No. 22-733

IN THE

Supreme Court of the United States

PACIFIC GAS & ELECTRIC COMPANY,

Petitioner,

v.

AD HOC COMMITTEE OF HOLDERS OF TRADE CLAIMS,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Under Chapter 11 of the Bankruptcy Code, a plan of reorganization must classify a creditor's claim as either "impaired," which triggers various substantive and procedural protections for the creditor, or "not impaired," disentitling the creditor to those protections. 11 U.S.C. § 1123(a)(2)-(3); see *id.* § 1129. A plan may classify a claim as "[un]impaired" only if "the plan * * * leaves unaltered the legal, equitable, and contractual rights to which such claim * * * entitles" the creditor. *Id.* § 1124(1). The question presented is as follows:

May a Chapter 11 plan that classifies a creditor's claim as unimpaired withhold from that creditor interest provided under the creditor's contract that accrues after the Chapter 11 petition is filed, while also passing surplus value through to the debtor's equity holders?

RULE 29.6 STATEMENT

The members of respondent Ad Hoc Committee of Holders of Trade Claims are Whitebox Advisors LLC; Citigroup Global Markets Inc. (CGMI), Citigroup Financial Products, Inc., and Olympus Peak Asset Management LP.

Whitebox Advisors LLC does not have a parent corporation, nor does any publicly held corporation own 10% or more of its stock.

CGMI is a wholly owned subsidiary of CFPI, which, in turn, is a wholly owned subsidiary of Citigroup Global Markets Holdings Inc., which, in turn, is a wholly owned subsidiary of Citigroup Inc., a publicly traded company. Citigroup Inc. has no parent company and, to the best of CGMI's knowledge, no publicly held corporation owns 10% or more of Citigroup Inc.'s stock.

Olympus Peak Asset Management LP is organized as a limited partnership, not as a corporation, and no publicly held corporation owns an interest in that limited partnership.

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BRIEF IN OPPOSITION

INTRODUCTION

Until now, the dispute in this case has been confined to a single, narrow question of bankruptcy law. The case involves the unusual circumstance where a Chapter 11 debtor's estate would still have a surplus after repaying all the debts that the debtor owed when the bankruptcy began. The parties agreed below that, in this situation, a creditor whose claim the plan classifies as not "impaired" must be paid interest accruing after the petition was filed. 11 U.S.C. § 1124; Pet. App. 7a. The only dispute concerned at what *rate*: the interest rate specified by the applicable nonbankruptcy law—here, the underlying contract—or the federal judgment rate set forth in 28 U.S.C. § 1961?

Indeed, at every prior stage of the litigation—in the bankruptcy court, the district court, and the court of appeals—petitioner Pacific Gas & Electric Company (PG&E) conceded that it must pay post-petition interest to creditors whose claims the plan deemed unimpaired, which include members of respondent Ad Hoc Committee of Holders of Trade Claims (Trade Committee). As PG&E explained in the Ninth Circuit, "[b]oth parties agree that given the Debtors' [*i.e.*, PG&E's] solvency, the Bankruptcy Code entitle[d] the unsecured creditors to post-petition interest on their claims." Pet. C.A. Br. 16. That concession was correct. It is compelled by the Code's text—which requires that an unimpaired creditor's rights remain "unaltered," 11 U.S.C. § 1124(1)—and by the teaching of this Court dating back more than a century that, "in the rare instances where the assets ultimately prove sufficient for the purpose, * * * creditors are entitled to interest accruing after adjudication," Pet. App. 12a (quoting *American Iron & Steel Manufacturing Co.* v. *Seaboard Air Line Railway*, 233 U.S. 261, 267 (1914) (brackets omitted)).

Instead, until now PG&E has framed the dispute as concerning only the *amount* of interest it must pay. Pet. C.A. Br. 16 ("[T]he issue is what rate applies."). PG&E argued below that the federal judgment rate applies—and it has already paid interest at that rate. Pet. 4. The Ninth Circuit disagreed, concluding that PG&E's unimpaired creditors are entitled to interest at the rate prescribed by the applicable nonbankruptcy law—which in this case means the rate set by contract or, if it has none, by state law. Pet. App. 9a-34a. That conclusion is correct, and PG&E does not attempt to show that either the which-rate question litigated below or the Ninth Circuit's answer warrants this Court's review.

