longer had an interest in the property as of the petition date, and thus that the property could not be used, sold, or leased by the trustee.

An action to enforce a party's obligation to turn over property is typically brought as an adversary proceeding, pursuant to Fed. R. Bankr. P. 7001 ("The following are adversary proceedings … (1) a proceeding to recover … property, … (7) a proceeding to obtain an injunction or other equitable relief.").

3. *Adequate protection.* While § 542 requires parties to relinquish possession of property in which the estate has an ownership interest to the debtor or trustee, the Bankruptcy Code does not place a secured creditor's collateral at the debtor's disposal without affording the creditor some protection. To the contrary, § 363(e) of the Code provides that any entity that has an interest in estate property that the trustee or debtor seeks to use, sell, or lease is entitled to "adequate protection" of its interest. 11 U.S.C. § 363(e). The basic function of adequate protection is to ensure that the se-

cured creditor's interest in its collateral is not harmed by the debtor's or trustee's use of the collateral during the bankruptcy case. *See, e.g.*, 3 *Collier on Bankruptcy* ¶ 361.02 (16th ed. 2018).

Adequate protection may take many forms. The bankruptcy court might, for example, order the debtor to make periodic cash payments to the secured creditor to compensate the creditor for depreciation in the value of its collateral while the debtor is using the collateral. 11 U.S.C. § 361(1); 3 *Collier on Bankruptcy* ¶ 361.03[2]. In a consumer bankruptcy case in which the creditor's collateral is a vehicle that the debtor wants to keep driving during the bankruptcy case, adequate protection may require the debtor to secure insurance coverage sufficient to compensate the creditor for the loss of its interest in the vehicle in case of an accident or other damage to the vehicle. *See In re Denby-Peterson*, 576 B.R. 66, 81-82 (Bankr. D.N.J. 2017).

When a trustee is unable to provide a secured creditor the adequate protection to which it is entitled, the court must prohibit the use of the collateral. 11 U.S.C. § 363(e) (court shall prohibit or condition use of property as necessary to provide adequate protection). The secured creditor may also seek leave from the bankruptcy court to enforce its state-law rights against its collateral, including, where applicable, through repossession, foreclosure, or sale. *Id.* § 362(d)(1).

4. *The automatic stay.* Finally, the automatic stay protects the bankruptcy estate during the bankruptcy case. 11 U.S.C. § 362(a). It is "automatic" because the bankruptcy petition itself "operates as a stay" of certain actions by creditors without the need for a court order. *Id.*

The automatic stay's primary purpose is to preserve the status quo by halting the race to the courthouse that may have precipitated the bankruptcy case and preventing the dismemberment of the estate by prepetition creditors seeking to enforce their claims against the debtor. *See* S. Rep. No. 95-989, at 50 (1978); H.R. Rep. No. 95-595, at 341 (1977); *United States* v. *Inslaw, Inc.*, 932 F.2d 1467, 1473 (D.C. Cir. 1991). The stay also grants the debtor a breathing spell from collection efforts made by her creditors. *See In re VistaCare Grp., LLC*, 678 F.3d 218, 231 (3d Cir. 2012).

Most of the automatic stay's commands directly address prepetition creditors. For example, the automatic stay bars the commencement or continuance of any proceeding against the debtor that was or could have been commenced prior to the petition date, as well as any effort to collect on a prepetition claim or enforce a prepetition lien. *See* 11 U.S.C. § 362(a)(1), (4)-(6). Other provisions serve to protect property of the estate from collection efforts by both prepetition and postpetition creditors. For example, § 362(a)(3)—the provision at issue here—bars any entity from taking "any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate." *Id.* § 362(a)(3).

The automatic stay also provides an express cause of action for damages, including for the recovery of attorneys' fees and punitive damages, in cases of "willful violation" of the stay. 11 U.S.C. §§ 342(g)(2), 362(k); *see also Taggart* v. *Lorenzen*, 139 S. Ct. 1795, 1803-1804 (2019).

B. Factual And Procedural Background

1. In each of the cases below, the City of Chicago impounded the respondent's car based on unpaid penalties and fines imposed for violations of the City's laws. City ordinances provide that, for the "purpose of enforcing" its traffic regulations, the City may impound vehicles and hold them until fines and penalties are satisfied. Municipal Code of Chicago, Ill. § 9-100-120. Under Section 9-100-120, a vehicle may be immobilized if the owner has three or more unpaid violations; 24 hours after immobilization, the vehicle is subject to impoundment. *Id.* § 9-100-120(b), (c). In response to the impoundments, each respondent commenced a Chapter 13 bankruptcy case in the U.S. Bankruptcy Court for the Northern District of Illinois and sought the return of his or her car.

