No. 21-1448

In the Supreme Court of the United States

DUSTIN JADE WELLS, PETITIONER

v.

KATHLEEN A. MCCALLISTER

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

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

ELIZABETH B. PRELOGAR
Solicitor General
Counsel of Record
BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General
CURTIS E. GANNON
Deputy Solicitor General
YAIRA DUBIN
Assistant to the Solicitor General
MARK B. STERN
MICHAEL SHIH
Attorneys

Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTION PRESENTED

The Bankruptcy Code authorizes debtors to claim state-law property exemptions that protect specific categories of property from prepetition creditors. 11 U.S.C. 522(b)(2) and (3). Most States have enacted some type of homestead exemption, which shields from creditors all or some of a debtor's equity in a primary residence. Some States have also enacted a related proceeds exemption, which allows a debtor to exempt the proceeds received from selling a homestead by reinvesting those proceeds in another homestead within a certain time period.

The question presented is whether, in States with a proceeds exemption, a homestead exemption to which a debtor is entitled on the date of filing for bankruptcy lapses if the debtor sells the homestead while the bankruptcy case is pending without any purpose of reinvesting the proceeds in another homestead before the end of the time period in the proceeds exemption.

TABLE OF CONTENTS

Page

Statement 1
Discussion 8
A. The court of appeals erred in concluding that an individual debtor, whether in Chapter 7 or 13, forfeits an already-established homestead exemption by selling the homestead and failing to satisfy a proceeds exemption 9
B. Further review is not warranted here 16
Conclusion 22

TABLE OF AUTHORITIES

Cases:

Cutter v. *Wilkinson*, 544 U.S. 709 (2005) 19
England v. *Golden* (*In re Golden*), 789 F.2d 698 (9th Cir. 1986) 14
Grogan v. *Garner,* 498 U.S. 279 (1991) 1
Harris v. *Viegelahn*, 575 U.S. 510 (2015) 2, 3
Law v. *Siegel*, 571 U.S. 415 (2014) 16
Lowe v. *DeBerry* (*In re DeBerry*), 884 F.3d 526 (5th Cir. 2018) 18, 20, 21
May, In re, 329 B.R. 789 (Bankr. D.N.H. 2005) 13
Myers v. *Matley*, 318 U.S. 622 (1943) 15, 16
Owen v. *Owen*, 500 U.S. 305 (1991) 3
Pasquina v. *Cunningham* (*In re Cunningham*), 513 F.3d 318 (1st Cir. 2008) 10
Richards, In re, 642 B.R. 777 (B.A.P. 6th Cir. 2022) 13
Rockwell v. *Hull* (*In re Rockwell*), 968 F.3d 12 (1st Cir. 2020), cert. denied, 141 S. Ct. 1372 (2021) 9, 20, 21
Sajkowski, In re, 49 B.R. 37 (Bankr. D.R.I. 1985) 13
Sparks, In re, No. 09-30238, 2009 WL 2824868 (Bankr. S.D. Tex. Aug. 31, 2009) 13

Cases—Continued: Page

Viegelahn v. *Frost* (*In re Frost*), 744 F.3d 384 (5th Cir. 2014) ... 17, 18, 21
White v. *Stump*, 266 U.S. 310 (1924) ... 9, 15
Wolfe v. *Jacobson (In re Jacobson)*, 676 F.3d 1193 (9th Cir. 2012) ... 6, 11, 20
Zibman v. *Tow* (*In re Zibman*), 268 F.3d 298 (5th Cir. 2001) ... 11, 14

Statutes:

Bankruptcy Code:
Ch. 5, 11 U.S.C. 501 *et seq*:
11 U.S.C. 507 ... 2
11 U.S.C. 521(a)(3) ... 2
11 U.S.C. 521(a)(4) ... 2
11 U.S.C. 522 ... 8, 9, 19
11 U.S.C. 522(b)(1) ... 4, 9
11 U.S.C. 522(b)(2) ... 3, 10
11 U.S.C. 522(b)(3) ... 3
11 U.S.C. 522(b)(3)(A) ... 4, 10
11 U.S.C. 522(b)(4)(D)(ii)(II) ... 14
11 U.S.C. 522(c) ... 3, 9, 10, 12-14, 18, 19
11 U.S.C. 522(d)(1) ... 4
11 U.S.C. 522(d)(1)-(12) ... 3
11 U.S.C. 522(*l*) ... 3, 13
11 U.S.C. 541 ... 2, 9
11 U.S.C. 541(a) ... 2
11 U.S.C. 541(a)(1) ... 9
Ch. 7, 11 U.S.C. 701 *et seq* ... 1-3, 6, 8, 9, 11, 16-21
11 U.S.C. 701-727 ... 1
11 U.S.C. 704(a)(1) ... 2
11 U.S.C. 706(a) ... 3