In seeking this Court's review, however, PG&E now attempts to inject a fundamentally different issue and portrays the central dispute as concerning a point that was previously common ground. PG&E asks the Court (Pet. i) to consider whether the Code prohibits a Chapter 11 debtor with a surplus in the bankruptcy estate from paying *any* post-petition interest to unimpaired creditors. See Pet. 12-26. PG&E's present contention that the Code categorically precludes such interest contradicts its own position below. That assertion instead echoes a novel theory floated by the dissenting opinion below in this case and another dissent in a different circuit.

PG&E's new position premised on that theory does not warrant plenary review. It points to no conflict on whether a so-called "solvent" Chapter 11 debtor (Pet. i) can be required to pay post-petition interest. No court of appeals has embraced PG&E's extreme stance that payment of post-petition interest is forbidden. The only circuit conflict the petition alleges concerns the scope of equitable exceptions to the general rule. That asserted split is an illusion; the Ninth Circuit here expressly borrowed its approach on that ancillary issue from Fifth Circuit precedent. And it is not implicated here in any event as this case comes to the Court: the Ninth Circuit did not reach, but instead remanded, the question whether any "compelling equitable considerations" should excuse PG&E's payment of post-petition interest at the contract (or default state-law) rate here. Pet. App. 33a (quoting *In re Ultra Petroleum Corp.*, 943 F.3d 758, 765 (5th Cir.

2019)); see *id.* at 33a-34a. The case's interlocutory posture provides a powerful reason why review of that splitless, logically subsequent issue is unwarranted—which may well be why PG&E's petition does not seek review of it.

To be clear, PG&E's sweeping new position is also wrong. Its newfound view would excuse Chapter 11 debtors who are capable of fully repaying their creditors from honoring those obligations. In this case, that would permit PG&E to bypass its unimpaired creditors and to funnel as much as $200 million in surplus value to its own shareholders, who hold interests junior to PG&E's creditors. Nothing in the Bankruptcy Code supports that result. To the contrary, the current Code's text guarantees that an unimpaired creditor's rights must remain "unaltered." 11 U.S.C. § 1124(1). The Code once did contain a provision that enabled debtors to avoid paying post-petition interest, 11 U.S.C. § 1124(3) (1988), but Congress swiftly repealed that provision after a bankruptcy-court ruling brought its harmful, illogical consequences to light.

In addressing the rate-of-interest question that the parties disputed below, the Ninth Circuit properly construed the Code's relevant text to protect an unimpaired creditor's right to contract-rate interest that accrues during the bankruptcy proceeding where, as here, the debtor's estate has a surplus. The court also canvassed the centuries-old pre-Code history and practice requiring a debtor in that rare scenario to pay post-petition interest to creditors before diverting value to equity-holders. Contrary to PG&E's contention (Pet. 14), the court of appeals did not elevate past bankruptcy practice over the Code's "unambiguous text." It properly followed this Court's teaching by carefully parsing the Code's pertinent text, and it simply found no provision that "unambiguously displace[s]" the long-settled principle that debtors in this scenario must honor their contracts. Pet. App. 22a.

The petition should be denied.

STATEMENT

1. Following a series of devastating wildfires in Northern California, PG&E faced massive potential tort liability. Pet. App. 6a. In January 2019, it filed voluntary petitions for reorganization under Chapter 11 of the Bankruptcy Code. *Ibid.* Although PG&E's "assets at the time of the bankruptcy filing exceeded its known liabilities by nearly $20 billion," PG&E asserted that "bankruptcy was necessary to resolve its wildfire liabilities"—which it estimated "'could exceed $30 billion'"—and to provide adequate "liquidity." *Id.* at 6a-7a & n.1 (citation omitted). But "[t]he company has never contested its ability to pay non-wildfire creditors in full." *Id.* at 7a.

