No. 21-6898

IN THE
Supreme Court of the United States

JASPER STEVENS
AND BRENDA LOUISE MURRAY STEVENS,

Petitioners,

v.

ROBERT S. WHITMORE,

Respondent

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

In Bankruptcy, as provided for in 11 U.S.C. §554(c), "unless the court orders otherwise", a trustee can abandon an asset to a debtor if the asset is both "scheduled under section 521(a)(1) of this title" and is "not otherwise administered at the time of the closing" of the bankruptcy case.

11 U.S.C. § 521(a)(1) refers to seven documents, including: "a list of creditors"; "a schedule of assets and liabilities"; "a schedule of current income and current expenditures"; and "a statement of the debtor's financial affairs". In this case, the United States Court of Appeals for the Ninth Circuit held that "absent Trustee or court action, to be abandoned under §554(c), property must be scheduled on a schedule, not just listed on the [statement of the debtor's financial affairs]." In so doing, the Ninth Circuit created a circuit-split and exposed millions of citizens to revocation of the "fresh start" provided for by the Bankruptcy Code.

The Question Presented is:

Whether an asset can be abandoned to a debtor where (1) the asset is not administered prior to the closing of the bankruptcy case; and (2) the asset is scheduled only in the "statement of the debtor's financial affairs"?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

RELATED CASES

Related cases are:

(1) Chapter 7 Bankruptcy, *Jasper Stevens and Brenda Louise Murray Stevens,* No. 6:17-bk-15301-MH, in the U.S. Bankruptcy Court for the Central District of California. Judgment entered November 25, 2019.

(2) No. 19-1325, *Jasper Stevens and Brenda Louise Murray Stevens v. Robert S. Whitmore,* in the Ninth Circuit Bankruptcy Appellate Panel. Judgment entered July 2, 2020.

(3) No. 20-60044, *Jasper Stevens and Brenda Louise Murray Stevens v. Robert S. Whitmore,* in the U.S. Court of Appeals, Ninth Circuit. Judgment entered October 19, 2021.

(4) No. MCC1600867, *Stevens vs Ocwen Loan Servicing, LLC,* in the California Superior Court, Riverside County. Dismissed on August 19, 2019.

(5) No. E074922, (*Stevens vs Ocwen Loan Servicing, LLC*), in the California Court of Appeal, Fourth District. This appeal of the dismissal of MCC1600867 is currently pending.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion below is in Ninth Circuit, Case No. 20-60044, which has been designated for publication but is not yet reported. The Bankruptcy Appellate Panel's ("BAP") opinion is published at 617 B.R. 328.

JURISDICTION

The Ninth Circuit entered judgment on October 19, 2021 and rehearing and rehearing en banc were timely filed and denied on December 1, 2021. This Court has jurisdiction under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

Article 1, Section 8, Clause 4 of the United States Constitution authorizes Congress to enact "Uniform Laws on the subject of Bankruptcies throughout the United States."

The statutory provision under consideration is:

11 U.S.C. § 554. Abandonment of property of the estate.

* * *

(c) Unless the court orders otherwise, any property scheduled under section 521(a)(1) of this title not otherwise administered at the time of the closing of a case is abandoned to the debtor and administered for purposes of section 350 of this title.

STATEMENT

This case turns on the interpretation of the phrase, "scheduled under section 521(a)(1) of this title". A correct interpretation directly determines whether the bankruptcy court properly authorized Ch. 7 Trustee Robert S. Whitmore ("Trustee") to settle debtors Jasper Stevens and Brenda Stevens ("Debtors") legal claims against Ocwen Loan Servicing, LLC ("Ocwen"). A misinterpretation exposes millions of citizens to revocation of the "fresh start" required by the Bankruptcy Code.

Debtors filed a pro se complaint against Ocwen in the Riverside County Superior Court of the State of California. The operative complaint states claims for negligence, unfair business practices, and fraud under California law[1]. Pet.App. 3a

When Debtors filed for Chapter 7 bankruptcy, they disclosed these legal claims against Ocwen in their Statement of Financial Affairs under Section 521(a)(1)(B)(iii). The Trustee investigated these claims and decided not to administer them. The Debtors' bankruptcy was discharged and the case was closed. Under Section 554(c), those claims were "abandoned to the debtor[s]" because they were "scheduled under section 521(a)(1)" and not "administered at the time of the closing of [the] case." 11 U.S.C. § 554(c). Nevertheless, when Ocwen tried to secure a settlement with the Trustee nearly two years later, the bankruptcy case was reopened, and the bankruptcy court (28 U.S.C. §§ 1334 and 157(b)(2)(A) and (O)), the Ninth Circuit

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[1] *Stevens v. Ocwen Loan Servicing, LLC,*
No. MCC1600867 (Cal. Super. Ct. Riverside Cty.)

Bankruptcy Appellate Panel (28 U.S.C. § 158), and the Ninth Circuit Court of Appeals (28 U.S.C. § 158(d)(1)) ruled that the Trustee retained authority to dismiss and settle the Ocwen claims, holding that "absent Trustee or court action, to be abandoned under § 554(c), property must be scheduled on a schedule, not just listed on the [debtor's statement of financial affairs]."[2] Pet.App. 4a-7a.

In stark contrast, the Third Circuit Court of Appeals has squarely rejected that hyper-technical interpretation as "inconsistent with the Bankruptcy Code in letter, and intolerable in practice." *In re Kane*, 628 F.3d 631, 643 (3d Cir. 2010).

While the Ninth Circuit panel held that "§ 554(c) requires property to be disclosed on a literal schedule," Pet.App. 3a, the Third Circuit has squarely held just the opposite. In *Kane*, the Third Circuit considered a contingent claim arising from a lawsuit that—like the Ocwen litigation here—"was absent from Schedule B," but was "listed by docket number and described as 'pending,' on [the debtor's] financial statement", just as here. 628 F.3d at 641. Emphasizing that a "'debtor's burden [is limited] to reasonable diligence in completing schedules,'" the Third Circuit held that the SOFA disclosure was sufficiently scheduled for abandonment purposes, especially "in the face of the Trustee's acquiescence" to the disclosure. *Id.* at 643 (alteration in original; citation omitted).

As in *Kane*, the Trustee in this case concedes that Debtors disclosed the Ocwen litigation to him in their Statement of Financial Affairs (SOFA) and at the creditor's

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[2] Debtors have challenged that dismissal, and their challenge is currently pending before the California Court of Appeal. *See Stevens v. Ocwen Loan Servicing, LLC*, No. E074922 (Cal. Ct. App. filed Mar. 18, 2020).

meeting, and that he reviewed copies of the pleadings, fully evaluated the lawsuit's merits, determined it "was not valuable for the estate to pursue," and filed a report finding "no property available for distribution" and deeming the estate "fully administered". Pet.App. 4a. And the Trustee does not dispute that, because he never told Debtors to amend their schedules or even suggested they lacked authority to pursue the Ocwen claims, they spent the next *two years* litigating against Ocwen, and the bankruptcy case was reopened only after Ocwen convinced the Trustee to seize control of the lawsuit to accept a sweetheart settlement. Pet.App. 4a-5a. The Ninth Circuit's ruling is based entirely on a technicality that unjustifiably rewards Ocwen.