Statutes—Continued: Page

11 U.S.C. 726 2
Ch. 13, 11 U.S.C. 1301 *et seq.* 1-6, 8-10, 16-21
11 U.S.C. 1301-1330 2
11 U.S.C. 1304 2
11 U.S.C. 1306 .... 6, 8, 17-19, 21
11 U.S.C. 1306(a) 2, 17
11 U.S.C. 1306(a)(1) 18
11 U.S.C. 1306(b) 2
11 U.S.C. 1307(a) 3
11 U.S.C. 1307(c) 3
11 U.S.C. 1321-1328 2
11 U.S.C. 1322(a)(1) 2
11 U.S.C. 1328(a) 3
Idaho Code Ann.:
§ 55-1003 (2012) 4
§ 55-1003 (2021) 4
§ 55-1008(1) (2012) 4, 11, 12, 14
Tex. Prop. Code Ann. (2014):
§ 41.001(a) 17
§ 41.001(c) 17

Miscellaneous:

Laura B. Bartell, *The "Snapshot Rule" and Proceeds of Exempt Property in Chapter 7—Bringing a Doctrine Into Focus*, 95 Am. Bankr. L.J. 563 (2021) 10
4 *Collier on Bankruptcy* (Richard Levin & Henry J. Sommer eds., 16th ed. 2022) 3
87 Fed. Reg. 6625 (Feb. 4, 2022) 4

In the Supreme Court of the United States

No. 21-1448

DUSTIN JADE WELLS, PETITIONER

v.

KATHLEEN A. MCCALLISTER

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

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

This brief is submitted in response to the Court's order inviting the Solicitor General to express the views of the United States. In the view of the United States, the petition for a writ of certiorari should be denied.

STATEMENT

1. a. The Bankruptcy Code provides various ways for debtors in financial distress to discharge their financial obligations and obtain a "fresh start," while ensuring the maximum possible equitable distribution to creditors. *Grogan* v. *Garner,* 498 U.S. 279, 286 (1991). Individual debtors typically commence a voluntary bankruptcy case by filing a petition for relief under Chapter 7 or Chapter 13 of the Code.

Chapter 7 provides for liquidation of a debtor's assets in exchange for a prompt discharge of debts. 11 U.S.C. 701-727. The commencement of a Chapter 7 case creates an "estate" that includes (with certain excep-

tions) all of the debtor's interests in property "as of the commencement of the case." 11 U.S.C. 541(a). The debtor must surrender all non-exempt property of the estate to the trustee, who takes custody of the property, liquidates it, and distributes the proceeds to creditors in accordance with their rights and priorities under the Bankruptcy Code. 11 U.S.C. 507, 521(a)(3) and (4), 704(a)(1), 726. In exchange for forfeiting "virtually all * * * prepetition property," the debtor is entitled to the "'fresh start,'" which typically includes a discharge order that "shield[s] from creditors" the debtor's "postpetition earnings and acquisitions." *Harris* v. *Viegelahn*, 575 U.S. 510, 514 (2015).

Chapter 13 provides for the adjustment of debts of an individual with regular income. 11 U.S.C. 1301-1330. In contrast to Chapter 7, the "estate" in a Chapter 13 proceeding includes not only the property interests covered by 11 U.S.C. 541 but also "all property of the kind specified in [Section 541] that the debtor acquires after the commencement of the case but before the case is" resolved or converted. 11 U.S.C. 1306(a). That comparatively expansive definition of "estate" reflects a fundamental difference between the two chapters. Unlike in Chapter 7, a Chapter 13 debtor may retain possession of prepetition property by "propos[ing], and gain[ing] court confirmation of, a plan" to repay the debtor's debts within a certain period. *Harris*, 575 U.S. at 514; 11 U.S.C. 1304, 1306(b), 1321-1328. Because such plans are typically funded by the debtor's "future earnings or other future income," 11 U.S.C. 1322(a)(1), a Chapter 13 estate includes both prepetition property and property that is acquired during the pendency of the bankruptcy proceeding. A Chapter 13 discharge ordinarily can be achieved only after the debtor completes "all payments

under the plan," 11 U.S.C. 1328(a), which usually takes three to five years. *Harris*, 575 U.S. at 514.

In general, an individual debtor may voluntarily convert a case between Chapters 7 and 13. 11 U.S.C. 706(a), 1307(a). A court may also dismiss a Chapter 13 proceeding or convert it to Chapter 7 "for cause." 11 U.S.C. 1307(c).

b. Under both Chapter 7 and Chapter 13, a debtor may exempt certain types of property from the estate. "An exemption is an interest withdrawn from the estate (and hence from the creditors) for the benefit of the debtor." *Owen* v. *Owen*, 500 U.S. 305, 308 (1991). Generally speaking, exempted property "is not liable during or after the case for any debt of the debtor that arose * * * before the commencement of the case." 11 U.S.C. 522(c).

A debtor claims an exemption by filing "a list of property that the debtor claims as exempt." 11 U.S.C. 522(*l*). The list may contain "any property that is exempt on the filing date of the petition," and "[a]ny dispute as to the debtor's eligibility for an exemption in such property likewise is determined based on the law and facts that are applicable as of the petition date." 4 *Collier on Bankruptcy* ¶ 522.05[1], at 522-32 (Richard Levin & Henry J. Sommer eds., 16th ed. 2022). "Unless a party in interest objects," "the property claimed as exempt on such list is exempt." 11 U.S.C. 522(*l*).

