No. 21-___

In the Supreme Court of the United States

ANNICK ROY, et al.,
Petitioners,

v.

CANADIAN PACIFIC RAILWAY CO.,
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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January 24, 2022

QUESTIONS PRESENTED

1. The Federal Rules of Bankruptcy Procedure govern procedure in "cases under title 11 of the United States Code." Fed. R. Bankr. P. 1001. Does the term "cases under title 11" extend to cases in district court that are merely "*related to* a case under title 11," such that the bankruptcy rules govern in all civil cases that could conceivably affect a bankruptcy?

2. The bankruptcy rules provide that, to toll the fourteen-day period in which to appeal the judgment "of a bankruptcy court," a motion to reconsider the judgment under Federal Rule of Bankruptcy Procedure 9023 must be filed "in the bankruptcy court" within fourteen days. Assuming the bankruptcy rules apply in district court, do the rules likewise require a motion to reconsider a district court's judgment under Federal Rule of Civil Procedure 59(e) to be filed within 14 days?

LIST OF PARTIES TO THE PROCEEDING

The following petitioners were plaintiffs in the district court and appellants in the court of appeals: Annick Roy, as special administrator of the estate of Jean-Guy Veilleux, deceased; individually and as next friend of minor, F.R.V.; Samuel Audet; Beland Audet; Emanuel Baillargeon; Sandra Baillargeon; Jean Boyle Barrett Beaudoin; Gabriel Beaudoin; Jocelyn Beaudoin; Raymond Beaudoin; Yves Bernier; Gerard Bolduc; Marie Claude Bouchard; Michel Bouchard; Suzie Bouchard; Pierrette Boucher Lafontaine; Rouville Boucher; Michel Boulanger; Daniel Boule; Pierre Boulet; Pierrette Boulet; Helene Bourgeois; Ghislain Champagne; Line Champagne; Denis Charest; Pascal Charest; Daniel Charrier; Sylvain Cote; Annette Doyon; Denise Dubois; Martial Dupiuis; Serge Faucher; Yves Faucher; Lea Favreau; France Fortier; Yannick Gagne; Daniel Gendron; Melanie Gerhard; Gravure Megantic; Mario Grimard; Group Exca Inc.; Nancy Guay; Eric Joubert; Jeannot Labrecque; Danielle Lachance; Lucille Lachance; Pierrette Lachance; Sylvie Lacroix; Angelique Lafontaine; Anna Lafontaine; Christian Lafontaine; Clement Lafontaine; Exca Lafontaine; Jonathan Lafontaine; Josie Lafontaine; Lisa Lafontaine; Luc Lafontaine; Marilou Lafontaine; Rosemary Lafontaine; Louise Lajeunesse; Guillaume Lapierre; Henriette Latulippe; Marcel Lavoie; Mayla; Marche Valiquette Ltee; Josee Morin; Clement Pepin; Yannick Pepin; France Picard; Louisette Picard; Mathieu Picard; Claude Plante; Manon Rodrigue; Doris Roy; Garage Jean Roy; Jean-Guy Roy; Ginette Roy; Julie Roy; Services Esthtiques Malya; Bernard St-Hilaire; Billy Turcotte; Celine Turcotte; Marc Vachon; Louise Valiquette; Philippe Valiquette; Rene Boutin; Sophie Boutin; Roxanne Boutin; Caroline Tremblay, individually and as representative of the estate

of Guy Bolduc, Deceased; As Next Friend Of S.B., a minor; And As Next Friend Of A-C.B., a minor; Jacques Bolduc; Solange Gaudreault; Mario Bolduc; Cynthia Boule, individually and as representative of the estate of sylvie charron, deceased; and as next friend of A.B., a minor; Jean-Guy Boule; Therese Pouliot, individually and as representative of the estate of real custeau, deceased; Simon Custeau, individually and as next friend of J.C., a minor; Sonia Pepin; Richard Custeau; Sylvie Custeau, individually and as representative of the estate of Suzanne Custeau, deceased; Michael Custeau; Karine Lafontaine; Rejean Custeau; Claude Turmel; Kathleen Bedard; Kim Turmel, individually and as next friend of A.L., a minor; as next friend of M.L., a minor; as next friend of L-A.N., a minor and as next friend of E.N., a minor; Josee Bolduc; Vincent Nadeau; Guylaine St-Laurent, as representative of the estate of Natachat Gaudreau, deceased; Joanie Turmel; Chantal Gaudreau; Francois Poulin, individually and as representative of the estate of Lucie Vadnais, deceased; Estel Blanchet; Sylvie Vadnais; Pauline Theberge; Elisabeth Vadnais; Diane Giroux Rodrigue, as representative of the estate of Jacques Giroux, Deceased; Marie-Eve Poulin; Andre Giroux; Serge Morin, individually and as co-representative of the estate of Kaven Morin, deceased; Raymond Lapointe; Nancy Ducharme, individually and as co-representative of the estate of Kaven Morin, deceased; Joannie Lapointe; Kathleen Morin; Lucie Boutin; Michael Vallerand; Genevieve Breton; Ginette Dostie; Taxi Megantic Enr; Fiducie Familiale Francois Jacques, individually and on behalf of the estate of Dominik Leblanc; Societe De Gestion Jean-Pierre Jacques Inc.; Dube Equipment De Bureau Inc.; 9020-1468 Quebec Inc.; Via Beaute Sante Enr; Bolduc Chaussures Lte; Clinique Dentaire Marie-Pier Dube Inc.; Michel Charland;

Societe En Commandite Projet Shier; Jean Vadnais; Isabelle Beaudry; Clermont Pepin, as special administrator of the estate of Eric Pepin-Lajeunesse, deceased; Pascal Lafontaine, as special administrator of the estate of Karine Lafontaine, deceased; Louise Couture; Mario Sevigny; Marc-Antoine Sevigny; Louise Breton; Ginette Cameron; Manon Bolduc; Sandy Bedard, as special administrator of the estate of Michel Guertin, Jr.; Herbert Ratsch, as special administrator of the estate of Willfried Heinz Ratsch, deceased; Genevieve Dube; Michelle Gaboury, as special administrator of the estate of kevin roy, deceased; Gaston Begnoche, as special administrator of the estate of Talitha Coumi Begnoche, deceased; Dave Lapierre; Marie-Eve Lapierre; Lisette Bolduc; Steve Bolduc; Maude Faucher; Karine Paquet; Guy Paquet, as special administrators of the estate of Roger Paquet, deceased; Jacques Martin; Solange Belanger, as special administrator of the estate of Jimmy Sirois, deceased; Guy Boulet; Elise Dubois-Couture, as special administrator of the estate of David Lacroix-Beaudoin, deceased; Lily Rodrigue; Rejean Roy, as special administrator of the estate of Mlissa Roy, deceased; Alexia Dumas-Chaput, as special administrator of the estate of Mathieu Pelletier, deceased; Theresa Poulan Dubois, as special administrator of the estate of Denise Dubois, deceased; Christiane Mercier, as special administrator of the estate of Marianne Poulin, deceased; Robert Picard; Justine Lapointe; Eric Bilodeau, as special administrator of the estate of Karine Champagne, deceased; Micheline Veilleux; Richard Turcotte, as special administrator of the estate of Elodie Turcotte, deceased; Marie-Josee Grimard, as special administrator of the estate of Henriette Latulippe, deceased; Alaine Bizier, individually and as representative of the estate of Diane Bizier, deceased;