Respondent Robbin Fulton's car was impounded in December 2017 because Fulton was discovered to be driving on a suspended license. App. 4a. The following month, Fulton filed a Chapter 13 petition (commencing her third bankruptcy case). *Id.*; Bankr. N.D. Ill. No. 18-02860, Dkt. 6. At the time of the bankruptcy filing, Fulton owed the City of Chicago $11,831.20 in connection with 54 separate and outstanding violations. App. 4a; Bankr. N.D. Ill. No. 18-02860, Claims Register 1-3. Fulton demanded the return of her car and sought sanctions for violation of the automatic stay when the City argued that the Code did not mandate immediate turnover of the car. App. 4a-5a. The bankruptcy court held that the City's failure to return the car violated the automatic stay under *Thompson* v. *General Motors*

Acceptance Corp., 566 F.3d 699 (7th Cir. 2009), and ordered return of the car. App. 5a.[4]

Respondent Jason Scott Howard's car was impounded in August 2017. App. 7a. Howard had incurred 66 unpaid parking, automated red-light, and speeding tickets and accumulated an outstanding balance of $17,110.80. *Id.*; Bankr. N.D. Ill. No. 17-25141, Claims Register 1-1. Two weeks later, on August 22, 2017, Howard filed a Chapter 13 petition—his third bankruptcy filing in a period of just over 12 months. App. 7a, 29a-30a. Although, because of Howard's prior petitions, the automatic stay did not come into effect, 11 U.S.C. § 362(c)(4)(A), the bankruptcy court granted Howard's motion to impose the stay upon confirmation of his plan. App. 7a, 29-30a. The bankruptcy court thereafter ordered the City *sua sponte* to show cause why it was not violating the automatic stay by retaining Howard's car. *Id.* 7a, 31a. Ultimately, on April 19, 2018, the bankruptcy court held that the City had violated the automatic stay every day "since th[e] case was filed on August 22, 2017." *Id.* 40a-41a. It imposed sanctions upon the City of fifty dollars per day. *Id.* 41a.

Respondent George Peake's vehicle was immobilized and subsequently impounded in June 2018 because Peake had failed to pay fines associated with 22 violations of the Chicago Municipal Code. App. 6a, 64a; Bankr. N.D. Ill. No. 18-16544, Dkt. 16, Ex. D. A week later, Peake filed a Chapter 13 bankruptcy petition. App. 6a. The City asserted a claim in Peake's bankruptcy case for $5,393.27. *Id.* Peake sought turnover of the car and sanctions against the City. *Id.* The bank-

[4] By order dated August 28, 2019, Fulton's bankruptcy case was dismissed on the trustee's motion for failure to make plan payments. Bankr. N.D. Ill. No. 18-02860, Dkt. 121.

ruptcy court found that the City's retention of the vehicle following the bankruptcy filing was a violation of the automatic stay and ordered the car returned. *Id.* 6a, 100a. The court imposed sanctions of $100 per day from August 17 through August 22 and $500 per day thereafter until the City returned the vehicle. *Id.* 6a.

Respondent Timothy Shannon's vehicle was impounded in January 2018 on account of unpaid parking tickets, three speeding violations, and because Shannon drove the car on a suspended license. App. 5a, 146a. The following month, Shannon filed a Chapter 13 bankruptcy petition. *Id.* 5a. As of the petition date, Shannon had incurred fines payable to the City of Chicago for 27 separate violations of its Municipal Code. *Id.* 146a; Bankr. N.D. Ill. No. 18-04116, Dkt. 33, Ex. B. In June 2018, Shannon moved for sanctions, alleging that the City's failure to return his car to him violated the automatic stay. App. 5a-6a. The bankruptcy court agreed, granting Shannon's motion and ordering the return of his vehicle. *Id.* 6a, 155a.[5]

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[5] Contrary to the Seventh Circuit's suggestion, the City's refusal immediately to turn over the vehicles to the debtors upon their bankruptcy filings did not reflect a judgment that it believed it was entitled to "ignore the Bankruptcy Code[]." App. 2a. *First*, although the question presented in this case was resolved by the Seventh Circuit in *Thompson*, 566 F.3d 366, the City was not a party to the *Thompson* case, and it was required to litigate the matter in the lower courts in order to preserve the issue for this Court's review. *See City of Springfield* v. *Kibbe*, 480 U.S. 257, 259 (1987) (Court "ordinarily will not decide questions not raised or litigated in the lower courts"). *Second*, lower courts within the Seventh Circuit had held that the City's retention of a debtor's vehicle was authorized by the exception to the automatic stay set forth in 11 U.S.C. § 362(b)(3). *See In re Avila*, 566 B.R. 558 (Bankr. N.D. Ill. 2017); *City of Chicago* v. *Kennedy*, 2018 WL 2087453 (N.D. Ill. May 4, 2018). The *Fulton* decision ultimately

2. In each of the four cases, the court of appeals granted the City's petition for direct appeal from the bankruptcy court pursuant to 28 U.S.C. § 158(d). All four cases were consolidated for purposes of the appeal. The court of appeals affirmed the bankruptcy courts' judgments.