The Code defines numerous default categories of property that debtors may exempt under federal law. 11 U.S.C. 522(d)(1)-(12). But a State may define its own system of exemptions as a matter of state law, which may then apply in bankruptcy. 11 U.S.C. 522(b)(2) and (3). A debtor domiciled in a State that has opted out of the federal exemptions may claim only the exemptions

provided by state and federal nonbankruptcy law. 11 U.S.C. 522(b)(1).

Federal law currently exempts up to $27,900 of a debtor's home equity. 11 U.S.C. 522(d)(1); 87 Fed. Reg. 6625, 6625 (Feb. 4, 2022) (adjusting the statutory baseline for inflation). But many States have enacted their own homestead exemptions. This case concerns Idaho's homestead exemption, which stated at the relevant time that a "homestead is exempt from attachment and from execution or forced sale for the debts of the owner up to" a value of $100,000. Idaho Code Ann. § 55-1008(1) (2012); see *id.* § 55-1003. Idaho "likewise" provides a separate exemption, lasting up to one year, for up to $100,000 of "[t]he proceeds of the voluntary sale of the homestead in good faith for the purpose of acquiring a new homestead." *Id.* § 55-1008(1).[1] If the proceeds are reinvested in a new homestead before that one-year exemption expires, then they will continue to be exempted as part of the new homestead. *Ibid.*

2. a. In 2019, petitioner filed a Chapter 13 petition in the United States Bankruptcy Court for the District of Idaho. Pet. App. 10a. Petitioner initially valued his home at $625,000 and claimed $100,000 of the equity as exempt under Idaho's homestead exemption. *Ibid.* Respondent, who is the Chapter 13 Trustee, objected to the exemption because Idaho law limits debtors to the lesser of $100,000 or the net value of the debtor's equity

---

[1] Idaho has since increased the maximum amount of the homestead exemption (and the proceeds exemption) to $175,000. Pet. App. 2a n.1 (citing Idaho Code Ann. § 55-1003 (2021)). But that amendment is inapplicable here because an exemption's availability in bankruptcy is controlled by the "State or local law that is applicable on the date of the filing of the [bankruptcy] petition." 11 U.S.C. 522(b)(3)(A).

in the home, and petitioner's property was subject to two mortgages worth more than $567,000. *Id.* at 10a-11a. In response, petitioner amended his filings by increasing his home's stated value to $668,000 and claiming as exempt "100% of the fair market value, up to any applicable statutory limit." *Id.* at 11a. Respondent did not object to the amended exemption. *Ibid.* It is thus undisputed that, when petitioner filed for Chapter 13 bankruptcy, he was entitled to claim Idaho's homestead exemption.

While his bankruptcy case was pending, petitioner negotiated a settlement with his largest creditor. Pet. App. 11a. Under the terms of the settlement, petitioner would sell his home and use the proceeds to pay the costs of sale, property taxes and other assessments, and the two mortgages. *Id.* at 24a. But petitioner did not plan to reinvest the remaining proceeds in a new homestead within the one-year limit specified by Idaho law for the proceeds exemption. *Id.* at 9a. Instead, those funds—which ultimately totaled $15,751.61 and which petitioner believed would continue to be exempted from the property of the estate—would be paid entirely to that particular creditor. See *id.* at 25a, 26a.

b. The bankruptcy court approved the home sale over respondent's objection. Pet. App. 25a-26a, 53a-63a. The court explained that petitioner was entitled to claim the homestead exemption "on the day the bankruptcy petition was filed." *Id.* at 55a. The court further noted that there were no "proceeds" to trigger Idaho's proceeds exemption at the time the petition was filed. *Id.* at 56a. The court thus held that the homestead exemption "stands," notwithstanding petitioner's decision to sell his home and not to reinvest the proceeds from

the sale in a new homestead within the period contemplated by the proceeds exemption. *Id.* at 59a.

3. The district court reversed. Pet. App. 9a-23a. The court concluded that, under binding circuit precedent, where state law makes the right to exempt proceeds from a homestead sale "contingent on [a debtor's] reinvesting the proceeds in a new homestead," the debtor "forfeit[s]" any homestead exemption by failing to comply with the reinvestment requirement—even if the debtor owned the home when the petition was filed and properly exempted the home at that time. *Id.* at 17a-18a (emphasis omitted) (quoting *Wolfe* v. *Jacobson* (*In re Jacobson*), 676 F.3d 1193, 1199 (9th Cir. 2012)). Like the debtor in *Jacobson*, petitioner had "claimed a state homestead exemption and then later, post-petition, sold the home" and "did not reinvest the proceeds." *Id.* at 17a. Accordingly, like the *Jacobson* debtor, petitioner was "foreclosed from arguing that the proceeds from his homestead sale were exempt." *Id.* at 19a.