The panel's narrow approach conflicts with how other Ninth Circuit panels and other Circuit Courts determine whether property has been sufficiently "scheduled." In *Cusano v. Klein*, 264 F.3d 936 (9th Cir. 2001), a prior panel of the Ninth Circuit held that an asset is sufficiently "scheduled" so long as the disclosure is "not so defective that it would forestall a proper investigation of the asset." 264 F.3d at 946. While the asset in *Cusano* happened to have been disclosed on a piece of paper entitled "Schedule," the *Cusano* court gave no hint that a different rule would apply to an asset disclosed on a different piece of paper where, as here, the disclosure prompts the trustee to conduct a "proper investigation of the asset." *Id.* Indeed, disclosure of property "on the SOFA" equally gives "the trustee and the bankruptcy court . . . sufficient notice to take steps to protect the creditors' interest." *Ashmore v. CGI Grp., Inc.*, 923 F.3d 260, 281 (2d Cir. 2019).

In *Furlong*, the First Circuit likewise held that, for "partially-scheduled claim[s]" on a "schedule," a debtor need only "'do enough itemizing to enable the trustee to determine whether to investigate.'" 660 F.3d at 87 (citation omitted). Here, too, there was no hint a different rule would apply to claims scheduled only on a SOFA. As the Third Circuit recognized in *Kane*, "[t]he facts of [a case like *Furlong*] do not map precisely onto those here, but its logic does." 628 F.3d at 642.

In *Spaine v. Cmty. Contacts, Inc.* (7th Cir. 2014), the Seventh Circuit held that "incomplete schedules" can be "timely corrected [even] through an oral disclosure" at the creditors' meeting. 756 F.3d at 547. Given that Debtors freely "discussed" the Ocwen claims with the Trustee at the creditors' meeting, those claims would have been deemed properly scheduled—and abandoned—under the Seventh Circuit's rule. Pet.App. 4a.

The square conflict with the Third Circuit is sufficient reason to grant certiorari. The Constitution demands "uniform Laws on the subject of Bankruptcies throughout the United States," U.S. Const. art. I, § 8, cl. 4, and the Ninth Circuit panel's opinion has destroyed that uniformity among the Circuit Courts.

But the panel has cemented the need to clarify the question presented to this Court by creating additional conflicts with how a prior panel of the Ninth Circuit and two more Circuits determine whether property is "scheduled."

The Ninth Circuit panel reached the wrong result in this case and, more importantly, set bad precedent that promises to deprive scores of other debtors of the fresh start required by Congress. Absent correction by this Court, future trustees—

like the trustee here—will be allowed to swoop in years after a bankruptcy case has closed and take away from debtors assets that the trustee was on notice of, fully investigated, and intentionally did not administer. Pet.App. 4a. This opens the bankruptcy system to potential abuse, since trustees receive a commission on assets that they administer. 11 U.S.C. § 326(a).

The decision in the Ninth Circuit is all but guaranteed to prompt lower courts throughout the country to ignore the proper interpretation of § 554(c) in the future. This likelihood is increased by the fact that many who file for bankruptcy do so in pro se and are unable financially or otherwise to defend against misinterpretations of the Bankruptcy Code's abandonment rules, which misinterpretations may be used as litigation tactics against unwary debtors.

Between 2016 and 2020, an average of 734,684 bankruptcies (Chapters 7, 11, and 13) were filed in the United States *each year*. (uscourts.gov) Due to the circuit-split caused by the Ninth Circuit's ruling, many of these individuals stand to be adversely affected. Or, at a minimum, the individuals who file for bankruptcy will find that abandonment of assets will be determined by the rulings in the individual Federal or Circuit Courts where they live. Thus, a debtor's place of residence, and not a proper and uniform interpretation of abandonment rules, will determine which assets can be kept by the debtor and which ones cannot.

There is no uniformity nationally on this federal issue. Already, many lower courts (including bankruptcy and district courts) throughout the country have ruled differently than the Ninth Circuit on this issue of whether scheduling an asset on the

statement of debtor's financial affairs satisfies the abandonment requirement of 11 U.S.C. § 554(c). Pet.App. 7a.

The rule coming out of these and other recent cases is that "[p]artially scheduled assets *can* be abandoned by operation of Section 554(c), so long as the partial scheduling is sufficient to enable the trustee to determine whether he ought to investigate further." *Hart*, 616 B.R. at 832; accord *In re Bernstein*, 525 B.R. 505, 509 (Bankr. N.D. Ga. 2015); *Krachun*, 2015 WL 4910241, at *4; *Fortenberry*, 515 B.R. at 829 & n.1; *Hill*, 195 B.R. at 150; *Osadon v. C&N Renovation, Inc.*, No. 05-17-00453-CV, 2018 WL 2126821, at *3 (Tex. App. May 9, 2018). In fact, the Ninth Circuit Bankruptcy Appellate Panel itself recently held that an asset "not list[ed] . . . in [the debtor's] Schedule B," but "list[ed] . . . in his Statement of Financial Affairs" is abandoned by operation of Section 554(c). *In re Tadayon*, No. NV-18-1119-BKuTa 2019 WL 1923044, at *1, *7 (B.A.P. 9th Cir. Apr. 29, 2019).

The Ninth Circuit's construction incentivizes trustees to shirk their fiduciary duties and shift the blame to debtors like those here. Pet.App. 11a, 18a-19a. But given *a trustee*'s duties to be accountable for all disclosed property and to ensure a debtor's disclosures are complete, it is "inconsistent with the Bankruptcy Code" and "intolerable in practice" to require *a debtor* "'to supervise and double check the actions of the trustee.'" *In re Kane*, 628 F.3d 631, 643 (3d Cir. 2010) (citation omitted). Pet.App. 48a-51a.

One of the fundamental purposes of bankruptcy is to allow the honest but unfortunate debtor to address his debts in the manner most beneficial to himself and

his creditors and move on from bankruptcy free from the crushing burden of financial distress. In furtherance of that goal, the Bankruptcy Code places a burden on the trustee to abandon assets he believes will not benefit the estate. This provision allows the debtor to proceed with the confidence that once his bankruptcy has been fully administered and closed, his assets will not be subject to the trustee's renewed efforts to liquidate them for the benefit of the estate.

The Ninth Circuit's ruling elevates form over substance and deprived the Debtors of bankruptcy's promised fresh start. The same outcome will repeatedly befall countless debtors across the country if the Ninth Circuit's narrow view is allowed to stand.

The Ninth Circuit's ruling encourages a case trustee to ignore his statutory duties to investigate assets of the estate, § 704(a)(4), and collect and reduce to money estate assets, § 704(a)(1). This outcome is contrary to the policies behind the Bankruptcy Code. The honest but unfortunate debtor is penalized for not complying in a technical sense with an ambiguous statute, yet a non-diligent trustee is rewarded with a commission for administering an asset which he chose not to pursue, despite having ample information to do so.