Steve Roy, individually and on the behalf of minor Y.R.; Isabelle Boulanger, individually and as representative of the estate of Frederic Boutin, deceased; Colette Lacroix Boulet; Joanne Proteau, as special administrator of the estate of Maxime Dubois, deceased; Gabrielle Lapointe; Helen Lynn Barrett Beaudoin; Malya; Pierre Picard; and Boutique De La Gare Inc.

The following parties were plaintiffs in the district court: Maurice Gagne; Jacques Grenier; Bar Laitier; Josee Lajeunesse; Lambrequin; Lisa Fleury Larange; Logi-Bel; Marche Metro; Andre Martin; Melissa Robert, individually and as next friend of Elyka Richard and Megane Richard; Musi-Cafe; Nettoyeur Moderne Senc; Melanie Poirer; Poulet Frit Ideal; Patrick Rodrigue; Jean Tanguay; The Heritage Building; Jean-Yves Fortin; Eric Lavallee; Annie-Julie Blais; Jacques Dube; Gerald Rodrigue; Claudette Rodrigue; Julie Hamel, individually and as next friend of Nathan Fouquet; Frederic Fouquet; Lorraine Beaudoin-Langlois; 9219-0610 Quebec Inc, d/b/a Ariko Restorant & Bar; Mirko Couture; Jean-Francois Drouin; Marie-Claude Pepin-Verdo; Sylvain Rancourt; Clemente Rancourt; Nicole Lapierre; Antoine Leclerc; Claude Charron; Pharmaciens Inc.; Variete Claude Charron Inc; Variete Claude Charron; Centre Funeraire Jacques Et Fils Inc.; Jean-Pierre Jacques; Francois Jacques; Carol Begin; Jean Dube; Andre Fluet Dube; Pascal Halle; Angele Godbout; Denise Poulin; Denis Bolduc; Marie-Pier Dube, individually and as next friend of L.C., a minor, and as next friend of X.C., a minor; Jacques Laprise; Steven Halle; Gesner Blenkhorn; Andre Valiquette; Pascale Lacroix; Gordon Beaudoin; and Force Action Nutrition.

Respondent Canadian Pacific Railway Company was a defendant in the district court and appellee in the court of appeals.

The following parties were also defendants in the district court: Soo Line Railroad Company, d/b/a Canadian Pacific Railway; Delaware And Hudson Railroad Company Inc., d/b/a Canadian Pacific Railway; Dakota Minnesota and Eastern Railroad Corporation, d/b/a Canadian Pacific Railway; and Canadian Pacific Railway Limited.

RELATED PROCEEDINGS

This case arises from the following proceedings:

In re: Lac Megantic Train Derailment Litig., No. 16- 1001 (D. Maine Sept. 28, 2016)

In re Lac-Megantic Train Derailment Litig., 999 F.3d 72 (1st Cir. June 2, 2021)

There are no other proceedings in state or federal trial or appellate courts, or in this Court, directly related to this case within the meaning of this Court's Rule 14.1(b)(iii).

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INTRODUCTION

Fairness demands that procedural rules, especially jurisdictional ones, be knowable in advance. At the very least, it must be clear to everyone which *body* of rules will govern a case. Confusion on that score is intolerable.

In this case, the district court and the parties all understood the ordinary rules of civil procedure to apply. Yet the First Circuit held, for the first time on appeal, that the plaintiffs' state-law wrongful-death claims were governed in the district court by the federal bankruptcy rules. Although this is not a bankruptcy case, it was "related to" one because the outcome could have affected an insurance policy held by a debtor in a different case. On that basis, the First Circuit retroactively applied the Federal Rules of Bankruptcy Procedure to the plaintiffs' district-court filings and concluded that the plaintiffs' post-judgment motion for reconsideration under Rule 59(e)—though it would have been timely filed under that rule—was late under the shorter deadline that the bankruptcy rules provided. The result was a "domino effect," App. 3a, that rendered the plaintiffs' appeal untimely, deprived the court of appellate jurisdiction, and ended the plaintiffs' case.

The First Circuit justified that surprising outcome as necessary to avoid a circuit split on the applicability of the bankruptcy rules in district court and to "facilitate[] the efficient disposition" of bankruptcy claims. App. 15a. But in doing so, the court exacerbated existing confusion on the meaning of a key statutory phrase and created a split much more serious than the one it sought to avoid.

The Bankruptcy Code and the Federal Rules of Bankruptcy Procedure provide that the bankruptcy rules govern only in "cases under title 11." 28 U.S.C. § 2075;

Fed. R. Bankr. P. 1001. A majority of circuits have held that the phrase "cases under title 11," as used in the Bankruptcy Code, is a term of art that "refers merely to the bankruptcy petition itself." *In re Seven Fields Dev. Corp.*, 505 F.3d 237, 250 (3d Cir. 2007) (quotation marks omitted). Even the First Circuit has, in the past, recognized that well-established meaning.

But in extending the bankruptcy rules to this case, the First Circuit diverged from that authority, and from its own precedent, by holding that the statutory phrase "should be read more broadly." App. 13a. "Cases under title 11," the court held, also include any proceedings subject to federal bankruptcy jurisdiction because they are "*related to* a case under title 11." 28 U.S.C. § 1334(b) (emphasis added); *see* App. 20a. "'Related to jurisdiction," it wrote, "is designed to … facilitate[] the efficient disposition of claims." App. 15a (cleaned up). And it reasoned that applying "the same set of procedural rules in all proceedings having a nexus to a bankruptcy case" is "the best way to effectuate this goal." *Id.* In so holding, the court followed decisions of three other circuits that employed the same policy-based rationale in extending the bankruptcy rules to proceedings "related to" a bankruptcy.