Although *Jacobson* involved a Chapter 7 rather than Chapter 13 debtor, the district court believed that the distinction "does not help" petitioner. Pet. App. 18a. The court noted that 11 U.S.C. 1306—which applies only to Chapter 13 proceedings, see pp. 2-3, *supra*—"mandat[es] that all property coming into the debtor's possession after the commencement of the case * * * becomes property of the estate." Pet. App. 18a. Accordingly, the court posited, the fact that petitioner is a Chapter 13 debtor would, if anything, "potentially help the trustee." *Ibid.* But the court did not decide what effect Section 1306 might have on the analysis because the court believed that "under *Jacobson*," petitioner "is foreclosed from arguing that the proceeds from his

homestead sale were exempt"—regardless of which Chapter of the Code he had invoked. *Id.* at 19a.

4. a. The court of appeals affirmed. Pet. App. 1a-8a. Under *Jacobson*, the court explained, a "debtor must comply with the State's time limit for reinvesting the sales proceeds in a new homestead" "in order to retain the homestead exemption." *Id.* at 3a. The court believed that, throughout petitioner's bankruptcy proceedings, "the estate held a contingent, reversionary interest in any eventual proceeds resulting from a sale of the homestead." *Ibid.* (citation and internal quotation marks omitted). The court reasoned that "[w]hen [petitioner] sold the homestead and failed to reinvest the proceeds within the period allowed by statute, the proceeds, stripped of their exempt status, transformed into nonexempt property * * * by operation of law." *Id.* at 3a-4a (citation, emphasis, and internal quotation marks omitted).

The court of appeals noted that *Jacobson* "ha[s] been criticized, questioned, and rejected by many," including the First and Fifth Circuits. Pet. App. 5a; see *id.* at 6a-7a. And the court conceded that "[a]pplying *In re Jacobson*'s rule in a case like this one leads to arguably peculiar results":

> The federal government and some States allow a homestead exemption but allow no exemption whatsoever in sales proceeds. 11 U.S.C. § 522(d)(1). In those jurisdictions, a debtor may claim the full homestead exemption and, once the period for objecting to exemptions expires, the debtor may sell the homestead and retain all proceeds. States like California and Idaho grant debtors a *more generous* exemption by allowing debtors an additional exemption, albeit a time-limited one, in sales proceeds. Yet our ruling in

> *In re Jacobson* has the perverse result that debtors in those jurisdictions have only a contingent homestead exemption such that, practically, they have *fewer rights* during bankruptcy than debtors in other jurisdictions.

Id. at 7a. The court acknowledged that it could see "no justification in federal law, state law, or logic for that result." *Ibid.* Nevertheless, the court concluded that its precedents "require[d]" it to affirm. *Id.* at 5a.

b. The court of appeals denied petitioner's petition for rehearing en banc without a vote, though Judge Graber recommended that the petition be granted. Pet. App. 65a.

DISCUSSION

The court of appeals erred in holding that all debtors—whether in Chapter 7 or Chapter 13 bankruptcy proceedings—must comply with a state-law proceeds exemption in order to retain a homestead exemption to which they were entitled at the time they filed for bankruptcy. Under the ordinary operation of the "snapshot" rule embodied in 11 U.S.C. 522, post-petition events do not affect a debtor's entitlement to an already-established exemption. Notwithstanding that error, this case does not warrant the Court's review. It arises in the Chapter 13 context, which implicates distinct considerations and potentially a separate Bankruptcy Code provision—11 U.S.C. 1306—that was wholly ignored by the court of appeals. Petitioner has identified no conflict of authority on the question presented in the Chapter 13 context; to the contrary, both of the courts of appeals to have considered the durability of the homestead exemption in that context have reached the same conclusion. The petition for a writ of certiorari should be denied.

A. The Court Of Appeals Erred In Concluding That An Individual Debtor, Whether In Chapter 7 Or 13, Forfeits An Already-Established Homestead Exemption By Selling The Homestead And Failing To Satisfy A Proceeds Exemption

1. a. Section 541 of the Bankruptcy Code provides that the property of the estate is determined "as of the commencement of the case." 11 U.S.C. 541(a)(1). As this Court has explained, "the point of time which is to separate the old situation from the new in the bankrupt's affairs is the date when the petition is filed"; "this point of time is the one as of which * * * the status and rights of the bankrupt, the creditors[,] and the trustee * * * are fixed." *White* v. *Stump*, 266 U.S. 310, 313 (1924). That focus on the "commencement of the case" is sometimes referred to as the "snapshot" rule, "because the debtor's financial situation is frozen in time, as if someone had taken a snapshot of it." *Rockwell* v. *Hull* (*In re Rockwell*), 968 F.3d 12, 18, 20 (1st Cir. 2020) (citation omitted), cert. denied, 141 S. Ct. 1372 (2021).