The Ninth Circuit's ruling also allows a third-party defendant, such as Ocwen here, to employ an untoward litigation strategy. Despite having notice of the Debtors' bankruptcy, *for years* it never challenged their standing to pursue the litigation post-petition against it. Pet.App. 4a. Once the lawsuit survived the pleading challenges and the possibility of a jury verdict for emotional distress and punitive damages

loomed on the horizon, Ocwen then looked to the Trustee as an easy mark to accept a settlement far below the value the debtors had created with their diligent efforts. Ocwen sought settlement through the back door on a claim it could not defeat head on in the litigation. Pet.App. 4a-5a. This bad faith tactic is certainly contrary to the quick and efficient administration of estates encouraged by the bankruptcy system.

This Court's supervisory role should therefore be invoked to ensure that Congress' desire to enact "Uniform Laws on the subject of Bankruptcies throughout the United States" is fully realized. Doing so will also spare lower courts countless hours of litigation that will be spent if uniformity is not achieved through a ruling by this Court.

REASONS FOR GRANTING THE WRIT

I. The Decision Below Departs From the Intent and Legislative History of § 554

A. Intent of § 554

The Bankruptcy Code states that when a debtor files for Chapter 7 bankruptcy, "all legal or equitable interests of the debtor in property as of the commencement of the case" becomes property of the estate, 11 U.S.C. § 541(a)(1), and a trustee is appointed to "collect and reduce to money the property of the estate" for distribution to creditors, and to "close such estate as expeditiously as is compatible with the best interests of parties in interest," *id.* § 704(a)(1); see also *id.* § 1104 (appointment of trustee). Because "[b]ankruptcy proceedings are intended to grant debtors a 'fresh start,'" *Goudelock v. Sixty-01 Ass'n of Apartment Owners*, 895 F.3d 633, 637 (9th Cir.

2018) (citation omitted), "property acquired . . . by the debtor after the commencement of the case" generally remains property of the debtor, 11 U.S.C. § 552(a). This includes assets the trustee decides not to liquidate before closing the case, which the law deems "abandoned" to the debtor. 11 U.S.C. § 554.

To facilitate the trustee's inquiry into and administration of estate property, debtors normally are required to file a series of attachments to their bankruptcy petition under Section 521(a)(1)—including "a list of creditors," 11 U.S.C. § 521(a)(1)(A), "a schedule of assets and liabilities," *id.* § 521(a)(1)(B)(i), "a schedule of current income and current expenditures," *id.* § 521(a)(1)(B)(ii), "a statement of the debtor's financial affairs," *id.* § 521(a)(1)(B)(iii), and other forms about employment, income, and expenses, see *id.* § 521(a)(1)(B)(iv)–(vi). These attachments cover a broad range of financial information: For example, the "Statement of Financial Affairs" asks various questions (including property-related ones) about the debtor's income, debts, pending insurance claims, and other information. "Schedule A/B" also asks a series of questions about the debtor's property. There is some overlap in the attachments: The SOFA asks, for example, whether "[w]ithin 1 year before you filed for bankruptcy, [you were] a party in any lawsuit", while Schedule A/B somewhat less clearly asks about "[c]laims against third parties, whether or not you have filed a lawsuit." *See* Pet.App. 57a, 72a.

Based on these initial filings, the trustee has a duty to creditors to "investigate the financial affairs of the debtor," 11 U.S.C. § 704(a)(4), and the debtor must "cooperate with the trustee as necessary to enable the trustee to perform the trustee's

duties," id. § 521(a)(3), and "surrender to the trustee all property of the estate and any recorded information" about that property, *id.* § 521(a)(4). In addition, the trustee holds a meeting of the creditors, at which "the trustee [must] orally examine the debtor". *Id.* § 341(d).

Because not all estate property can be efficiently or quickly liquidated, § 554 provides three ways for property to be abandoned to the debtor either expressly by the trustee or by the court, or automatically by operation of law at case closing:

> (a) After notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.
>
> (b) On request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.
>
> (c) Unless the court orders otherwise, any property scheduled under section 521(a)(1) of this title not otherwise administered at the time of the closing of a case is abandoned to the debtor and administered for purposes of section 350 of this title.

"Upon abandonment, the debtor's interest in the property is restored *nunc pro tunc* as of the filing of the bankruptcy petition." *Catalano v. Comm'r*, 279 F.3d 682, 685 (9th Cir. 2002).

The Bankruptcy Code does not permit, much less require, the counterintuitive and inequitable result reached by the Ninth Circuit. The text of Section 554(c) is clear: By its terms, the phrase "property scheduled under section 521(a)(1)" permits a trustee to abandon property disclosed under any subsection of Section 521(a)(1)—including a "statement of the debtor's financial affairs," 11 U.S.C. § 521(a)(1)(B)(iii).

Contrary to the Ninth Circuit ruling, the text is not limited to property disclosed only on particular filings under subsections 521(a)(1)(B)(i) and (ii).

The Ninth Circuit's (and BAP's) basic error was to treat Section 554(c) as a provision concerned with "expectations for a *debtor*'s performance of statutory duties." Pet.App. 5a, 18a-19a. (emphasis added). Unlike Section 521, Section 554(c) concerns a *trustee*'s statutory duties, as Congress intended it to provide an efficient mechanism for *trustees* to abandon property they deem worthless or worth less than it would cost to liquidate.

The phrase "property scheduled under section 521(a)(1)," 11 U.S.C. § 554(c), thus was not designed to penalize debtors for disclosing property on the wrong piece of paper, particularly where the disclosure prompts a fulsome analysis of the property's value by the trustee so that he can make an informed decision when administering the estate.

The Ninth Circuit Court of Appeals departed from the intent of §554(c) when it held that "absent Trustee or court action, to be abandoned under §554(c), property must be scheduled on a schedule, not just listed on the SOFA." Pet.App. 7a.

B. Legislative history of § 554

Section 554 was enacted as part of the Bankruptcy Act of 1978. While the legislative history of this provision is otherwise "scant," *Midlantic Nat'l Bank v. N.J. Dep't of Envtl. Prot.*, 474 U.S. 494, 509 (1986) (Rehnquist, J., dissenting) the Senate Report confirms that § 554 "aid[s] administration of the case," S. Rep. No. 95-989, at

92 (1978), Pet.App. 39a, and reflects the common-law rule that Section 554(c) was designed to codify.

Section 554(c) "enables the trustee to rid the estate of burdensome or worthless assets, and so speeds the administration of the estate, . . . and also protects the estate from diminution." *Matter of Quanta Res. Corp.*, 739 F.2d 912, 915 (3d Cir. 1984) (citation omitted), *aff'd sub nom. Midlantic*, 474 U.S. 494.