Adhering to circuit precedent, the court of appeals held that the passive retention of an asset in which the debtor held a beneficial interest was an "act to … exercise control" over the asset, in violation of the automatic stay. App. 8a-10a, 12a (citing *Thompson*, 566 F.3d at 700, 702). On the court of appeals' view, the automatic stay operates as a mandatory injunction affirmatively requiring the City to deliver the vehicle to a debtor upon the filing of a petition. The debtor thus need not bring an action for turnover under § 542(a) to have a judicially enforceable right to possess the vehicle. App. 10a. The City therefore "violated the automatic stay pursuant to § 362(a)(3) by retaining possession of the debtors' vehicles after they declared bankruptcy." *Id.* 12a. The court of appeals explained that "[a]lthough the Tenth Circuit recently adopted the City's view," the court's contrary holding is "in line with the majority rule … held by the Second, Eighth and Ninth Circuits." *Id.* 14a.[6]

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rejected those arguments. *See* App. 17a-27a. The City is not seeking this Court's review of those aspects of the Seventh Circuit's decision. *See infra* n.6.

[6] The court of appeals went on to reject the City's alternative argument that its actions were permitted under two exceptions to the automatic stay: one that permits a party to take action necessary to perfect a lien, 11 U.S.C. § 362(b)(3), and one that permits a governmental entity to enforce its police and regulatory power, *id.* § 362(b)(4). The question presented in this petition, however, is the antecedent question whether the City's passive possession of

REASONS FOR GRANTING THE PETITION

I. THERE IS A SQUARE, ENTRENCHED, AND OPENLY ACKNOWLEDGED CIRCUIT SPLIT ON THE QUESTION PRESENTED

Consumer debtors whose cars have been impounded or repossessed by a creditor file thousands of bankruptcy cases every year. But the circuits are in open conflict about how to handle such cases. In the Second, Seventh, Eighth, Ninth and Eleventh Circuits, the creditor must turn the car over to the debtor immediately upon receiving notice of the filing of the bankruptcy case or face sanctions for violating the automatic stay. By contrast, in the Tenth and D.C. Circuits, the creditor may keep the car until the bankruptcy court determines whether the debtor has a right to turnover, allowing the creditor to assert defenses to turnover and seek vindication of its own right to adequate protection. This longstanding split of authority has recently been deepened by new decisions from courts of appeals on both sides of the question. This Court should grant the petition to restore uniformity to this important aspect of bankruptcy practice.

Specifically, the Second, Seventh, Eighth, Ninth and Eleventh Circuits have held that creditors' passive retention of repossessed cars or other property in which the estate has an ownership interest violates the automatic stay. *See* App. 12a ("[W]e conclude … that the City violated the automatic stay pursuant to § 362(a)(3) by retaining possession of the debtors' vehicles after they declared bankruptcy."); *Thompson* v. *General Motors Acceptance Corp.*, 566 F.3d 699, 703

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the vehicles implicates the automatic stay in the first place. The court of appeals' determination that the exceptions to the stay are inapplicable therefore has no bearing on this petition for certiorari.

(7th Cir. 2009) ("[W]e find that the act of passively holding onto an asset constitutes 'exercising control' over it, and such action violates section 362(a)(3) of the Bankruptcy Code."); *In re Weber*, 719 F.3d 72, 81 (2d Cir. 2013) ("[S]ection 362 requires a creditor in possession of property … to deliver that property to the trustee or debtor-in-possession promptly after the debtor has filed a petition in bankruptcy[.]"); *In re Del Mission Ltd.*, 98 F.3d 1147, 1151 (9th Cir. 1996) ("[K]nowing retention of estate property violates the automatic stay of § 362(a)(3)."); *In re Knaus*, 889 F.2d 773, 775 (8th Cir. 1989) ("[A] person holding property of a debtor who files bankruptcy proceedings becomes obligated, upon discovering the existence of the bankruptcy proceedings, to return that property to the debtor … or his trustee[.]"); *In re Rozier*, 376 F.3d 1323, 1324 (11th Cir. 2004) (per curiam) (bankruptcy court properly found creditor in contempt for violation of the automatic stay when it failed to return to the debtor a repossessed vehicle in which the debtor retained a state-law ownership interest).