The First Circuit's decision to link the choice of rules to the existence of "related to" bankruptcy jurisdiction subjects parties to procedural rules that are unpredictable and subject to unexpected change. The question whether a case falls under a district court's "related to" jurisdiction is a notoriously difficult and frequently contested issue, to which the right answer is often far from clear. Indeed, by far the largest number of reported cases on questions of bankruptcy jurisdiction are about whether a proceeding is

"related to" a case under title 11. Because district courts do not have the final word on those questions, parties and judges under the First Circuit's rule may not learn with certainty which set of rules govern a case until it is decided on appeal—when it's already too late. That risks pulling the rug out from under district judges who have already taken a case through final judgment under an entirely wrong set of rules. It creates numerous traps for counsel and parties who risk permanently losing their claims, as the plaintiffs did here, by inadvertently misapplying a rule with jurisdictional consequences. And it invites abuse, creating an incentive, for example, to sandbag an opposing party by arguing for different rules only after it is too late to comply with them.

The First Circuit reached that result rashly, by redefining "cases under title 11"—one of the most important and frequently recurring phrases in the Bankruptcy Code that itself serves to define other core concepts like the "debtor" and the "estate." This Court has warned against judicial rewriting of the Bankruptcy Code's "complex" and "interconnected provisions," which "threatens ripple effects" within "the broader bankruptcy scheme." *Hall v. United States*, 566 U.S. 506, 523 (2012). But the First Circuit did exactly that, casting into uncertainty hundreds of provisions in the Bankruptcy Code and the Rules of Bankruptcy Procedure that turn on the meaning of the phrase "cases under title 11." The First Circuit's holding would, for example, collapse Congress's distinction between a district court's exclusive bankruptcy jurisdiction in "cases under title 11" under section 1334(a) and its concurrent jurisdiction in "related" proceedings under section 1334(b). It would eliminate the division of authority between district and bankruptcy courts by authorizing bankruptcy judges to enter judgments in

proceedings that are merely "related to" a bankruptcy. *See* 28 U.S.C. § 157(b). It would have unexpected procedural consequences, such as authorizing nationwide service of process by mail in ordinary civil cases. And it could even create new federal crimes by expanding the definition of bankruptcy fraud to cover false statements made in related civil litigation. *See* 18 U.S.C. § 152(7).

On top of all that, the First Circuit misread the bankruptcy rules—and created another circuit split—when it held that Federal Rule of Bankruptcy Procedure 9023 foreclosed the plaintiffs' appeal. Every other circuit to have addressed the question has held that Rules 9023 and 9024—the bankruptcy analogues to Rules of Civil Procedure 59 and 60—"appl[y] only to appeals from the bankruptcy court to the district court, and not to appeals from the district court to the court of appeals." *In re Butler, Inc.*, 2 F.3d 154, 155 (5th Cir. 1993); *In re Bli Farms, P'ship*, 465 F.3d 654, 658 (6th Cir. 2006); *see also English-Speaking Union v. Johnson*, 353 F.3d 1013, 1019 (D.C. Cir. 2004) (explaining that Rule 9024 is designed to apply "only to bankruptcy court proceedings"). That conclusion is the only one consistent with the bankruptcy rules' plain language, which provide that Rule 9023 motions toll the time to appeal the judgment "of a *bankruptcy court*." Fed. R. Bankr. P. 8001(a) (emphasis added).

These issues cry out for this Court's immediate review. Even setting aside the two concrete circuit splits and the ripple effects in a critical statutory scheme, the case implicates this Court's supervisory interest in establishing clear rules of the road in the lower courts. Awaiting further percolation makes little sense when the parties in those cases cannot know in advance the rules

governing the litigation. Only a decision by this Court can end the uncertainty by definitively setting forth the ground rules that apply in district and bankruptcy courts. The Court should grant certiorari to do so here.

OPINIONS BELOW

The opinion of the court of appeals is reported at 999 F.3d 72 (1st Cir. 2021) and is reproduced at App. 1a. The district court's order granting Canadian Pacific's motion to dismiss is reported at 210 F. Supp. 3d 218 (D. Me. 2016). The district court's order denying the plaintiffs' motion for leave to file a second-amended complaint is unreported but available at 2016 WL 5416943, and is reproduced at App. 21a.

JURISDICTION

The First Circuit issued its opinion on June 2, 2021, and denied the plaintiffs' petition for rehearing on September 8, 2021. On November 30, 2021, Justice Breyer extended the time for filing a petition for a writ of certiorari until January 24, 2022. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS AND RULES INVOLVED

28 U.S.C § 2075 provides:

> The Supreme Court shall have the power to prescribe by general rules, the forms of process, writs, pleadings, and motions, and the practice and procedure in cases under title 11. Such rules shall not abridge, enlarge, or modify any substantive right.

Federal Rule of Bankruptcy Procedure 1001 provides:

> The Bankruptcy Rules and Forms govern procedure in cases under title 11 of the United States Code. The rules shall be cited as the Federal Rules of Bankruptcy Procedure and the forms as the Official Bankruptcy Forms. These rules shall be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every case and proceeding.

Federal Rule of Bankruptcy Procedure 9023 provides:

> Except as provided in this rule and Rule 3008, Rule 59 F.R.Civ.P. applies in cases under the Code. A motion for a new trial or to alter or amend a judgment shall be filed, and a court may on its own order a new trial, no later than 14 days after entry of judgment. In some circumstances, Rule 8008 governs post-judgment motion practice after an appeal has been docketed and is pending.

Federal Rule of Civil Procedure 1 provides:

> These rules govern the procedure in all civil actions and proceedings in the United States district courts, except as stated in Rule 81. They should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding.

Federal Rule of Civil Procedure 81(a)(2) provides:

> These rules apply to bankruptcy proceedings to the extent provided by the Federal Rules of Bankruptcy Procedure.