While the petition was pending, California enacted A.B. 1054, the "Go-Forward Wildfire Fund," which created a "multi-billion dollar safety net" to compensate future victims of wildfires while ensuring California utilities could continue to maintain their "credit worthiness" and "attract capital" despite the high risk of future wildfire liability. Pet. App. 58a. After months of negotiation, the Debtors proposed a plan of reorganization (the Plan) shortly before the statutory deadline of June 30, 2020 for Debtors to qualify for participation in the Go-Forward Fund. *Id*. The Debtors then negotiated settlements of existing wildfire claims that would be paid out of the bankruptcy estate's assets and, once resolved, would allow

PG&E to participate in A.B. 1054's scheme for future incidents. The bankruptcy court confirmed the Plan on June 20, 2020, noting that the Plan was compliant with A.B. 1054 because it "establishes reserves for, provides for assumption of, or otherwise provides for satisfying all prepetition wildfire claims." Pet. App. 128a.

2. a. This case concerns the treatment by PG&E's plan of general unsecured claims, including trade claims held by the Trade Committee. Chapter 11 requires a plan to classify all claims as either "impaired" by the plan or "not impaired." 11 U.S.C. § 1123(a)(2)-(3). The Code presumes that all claims are impaired by a plan by providing (with an exception irrelevant here) that "a class of claims or interests is impaired * * * unless * * * the plan * * * leaves unaltered the legal, equitable, and contractual rights to which such claim or interest entitles the holder." *Id.* § 1124(1); see *id.* § 1124(2) (creating an exception applicable where a debtor cures a default and fully reinstates the underlying obligation). Unimpairment is the exception, not the rule.

The distinction between impaired and unimpaired status is highly significant. Chapter 11 accords holders of impaired claims important procedural and substantive protections that unimpaired creditors—whose rights, by definition, are not infringed by the plan—do not receive. Impaired creditors, for example, are entitled to vote on the plan. 11 U.S.C. § 1126(c). Unimpaired creditors, in contrast, cannot vote and instead are "conclusively presumed to have accepted the plan." *Id.* § 1126(f). Impaired creditors also benefit from substantive safeguards that unimpaired creditors do not. Those include the requirement that the plan's treatment of impaired creditors' claims be "fair and equitable," *id.* § 1129(b)(2), and the ability to invoke the "best interest of creditors test," which guarantees a dissenting impaired creditor a recovery of at least what it would receive in a hypothetical Chapter 7 liquidation, *id.* § 1129(a)(7)(A)(ii). A debtor can deprive a creditor of those protections by classifying the creditor's claims as unimpaired—and thereby streamline the path to plan confirmation. But to do so the plan must honor its obligations to the creditor in full as if the bankruptcy petition had never been filed.

b. PG&E's plan classified the Trade Committee's claims as unimpaired, thus depriving it of the right to vote on the plan and Chapter 11's substantive protections. Pet. App. 8a. PG&E recognized that it was therefore required to pay the Trade Committee all that it was owed, including post-petition interest—*i.e.*, interest that had accrued on the Committee's claims following the filing of PG&E's petition. Pet. App. 67a.

A dispute arose, however, regarding the *rate* of interest that PG&E must pay its unimpaired creditors. Relying on the Ninth Circuit's decision in *In re Cardelucci*, 285 F.3d 1231 (2002), PG&E contended that its unimpaired creditors were entitled only to post-petition interest at the federal judgment rate specified in 28 U.S.C. § 1961(a). Pet. App. 67a. Its plan provided for post-petition interest at that rate. Pet. App. 213a, 217a-18a.