Those courts have relied on the phrase "exercise control" in § 362(a)(3). But the statute does not bar any "exercise of control" over estate property. Rather, it stays "any *act* … to exercise control," 11 U.S.C. § 362(a)(3) (emphasis added)—language that the courts on this side of the split elide. For example, the Seventh Circuit's decision in *Thompson* concludes that "the act of passively holding onto an asset constitutes 'exercising control' over it, and such action violates section 362(a)(3) of the Bankruptcy Code." *Thompson*, 566 F.3d at 703 (holding that creditor's retention of debtor's car that the creditor repossessed before bankruptcy violated § 362(a)(3)). The analysis of the Second, Eighth, Ninth and Eleventh Circuits is generally similar. *See Weber*,

719 F.3d at 79-81; *Knaus*, 889 F.2d at 774-775; *Del Mission*, 98 F.3d at 1151-1152; *Rozier*, 376 F.3d at 1324.

In an attempt to bolster their interpretation of § 362(a)(3), these courts rely heavily on what they describe as the interplay between the automatic stay and § 542's turnover authority. Because § 542 requires turnover of property in which the estate has an interest, these courts treat that obligation as implicitly subsumed into § 362's automatic stay. "[A] majority of courts ha[ve] found that § 542(a) work[s] in conjunction with § 362(a) 'to draw back into the estate a right of possession that is claimed by a lien creditor pursuant to a pre-petition seizure.'" App. 11a (quoting *Thompson*, 566 F.3d at 704); *see also Del Mission*, 98 F.3d at 1151 ("11 U.S.C. § 542(a) provides that an entity in possession of estate property shall deliver such property to the trustee. … [Therefore] a creditor's knowing retention of property of the estate constitutes a violation of § 362(a)(3)." (quotation marks omitted)).

By contrast, the Tenth and D.C. Circuits have held that creditors do not violate the automatic stay by passively retaining possession of property in which the estate has an interest. In *Cowen*, the Tenth Circuit expressly rejected the "majority rule" on the ground that it "seems driven more by 'practical considerations' and 'policy considerations' than a faithful adherence to the text" of the Bankruptcy Code's automatic stay provision. *In re Cowen*, 849 F.3d 943, 948-949 (10th Cir. 2017) (citations omitted). That statutory text, the Tenth Circuit emphasized, prohibits only "acts" to exercise control over property of the estate. *Id.* at 949. It "stays entities from *doing* something to obtain possession of or to exercise control over the estate's property." *Id.* But "[i]t does not cover 'the act of passively holding onto an asset,' nor does it impose an affirmative

obligation to turnover property to the estate." *Id.* (citation omitted; emphasis in original).

The Tenth Circuit also disagreed that the turnover provision supports the "majority rule," noting that there is "no textual link between § 542 and § 362" and that "bankruptcy courts do not need § 362 to enforce the turnover of property of the estate," since they can hold a creditor in contempt for failing to comply with an order directing turnover. *Cowen*, 849 F.3d at 950. The court therefore held that a creditor's retention of the debtor's truck that it had repossessed before the bankruptcy did not violate § 362(a)(3). *Id.* at 948-950.

Similarly, longstanding precedent from the D.C. Circuit holds that a creditor's retention of property that might be subject to turnover, before the court orders turnover, does not violate the automatic stay. As the court explained, the "object of the automatic stay provision is … to make sure that creditors do not destroy the bankrupt estate in their scramble for relief." *United States* v. *Inslaw, Inc.*, 932 F.2d 1467, 1473 (D.C. Cir. 1991). "The automatic stay, as its name suggests, serves as a restraint only on acts to gain possession or control over property of the estate. Nowhere in its language is there a hint that it creates an affirmative duty … as soon as a debtor files a bankruptcy petition." *Id.* at 1474; *see id.* at 1472-1474 (holding that contract counterparty's retention and use of debtor's proprietary computer software in the counterparty's possession on the petition date under a claim of right, which debtor disputed, did not violate § 362(a)(3)).

These conflicting positions cannot be squared. Indeed, the Seventh Circuit below openly acknowledged the split of authority and rejected the position of the

Tenth and D.C. Circuits. App. 14a. Only this Court can resolve the conflict.

II. THE SEVENTH CIRCUIT'S DECISION IS WRONG

A. The Seventh Circuit's Decision Contravenes The Text, Purpose, History, And Structure Of The Bankruptcy Code

The Seventh Circuit's holding that a creditor violates the automatic stay by passively retaining property lawfully repossessed before bankruptcy contravenes the text, purpose, history, and structure of the relevant statutory provisions.

1. *Text.* The automatic stay provision stays only "any *act* to obtain possession of property of the estate … or to exercise control over property of the estate." 11 U.S.C. § 362(a)(3) (emphasis added). But the Seventh Circuit and other courts on its side of the split hold that a creditor violates that provision through *inaction*—by taking no act and thus failing to turn over property in which the estate has an interest. Those courts give short shrift to the statutory language limiting the stay to an "act." *See* App 9a-10a (focusing on the phrase "exercise control" without discussing the word "act"); *Thompson*, 586 F.3d at 702 (considering only "the plain meaning of 'exercising control'"); *Knaus*, 889 F.2d at 774-775 (glossing over "act" and suggesting that the stay prohibits all "attempts 'to exercise control over property in the estate'").