STATEMENT

1. Forty-seven people in the town of Lac-Mégantic, Québec, died when an unattended train carrying volatile crude oil derailed and erupted outside their homes in the middle of the night. JA1186.[1] More than a million gallons of oil spilled into the town's streets, homes, and businesses before going up in flames, leveling a significant portion of the town. *Id.*

The families of those killed filed wrongful-death claims in Illinois and Texas state courts seeking to hold the railroads responsible for the disaster accountable for their negligence. App. 4a. Right off the bat, the railroads removed all the cases to federal district courts under the courts' bankruptcy jurisdiction. JA1489–1528. Although no party in this case was in bankruptcy and none of the plaintiffs' state-law claims relied on the Bankruptcy Code, the defendants invoked the federal courts' broad jurisdiction over proceedings "related to a case under title 11." 28 U.S.C. § 1334(b). "Related to" bankruptcy jurisdiction was satisfied, they argued, because some defendants shared insurance with a non-party debtor in a separate bankruptcy case, which might be affected by an adverse judgment. JA1000. After removal, all the cases were stayed and transferred to the United States District Court for the District of Maine under 28 U.S.C. § 157(b)(5), which confers discretion on "the district court

[1] All references to the record below are from the Joint Appendix filed with the First Circuit.

in which the bankruptcy case is pending" to "order that personal injury tort and wrongful death cases shall be tried" in that district. JA1489, 1498. The cases remained under a stay until the district court lifted it at the conclusion of the bankruptcy proceeding.

Throughout the ensuing litigation in the district court, the parties and the district judge exclusively applied the Federal Rules of Civil Procedure, not the Federal Rules of Bankruptcy Procedure, to filings in the case. *See, e.g.*, JA1420 (dismissing released parties "pursuant to Federal Rule of Civil Procedure 54(b)"); JA1425 (consolidating cases "pursuant to Federal Rule of Civil Procedure 42(a)"). The defendants moved to dismiss the complaint under (under Federal Rule of Civil Procedure 12), asserting among other things insufficient service of process (under Rule 4). JA40–41. In response, the plaintiffs moved for leave to amend their complaint (under Rule 15(a)) to include as defendants three of Canadian Pacific's United States subsidiaries. JA388. But they never got the chance: The district court simultaneously granted the railroad's motion to dismiss (employing Rule 12's standard) and denied leave to amend (employing Rule 15) based on a technical defect in the amended pleading (under Rule 8). *See* App. 21–27a. On the same day, the court entered a final judgment against the plaintiffs—effectively foreclosing relief. JA1136–61.

The plaintiffs sought to correct the technical pleading problem by moving for reconsideration under Rule 59(e) "for the limited purpose" of allowing a revised amended complaint. JA1162–69. Only then did Canadian Pacific argue—for the first time—that the case was governed by the Rules of Bankruptcy Procedure. Although Rule 59(e) permits a motion for reconsideration of a judgment to be

filed up to twenty-eight days from the date the judgment is entered, Canadian Pacific argued that Bankruptcy Rule 9023, which allows only fourteen days, instead governed the case and rendered the plaintiffs' motion untimely.

The district court summarily denied the plaintiffs' motion without ruling on Canadian Pacific's new position. App. 29a.

2. The plaintiffs appealed the district court's denial of their motion to amend to the First Circuit. JA1283–85. Canadian Pacific moved to dismiss, arguing that the plaintiffs' failure to timely file their motion under the bankruptcy rules deprived the court of appellate jurisdiction. The First Circuit agreed with Canadian Pacific, holding that the Federal Rules of Bankruptcy Procedure governed the plaintiffs' case and, therefore, their appeal was untimely.

"By their own terms," the court noted, the bankruptcy rules "govern procedure in cases under title 11 of the United States Code." App. 12a (quoting Fed. R. Bankr. P. 1001). Whether the bankruptcy rules apply to this case, it explained, thus turns on whether the phrase "cases under title 11" includes proceedings—like this one—that are merely "related to cases under title 11." 28 U.S.C. § 1334; *see* App. 3a. The court quickly concluded that Rule 1001's language was "not dispositive" on that question, holding that, "[r]ead in isolation," the rule did "not compel either a broad or a narrow reading." App. 12a. The court reached that conclusion without attempting to define the rule's key phrase—"cases under title 11"—either under its ordinary meaning or under the Bankruptcy Code.

Instead, the court found "support for a broad reading of Rule 1001" in the language of 28 U.S.C. § 157, which delimits the authority of bankruptcy judges in "core" and

"non-core" proceedings. App. 13a. The court thought it "important" that "the drafters of the rule must have been aware of the core/non-core dichotomy that Congress created." App. 12a. Section 157, it observed, permits a bankruptcy judge to "enter appropriate orders and judgments" in bankruptcy matters, including: (1) "cases under title 11" and (2) "core proceedings arising under title 11." 28 U.S.C. § 157(b)(1). The court reasoned that Congress's inclusion of both "cases under title 11" and "core proceedings arising under title 11" "lends credence to the view that these are two distinct (albeit overlapping) categories of cases." App. 13a. Without looking to established definitions of those terms of art, and without further explanation, it held that this language "strongly suggest[ed] that the procedural aspects of non-core, 'related to' cases adjudicated in federal district courts" are "cases under title 11" that "are governed by the Bankruptcy Rules." App. 14a.

What settled the matter for the court was what it saw as "the practicalities attendant to the efficient operation of the modern bankruptcy system." App. 14a. "'Related to jurisdiction," it wrote, "is designed to put everything in the same place and, thus, facilitates the efficient disposition of claims." App. 15a (cleaned up). The court found it "obvious … that the best way to effectuate this goal is for both the bankruptcy judges and the district court judges to apply the same set of procedural rules in all proceedings having a nexus to a bankruptcy case." *Id.* (quoting *Phar-Mor, Inc. v. Coopers Lybrand*, 22 F.3d 1228, 1237 (3d Cir. 1994)). Considering the text in light of that efficiency rationale, the First Circuit found it "pellucid that the Bankruptcy Rules apply to non-core, 'related to' cases adjudicated in federal district courts under section 1334(b)'s 'related to' jurisdiction." App. 20a.

The court found further support for that conclusion in the decisions of three other circuits, which likewise concluded "that it would be 'anomalous' for different rules to govern claims in the same court, given 'the bankruptcy scheme's emphasis on centralization and efficiency.'" App. 15a (quoting *Diamond Mortg. Corp. of Illinois v. Sugar*, 913 F.2d 1234 (7th Cir. 1990)); *see also Phar-Mor, Inc.*, 22 F.3d at 1237; *In re Celotex Corp.*, 124 F.3d 619 (4th Cir. 1997). "To rule otherwise," it wrote, would "create a split in the circuits." App. 20a.

Because the plaintiffs' motion "was timely if the Civil Rules controlled but untimely if the Bankruptcy Rules controlled," its holding on that issue was "outcome-determinative" here. App. 7a. Application of the bankruptcy rules triggered a "domino effect" leading to dismissal of the plaintiffs' claims for lack of jurisdiction. App. 3a. The shorter time for post-judgment motions under the bankruptcy rules made the plaintiffs' motion retroactively untimely. And because an "untimely motion for reconsideration lacked tolling effect," their appeal was also late. App. 6a. Hence, no jurisdiction.