The Trade Committee objected, explaining that *Cardelucci* was inapposite because it concerned only the rights of *impaired* creditors, and its holding rested on provisions of the Code that do not apply to unimpaired creditors. Pet. App. 8a. The Committee contended that, under Section 1124, for their claims to be properly classified as unimpaired, they must be paid post-petition interest at the rate provided by the applicable nonbankruptcy law—either the "bargained-for interest rates on unpaid obligations" specified in the Committee's contracts, or (for those contracts with no stated rate) California's statutory default rate. *Id.* at 7a-8a; see Cal. Civ. Code § 3289 (providing that, if a contract "does not stipulate a legal rate of interest, the obligation shall bear interest at a rate of 10 percent per annum."). The Trade Committee argued that it was entitled to repayment in full under Section 1124 and a longstanding bankruptcy principle that requires a debtor whose estate has a surplus to pay interest that accrues during the pendency of the bankruptcy before the debtor's shareholders receive any residuum. *Id.* at 10a-16a.

c. The bankruptcy court agreed with PG&E and confirmed the Plan, awarding post-petition interest at the federal judgment rate. Pet. App. 81a, 84a-85a. The district court affirmed. *Id.* at 57a. In both courts, PG&E acknowledged that it must pay post-petition interest and contested only the rate. Bankr. Ct. Doc. 4624, at 3 (stating that unimpaired creditors "will receive postpetition interest at the Federal Judgment Rate" and that "[t]his treatment is mandated by the Bankruptcy Code and governing Ninth Circuit authority"); D. Ct. Doc. 21, at 16 ("[B]ecause the Reorganized Debtors are solvent, *Cardelucci* requires that the Reorganized Debtors pay postpetition interest * * * and pay it at the Federal Judgment Rate, no more and no less.").

3. The Ninth Circuit reversed and remanded. Pet. App. 1a-34a.

a. As in the bankruptcy and district courts, in the court of appeals PG&E acknowledged its obligation to pay post-petition interest to unimpaired creditors. PG&E's Ninth Circuit brief explained that "[b]oth parties agree that given the Debtors' [*i.e.*, PG&E's] solvency, the Bankruptcy Code entitle[d] the unsecured creditors to post-petition interest on their claims," and that "the issue is what *rate* applies." Pet. C.A. Br. 16 (emphasis added). The court of appeals took the case on that understanding and proceeded to address that issue. Pet. App. 9a ("The question we must answer is this: what rate of postpetition interest must a solvent debtor pay creditors whose claims are designated as unimpaired pursuant to § 1124(1) of the Bankruptcy Code?").

The court of appeals first rejected the bankruptcy court's and PG&E's contention that the Ninth Circuit's earlier decision in *Cardelucci* controlled. Pet. App. 17a-19a. The court explained that *Cardelucci* was inapposite because it "interpreted language from a specific statutory provision * * * that does not apply to unimpaired claims." *Id.* at 18a (citing 11 U.S.C. § 726(a)(5)). Its "holding" thus "d[id] not answer what rate of interest is required where § 726(a)(5) does not apply—including for unimpaired claims." *Id.* at 19a.

The court of appeals then turned to the Bankruptcy Code's text. Pet. App. 19a-24a. It considered and rejected the bankruptcy court's conclusion that "several Code provisions * * * establis[h] a uniform postpetition interest rate for all unsecured claims" in a case, such as this one, where the debtor is able to pay its debts in full. *Id.* at 19a.

In analyzing the Code's text, the court of appeals observed that a longstanding "equitable rule—widely recognized and applied under the [precursor of the Code]—entitled creditors to postpetition interest at the contract or default state law rate before a solvent debtor received surplus value from an estate." Pet. App. 19a-20a. The court recognized that Congress was and is free to abrogate that long-settled rule, either expressly or even "by implication." *Id.* at 20a (quoting *BFP* v. *Resolution Trust Corp.*, 511 U.S. 531, 546 (1994)). And it acknowledged that "pre-Code practice cannot abrogate the Code's plain text." *Id.* at 20a n.4. But the court of appeals explained that, under this Court's precedent, such statutory abrogation of settled practice "must be 'unambiguous.'" *Id.* at 20a (quoting *BFP*, 511 U.S. at 546). Put differently, the court of appeals observed, "pre-Code practice remains relevant to the construction of provisions that are 'subject to interpretation' or contain ambiguities." *Id.* at 20a n.4 (quoting *Hartford Underwriters Insurance Co.* v. *Union Planters Bank, N.A.*, 530 U.S. 1, 10 (2000)). After carefully examining the text of each provision PG&E cited, the court concluded that "[n]o Code provisions—alone or together—unambiguously displace the long-established" equitable principle that entitles "unimpaired creditors [to] asser[t] an equitable right to contractual postpetition interest." *Id.* at 22a; see *id.* at 20a-24a.