That violates the rule against surplusage. If Congress had meant to prohibit all "exercise of control" over estate property, it could have said so. Instead, it prohibited "any *act* … to exercise control." That additional language should be given meaning. *See, e.g.*, *Babbitt* v. *Sweet Home Chapter of Cmtys. for a Great*

Ore., 515 U.S. 687, 698 (1995) ("reluctance to treat statutory terms as surplusage" requires a reading that gives statutory language a "meaning that does not duplicate the meaning of other words" in the statute).

A creditor thus violates the automatic stay by taking action, not by failing to act. Put differently, the automatic stay, as its name suggests, *stays* affirmative actions that would change the status quo—it does not *require* affirmative actions that would change the status quo. "Stay means stay, not go." *Cowen*, 849 F.3d at 949. That reading accords with the basic distinction between a prohibitory injunction or stay barring a party from taking some action and a mandatory injunction requiring a party to take action. *See*, *e.g.*, *Ex parte Young*, 209 U.S. 123, 159 (1908) (negative injunction against state official imposes "no affirmative action of any nature" but simply prohibits official "from doing an act which he had no legal right to do"); *North Am. Soccer League, LLC* v. *U.S. Soccer Federation, Inc.*, 883 F.3d 32, 36 (2d Cir. 2018) ("Prohibitory injunctions maintain the status quo pending resolution of the case; mandatory injunctions alter it."); *Braintree Laboratories, Inc.* v. *Citigroup Global Markets Inc.*, 622 F.3d 36, 40-41 (1st Cir. 2010) ("a mandatory preliminary injunction"—as opposed to "a traditional, prohibitory preliminary injunction"—"requires affirmative action by the non-moving party in advance of trial").

2. *Purpose.* Treating the automatic stay as a prohibitory injunction would be in accord with the stay's long-recognized purpose: to preserve the status quo as it existed on the petition date during the bankruptcy proceeding. As this Court has recognized, the automatic stay "aims to prevent damaging disruptions to the administration of a bankruptcy case in the short run." *Taggart* v. *Lorenzen*, 139 S. Ct. 1795, 1804 (2019).

The Senate Report on the legislation that resulted in the 1978 Bankruptcy Code explained: "The automatic stay … provides creditor protection. Without it, certain creditors would be able to pursue their own remedies against the debtor's property. Those who acted first would obtain payment of the claims in preference to and to the detriment of other creditors." S. Rep. No. 95-989, at 49. The stay prevents that harm by freezing in place the state of affairs as of the commencement of the bankruptcy case, permitting "an orderly … procedure under which all creditors are treated equally." *Id.*; *see also* Brubaker, *Turnover, Adequate Protection and the Automatic Stay: A Reply to Judge Wedoff*, 38 No. 11 Bankr. L. Letter NL 1, at 9 (Nov. 2018) (*Turnover Part III*).

As to § 362(a)(3) in particular, the 1978 Senate Report notes that it was intended to "prevent dismemberment of the estate" and ensure that "[a]ny distribution of property must be by the trustee after he has had an opportunity to familiarize himself with the various rights and interests involved." S. Rep. No. 95-989, at 50; *see also* Norton Jr. et al., 2 *Norton Bankr. L. & Prac.* 3d § 43:7 (2019) ("The automatic stay is intended only as a temporary opportunity for the trustee or debtor in possession to take stock of the debtor's property interests so as to be apprised of the various rights and interests involved without the threat of immediate estate dismemberment by zealous creditors.").

The automatic stay accordingly does not expand a debtor's rights vis-à-vis creditors beyond what the debtor had before the bankruptcy filing. Other provisions of the Bankruptcy Code, such as the turnover provision, do enable the trustee or debtor-in-possession to bring back into the estate certain property in which the estate has an interest. Achieving that objective,

however, is outside the ambit of the automatic stay, which stays creditor actions to preserve the status quo.

3. *History.* Before 1984, § 362(a)(3) prohibited only "act[s] to obtain possession" of property of the estate; it made no reference to "act[s] to … exercise control" over property of the estate. Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, § 362, 92 Stat. 2549, 2570. In 1984, Congress added the language at issue here, barring "any act to … exercise control over property of the estate." Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, § 441(a)(2), 98 Stat. 333, 371 (amending 11 U.S.C. § 362(a)(3)). Nothing about that change supports the inference that Congress intended to broaden the scope of the automatic stay to reach passive retention of property of the estate.