The First Circuit recognized that the district court had never applied the bankruptcy rules, but thought that this "lack of clarity on the district court's part" did not "vitiate [its] obligation to determine which set of rules applies in this case." App. 19a. "[T]here is no room for an equitable exception," it held, "to the quintessentially legal determination of which set of rules applies to a particular case." *Id.* Accordingly, it dismissed the plaintiffs' appeal.

REASONS FOR GRANTING THE PETITION

I. This case cleanly presents a circuit split on the meaning of a key term of art in the Bankruptcy Code, with far-reaching and recurring consequences.

A. The First Circuit's reading of "cases under title 11" exacerbates an existing circuit split on the phrase's scope.

1. The Bankruptcy Code and Federal Rule of Bankruptcy Procedure 1001 provide that the bankruptcy rules govern "procedure in *cases under title 11*." Fed. R. Bankr. P. 1001 (emphasis added); *see* 28 U.S.C. § 2075. The term "cases under title 11" has a "well-understood" meaning. *In re Caldor Corp.*, 303 F.3d 161, 168 (2d Cir. 2002). For decades, courts have held that the word "case" in the Bankruptcy Code is a "term of art" that "refers to litigation 'commenced by the filing with the bankruptcy court of a petition' under the appropriate chapter of Title 11." *Id.* (quoting 11 U.S.C. §§ 301, 302, 303(b), 304(a)). In other words, it "refers merely to the bankruptcy petition itself, over which district courts (and their bankruptcy units) have original and exclusive jurisdiction." *In re Wood*, 825 F.2d 90, 92 (5th Cir. 1987); *see also, e.g.*, *In re Wolverine Radio Co.*, 930 F.2d 1132, 1141 (6th Cir. 1991).

As these courts have recognized, the Bankruptcy Code "consistently … denotes the original bankruptcy case filed under Title 11 as 'case' and applies other terms, such as 'proceedings' or 'actions,' to other causes of action." *Christo v. Padgett*, 223 F.3d 1324, 1332 (11th Cir. 2000); *see, e.g.*, 11 U.S.C. § 101(42) (defining "petition" as a "petition … commencing a case under this title"); Fed. R. Bankr. P. 1002(a) ("A petition commencing a case under the Code shall be filed with the clerk."). In 28 U.S.C.

§ 1334, for example, Congress relied on this distinction between "cases" and "proceedings" to delineate the scope of federal bankruptcy jurisdiction. Section 1334(a) grants the federal district courts exclusive jurisdiction over "cases under title 11," while section 1334(b) gives them only concurrent jurisdiction over "proceedings." Under that scheme, "the only aspect of the bankruptcy proceeding over which the district courts … have exclusive jurisdiction is 'the bankruptcy petition itself.'" *In re Brady, Tex., Mun. Gas Corp.*, 936 F.2d 212, 218 (5th Cir. 1991).

All told, seven circuits—the Second, Third, Fifth, Sixth, Eighth, Tenth, and Eleventh—have held that section 1334 incorporates that settled understanding of "cases under title 11." *See In re Caldor Corp.*, 303 F.3d at 168 (2d Cir.); *Donaldson*, 104 F.3d 547, 552 (3d Cir. 1997); *In re Wood*, 825 F.2d at 97 (5th Cir.); *In re Wolverine Radio Co.*, 930 F.2d at 1141 (6th Cir.); *In re Cassidy Land & Cattle Co., Inc.*, 836 F.2d 1130, 1132 (8th Cir. 1988); *In re Republic Trust Sav. Co.*, 897 F.2d 1041, 1044 (10th Cir. 1990); *Christo*, 223 F.3d at 1332. Indeed, even the First Circuit previously recognized that a "case under title 11 is the bankruptcy petition itself, such as a Chapter 11 reorganization." *In re Middlesex Power Equip. & Marine, Inc.*, 292 F.3d 61, 66 (1st Cir. 2002).

2. In applying the bankruptcy rules to this case, the First Circuit radically diverged from that established meaning. Relying on the text of the Bankruptcy Code and the "efficiency goals of the bankruptcy system," the court adopted a "broad construction" under which "cases under title 11" includes any proceedings subject to federal bankruptcy jurisdiction as "related to a case under title 11." 28 U.S.C. § 1334(b); *see* App. 15–17a. Because the

plaintiffs' wrongful-death claims could "conceivably" affect a bankruptcy, their case was "related to a case under title 11" and thus—under the court's logic—was also itself "a case under title 11" to which the bankruptcy rules applied.

The court justified this conclusion as necessary to avoid creating a different circuit split with decisions of the Third, Fourth, and Seventh Circuits, which had read "cases under title 11" in Bankruptcy Rule 1001 as encompassing "related to" cases in district court. *See Diamond Mortg. Corp.*, 913 F.2d 1233; *Phar-Mor, Inc.*, 22 F.3d 1228; *In re Celotex Corp.*, 124 F.3d 619. In the first of these cases, the Seventh Circuit in *Diamond Mortgage* held that plaintiffs in a state-law malpractice case in federal district court could rely on the bankruptcy rules' provision for nationwide service of process to subject out-of-state defendants to personal jurisdiction in Illinois. 913 F.2d at 1243; *see* Fed. R. Bankr. P. 7004(d) (authorizing service "anywhere in the United States"). The court saw "nothing in the literal terms" of Rule 1001 that "even remotely suggests" that it applies "differently in core and non-core proceedings." 913 F.2d at 1243. The court also relied on a policy rationale, concluding that "it would seem anomalous for different sets of procedural rules to govern related proceedings in the same court, given the bankruptcy scheme's emphasis on centralization and efficiency." *Id.* It concluded that application of the bankruptcy rules was consistent with both "these goals and the language of the rules." *Id.*

Likewise, the Fourth Circuit in *Celotex Corp.* applied the same service-of-process rule to commercial litigation, relying on *Diamond Mortgage* in holding that, "when a case is properly in federal district court on 'related to'

jurisdiction" under section 1334(b), the "entire body of Bankruptcy Rules" applies." 124 F.3d at 629.