Just as estate property is determined as of the petition filing date, the Code establishes that exemptions from the estate are determined as of the filing date. Section 522 creates an express link between property included and excluded from the estate, stating that exemptions from the estate apply "[n]otwithstanding section 541 of this title." 11 U.S.C. 522(b)(1). Section 522(c) further provides that property exempted from the estate is generally "not liable during or after the case for any debt of the debtor that arose * * * before the commencement of the case," reinforcing the petition date as the relevant time when the debtor's rights are fixed. 11 U.S.C. 522(c). Similarly, in permitting States to opt out of the federal exemptions, Congress limited

alternate state-law exemptions to those established by "State or local law that is applicable on the date of the filing of the petition." 11 U.S.C. 522(b)(2) and (3)(A). As petitioner emphasizes (Pet. 27)—and as respondent does not dispute (Br. in Opp. 13)—the applicable exemptions are therefore properly determined on the date of filing. See, *e.g.*, *Pasquina* v. *Cunningham* (*In re Cunningham*), 513 F.3d 318, 324 (1st Cir. 2008) ("[I]t is a basic principle of bankruptcy law that exemptions are determined when a petition is filed.").

b. In this case, there is no dispute that petitioner was entitled to claim the Idaho homestead exemption on the day he filed his Chapter 13 bankruptcy petition. See p. 5, *supra*. The exempted property then ceased to be "liable * * * for any debt of the debtor that arose * * * before commencement of the case." 11 U.S.C. 522(c). Under the ordinary operation of the snapshot rule, a later sale of the exempt property during the bankruptcy does not affect a debtor's entitlement to the homestead exemption. Rather, the relevant question is simply whether "a lien creditor [could] reach the proceeds at issue at the moment of the filing of the petition." Laura B. Bartell, *The "Snapshot Rule" and Proceeds of Exempt Property in Chapter 7—Bringing a Doctrine Into Focus*, 95 Am. Bankr. L.J. 563, 563 (2021). Because a creditor would not have been able to reach the exempted homestead interest at the moment the petition was filed, that interest was and continued to be exempt under Section 522(c)—meaning that the interest, having been excluded from the property of the estate, could not be used to satisfy prepetition debts.

2. The Ninth Circuit's contrary holding turned on the presence of an additional exemption under Idaho law, which extends to "[t]he proceeds of the voluntary

sale of the homestead" and exempts those proceeds for up to a year if the sale is made "in good faith for the purpose of acquiring a new homestead." Pet. App. 2a (quoting Idaho Code Ann. § 55-1008(1) (2012)). The court believed that this case was "control[led]" (*id.* at 3a) by its earlier decision in *Wolfe* v. *Jacobson* (*In re Jacobson*), 676 F.3d 1193 (9th Cir. 2012), which held that a Chapter 7 debtor who owned a home at the time of filing but later sold that home without complying with California's reinvestment requirement for sales proceeds lost the homestead exemption's protection, *id.* at 1199-1200.

The decision in *Jacobson*, however, was premised on the assumption that California's "reinvestment requirement for the debtor's share of the homestead sale proceeds" operated as a "condition" on the applicability of the "homestead exemption" itself. *Jacobson*, 676 F.3d at 1199; see *id.* at 1200 ("[T]he Jacobsons essentially ask us to read out the reinvestment requirement from the homestead exemption."). The court explained that "'it is the *entire* state law applicable on the filing date that is determinative' of whether an exemption applies." *Id.* at 1199 (quoting *Zibman* v. *Tow* (*In re Zibman*), 268 F.3d 298, 304 (5th Cir. 2001)). The court believed that a debtor must take the bitter with the sweet—that is, he should never be permitted to "invoke one part" of an exemption while "ignor[ing] another part." *Id.* at 1200. Because the debtor's right to retain the proceeds from selling his home was, in the Ninth Circuit's view, "contingent" on their reinvestment, the debtor "forfeited the exemption" by failing to buy another home within the statutory window. *Id.* at 1199.

But that premise finds no support in the Idaho law at issue in this case. Nothing in the state statute sug-

gests that the proceeds provision operates as an ongoing limitation on the availability of the homestead exemption for a debtor who still owned a homestead at the time the bankruptcy petition was filed. Rather, the more natural reading of Idaho law is that it affords two distinct homestead-related exemptions for debtors in different circumstances. First, Idaho law exempts a portion of a debtor's equity in the homestead itself if the debtor owns the homestead at the time the petition is filed. See Idaho Code Ann. § 55-1008(1) (2012) (providing that "the homestead is exempt from attachment and from execution or forced sale for the debts of the owner"). Second, Idaho law allows a debtor who, before filing for bankruptcy, voluntarily sells his homestead in good faith for the purpose of reinvesting the proceeds in a new homestead to "likewise" exempt a portion of the proceeds for up to one year, during which the proceeds can be reinvested in a new homestead and thereafter be exempted as part of the new homestead. See *ibid.* But neither the court of appeals nor respondent has identified anything in Idaho law that makes eligibility for the homestead exemption—once established—contingent on the debtor's retaining possession of the home after filing for bankruptcy or reinvesting any sale proceeds in another homestead within a year.