The court of appeals first considered 11 U.S.C. § 502(b)(2), which PG&E cited, and which generally excludes "unmatured interest" from the "allowed" amount of a claim. Pet. App. 21a.; see *id.* at 22a-23a.

The court explained that Section 502(b)(2) simply "restates" an earlier bankruptcy provision that had long been in force while the equitable principle requiring a debtor with a surplus to make unimpaired creditors whole before retaining value for shareholders. *Id.* at 22a. Congress's "mere recodification of" that earlier provision, the court held, "fails to reflect any Congressional instruction" to do away with that well-settled tenet of bankruptcy law or absolve a debtor in such a circumstance of its "obligation to pay interest on claims against it." *Ibid.*

The Ninth Circuit also agreed with other courts that the topic Section 502(b)(2) addresses—"whether postpetition interest can be *part of* an allowed claim"—is distinct from "whether there are circumstances under which the debtor may be required to pay postpetition interest *on* an allowed claim." Pet. App. 22a (citing *In re Mullins*, 633 B.R. 1, 22 (Bankr. D. Mass 2021); *In re Ultra Petroleum Corp.*, 624 B.R. 178, 203-204 (Bankr. S.D. Tex. 2020)). The court found "[t]he text of § 502(b)(2)" to be "entirely consistent with the conclusion that, in some instances, a creditor must receive postpetition interest *on* their allowed claim to be considered unimpaired." *Id.* at 23a. The Ninth Circuit stressed that "PG&E concede[d] that [the Trade Committee's members] are entitled to some interest on their allowed claims in this case," and therefore its "own argument foreclose[d] the notion that § 502(b)(2) alone limits unimpaired creditors' ability to collect postpetition interest." *Ibid.*

The Ninth Circuit next considered the other provision on which PG&E relied, 11 U.S.C. § 726(a), which specifies how property is to be distributed in a Chapter 7 liquidation, see *ibid.*, and in that context authorizes payment of interest "on" a claim at "the legal rate," *id.* § 726(a)(5). The court held that Section 726(a)(5) "does not unambiguously abrogate" the settled rule that entitles unimpaired creditors like the Trade Committee to contract-rate post-petition interest because that provision is inapplicable to unimpaired creditors. Pet. App. 23a. The court explained that, although Chapter 11 does incorporate Section 726(a)'s substance in certain contexts, Section 726(a)(5) "only applies to *impaired* chapter 11 creditors via the best-interests test." *Ibid.* (citing 11 U.S.C. § 1129(a)(7)). "If Congress meant to limit all unsecured, chapter 11 creditors to interest at the federal judgment rate, it could have done so directly," but it did not. *Ibid.*

The court of appeals further reasoned that the equitable principle entitling the unimpaired creditors to post-petition interest before shareholders receive value is affirmatively supported by the Code's text and history. Pet. App. 24a-26a. The court observed that that principle "fits comfortably within the text of the Code—specifically, its requirement that a debtor's plan leave unaltered a creditor's 'legal, *equitable*, and contractual rights.'" *Id.* at 25a (quoting 11 U.S.C. § 1124(1)). The court additionally noted that, in 1994, "Congress repealed a Code provision" that had allowed a debtor to avoid paying post-petition interest. *Ibid.* (citing 11 U.S.C. § 1124(3) (1988)). Section 1124(3) permitted a debtor to deem a creditor's claim unimpaired by paying only the "allowed amount of its claim," which under Section 502(b)(2) would not include post-petition interest. *Ibid.* (brackets and citation omitted).