Estates often include assets that are either worthless or would be too costly or time-consuming to liquidate. Because a trustee has a fiduciary duty to creditors to maximize the liquidated value of the estate, he cannot administer such assets. *See, e.g., In re Rigden*, 795 F.2d 727, 730 (9th Cir. 1986). As the Department of Justice's *Handbook for Chapter 7 Trustees* explains, "[i]f the sale will not result in a meaningful distribution to creditors, the trustee *must* abandon the asset." U.S. Department of Justice, Executive Office for U.S. Trustees, *Handbook for Chapter 7 Trustees* 4-14 (2012) (emphasis added), see also *id.* 4-1 ("A trustee shall not administer an estate or an asset in an estate where the proceeds of liquidation will primarily benefit the trustee or the professionals, or unduly delay the resolution of the case.") Pet.App. 45a, 50a.

With Section 554, Congress provided three mechanisms for handling such worthless or administratively burdensome assets. The first two mechanisms—express abandonment by the trustee and court-ordered abandonment—require identification of every asset so abandoned, as well as "notice and a hearing" for all creditors. 11 U.S.C. § 554 (a)–(b).

It is not always practical to provide notice to all creditors for each and every identified asset of inconsequential value. In no-asset cases, for example, the cost of providing notice of intent to abandon may well exceed the statutory amount for which the trustee can be reimbursed. *See* 11 U.S.C. § 326(a).

Congress therefore included a third catch-all provision in Section 554(c), which allows the trustee to efficiently abandon assets without requiring the trustee (or the court) to spend the time and expense of providing notice and a hearing. For this reason, it is "[t]he typical solution" in no-asset cases. *Ginsberg & Martin on Bankruptcy* § 5.06[A] (2008). Because Section 554(c) involves an implied, not an express, abandonment, it is limited to only those assets of which a court can reasonably assume the trustee had knowledge: i.e., "property scheduled under section 521(a)(1) of this title." 11 U.S.C. § 554(c).

"Property" is defined as "all legal or equitable interests of the debtor in property as of the commencement of the case". 11 U.S.C. § 541(a)(1) Where property is expressly disclosed on a SOFA, no trustee diligently performing his duties can overlook it. Allowing the trustee to intentionally abandon such property simply by not administering it—without the ritual of notice and a hearing— enhances the efficient administration of the estate.

The Ninth Circuit's construction, in contrast, would impede such efficiency by requiring a trustee to undertake Section 554(a)'s cumbersome "notice and a hearing" procedure, 11 U.S.C. § 554(a), to abandon any property disclosed only on a SOFA.

Section 554(c) was intended to "codify[ ] the judicially developed rule of abandonment." *Midlantic*, 474 U.S. at 501; *see also Report of the Commission on the Bankruptcy Laws of the United States*, H.R. Doc. No. 93-137, Pt. II, at 181 (1973) (noting that the proposed abandonment provision "is new," but "[t]he concept of abandonment is well recognized in the case law"). At common law, it did not matter for abandonment purposes on which piece of paper an asset was disclosed. Yet, the Ninth Circuit underplays and camouflages this fact when it indicated that "no matter what the common law said before § 554(c) was enacted, "[i]t is not enough that the trustee learns of the property through other means; the property must be scheduled."" Pet.App. 10a.

"Although there had been no express recognition of an abandonment power in the pre-1978 bankruptcy statute, courts approved the trustee's exercise of such a power as part of his larger power to dispose of the assets of the estate." *Quanta Res. Corp.*, 739 F.2d at 916.

Under this pre-1978 caselaw, there were two elements to an implied abandonment: The trustee needed to have both "knowledge of the asset as property of the [debtor]" and an "intent to abandon it." Note, *Abandonment of Assets by a Trustee in Bankruptcy*, 53 Colum. L. Rev. 415, 421 (1953). Courts "presumed," however, "that a trustee ha[d] knowledge of all assets which [we]re scheduled" in the debtor's initial disclosures and that abandonment was intentional "if, within a reasonable time, [the] trustee fail[ed] to indicate an acceptance of such an asset." *Id.* at 421–23.

Section 554(c) straightforwardly codified both elements. The statutory requirement that the asset be "scheduled under section 521(a)(1)," 11 U.S.C. § 554(c), reflects the common-law rule that a trustee is presumed to know of any asset for which he is "so situated as to be chargeable with . . . knowledge" from the debtor's filings, *Dushane v. Beall*, 161 U.S. 513, 516 (1896); see also *In re Webb*, 54 F.2d 1065, 1067 (4th Cir. 1932) (finding abandonment where the debtor's disclosure was "certainly sufficient to put him (the trustee) upon diligent inquiry as to the [asset]"). And the statutory requirement that the asset "not otherwise [be] administered at the time of the closing of a case," 11 U.S.C. § 554(c), reflects the common-law rule that a trustee intentionally abandons an asset when he "forbear[s] to act," *Dushane*, 161 U.S. at 516, and fails to administer it after "a reasonable time," *In re Tarpley*, 4 B.R. 145, 146 (Bankr. M.D. Tenn. 1980) (discussing pre-1978 caselaw).

Importantly, whether an asset is disclosed only on a SOFA or also on a piece of paper entitled "Schedule" would not have mattered under the common law.

II. This Court Now Needs to Clarify the Interpretation of § 554(c)

A. The Ninth Circuit's ruling contradicts this Court's cases that demonstrate how Section 554 of the Bankruptcy Code is to be interpreted

This Court has evaluated the interpretation of statues, like § 554, whose roots are in the common law. *Nationwide Mut. Ins. Co. v. Darden*, 503 U.S. 318, 322 (1992) ("[W]here Congress uses terms that have accumulated settled meaning under ... the common law, [we] must infer, unless the statute otherwise dictates, that Congress

means to incorporate the established meaning of th[o]se terms); *Standard Oil Co. v. United States*, 221 U.S. 1, 59 (1911) ("[W]here words are employed in a statute which had at the time a well-known meaning at common law or in the law of this country they are presumed to have been used in that sense."). As Justice Frankfurter put it: "If a word is obviously transplanted from another legal source, whether the common law or other legislation, it brings [its] soil with it." Frankfurter, *Some Reflections on the Reading of Statutes*, 47 Colum. L. Rev. 527, 537 (1947).

In contrast, rather than give the statute its broad ordinary meaning, the Ninth Circuit insists that "property listed only on the SOFA is not "scheduled" and thus, absent Trustee or court action, cannot be abandoned under § 554(c)." Pet.App. 7a. This narrow textual approach cannot withstand scrutiny, as this Court has explained: "[P]rinciples of statutory construction are not so rigid," *Envtl. Def. v. Duke Energy Corp.*, 549 U.S. 561, 574 (2007); and it is noteworthy that the Ninth Circuit does not meaningfully address or distinguish that a SOFA expressly asked about the Ocwen litigation here. Pet.App. 4a.

The Ninth Circuit asks courts across this country to mechanically apply the principle that "[i]dentical words within a statutory scheme are presumed to have the same meaning." Pet.App. 9a. Yet, as this Court has explained, this principle "'is not rigid and readily yields whenever there is such variation in [how] the words are used as reasonably to warrant the conclusion that they were employed in different parts of the act with different intent.'" *Envtl. Def.*, 549 U.S. at 574 (citation omitted).