This case thus does not implicate the "bitter with the sweet" principle on which *Jacobson* relied. Rather, the relevant question is whether a debtor's already-established entitlement to an exemption on the petition filing date is affected by post-petition events. And pursuant to the usual "snapshot" analysis applicable under Section 522(c)—which provides that, once a debtor has properly claimed an exemption, the exempted property "is not liable during or after the case for any debt of the

debtor that arose * * * before the commencement of the case," 11 U.S.C. 522(c)—the answer to that question is no. See pp. 9-10, *supra*; see also 11 U.S.C. 522(*l*) ("Unless a party in interest objects, the property claimed as exempt on [the debtor's list of exempt property] is exempt.").

Not only is that reading more consistent with Idaho law, but it avoids the "arguably peculiar" results that the Ninth Circuit conceded would flow from its contrary holding. Pet. App. 7a. The court of appeals recognized that its holding created anomalous distinctions between States like Idaho (which exempt both a still-owned homestead and the proceeds from selling a homestead) and the federal government and other States (which exempt only the still-owned homestead). See *ibid.* Although the latter grant no protection "whatsoever in sales proceeds," it is undisputed that a debtor in those jurisdictions who owns a home at the time of filing for bankruptcy will retain the homestead exemption's protection even if the home is then sold during the pendency of the bankruptcy. *Ibid.*; see*, e.g.*, *In re Richards*, 642 B.R. 777, 785 n.8 (B.A.P. 6th Cir. 2022) ("[A] postpetition sale of the residence and retention of the proceeds does not affect its exempt character under [the federal homestead exemption]."); accord *In re May*, 329 B.R. 789, 792 (Bankr. D.N.H. 2005); *In re Sparks*, No. 09-30238, 2009 WL 2824868, at *1-*2 (Bankr. S.D. Tex. Aug. 31, 2009); *In re Sajkowski*, 49 B.R. 37, 39-40 (Bankr. D.R.I. 1985). As the Ninth Circuit acknowledged, it is difficult to justify "in federal law, state law, or logic" a result that is less debtor-friendly simply because a State has chosen to be more generous by exempting not only currently owned homesteads but also the proceeds from recent homestead sales. Pet. App. 7a.

Of course, nothing in the Bankruptcy Code *precludes* a State from creating an exemption that turns on events that may occur after a debtor files for bankruptcy. Cf. 11 U.S.C. 522(b)(4)(D)(ii)(II) (federal bankruptcy exemption creating a right to exempt IRA rollover distributions if the debtor takes certain post-petition actions within a certain timeframe). For example, the analysis might look different for an Idaho debtor who sold his home *before* filing for bankruptcy. In that circumstance, Idaho law would not grant the debtor a perfected homestead exemption at the time of filing. Instead, under Idaho's proceeds exemption, the debtor would potentially possess the right to exempt up to $100,000 of the proceeds of the home sale for up to a year if the sale was made "in good faith for the purpose of acquiring a new homestead," and that exemption would lapse if the proceeds were not reinvested in a new homestead before the end of the year. Idaho Code Ann. § 55-1008(1) (2012). Both the Ninth and Fifth Circuits have held that the expiration of an analogous proceeds exemption in that circumstance is fully consistent with Section 522(c) because the property would not actually have been exempt on the bankruptcy filing date. See *England* v. *Golden* (*In re Golden*), 789 F.2d 698, 699-701 (9th Cir. 1986) (holding that debtor who sold homestead before filing for bankruptcy and who failed to comply with applicable reinvestment provision could not retain California exemption for sales proceeds); *Zibman*, 268 F.3d at 303-304 (same for Texas proceeds exemption). But here, as explained above, the Ninth Circuit erred in assuming that the existence of a proceeds exemption renders the underlying homestead exemption itself unperfected, when nothing in Idaho law compels that result.

3. Respondent contends (Br. in Opp. 13-14) that the Ninth Circuit's holding finds support in this Court's decisions in *White* v. *Stump*, 266 U.S. 310 (1924), and *Myers* v. *Matley*, 318 U.S. 622 (1943). That is incorrect.

In *White*, this Court considered an earlier version of the Idaho homestead exemption that was conditioned on the execution of a "declaration that the land is both occupied and claimed as a homestead." 266 U.S. at 311. The debtor in *White* filed for bankruptcy but failed to execute the required declaration until a month later. *Ibid.* The Court explained that "the point of time which is to separate the old situation from the new in the bankrupt's affairs is the date when the petition is filed." *Id.* at 313. Because the debtor lacked a "present right" to claim the homestead exemption on the date of filing, the Court held that the debtor could not claim the exemption after executing the declaration a month later. *Ibid.*

Myers involved a Nevada homestead exemption that, like the Idaho exemption at issue in *White*, state law conditioned on the execution of a declaration. 318 U.S. at 626-627. But unlike the Idaho exemption (which "arose when the declaration was filed and not before," *id.* at 625), the Nevada exemption could be claimed on the filing date so long as the declaration was recorded "at any time before actual sale under execution," *id.* at 627-628. Because "the right to make and record the necessary declaration of homestead existed in the bankrupt at the date of filing the petition," the Court held that the debtor's "assertion of that right before actual sale in accordance with state law did not change the relative status of the claimant and the trustee subsequent to the filing of the petition." *Id.* at 628. Rather, "the bankrupt's right to a homestead exemption becomes fixed at the date of the filing of the petition in bankruptcy and

cannot thereafter be enlarged or altered by anything the bankrupt may do." *Ibid.*