Finally, the court of appeals explained that the "Code's structure" reinforced its reading. Pet. App. 26a. Chapter 11, the court observed, "offers procedural and substantive protections for creditors who are impaired by a plan" that unimpaired creditors do not enjoy, and "Congress ensured that creditors whose rights were altered in any way by a plan could avail themselves of these protections." *Ibid.* Abridging unimpaired creditors' rights by paying them "the same, reduced interest rate as impaired creditors," while also "depriving them of the statutory protections that impaired creditors enjoy," would "permi[t] PG&E to end-run these statutory rights while reaping a windfall of hundreds of millions of dollars." *Id.* at 26a-27a. The Code's text and structure show that Congress gave debtors with a surplus "a choice: compensate creditors in full * * * or designate them as impaired claimants entitled to the full scope of the Code's substantive and procedural protections." *Id.* at 27a.

b. Judge Ikuta dissented. Pet. App. 35a-56a. In her view, Section 502(b)(2) imposes a "general rule disallowing postpetition interest," regardless of a debtor's ability to repay its debts in full. *Id.* at 42a. She concluded that post-petition interest need be paid to unimpaired creditors only in the situations where the Code specifically mandates such payment—that is, to impaired unsecured creditors of a debtor with a surplus, under Sections 726(a)(5) and 1129(a)(7)(A)(ii), *ibid.*

REASONS FOR DENYING THE PETITION

PG&E's petition should be denied because PG&E expressly and repeatedly disclaimed in each court below the central contention that it now urges this Court to adopt. PG&E consistently conceded in the lower courts that it owed post-petition interest and disputed only the amount. In this Court, PG&E now seeks to claw back what was once common ground. This Court should not grant review on a theory PG&E explicitly disavowed.

In any event, the new and broader question PG&E raises in its petition would not warrant review even if it were properly presented. PG&E identifies no circuit conflict on its sweeping contention that post-petition interest is categorically forbidden even where a debtor is able to repay its obligations in full. No court has embraced that extreme stance. PG&E instead relies principally on the dissenting opinion in this case and a dissenting opinion from a decision of the Fifth Circuit. PG&E also attempts to manufacture disagreement at the margins of the Ninth and Fifth Circuit's approaches to an ancillary question of what, if any, equitable considerations might warrant an exception to the general rule requiring post-petition interest in this context. That asserted split is a mirage, and it also is not implicated here. The Ninth Circuit did not reach that follow-on issue, but instead remanded for the courts below to address it. The case's interlocutory posture counsels strongly against review.

Finally, PG&E is wrong on the merits of its new theory. The Ninth Circuit properly interpreted the Bankruptcy Code's text in light of centuries of unbroken bankruptcy practice. It correctly concluded that nothing in the Code's current text unambiguously abrogates that longstanding rule, and instead that the Code's language "fits comfortably" with that principle. Pet. App. 25a. And it faithfully applied other familiar tools of interpretation in determining that the statutory history—namely, Congress's repeal of a provision that once supported PG&E's view—and its structure foreclose the illogical and inequitable interpretation that PG&E now belatedly proffers, which would result in unwarranted windfalls for debtors and invite evasion of the Code's procedural and substantive safeguards. Further review is not warranted.

I. PG&E Waived Its New Argument That The Code Bars Paying Post-Petition Interest To Unimpaired Creditors

Prior to PG&E's petition for a writ of certiorari, this litigation has involved a narrow dispute. It was common ground throughout the proceeding below that the Bankruptcy Code requires a Chapter 11 debtor whose estate has a surplus—*i.e.*, a so-called "solvent" debtor that is able to pay its creditors in full—must pay its unimpaired creditors any interest it owes under the applicable nonbankruptcy law, including interest accruing while the bankruptcy proceeding is ongoing. PG&E assured the court of appeals that "[b]oth parties agree that given [PG&E's] solvency, the Bankruptcy Code entitles the unsecured creditors," including the Trade Committee, "to post-petition interest on their claims." Pet. C.A. Br. 16. The parties contested only the *amount*—*i.e.*, whether the rate under a contract or the federal judgment rate controls.