It is undisputed that before 1984, a creditor in possession of property in which the estate had an interest was not automatically required to turn over that property simply because a bankruptcy case was filed. *See, e.g.*, *In re Hall*, 502 B.R. 650, 665 (Bankr. D.D.C. 2014) (discussing history of turnover under the Bankruptcy Code); Brubaker, *Turnover Part III*, 38 No. 11 Bankr. L. Letter NL 1, at 3-4. Under the Code as enacted in 1978, nothing in § 362 could be construed to impose a turnover obligation. And it was generally understood that while § 542 of the Bankruptcy Code empowered a debtor to seek turnover of property that the estate could use, sell or lease, a creditor's duty to turn over such property was neither immediate nor "self-executing." Rather, "turnover could be refused and the creditor could raise defenses to turnover before being required to relinquish possession." *Hall*, 502 B.R. at 664; Brubaker, *Turnover Part III*, 38 No. 11 Bankr. L. Letter NL 1, at 3-4; *see also* Wedoff, *The Automatic*

Stay Under § 362(a)(3)—One More Time, 38 No. 7 Bankr. L. Letter NL 1, at 2 (July 2018) ("Before the 1984 expansion of § 362(a)(3), if a creditor was unwilling to return collateral, the debtor would have to seek a court order requiring turnover under § 542(a), and in response the creditor could request adequate protection under § 363(e).").

The Seventh Circuit concluded that the 1984 amendments to § 362(a)(3) effected a sea change in that long-settled law, imposing on creditors an affirmative obligation to turn over collateral in their possession to the debtor or trustee immediately upon the filing of the bankruptcy case. App. 10a; *Thompson*, 566 F.3d at 702-703. Moreover, Congress purportedly accomplished that result not by amending the *turnover* provisions of the Bankruptcy Code but by amending the *automatic stay*. That is scarcely plausible. *See Cowen*, 849 F.3d at 950 ("If Congress had meant to add an affirmative obligation—to the automatic *stay* provision no less, as opposed to the *turnover* provision—to turn over property belong to the estate, it would have done so explicitly.").

Indeed, there is ample evidence that the 1984 amendments to § 362 were intended to effect only limited, technical changes. The "exercise control" language originated in a bill entitled "An Act to Correct Technical Errors, Clarify and Make Minor Substantive Changes to Public Law 95-598 (the Bankruptcy Reform Act of 1978)." H.R. Rep. No. 96-1195, at 1, 52 (1980); Brubaker, *Turnover Part III*, 38 No. 11 Bankr. L. Letter NL 1, at 5-6. The original House Report explained that the bill made changes where "the treatment of a subject in the Bankruptcy Reform Act was found to be incomplete; or [] there was overlooked some minor yet relevant matter." H.R. Rep. No. 96-1195, at 2. "Every effort" was made "to maintain existing policy intact."

Id.; *see generally* Brubaker, *Turnover Part III*, 38 No. 11 Bankr. L. Letter NL 1, at 5-6. The legislative history specifically addressing the changes to § 362(a)(3) was cursory, doing little more than repeating the language of the amendment in a paragraph generally addressing the workings of the stay. H.R. Rep. No. 96-1195, at 10.

This Court has repeatedly made clear that one should "'not read the Bankruptcy Code to erode past bankruptcy practice absent a clear indication that Congress intended such a departure.'" *Cohen* v. *de la Cruz*, 523 U.S. 213, 221 (1998) (holding that a similar "technical" amendment under the 1984 Act did not effect a substantive change in the law). The reasoning of the Seventh Circuit (and the other courts of appeals that have reached the same conclusion) disregards this established principle of construction.

4. *Structure.* The Seventh Circuit's conclusion is also at odds with the overall structure of the Bankruptcy Code, which carefully balances the interest in facilitating the reorganization of a corporate debtor or promoting an individual debtor's fresh start with the nonbankruptcy rights and entitlements of creditors.

Section 542(a) of the Bankruptcy Code permits a debtor to seek turnover of property lawfully repossessed by a secured creditor before the petition date. But § 542 contains express statutory defenses (such as where "the property is of inconsequential value or benefit to the estate"). And the Bankruptcy Rules are clear that a turnover action must proceed by way of an adversary proceeding, Fed. R. Bankr. P. 7001(1), (7), which provides a creditor with the opportunity to assert such defenses.

In addition to asserting statutory defenses, a creditor may also respond to a turnover action by seeking

"adequate protection" of its interest in the property. 11 U.S.C. § 363(e). In the case of a vehicle in which the creditor holds a security interest, adequate protection may include a requirement that the debtor obtain appropriate insurance. If the value of a creditor's security interest may diminish as a result of the debtor's use of the property, adequate protection may also include cash payments to compensate a secured creditor for that diminution of value. *Id.* § 361(1).

In these ways, the Bankruptcy Code is careful to compensate the secured creditor for the loss of its possessory interest when the creditor is required to turn over possession of its collateral. Instead of possession, the secured creditor is entitled to adequate protection of all of its interests in property in which the estate also has an interest. *Whiting Pools*, 462 U.S. at 207 ("The Bankruptcy Code provides secured creditors various rights, including the right to adequate protection, and these rights replace the protection afforded by possession."); *see also* Brubaker, *Turnover, Adequate Protection, and the Automatic Stay (Part I): Origins and Evolution of the Turnover Power*, 33 No. 8 Bankr. L. Letter NL 1, at 6 (Aug. 2013).