Taken together, *White* and *Myers* demonstrate that, when determining whether a debtor is entitled to claim a state-created exemption, the court must consider the contours of that particular exemption as defined by state law. But neither *White* nor *Myers* is relevant to the separate question of how the State has in fact defined the exemption in question. And here, as explained above, see pp. 12-14, *supra*, Idaho's proceeds exemption is best read not to operate as an additional condition on the availability of the homestead exemption for a debtor who owns a homestead at the time of the bankruptcy petition, but as a separate exemption that is available to a debtor who sold his homestead in the year before filing for bankruptcy. *White* and *Myers* thus provide no support for the Ninth Circuit's contrary rule.

This Court's more recent decision in *Law* v. *Siegel*, 571 U.S. 415 (2014), is of a piece. *Law* confirmed that state-law exemptions come with whatever strings may be attached: "It is of course true that when a debtor claims a state-created exemption, the exemption's scope is determined by state law, which may provide that certain types of debtor misconduct warrant denial of the exemption." *Id.* at 425 (emphasis omitted). But the Court did not put a thumb on the scale or otherwise dictate how to determine the scope of a state-law exemption that is otherwise consistent with the Code.

B. Further Review Is Not Warranted Here

Notwithstanding the court of appeals' error, this case does not warrant this Court's review. As respondent emphasizes (Br. in Opp. 2, 8-12), it arises in the Chapter 13, rather than the Chapter 7, context. A Chapter 13 proceeding raises distinct considerations

and implicates distinct Bankruptcy Code provisions. Moreover, there is no conflict among the circuits about a Chapter 13 debtor's entitlement to retain a homestead exemption when a home is sold after the filing for bankruptcy and the debtor does not reinvest the proceeds in accordance with an applicable state-law proceeds exemption.

1. Unlike the Chapter 7 debtor in *Jacobson*, petitioner filed for Chapter 13 protections. The Bankruptcy Code provides that a Chapter 13 estate—but not a Chapter 7 estate—includes "all property * * * that the debtor acquires after the commencement of the case but before the case is" either resolved or converted to Chapter 7. 11 U.S.C. 1306(a). The Code's more-expansive definition of a Chapter 13 estate reflects the fundamentally different bargain at the heart of Chapter 13; whereas a Chapter 7 debtor forfeits virtually all property in exchange for a clean post-petition slate, a Chapter 13 debtor may retain property in return for committing to repay debts using both prepetition property and the additional income and property acquired during the pendency of the bankruptcy proceeding. See pp. 2-3, *supra*.

The Fifth Circuit has concluded that, in the Chapter 13 context, Section 1306 means that a debtor forfeits a homestead exemption by failing to reinvest the proceeds of a post-petition home sale. Thus, in *Viegelahn* v. *Frost* (*In re Frost*), 744 F.3d 384 (5th Cir. 2014), a Chapter 13 debtor claimed a homestead exemption under Texas law when he filed his bankruptcy petition. *Id.* at 386. The debtor later sold his home but "did not reinvest the proceeds in a new homestead" within the applicable statutory window. *Id.* at 385; see Tex. Prop. Code Ann. § 41.001(a) and (c) (2014). The Fifth Circuit

held that those proceeds lost their exempt status and reverted to the estate. *Frost*, 744 F.3d at 387-388.

A few years later, in *Lowe* v. *DeBerry* (*In re DeBerry*), 884 F.3d 526 (5th Cir. 2018), the court held that a Chapter 7 debtor who validly exempted a homestead at the time of filing but later sold the home was able to retain the exemption's protection; because the homestead was "owned on the date of [the debtor's] filing," it "was subject to an unconditional exemption under Texas law." *Id.* at 529 (citation and internal quotation marks omitted). The court distinguished *Frost* on the ground that it "was a Chapter 13 case, which turns out to be a key distinction." *Id.* at 530. Chapter 13, the court explained, "contains a provision mandating that all property 'the debtor acquires after the commencement of the case but before the case is closed, dismissed, or converted' becomes part of the Chapter 13 estate," whereas "Chapter 7 contains no similar provision." *Ibid.* (quoting 11 U.S.C. 1306(a)(1)). The two Chapters "treat postpetition transactions differently." *Ibid.*

The Fifth Circuit did not consider, however, the substantial additional question of how Section 1306 and Section 522(c) interact. Nothing in Section 1306 explicitly refers to—let alone overrides—the snapshot approach in Section 522(c), which applies to both Chapter 7 and Chapter 13 bankruptcies, and which provides that property validly exempted at the time of filing remains exempted despite subsequent developments. See pp. 9-10, *supra*. Accordingly, even if the proceeds of the subsequent homestead sale were best understood to be "property * * * acquire[d] after the commencement of the case" that must be reintegrated into the estate under 11 U.S.C. 1306, a debtor could contend that Section

522(c) continues to protect from execution the amount validly exempted.