In § 554(c), the word "scheduled" is not even identical to "Schedule": The former is a generic verb with a broad meaning that includes adding any statement of supplementary details—however titled—as an appendix to a legal document; the latter is a proper noun. Moreover, the verb "scheduled" appears in a provision concerning a *trustee's* authority to abandon property, whereas the noun "schedule" appears in a list of *debtors'* duties. That is easily enough "variation" in the statutory language and how it is used to reject the Ninth Circuit's wooden equation of the two words. See *Envtl. Def.*, 549 U.S. at 576 (holding the same word had different meanings in two provisions even though both provisions included "the same definition" and one provision expressly "referred back to" the other provision's definition).

The Ninth Circuit panel reiterates the BAP's reasoning that the word "scheduled" in Section 554(c) cannot encompass disclosure on a SOFA because then Congress would not have needed to include the word "listed" in a separate provision on debts "neither listed nor scheduled under section 521(a)(1)." 11 U.S.C. § 523(a)(3). Pet.App. 9a, 18a. However, the words "listed" and "scheduled" in Section 523(a)(3) perform distinct functions: A debt is 'scheduled under section 521(a)(1)' if it is detailed in an attachment required by Section 521(a)(1); and a debt is 'listed' if, regardless of whether it is detailed in an attachment, it is connected to a listed creditor. *See* Historical and Revision Notes, Legislative Statements, on § 523(a)(3). ("The debt is excepted from discharge if it was not scheduled in time to permit timely action by the creditor to protect his rights, unless the creditor had notice or actual knowledge of

the case." "The provision is intended to overrule *Birkett v. Columbia Bank*, 195 U.S. 345 (1904)") Pet.App. 36a.

The Ninth Circuit panel erroneously assumes the Debtor's interpretation violates "the canon against surplusage". Pet.App. 9a. However, statutory language is not superfluous when inserted to "remov[e] any doubt," *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 383 (2013) (citing cases), or "out of an abundance of caution," *Fort Stewart Schools v. FLRA*, 495 U.S. 641, 646 (1990). Because it is undoubtedly important to define clearly when debts can and cannot be discharged in bankruptcy, Congress reasonably could have inserted the word "listed" into Section 523(a)(3) to remove any doubt that all debts connected to a "listed" creditor can be discharged. Pet.App. 42a.

So, rather than "bolster[] [their] reading", a clear understanding of § 523(a)(3) actually undermines the Ninth Circuit's interpretation. Pet.App. 8a-9a.

B. This Court needs to clarify whether a proper statutory analysis confirms that assets can be scheduled on a SOFA

The ordinary meaning of the statute, based on dictionaries and common usage, includes property disclosed only on a SOFA. Seeking to cast aside that ordinary meaning, the Ninth Circuit insists the verb "scheduled" in Section 554(c) must be equated with the noun "schedule" in Section 521(a)(1)(B)(i) and (ii). The panel never seriously confronts what it means to "schedule" property where, as here, two pieces of paper—a SOFA and a document called a "Schedule"—ask about the property. In those circumstances, it elevates form over substance to insist that disclosure on one

piece of paper (a "Schedule") counts, yet disclosure on the other (a SOFA) does not. The panel's construction deviates from how courts analyze partially scheduled property, conflicts with the statutory context, and creates absurd results. Therefore, the following three points must be considered:

First, the ordinary meaning of "scheduling" property includes disclosing it on a SOFA. When terms used in a statute are undefined, this Court "give[s] them their ordinary meaning." *Asgrow Seed Co. v. Winterboer*, 513 U.S. 179, 187 (1995). Pet.App. 7a-8a. And this Court looks to the ordinary meaning of the term when Congress enacted the statute. See *Perrin v. United States*, 444 U.S. 37, 42 (1979). "[T]o schedule" something means to "add [it] in or as a schedule or *appendix*," where a "schedule" itself is merely a generic "appended *statement* of supplementary details." (emphasis added) *Webster's Third New International Dictionary* 2028 (1976); *accord* Schedule, *Black's Law Dictionary* 1511 (4th ed. 1968) (defining "schedule" as a "*list* or inventory") (emphasis added). Even the panel's dictionary says one can "schedule" something "in a schedule or *list*." (emphasis added) (quoting *Oxford Compact Dictionary* 203 (1971)) Pet.App. 8a. Consistent with this broad meaning, courts of appeals (including the Ninth Circuit) often describe a SOFA as part of a debtor's "schedules." *See In re Blixseth*, 684 F.3d 865, 867 (9th Cir. 2012) (describing "bankruptcy schedules and statement of financial affairs" as "the Schedules"); *Sec. Ins. Co. of Hartford v. Machevsky*, 81 F. App'x 241, 242 (9th Cir. 2003) (unpublished) (describing the SOFA as a "portion of the bankruptcy schedules"); see also *Ashmore v. CGI Grp., Inc.*, 923 F.3d 260, 276 (2d Cir. 2019) (SOFA "surely" appears to be "a

parallel schedule" in ordinary parlance); *Spaine*, 756 F.3d at 544 (describing "schedule of personal property" and "statement of financial affairs" as filed "schedules"). Property detailed on a SOFA attachment is thus "scheduled under section 521(a)(1)." 11 U.S.C. § 554(c).

The Ninth Circuit panel gave the word "scheduled" a strained and limited meaning that ordinary debtors would not: "to include something on a literal schedule." Pet.App. 8a. No English speaker would assume that an appointment, say, can be "scheduled" only on a literal "Schedule"—as opposed to a day-planner, diary, or Post-it note. The word "schedule" is not so limited.

The panel nevertheless contends "[their] interpretation is bolstered by the "established canon of construction that similar language contained within the same section of a statute must be accorded a consistent meaning." Pet.App. 8a. This argument ignores that Congress was not writing on a blank slate when using the word "scheduled" in Section 554(c). For decades prior to Section 554(c)'s enactment in 1978, courts had consistently differentiated between "scheduled" and "unscheduled" assets. *See, e.g., State of Delaware v. Irving Tr. Co.*, 92 F.2d 17, 18–19 (2d Cir. 1937); *Burton Coal Co. v. Franklin Coal Co.*, 67 F.2d 796, 798 (8th Cir. 1933). Congress is presumed to know about this pre-existing case law and chose the word "scheduled" because *that* word had long been used *in the bankruptcy context*. The ordinary meaning of "scheduled under section 521(a)(1)" thus includes detailing property on a SOFA.

The panel also misconstrued the context surrounding the word "scheduled" in the statutory phrase "scheduled under section 521(a)(1)." 11 U.S.C. § 554(c). The panel felt "compel[led]" "to construe 'scheduled' narrowly" because "Section 554(c) refers to § 521(a)(1), which itself uses the nearly identical term 'schedule.'" Pet.App. 8a. But Section 521(a)(1) is not narrow. It lists *seven* filings—only two of which are literal schedules. *See* 11 U.S.C. § 521(a)(1)(B)(i) ("schedule of assets and liabilities"); *id.* § 521(a)(1)(B)(ii) ("schedule of current income and current expenditures").