In substance, § 542(a) of the Code therefore contemplates a trade. The secured creditor gives up possession, while the estate is required to provide adequate protection that fairly compensates the secured creditor for the loss of possession. A consequence of this structural protection for the rights of creditors is that a secured creditor's obligation to turn over estate property can become judicially enforceable only following a turnover proceeding. That proceeding will not only allow the bankruptcy court to rule on the debtor's entitlement to the property, but also ensure that the secured creditor receives the adequate protection to

which it is entitled in return for relinquishing possession of its collateral. Requiring such property to be turned over immediately after the bankruptcy petition is filed, by contrast, creates the risk that the secured creditor's collateral will be destroyed or damaged before the debtor has taken the necessary steps to protect the secured creditor's interest—an outcome that would frustrate the very purpose of adequate protection.

The rule adopted by the Seventh Circuit makes a hash of the Bankruptcy Code's structural protections for secured creditors. Requiring a creditor to turn over property immediately after a bankruptcy filing or face sanctions deprives that creditor of the opportunity to assert defenses to turnover and to secure adequate protection for its property rights before relinquishing property in its lawful possession.

B. The Seventh Circuit's Decision Is Inconsistent With This Court's Decision In *Strumpf*

The Seventh Circuit's decision is also inconsistent with this Court's decision in *Citizens Bank of Maryland* v. *Strumpf*, 516 U.S. 16 (1995).

In *Strumpf*, this Court considered the interplay between the automatic stay and § 542(b) of the Bankruptcy Code. The question was whether a bank that places an administrative freeze on funds in a debtor's bank account during the bankruptcy case, to preserve the bank's ability to set off the bank's claim against the debtor against the funds in the account, violates the automatic stay. *See Strumpf*, 516 U.S. at 17. The Court held that such an administrative freeze did not violate the automatic stay. *Id.* at 21.

As the Court explained, the automatic stay does prohibit a creditor from effecting a setoff of mutually

owing obligations. *See Strumpf*, 516 U.S. at 19; *see* 11 U.S.C. § 362(a)(7) (staying "the setoff of any debt owing to the debtor that arose before the commencement of the [bankruptcy] case … against any claim against the debtor"). A creditor that would be entitled to setoff under common law outside bankruptcy must thus obtain relief from the stay to effect such a setoff once the debtor has sought bankruptcy protection.

The bank in *Strumpf* froze the debtor's bank account to permit it to seek stay relief so that it could exercise its setoff rights. The debtor argued that freezing the account was itself a stay violation, and that the bank was under an affirmative obligation to pay the funds in the account to the debtor immediately under § 542(b). That provision, which is very similar to § 542(a), requires an entity that owes a debt that is property of the estate to pay that debt to the trustee. *See Strumpf*, 516 U.S. at 20; *see* 11 U.S.C. § 542(b).

Like § 542(a), however, § 542(b) permits the third party to assert certain defenses to payment. Specifically, § 542(b) provides that the trustee's right to demand payment does not apply "to the extent" that the party owing money to the estate is entitled to assert setoff as a defense to the estate's claim. This Court accordingly held that reading the automatic stay to require immediate payment of any debt to the estate would "eviscerate" the statutory exceptions to the duty to pay such debts. *Strumpf*, 516 U.S. at 20.

So too here. Section 542(a) is not materially different from its neighboring provision. *Strumpf* refused to "give § 362(a)(3) … an interpretation that would proscribe what § 542(b)'s exception … [was] plainly intended to permit." 516 U.S. at 21 (quotation marks and original brackets omitted). Likewise, § 362(a)(3) should

not be interpreted to proscribe what § 542(a) would otherwise permit: a creditor's assertion of defenses to turnover and its right to adequate protection before it surrenders its collateral. The Seventh Circuit's contrary reading of § 362(a)(3) similarly "eviscerate[s]" the statutory protections associated with the turnover obligation.

C. The "Policy Considerations" Underlying The Seventh Circuit's Rule Are Unpersuasive

As the Tenth Circuit noted in *Cowen*, the "majority rule" adopted by the Seventh Circuit seems driven more by "policy considerations" than by faithful adherence to the statutory text. 849 F.3d at 949-950. Of course, where—as here—the text of the statute is plain, there is no need to consider policy. But, in any event, these "policy considerations" are unpersuasive even on their own terms.

There is no dispute that a trustee or debtor in possession is entitled to recover property in which the estate has an interest, such as a repossessed car, absent a valid defense to turnover. The question presented here is only *when* turnover must occur: immediately upon the filing of the bankruptcy petition, or after resolution of any disputes and the provision of adequate protection in a turnover proceeding under § 542(a).