Here, too, the decision below did not address the import of Section 1306 or the relationship between Sections 1306 and 522(c), likely because the Ninth Circuit believed that all debtors in all States with proceeds exemptions are required to comply with the terms of those exemptions if they sell their homestead during the pendency of the bankruptcy, regardless of whether they filed under Chapter 7 or Chapter 13. See pp. 10-14, *supra*. The petition for a writ of certiorari also largely fails to distinguish between Chapter 7 and Chapter 13. See Pet. i ("The question presented is whether a homestead exemption to which a debtor is entitled on the date he files for bankruptcy can vanish if the debtor sells his homestead during the pendency of bankruptcy proceedings and does not reinvest the proceeds in another homestead.").

As a result, and regardless of the merits of the Fifth Circuit's interpretation of Section 1306, this case is a poor vehicle to address the question presented by petitioner. The need for this Court to consider the intersection of Sections 522 and 1306 in the first instance in order to determine whether petitioner is entitled to retain the exempted property interest weighs strongly against review. See *Cutter* v. *Wilkinson*, 544 U.S. 709, 718 n.7 (2005) ("[W]e are a court of review, not of first view[.]").

2. For similar reasons, petitioner is incorrect in contending that this case implicates a conflict among the courts of appeals on whether a homestead exemption to which a debtor is entitled on the date he files for bankruptcy "vanish[es]" if the debtor sells his home during the bankruptcy proceedings and does not reinvest the sale proceeds in another homestead. Pet. i.

As petitioner correctly notes (Pet. 15-22), there is a 1-to-2 split on that question in the Chapter 7 context. The Ninth Circuit has held that a Chapter 7 debtor's homestead sale proceeds "lose their exempt status" if they are not reinvested in a new homestead within the applicable state-law statutory window. See *Jacobson*, 676 F.3d at 1198. The First Circuit, by contrast, has rejected *Jacobson* as "unpersuasive." *Rockwell*, 968 F.3d at 23. In the First Circuit's view, a "homestead exemption taken on the day [the debtor] filed for bankruptcy must be viewed as unchanging, even in the face of his later sale of the property." *Id.* at 20. The Fifth Circuit agrees, holding that "the proceeds of a homestead sold after the filing of a petition for Chapter 7 bankruptcy remain exempt from the debtor's estate" because the homestead "was owned at the commencement of [the debtor's] bankruptcy." *DeBerry*, 884 F.3d at 527, 530; p. 18, *supra*. *Jacobson*'s contrary rule, the court reasoned, would "transform" the proceeds exemption from a provision "that extends the homestead exemption to some situations when the home is not owned on the filing date into one that limits the homestead exemption even when the debtor owns the home on the filing date." *DeBerry*, 884 F.3d at 529.

But, as relevant here, there is no disagreement among the courts of appeals as to whether a Chapter 13 debtor similarly loses his entitlement to a state-law homestead exemption if he sells his home after filing for bankruptcy and does not reinvest the proceeds in a new homestead within the applicable statutory window. Rather, the only two courts of appeals to have addressed that question—the Ninth and Fifth Circuits—*agree* that a Chapter 13 debtor loses the homestead exemption in those circumstances. See Pet. App. 3a; *Frost*,

744 F.3d at 387-388 & n.2. The decision below thus neither creates nor implicates a conflict among the courts of appeals.

Petitioner contends that the First Circuit has rejected *Frost* as "unpersuasive." Cert. Reply Br. 3 (quoting *Rockwell*, 968 F.3d at 23). But *Rockwell* expressly limited its holding to the Chapter 7 context in which that bankruptcy proceeding arose. See 968 F.3d at 22 ("[W]e must view this as what it is: a Chapter 7 case."). And the First Circuit specifically reserved the question of what result should obtain in the Chapter 13 context, explaining that it did "not decide whether sale proceeds continue to be exempted under the Maine homestead exemption if the six-month period expires after the petition date in a Chapter 13 case." *Id.* at 22 n.7.

Petitioner further asserts (Cert. Reply Br. 4) that the distinction between Chapter 13 and Chapter 7 is immaterial. But the Fifth Circuit disagrees. Compare *Frost*, 744 F.3d at 385 (holding that a Chapter 13 debtor lost the protection of Texas's homestead exemption by failing to comply with Texas's proceeds provision), with *DeBerry*, 884 F.3d at 529 (holding that a Chapter 7 debtor retained the exemption in similar circumstances). And, at least in the Fifth Circuit's view, that distinction draws some support from the text of Section 1306. See p. 18, *supra*. Insofar as this Court is inclined to consider the correctness of the Ninth Circuit's *Jacobson* rule, it should do so in the Chapter 7 context, where a conflict exists and Section 1306 would play no role in the analysis. At a minimum, further percolation is warranted to aid the Court's consideration and resolution of the question presented in the Chapter 13 context.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

ELIZABETH B. PRELOGAR
Solicitor General
BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General
CURTIS E. GANNON
Deputy Solicitor General
YAIRA DUBIN
Assistant to the Solicitor General
MARK B. STERN
MICHAEL SHIH
Attorneys

MARCH 2023