These courts' broad reading of "cases under title 11" in Bankruptcy Rule 1001 is, at the very least, in serious tension with the decisions of other circuits that have read the same phrase in the Bankruptcy Code as limited to "the bankruptcy petition itself." *See, e.g.*, *In re Wood*, 825 F.2d at 92. Given "the interlocking nature of the bankruptcy code," its provisions must be "read to be consistent whenever possible." *In re Bateman*, 331 F.3d 821, 825 (11th Cir. 2003). And as the First Circuit noted here, "the drafters of the rule must have been aware" of how Congress used the phrase. App. 12a. Indeed, Rule 1001 just repeats verbatim the language Congress used in authorizing the Supreme Court to prescribe "practice and procedure in cases under title 11." 28 U.S.C. § 2075. It would exceed that grant of authority to give the phrase "cases under title 11" a meaning under the bankruptcy rules broader than the one Congress attributed to it.

Unlike the Fourth and Seventh Circuits, the Third Circuit in *Phar-Mor* understood that statutory meaning. In a separate section of its opinion, the court recognized that the "term 'case' refers to the general administrative proceedings in bankruptcy—that is, the actual bankruptcy case filed under the Bankruptcy Code." 22 F.3d at 1232 n.5. Despite that, the court held the bankruptcy rules applicable to "related to" proceedings "largely because" it saw the contrary result as "incompatible with the policies" of the Bankruptcy Code. *Id.* at 1236.

The Eleventh Circuit has questioned the Third Circuit's extra-textual approach, noting that the "related to" proceedings at issue in *Phar-Mor* did "not arise

directly under the substantive rules of title 11, and, therefore, may lie outside the language" the rule. *Rosenberg v. DVI Receivables XIV, LLC*, 818 F.3d 1283, 1288 (11th Cir. 2016). *Rosenberg* involved a core bankruptcy claim, so the Eleventh Circuit did not need to resolve the question. *Id.* at 1289. But it recognized that such "proceedings offer, perhaps, the most likely circumstance for applying the Federal Civil Rules." *Id.* at 1288. And it suggested, contrary to *Phar-Mor*, that application of the bankruptcy rules to such "essentially collateral matters" is appropriate only "when the case itself is a bankruptcy proceeding." *Id.* at 1288-89. At a minimum, the Third Circuit's inconsistent application in different contexts of an identical word of art creates uncertainty about the key term's meaning in the Third Circuit and its application in future cases.

Here, however, the First Circuit went further than the Third, Fourth, and Seventh Circuits by finding "support for a broad reading of Rule 1001" in the language of 28 U.S.C. § 157, a key provision of the Bankruptcy Code that sets forth the authority of bankruptcy judges in "core" and "non-core" proceedings. App. 13a. That language, it held, "strongly suggests that the procedural aspects of non-core, "related to" cases adjudicated in federal district courts are governed by the Bankruptcy Rules." App. 14a. And the drafters of Bankruptcy Rule 1001 "must have been aware" of that statutory meaning. App. 12a.

That holding is flatly at odds with the circuit decisions recognizing "cases under title 11" under the Bankruptcy Code as a term of art. This case is "not a 'case under title 11,'" as those courts have read the term, because it is not "the bankruptcy petition itself." *Wolverine Radio Co.*, 930

F.2d at 1141. The case was not commenced by filing a petition in a bankruptcy court. *See In re Caldor Corp.*, 303 F.3d at 168. And it does not invoke any provision of title 11. *See id.* Far from it: The case is "simply a state [law] action that, had there been no bankruptcy, could have proceeded in state court." *In re Wood*, 825 F.2d at 97. A case raising state-law claims and removed from state court is "clearly not a 'case under title 11' within the meaning of section 1334(a)." *Robinson v. Michigan Consol. Gas Co. Inc.*, 918 F.2d 579, 583 (6th Cir. 1990).

B. The First Circuit's holding risks significant confusion and unpredictable harm to one of the nation's most important and complex statutory schemes.

1. The core of the First Circuit's holding is that the bankruptcy rules apply to proceedings "within the federal district court's jurisdiction" under section 1334(b) "as cases 'related to' a pending bankruptcy." App. 3a. By hinging the choice of rules on the existence of "related to" jurisdiction, the opinion makes the rules' application unpredictable. The scope of that jurisdiction "is protean, and what is 'related to' a proceeding under title 11 in one context may be unrelated in another." *In re Boston Reg'l Med. Ctr., Inc.*, 410 F.3d 100, 107 (1st Cir. 2005). The jurisdiction is also extraordinarily broad, requiring only that the proceeding "could *conceivably* have any effect on the estate being administered in bankruptcy." *In re G.S.F. Corp.*, 938 F.2d 1467, 1475 (1st Cir. 1991) (emphasis added). This case is an example: Although the bankruptcy debtor was not a party to the case, and although there was "no possibility of recovery" against the debtor's estate, the district court found "related to" jurisdiction because the

debtor and some of the defendants shared an insurance policy. JA100.

The difficulty of determining "related to" jurisdiction, and thus the procedural rules that apply, is demonstrated by the fact that "[b]y far the largest number of reported cases dealing with bankruptcy jurisdiction over civil proceedings are concerned with whether a particular proceeding is 'related to' a title 11 case." 1 Collier on Bankruptcy ¶ 3.01[e][ii] (16th ed. 2010). Even if the parties and the district judge agree about which rules apply, "the subject matter jurisdiction of a federal court can be challenged at any stage of the litigation (including for the first time on appeal), even by the party who first invoked it." *In re Canion*, 196 F.3d 579, 585 (5th Cir. 1999). And under the First Circuit's opinion, there is "no room for an equitable exception to … which set of rules applies." App. 19a. The rule thus invites abuse, giving parties an incentive to sandbag opponents by sitting on their hands in the district court and arguing for a different set of rules for the first time on appeal.

"Rules, especially procedural rules, must be knowable in advance." *Wallace v. Robinson*, 914 F.2d 869, 880 (7th Cir. 1990) (Easterbrook, J., concurring). "Basic notions of due process underpin this requirement," because the "right to be heard is of little value unless the party has some point of reference in established procedural rules to guide … participation in the proceedings." *Sec. & Exch. Comm'n v. Smyth*, 420 F.3d 1225, 1232 (11th Cir. 2005). The potential for surprise application of the bankruptcy rules, however, creates numerous traps for the unwary. The civil rules, for example, calculate the deadline for answering the complaint based on the date of service, Fed. R. Civ. P. 12, while the bankruptcy rules calculate it from

the date the clerk issues the summons, Fed. R. Bankr. P. 7012. The civil rules require motions for summary judgment to be filed 30 days after the close of discovery, Fed. R. Civ. P. 56, while the bankruptcy rules require the motion to be filed 30 days before the first scheduled evidentiary hearing, Fed. R. Bankr. P. 7056. And the civil rules require motions for a new trial to be filed 28 days from entry of judgment, Fed. R. Civ. P. 59, while the bankruptcy rules require them to be filed within 14 days. *See* Fed. R. Bankr. P. 9015.