Nothing about the latter position threatens debtors' ability to reorganize. Debtors must simply file turnover proceedings—which courts can and frequently do hear on short notice and decide expeditiously—and can recover their property promptly thereafter. In cases in which the debtor's right to turnover is clear and the debtor can provide adequate protection, the creditor is likely simply to turn over the property with-

out the need for a hearing. And while it may be true that it would be better for debtors if the Bankruptcy Code relieved them of the obligation to file such proceedings (and thereby stripped creditors of their statutory protections), that does not by itself mean the Bankruptcy Code provides for it. As this Court explained in *Mission Products Holdings, Inc.* v. *Tempnology, LLC*, while the "Code of course aims to make reorganizations possible[] … it does not permit anything and everything that might advance that goal." 139 S. Ct. 1652, 1665 (2019).

III. THE QUESTION PRESENTED IS IMPORTANT, RECURRING, AND CLEANLY PRESENTED IN THIS CASE

The issue presented in this case is both important and recurring. *See Thompson*, 566 F.3d at 700 ("This case involves an all too common occurrence that bankruptcy courts must deal with[.]"). The question arises in cases under every chapter of the Bankruptcy Code, and has important consequences to all secured creditors, including (but by no means limited to) municipal governments that seek to enforce their traffic laws. While the tools of bankruptcy are certainly powerful ones, permitting debtors immediately to seek contempt against creditors that have lawfully repossessed or impounded estate property before bankruptcy, before those creditors may even advance arguments that the Bankruptcy Code does not require them to return the asset to the trustee, materially alters the negotiating dynamic in bankruptcy cases.

It is therefore unsurprising that the issue has attracted wide attention in the bankruptcy community. As one article put it, "all eyes remain on *City of Chicago v. Robbin L. Fulton.*" Dugan & Brusa, *The City Has My Vehicle. What Now?*, *supra* n.3; *see also* Newman,

Possession is not 'nine tenths of the law': Impounded vehicles must be returned when a bankruptcy petition is filed, *supra* n.2.

And the issue is squarely presented here. While this Court recently denied certiorari in a case that purported to present the same issue, *Davis* v. *Tyson Prepared Foods, Inc.*, No. 18-941, the issue was not in fact presented in *Davis*. As the opposition to certiorari in *Davis* explained (at 12), *Davis* involved § 362(a)(4), which prohibits "acts to create, perfect, or enforce any lien against property of the estate," rather than § 362(a)(3)'s prohibition on acts to "exercise control" over property of the estate. Indeed, the respondent in *Davis* pointed to this case as an example of one that presented the issue more cleanly: "To the extent this Court is inclined to resolve the circuit conflict on the meaning of Section 362(a)(3), it should have ample opportunities to do so in a case in which that question is actually presented. [Such a case] … is pending in the Seventh Circuit. *In re Peake*, 588 B.R. 811 (Bankr. N.D. Ill. 2018)." No. 18-941 Br. in Opp. 12; *see also* Am. Bankr. Inst., *Newly Filed Certiorari Petitions Raise Circuit Splits on 'Finality' and the Automatic Stay*, Rochelle's Daily Wire (Jan. 25, 2019) ("[i]f the Supreme Court denies certiorari [in *Davis*], the case from the Seventh Circuit could be a better vehicle to decide" the issue)[7]; Am. Bankr. Inst., *New Jersey Judges Side with the Minority on Turnover of Repossessed Autos*, Rochelle's Daily Wire (Nov. 8, 2019) ("The split is head-

[7] *Available at* https://www.abi.org/newsroom/daily-wire/newly-filed-certiorari-petitions-raise-circuit-splits-on-'finality'-and-the.

ing for the Supreme Court from either the Tenth or Seventh Circuits.").[8]

Petitioners are aware of only one other case currently pending at the circuit court level in which this issue is presented, *In re Denby-Peterson*, No. 18-3562, now before the Third Circuit. *See supra* n.1. However the Third Circuit decides that appeal, this case is a better vehicle for this Court to resolve the issue. The secured creditor in *Denby-Peterson* elected not to participate in the appeal, and the Third Circuit thus appointed an *amicus curiae* to defend the district court's judgment. Ordinary prudential principles counsel in favor of granting certiorari in a case in which the issues are joined by parties that have a concrete stake in the dispute, each represented by capable counsel. Indeed, the respondents in this case were represented in the Seventh Circuit by a former Chief Judge of the U.S. Bankruptcy Court for the Northern District of Illinois, who currently serves as chairman of the American Bankruptcy Institute and focuses his practice on the *pro bono* representation of consumer debtors. Granting certiorari in this case would permit the issues to be presented clearly to this Court by parties with a great deal at stake in the outcome.

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[8] *Available at* https://www.abi.org/newsroom/daily-wire/new-jersey-judges-side-with-the-minority-on-turnover-of-repossessed-autos.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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