Especially given the broad ordinary meaning of the word "scheduled," "[h]ad Congress intended [Section 554(c)] to encompass only" property disclosed under Section 521(a)(1)(B)(i) or (ii)—and to leave out *five* other Section 521(a)(1) filings—"it could have so specified"; that it "did not use such narrow language" confirms that Section 554(c) is not limited to assets disclosed on a literal schedule. *Lamar, Archer & Cofrin, LLP v. Appling*, 138 S. Ct. 1752, 1761 (2018).

In fact, when Congress has intended reference to disclosure on a literal schedule, specifically, it has said so expressly, including in the provision immediately following Section 521(a)(1). *See, e.g.*, 11 U.S.C. § 521(a)(2) (describing what happens "if an individual debtor's schedule of assets and liabilities includes debts which are secured by property of the estate"); Fed. R. Bankr. P. 3003(b)(1) (denoting the way creditors' claims are "scheduled" on "[t]he schedule of liabilities filed pursuant to § 521(1)" as "prima facie evidence of [their] validity and amount"). No similar limiting language appears in Section 554(c).

Although the Ninth Circuit ruled that "scheduled" must refer exclusively to the literal "schedules" in Section 521(a)(1), that assumption conflicts with the word's ordinary meaning and begs the question that this Court must decide.

Second, the Ninth Circuit's overly narrow construction prevents abandonment of assets that are sufficiently disclosed. Courts have already developed a pragmatic and workable standard with respect to partially scheduled property: Such property can be abandoned under Section 554(c) so long as the disclosure is "not so defective that it would forestall a proper investigation of the asset." *Cusano v. Klein*, 264 F.3d 936, 946 (9th Cir. 2001); *see also, e.g.*, *In re Furlong*, 660 F.3d 81, 87 (1st Cir. 2011) (for "partially-scheduled claim[s]," "a debtor is required only to 'do enough itemizing to enable the trustee to determine whether to investigate further'" (citation omitted)); *Kane*, 628 F.3d at 643 (a "'debtor's burden [is limited] to reasonable diligence in completing schedules'" (alteration in original; citation omitted)). This pragmatic standard reflects that "'investigation is part of the Trustee's duties under § 704.'" *Furlong*, 660 F.3d at 87 (citation omitted).

Although *Cusano* involved a partial disclosure on a Schedule A/B, "its logic" applies to disclosures of property asked about on both a SOFA and a Schedule A/B but disclosed only on a SOFA. *Kane*, 628 F.3d at 642. Because a trustee must "investigate the financial affairs of the debtor," 11 U.S.C. § 704(a)(4), property disclosed on a SOFA gives "the trustee and the bankruptcy court . . . sufficient notice to take steps to protect the creditors' interests," *Ashmore*, 923 F.3d at 281; *see also Bird v. Hart* ("*Hart*"), 616 B.R. 826, 831–32 (D. Utah 2020) (SOFA disclosure

"allow[ed] the trustee to 'efficiently . . . identify and investigate a potential asset'" (citation omitted)); *In re Hill*, 195 B.R. 147, 150 (Bankr. D.N.M. 1996) (SOFA disclosure "made the trustee fully aware of the fraudulent transfer claim").

The Ninth Circuit suggests that only property disclosed on a piece of paper called a "Schedule" can result in abandonment under § 554(c) and "property disclosed only on a statement (e.g., the Statement of Financial Affairs) cannot." Pet.App. 3a. The SOFA is obviously designed to provide notice to a trustee—and it undisputedly asks questions about certain property and obtains similar information as a Schedule A/B.

This Court needs to clarify whether it is relevant which piece of paper is used to disclose property. A trustee is "accountable for all property received," regardless of the piece of paper on which it is disclosed, 11 U.S.C. § 704(a)(2), and has an independent "duty to ensure that a debtor files all schedules and statements required under section 521," U.S. Department of Justice, Executive Office for U.S. Trustees, *Handbook for Chapter 7 Trustees* (2012), 4-2. Pet.App. 48a. Every time property is disclosed only on a SOFA, therefore, a trustee is given notice of the property and must bless it as sufficiently disclosed or alert the debtor to file an amended Schedule A/B. By positing that a SOFA disclosure does not count—notwithstanding a trustee's duty to bless the disclosure or ensure it is amended, Pet.App. 51a—the Ninth Circuit's rigid rule would require debtors "'to supervise and double check the actions of the trustee, contrary to the intention of 11 U.S.C. § 704.'" *Kane*, 628 F.3d at 642 (citation omitted).

Finally, Section 554(c)'s context does not support the Ninth Circuit's construction. Given the ordinary meaning of "scheduled under section 521(a)(1)", Congress would have limited that phrase to property "scheduled under Section 521(a)(1)(B)(i) or Section 521(a)(1)(B)(ii)" had it actually intended to refer to only property disclosed on a piece of paper called a "Schedule." *see Hart*, 616 B.R. at 829; *United States ex rel. Fortenberry v. Holloway Grp., Inc.*, 515 B.R. 827, 829 n.1 (W.D. Okla. 2014).

Had Congress intended a narrower scope for Section 554(c), it could have made that provision refer to only property disclosed on "a schedule of assets and liabilities under Section 521(1)." That it did not do so in 1978 or, indeed, later when adding "a schedule of current income and current expenditures" to Section 521(1), *see* Act of July 10, 1984, Pub. L. No. 98-353, 98 Stat. 333, 352, confirms that Section 554(c) is not limited to property disclosed on a piece of paper called a "Schedule." Pet.App. 35a.

C. The Ninth Circuit's reading of 554(c) poses far-reaching dangers

First, the Ninth Circuit's rule gives no credence to a Trustee doing his statutory duties. Opposing the Ninth Circuit's rule, the cases which favor a broad reading of § 554(c) to include adequate disclosure of the asset in question anywhere in the sworn statements made by the debtors in the bankruptcy proceeding, rely on the language and reasoning of the First Circuit in *In re Furlong*, 660 F. 3d 81 (1st Cir. 2011). The First Circuit said the debtor need give only reasonable particularization under the circumstances since "investigation is part of the trustee's duties under § 704." A

debtor is required only to give sufficient detail to enable the *trustee* to determine whether to investigate further. *Id.* at 87.

The duties of a Chapter 7 Trustee are defined in 11 U.S.C. § 704(a). There are twelve of them, including "[i]nvestigate the financial affairs of the debtor" (a)(4), and "[m]ake a final report and file a final account of the administration of the estate with the United States Trustee and the court" (a)(9). The United States Trustee has issued a *Handbook for Chapter 7 Trustees* (the "*Handbook*"). Chapter 4, Part C, subpart (1) compels "[t]he trustee [to] conduct an independent investigation to make a determination" whether the case is an asset case. It also describes what it means to file a report of no distribution ("NDR"), Chapter 4. Part C. subpart (2). Pet.App. 48a-49a.