"The time of appealability, having jurisdictional consequences, should above all be clear." *Budinich v. Becton Dickinson & Co.*, 486 U.S. 196, 202 (1988). The First Circuit's rule fails to provide that clarity, thus risking the imposition of new, jurisdictional deadlines without notice. Bankruptcy Rules 9023 and 9024 halve the time for filing post-judgment motions under Rules 59 and 60, and the First Circuit's retroactive application of that shorter period here ended the plaintiffs' claims. And similar applications of different rules could create other jurisdictional problems. If a party takes advantage of the bankruptcy rules' provision for nationwide service of process, for example, that service (and resulting personal jurisdiction) could be destroyed by a later determination that the district court should have applied the civil rules. *See* Fed. R. Bankr. P. 7004(d).

2. The Fourth Circuit's opinion also risks significant confusion and unpredictable harm to Congress's carefully calibrated bankruptcy scheme by changing the meaning of "cases under title 11"—a key term of art used throughout the bankruptcy statutes and rules.

The term is central, for example, to federal bankruptcy jurisdiction. Congress granted the federal

district courts exclusive bankruptcy jurisdiction in "cases under title 11," and assigned jurisdiction over a debtor's property to the district court in the district where the "case under title 11" is pending. 28 U.S.C. § 1334(a), (e). In contrast, it gave the district courts only concurrent jurisdiction over proceedings "related to cases under title 11." *Id.* § 1334(b). But the First Circuit interpreted section 1334 to say that a proceeding "related to a case under title 11" under section 1334(b) is a kind of "case under title 11" under section 1334(a). That obliterates Congress's jurisdictional scheme.

The term plays a key role, too, in Congress's allocation of authority between district and bankruptcy courts under section 157. Under that section, "cases under title 11" are "core" matters, which bankruptcy judges have authority to "hear and determine." 28 U.S.C. § 157(b)(1). Proceedings "related to a case under title 11," however, are "non-core" matters that only a district judge may decide. *Id.* § 157(c)(1). But in interpreting section 157 here, the First Circuit held that a "related to" proceeding (a non-core matter) is a kind of "case under title 11" (a core matter). That, of course, is a "contradiction in terms." *Stern v. Marshall*, 564 U.S. 462, 477 (2011). If that were right, "the entire range of proceedings under bankruptcy jurisdiction would fall within the scope of core proceedings, a result contrary to the ostensible purpose of the 1984 Act." *In re Wood*, 825 F.2d at 95. A reading that merges those concepts, "despite Congress' longstanding efforts to *distinguish"* them, "is not a natural construction of the statute." *Hall*, 566 U.S. at 520.

But that is just the beginning of the confusion created by the decision below. The "case under title 11"—that is, "the bankruptcy petition itself"—is part of the definitional

scaffolding on which the whole Bankruptcy Code is built. The bankruptcy "case" is, among many other things, "the basis for taking control of all pertinent interests in property, dealing with that property, determining entitlements to distributions, establishing the procedures for administering the mechanism, and discharging the debtor." *In re Caldor Corp.*, 303 F.3d at 168 (cleaned up). It is part of the Code's definitions of fundamental bankruptcy concepts like the "debtor," 11 U.S.C. § 101(13), and the "estate," 11 U.S.C. § 541. Hundreds of other provisions in the Bankruptcy Code and Rules of Bankruptcy Procedure rely on the term. For example, the Code defines criminal bankruptcy fraud as knowingly making fraudulent statements in a "case under title 11." 18 U.S.C. § 152(7). Under the decision below, that includes this case.

This Court has warned that redefining bankruptcy law's "complex terrain of interconnected provisions and exceptions" threatens "ripple effects" within the "broader bankruptcy scheme." *Hall*, 566 U.S. at 523. Even "compelling policy reasons," the Court held, cannot justify that result. *Id.* The First Circuit here, however, did exactly what this Court warned against. The court sweepingly redefined a core term of art in bankruptcy without any attempt to assess the collateral consequences. And it did so while frankly acknowledging that this result was not compelled by the rules' text, but rather was driven by the court's view that expansive application of the bankruptcy rules would be more "efficient."

C. The First Circuit's policy rationale is no reason to set aside the text's established meaning.

The First Circuit gave no persuasive textual basis for reading "cases under title 11" to include proceedings that are merely "related to a case under title 11." The court correctly observed that Congress used the phrases "cases under title 11" and "core proceedings arising under title 11" in 28 U.S.C. § 157(b) to mean different things. But that does not support the court's broad reading of the Bankruptcy Code. As explained above, the Code consistently distinguishes "cases under title 11" (meaning bankruptcy petitions) from "proceedings." "Core proceedings arising under title 11" is another "term[] of art," which "'Congress used … to describe those proceedings that involve a cause of action created or determined by a statutory provision of title 11.'" *In re Eastport Assocs.*, 935 F.2d 1071, 1076 (9th Cir. 1991) (quoting *In re Wood*, 825 F.2d 96–97). Congress's use of both "cases under title 11" and "core proceedings arising under title 11" together in section 157(b) gives bankruptcy judges authority to decide matters core to the federal bankruptcy power—the bankruptcy case itself and proceedings "that arise in a bankruptcy case or under Title 11." *Stern*, 564 U.S. at 476. But it does not remotely suggest that either phrase extends to non-core matters arising under state law.

The First Circuit did not account for these established meanings. Nor did it offer any ordinary meaning of "cases under title 11" that could reasonably encompass state-law claims arising from a train accident. Even as a matter of logic, the First Circuit's reading fails. A case cannot both be a "case under title 11" and merely "related to a case

under title 11" at the same time. *See Stern*, 564 U.S. at 477 (holding that it "does not make sense to describe a 'core' bankruptcy proceeding as merely 'related to' the bankruptcy case"). "[O]xymoron is not a typical feature of congressional drafting." *Id.*

That leaves, as the remaining support for the First Circuit's holding, its view that a "broad" interpretation is "the best way to effectuate" the "efficiency goals of the bankruptcy system." App. 15a; *see* App. 14a (calling this the "sockdolager"). The court explained that, unless the bankruptcy rules apply to all cases in bankruptcy jurisdiction, "a district court adjudicating both core and non-core cases … would need to apply two different sets of rules simultaneously." App. 14a "Such a convoluted procedural scheme," it reasoned, "would be in marked tension with the bankruptcy system's goal of resolving claims efficiently." *Id.*

But there is nothing "convoluted"—much less "Rube-Goldberg-like," App. 13a—about district courts applying the Rules of Civil Procedure to a class of cases that, by definition, involve no bankruptcy claims. The cases that fall under "related to" bankruptcy jurisdiction are civil cases in which, absent the bankruptcy, nobody could object to application of the civil rules. The fortuity that the case might have some effect on a bankruptcy debtor does not make applying those rules more difficult or convoluted. The case is still fundamentally civil, and the district courts are well accustomed to applying the civil rules to civil cases and the bankruptcy rules to bankruptcy ones.