Subpart (2) states that the purpose of the NDR, established by statute at § 704(a)(9), "is to close administration of the case. The NDR certifies that the trustee has reviewed the schedules, investigated the facts, and determined that there are no assets to liquidate for the benefit of creditors." Pet.App. 49a. The Ninth Circuit's rule makes a mockery of this certification, when the trustee has full information about an asset and knowingly closes the estate without administering it. This is contrary to good policy.

Second, the Ninth Circuit's construction is inconsistent with the broader policy of the Bankruptcy Code. "The principal purpose of the Bankruptcy Code is to grant a 'fresh start' to the 'honest but unfortunate debtor.'" *Marrama v. Citizens Bank of Mass.*, 549 U.S. 365, 367 (2007) (citation omitted). The Ninth Circuit's strict

approach, however, deprives Debtors of that fresh start by wiping away the years of hard work they put into the risky and time-consuming Ocwen litigation after the Trustee had declined to take it over during his administration of the bankruptcy estate.

It is well established that when a trustee concludes an asset would cost more to liquidate than the asset is worth, creditors have no entitlement to that asset even if it later becomes profitable to liquidate. *See, e.g.*, *In re Adair*, 253 B.R. 85, 91 & n.16 (B.A.P. 9th Cir. 2000) (no revocation of abandonment where asset's value "became ascertainable" only after the bankruptcy petition was filed). Even "'mistakes in valuation will not enable a trustee to recover an abandoned asset,' not even upon 'subsequent discovery that the property has a greater value than previously believed.'" *Cusano*, 264 F.3d at 946 (citations omitted); see also, e.g., *Hutchins v. I.R.S.*, 67 F.3d 40, 44 (3d Cir. 1995) (similar). This rule makes good sense: Where an asset is too burdensome for the trustee to liquidate, it would drain estate resources and thereby harm creditors were the trustee to put in the time and effort needed to liquidate the asset. And debtors should not be penalized when, after the case is closed, they decide to put in their own time and money to liquidate an abandoned asset.

Under the Bankruptcy Act, the "trustee is the 'legal representative' and 'fiduciary' of the estate," *In re AFI Holding, Inc.*, 530 F.3d 832, 844 (9th Cir. 2008); *see also* 11 U.S.C. § 323, with "a fiduciary obligation to conserve the assets of the estate and to maximize distribution to creditors," *Rigden*, 795 F.2d at 730; *see also, e.g.*, *Wisdom v. Gugino*, 649 F. App'x 583, 584 (9th Cir. 2016) (unpublished) (same);

11 U.S.C. § 704(a)(1). Although Section 521(a)(1) imposes certain disclosure duties on the debtor, the trustee has independent duties both "to ensure that a debtor files all schedules and statements required under section 521," *Handbook*, 4-2. Pet.App. 48a, 51a.

The debtor's disclosure duties thus serve primarily to enable *the trustee* "to fulfill his duty to investigate the assets of the estate." *Hart*, 616 B.R. at 831 (citing *Furlong*, 660 F.3d at 87); *accord Cusano*, 264 F.3d at 946 (disclosures must enable "a proper investigation of the asset[s]").

In this case, the Debtors, in their SOFA, indicated "Yes" in response to the question, "Within 1 year before you filed for bankruptcy, were you a party in any lawsuit," and provided case details about the Ocwen litigation, noting that it was "Pending" in the "Superior Court of California County of Riverside" under case number MCC1600867 and caption "Jasper Stevens and Brenda Louise Murray Stevens . . . vs. OCWEN Loan Servicing, LLC [et al]." On their separate "Schedule A/B," the Debtors' bankruptcy attorney mistakenly answered "No" in response to a question about "Claims against third parties, whether or not you have filed a lawsuit." As an extra "[p]recaution," however, "Ocwen Loan Servicing" was listed as a creditor for "Real Estate Mortgage," and Ocwen was provided notice of the bankruptcy petition. Pet.App. 4a.

The Debtors' error is of no moment. In *Furlong*, the court held that, for "partially-scheduled claim[s]" on a "schedule," a debtor need only "'do enough itemizing to enable the trustee to determine whether to investigate further'." The

First Circuit gave no hint that a different rule would apply to claims scheduled only on a SOFA. 660 F.3d at 87 (citation omitted). Similarly, in noting that "incomplete schedules" can be "timely corrected through an oral disclosure," the Seventh Circuit nowhere suggested this rule was limited to the context of judicial estoppel only. *Spaine v. Cmty. Contacts, Inc.*, 756 F.3d 542, 542, 546–47 (7th Cir. 2014). As the Third Circuit explained in finding abandonment of a lawsuit disclosed only on a SOFA, "[t]he facts of [these cases may] not map precisely onto those here, but [their] logic does." *Kane*, 628 F.3d at 642; *see id.* at 641–43 (holding Section 554(c) applies to lawsuit "listed by docket number and described as 'pending'" on a SOFA but "absent from Schedule B").

Once a trustee has sufficiently investigated an asset disclosed in the debtor's filings under Section 521(a)(1), he can make "an 'intelligent decision'" about distribution "'on the basis of all reasonably available information.'" *Hart*, 616 B.R. at 830 (quoting *In re Krachun*, No. 13- 22995, 2015 WL 4910241, at *4 (Bankr. D. Utah Aug. 14, 2015)). In the exercise of his good-faith judgment, the trustee can either administer the asset or abandon it under Section 554(a) or (c).

By focusing exclusively on a debtor's duties, the Ninth Circuit ignored the ways its construction would allow trustees to shirk their duties with respect to assets that are disclosed only on a SOFA, and this could incentivize bad behaviors, contrary to the objectives of the Bankruptcy Code.

Third, the Ninth Circuit's ruling is incompatible with the approach taken in other Circuits. To Debtors' knowledge, no circuit has adopted the Ninth Circuit's

"strict approach," Pet.App. 5a., in a precedential decision—and that rigid construction is incompatible with the functional approach taken in other circuits. The Seventh Circuit has held that "incomplete schedules that were timely corrected through an oral disclosure" are sufficient for abandonment under Section 554(c) even where the only written disclosure was on a SOFA. *Spaine*, 756 F.3d at 544, 546–47. The First Circuit likewise has held that, with respect to "partially-scheduled claim[s]," a debtor need only "'do enough itemizing to enable the trustee to determine whether to investigate further'" under Section 554(c). *Furlong*, 660 F.3d at 87 (citation omitted); *see id.* ("The Trustee was able to conduct his investigation into the value of the claims with the help of the sixteen-count draft complaint before determining that it would not be cost-effective to pursue the claims."). And although the Second Circuit has not squarely construed Section 554(c) in a precedential decision, it has held that a *pro se* debtor who "listed his pending litigation on the SOFA, rather than the Schedule B," is not judicially estopped from pursuing that claim after the bankruptcy case is closed. *Ashmore*, 923 F.3d at 281.

This petition therefore presents this Court the opportunity to decide which interpretation of Section 554(c) is correct and thereby ensure uniformity at a national level.