The court's view that Congress wanted "the same set of procedural rules in all proceedings having a nexus to a bankruptcy case," *id.*, ignores the reality that Congress

itself chose to require different procedures in core and non-core proceedings. Under section 157, bankruptcy judges may "hear and determine all cases under title 11" and "all core proceedings," entering "orders and judgments" subject only to appellate review in the district court. 28 U.S.C. § 157(b). But although bankruptcy judges may "hear" most non-core cases, they cannot decide them. In a proceeding "related to a case under title 11," only the district court may enter a "final order or judgment." *Id.* § 157(c)(1). The bankruptcy judge's authority is limited to submitting "proposed findings of fact and conclusions of law," subject to the district court's de novo review. *Id.*

In a personal injury or wrongful death case, a bankruptcy judge cannot even do that much. Such proceedings must "be tried in the district court," either in the district where "the bankruptcy case is pending" or in the district where "the claim arose." *Id.* § 157(b)(5). Congress thus chose to allow this category of "related to" claims—of which this case is a part—to proceed independently of the core bankruptcy case. Often, such claims cannot be heard in federal court at all. In "related to" proceedings based on state law, federal district courts—absent a separate basis for federal jurisdiction—are required to abstain in favor of state courts. 28 U.S.C. § 1334(c)(2). It makes little sense to read a statute that prohibits referral of a case to bankruptcy court, and that allows trial in another district or in state court, as signaling Congress's intent to mandate that the same rules always apply.

In any event, the First Circuit's views on the "best way to effectuate" the goals of the Bankruptcy Code are no reason to set aside Rule 1001's plain language. The federal courts "do not sit to assess the relative merits of

different approaches to various bankruptcy problems." *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 13 (2000). Where the bankruptcy laws are "coherent and consistent, there generally is no need for a court to inquire beyond the plain language." *United States v. Ron Pair Enters.*, 489 U.S. 235, 240–41 (1989). Given the well-established meaning of the phrase "cases under title 11," the court erred by relying on policy rationales to derive a different meaning. Even assuming the First Circuit is correct that efficiency concerns support a broader application of bankruptcy rules, Congress is better positioned than the courts to accomplish that end. Congress could do that by saying so directly, without the need to judicially redefine a bankruptcy term of art.

II. This case presents a second circuit split on the bankruptcy rules' applicability to appeals from a district court to a court of appeals.

Even if the First Circuit were correct that the bankruptcy rules, as a general matter, apply to civil cases like this one, it erred—and created a second circuit split—by interpreting the bankruptcy rules to foreclose the plaintiffs' appeal. Every other circuit to have addressed the question has held that Federal Rules of Bankruptcy Procedure 9023 and 9024—the bankruptcy analogues to Federal Rules of Civil Procedure 59 and 60—"appl[y] only to appeals from the bankruptcy court to the district court, and not to appeals from the district court to the court of appeals." *In re Butler, Inc.*, 2 F.3d at 155; *see In re Bli Farms, P'ship*, 465 F.3d at 658; *see also English-Speaking Union*, 353 F.3d at 1019 (explaining that Rule 9024 is designed to apply "only to bankruptcy court proceedings"). The First Circuit here held the opposite—that Rule 9023 controls in an appeal from a district court.

That circuit split independently warrants this Court's review.

In holding that "only a timely motion" under Rule 9023 "tolls the running of the appeal period," the First Circuit relied on Bankruptcy Rule 8002. App. 8a. But that rule, by its plain language, does not apply in district court. It provides that a Rule 9023 motion tolls the appeal period if timely filed "*in the bankruptcy court*." Fed. R. Bankr. Proc. 8002(b)(1) (emphasis added); *see also id.* 8002(a) (specifying the deadline for a notice of appeal "filed with the bankruptcy clerk"). That is because Part VIII of the rules, including Rule 8002, "governs the procedure … on appeal from a judgment, order, or decree of a *bankruptcy court*" to a district court in its capacity as a bankruptcy court of appeals. Fed. R. Bankr. Proc. 8001(a) (emphasis added); *see English-Speaking Union*, 353 F.3d at 1019 (Rule 8002 governs "the time for appealing from the bankruptcy court to the district court").

Just as the bankruptcy rules thus "apply to appeals … from bankruptcy courts to district courts," the "Federal Rules of Appellate Procedure generally govern bankruptcy appeals to courts of appeals." Fed. R. Bankr. P. 8001, Advisory Comm. Note. The First Circuit implicitly recognized as much when it applied the 30-day appeal period under Federal Rule of Appellate Procedure 4 rather than the 14-day period under the bankruptcy rules. The Federal Rules of Appellate Procedure provide that an "appeal to a court of appeals from a final judgment, order, or decree of a district court" under its bankruptcy jurisdiction "is taken as *any other civil appeal* under these rules." Fed. R. App. P. 6(a) (emphasis added). And in "any other civil appeal," Rule 4 provides that a motion for reconsideration under Rule 59 or 60 tolls the time to

appeal if the motion is filed "within the time allowed by those rules." *Id.* R. 4(a)(4)(A). Here, the relevant "time allowed" by Rule 59(e) is 28 days—not the 14 days provided by the bankruptcy rules.

That Rule 9023 governs only appeals from bankruptcy courts explains its shortened 14-day deadline. As the Advisory Committee's notes explain, Rule 8002's "deadline for filing a notice of appeal is 14 days." Fed. R. Bankr. P. 9023, 2009 Advisory Comm. Notes. Because application of Rule 59(e)'s 28-day deadline "would effectively override" that abbreviated appeal period, Rule 9023 applies the shortened period to mirror the 14 days to appeal. The First Circuit's imposition in this case of a deadline designed for bankruptcy appeals is illogical, does not accomplish the rule's purpose, and serves only to trap litigants.

CONCLUSION

The petition for certiorari should be granted.

Respectfully submitted,

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January 24, 2022