Finally, the Ninth Circuit's construction leads to absurd results. That the Ninth Circuit's construction "leads to an absurd result"—indeed, several that could not have been intended by Congress—is yet another reason for this Court to grant certiorari. *United States v. Pacheco*, 977 F.3d 764, 767 (9th Cir. 2020).

The Ninth Circuit does not address that its construction creates absurd results by permitting abandonment: (1) where the debtor mistakenly disclosed an asset on the wrong piece of paper entitled "Schedule," but not where the debtor mistakenly disclosed the asset only on a SOFA; and (2) where the debtor mistakenly listed the asset only on a Schedule A/B, but not where the debtor mistakenly listed the asset only on a SOFA. Pet.App. 6a-7a. "This disparity in outcome rests on no substantive policy or reasoning but on the mere happenstance that the erroneous entry was or was not made on a pleading entitled 'schedule.'" *Hill*, 195 B.R. at 149; *accord Hart*, 616 B.R. at 829 n.1.

III. This Issue Is Vitally Important

Interpretation of § 554(c) by this Court is needed to protect the rights of debtors and creditors.

Where an asset is disclosed on a SOFA, that provides notice to the bankruptcy court and creditors, just as it provides notice to the trustee. See *Ashmore*, 923 F.3d at 281 (disclosure of asset on a SOFA gives "the trustee and the bankruptcy court . . . sufficient notice to take steps to protect the creditors' interests"); *Hamilton v. State Farm Fire & Cas. Co.*, 270 F.3d 778, 784 (9th Cir. 2001) ("creditors base their actions on the disclosure statements and schedules").

"[T]he bankruptcy system *already* provides plenty of protections" to deter debtors from intentionally concealing assets through incomplete disclosure. *Ah Quin v. Cty. of Kauai Dep't of Transp.*, 733 F.3d 267, 275 (9th Cir. 2013) (emphasis added). Where an asset is intentionally concealed, "[r]evocation of abandonment is

appropriate," *Cusano*, 264 F.3d at 946; see also, e.g., *In re Fuller*, No. 18-00681-RLM-7A, 2020 WL 7346704, at *4 (S.D. Ind. Dec. 14, 2020); and if the asset is a legal claim, the debtor is judicially estopped from pursuing that claim, *Ah Quin*, 733 F.3d at 271–72 (only "an inadvertent or mistaken omission from a bankruptcy filing" defeats judicial estoppel). Debtors also face serious consequences for intentionally filing incomplete disclosures—including sanctions, see Fed. R. Bankr. P. 9011(c), no discharge of their debts, *see* 11 U.S.C. § 727(a)(4)(A), and revocation of a discharge, see id. § 727(d)(1), "even if [the case] has long been closed," *Ah Quin*, 733 F.3d at 275 (discussing 11 U.S.C. § 350(b); Fed. R. Bankr. P. 5010). Appropriate cases may even be referred for criminal prosecution. 18 U.S.C. § 152.

The Ninth Circuit's rule thus would not deter fraud or protect creditors any more than the Bankruptcy Code already does. The Ninth Circuit's rule would, however, give a second chance to trustees who intentionally fail to fully administer an estate, and it deprives a debtor's right to the peace of mind that comes with obtaining a "fresh start".

In the hearings below, the BAP worried that abandoning assets disclosed only on a SOFA "would foster litigation" over "whether the unique facts of a case justify technical abandonment." Pet.App. 20a. But recognizing disclosure of an asset in any attachment under Section 521(a)(1) does not clog the judicial system. Where an asset is not disclosed in any filing under Section 521(a)(1), abandonment cannot occur by operation of Section 554(c)—as other courts of appeals have uniformly concluded. See, e.g., *Jeffrey v. Desmond*, 70 F.3d 183, 186 (1st Cir. 1995); *Tyler v. DH Capital Mgmt.*,

Inc., 736 F.3d 455, 465 (6th Cir. 2013); *Vreugdenhill v. Navistar Int'l Transp. Corp.*, 950 F.2d 524, 526 (8th Cir. 1991); *Marshall v. Honeywell Tech. Sys. Inc.*, 828 F.3d 923, 925, 927 (D.C. Cir. 2016). But where an asset is disclosed on a SOFA, the trustee, the court, and the creditors are all on notice of the asset. So long as the disclosure is sufficiently detailed to allow "a proper investigation of the asset," *Cusano*, 264 F.3d at 946, the asset may be abandoned under Section 554(c).

On October 15, 2021—three days before the panel issued its opinion—the U.S. Department of Justice amended its *Handbook for Chapter 7 Trustees* to make explicit what had previously been implied: *i.e.*, that, in addition to being "accountable for all property received," 11 U.S.C. § 704(a)(2), "trustee[s] must investigate the debtor's financial affairs by reviewing the debtor's [initial paperwork] for consistency and completeness" and "must also verify the initial paperwork is complete and internally consistent," *Handbook* at 4-27. Pet.App. 51a.

The panel penalized *the Debtors* for "an inadvertent oversight" that the *Trustee* himself had approved as consistent with the Bankruptcy Code. Pet App. 11a.

While the panel asserts that "[t]he Debtors could have amended their schedules," Pet.App. 11a., they could not have *known* to correct an "inadvertent oversight," *id.*—especially when the Trustee never told them correction was needed. By omitting the critical role played by trustees in investigating, administering, and (where appropriate) abandoning assets, the panel never addressed the relevant question: whether it is "more appropriate to require a debtor"—including hundreds of thousands of *pro se* bankruptcy debtors in this country—"to understand the

technical distinctions among the various schedules and statements of a bankruptcy filing" or instead to require a trustee to "carry the burden of discerning a potential asset even when the asset is fully disclosed under the wrong heading." *In re Hill*, 195 B.R. 147, 149 (Bankr.D.N.M. 1996); *accord Ashmore*, 923 F.3d at 275 (discussing *Kane*, 628 F.3d at 643).

IV. This Case Is An Ideal Vehicle

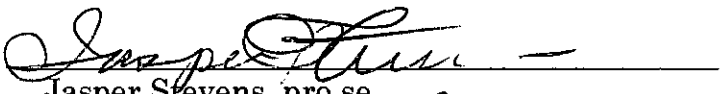
This is one of the clearest cases pertaining to the important question presented in this petition that this Court will ever see. The limited financial and legal resources of bankrupt debtors almost guarantees that this unresolved issue will continue percolating in the courts below and not rise to the level of this Court's supervisory review.

In the interest of helping Congress to achieve national uniformity on a federal Bankruptcy issue that has absorbed countless hours in the federal and state court systems—and that threatens to continue to do so—this Court should seize the opportunity to determine the interpretation that aligns with Section 554(c) as it was originally intended.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



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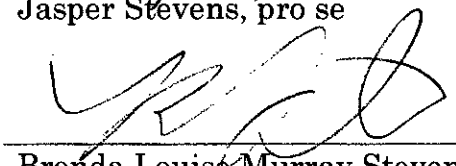

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