In this Court, however, seizing on arguments advanced by Judge Ikuta in dissent, PG&E seeks to transform the case from a focused dispute over the appropriate interest rate to a much broader battle over the relationship between the Bankruptcy Code and pre-Code law. And contrary to its repeated concessions below, PG&E now embraces the dissent's view—which it never endorsed below—that the Code does not require debtors who are able to repay their debts in full to pay unimpaired creditors any post-petition interest at all. Pet. i, 18-21; cf. Pet. App. 28a ("It is telling that not even PG&E advocates [the dissent's] position, instead conceding that the Code entitles plaintiffs, at minimum, to postpetition interest on their claims at the federal judgment rate.").

This is not an instance of refining arguments as a case ascends the appellate ladder. PG&E seeks review of an argument it disavowed in all three courts below.

- In the bankruptcy court, PG&E proposed a plan of reorganization under which the Trade Committee would receive post-petition interest at the federal judgment rate. Bankr. Ct. Doc. 8053-1, at 41-42. When the Trade Committee contested that treatment and argued that the Code entitled it to post-petition interest at the higher contractual or statutory rates, PG&E answered that the Trade Committee "will receive postpetition interest at the Federal Judgment Rate" and that "[n]o other rate applies." Bankr. Ct. Doc. 4624, at 3, 7. PG&E made clear, moreover, that it was legally required to pay that interest, not doing so as a matter of grace: "[t]his treatment is mandated by the Bankruptcy Code and governing Ninth Circuit authority." *Ibid.*; see *id.* at 5-9 (discussing *In re Cardelucci*, 285 F.3d 1231 (9th Cir. 2002)). Nor did it contend that that "Ninth Circuit authority," *id.* at 3, should be revisited.
- In the district court, PG&E likewise argued that, "because [PG&E is] solvent," "*Cardelucci* require[d] that the Reorganized Debtors pay postpetition interest * * * and pay it at the Federal Judgment Rate, no more *and no less*." D. Ct. Doc. 21, at 16 (emphasis added).

- In the Ninth Circuit, as noted, PG&E again held the same line, "agree[ing]" that the Code "entitles the unsecured creditors to post-petition interest on their claims" and disputing only "what rate applies." Pet. C.A. Br. 16.
- PG&E has also put its money where its mouth once was: as it notes even now, "PG&E has already paid" the Trade Committee post-petition interest at the federal judgment rate. Pet. 4.

But now, in its petition for a writ of certiorari, PG&E has transformed its argument. It has swapped its submission below that the Code *requires* a solvent debtor to pay unimpaired creditors post-petition interest for the view that the Code "flatly *prohibits*" it, irrespective of the amount. Pet. 5 (emphasis added).

Granting certiorari in these circumstances is unwarranted. This Court has explained that, when a petition for certiorari presents a "question [that] was not raised in the Court of Appeals," that question "is not properly before" this Court. *Delta Air Lines, Inc.* v. *August*, 450 U.S. 346, 362 (1981). Although the Court retains discretion to consider an unpreserved question in the first instance, it has long recognized that it is generally imprudent to do so as a Court of "review, not of first view." *Cutter* v. *Wilkinson*, 544 U.S. 709, 718 n.7 (2005). The lower courts here had no occasion to consider an argument that PG&E disclaimed below. They properly hewed to the "the principle of party presentation," *United States* v. *Sineneng-Smith*, 140 S. Ct. 1575, 1579 (2020), by deciding only the dispute the parties tendered. The absence of any ruling below would frustrate this Court's consideration of the question. This Court should not be fourth to consider the case but only the first to address the question now presented. And it should not reward attempts by litigants to blindside lower courts by seeking this Court's review of their decisions on issues they had no opportunity or reason to resolve. The petition should be denied for that reason alone.

II. The Decision Below Does Not Conflict With The Fifth Circuit's Decision In *Ultra*

This Court's review would be unwarranted in any event because PG&E identifies no lower-court conflict on the question it belatedly tries to inject. PG&E seeks review of its contention that the Bankruptcy Code prohibits a debtor with a surplus from paying any post-petition interest to unimpaired creditors. Pet. i, 18-21. But the petition identifies no conflict on that question and no decision from *any* court that has adopted PG&E's new position.

A. *Ultra* Rejected PG&E's New Position

1. PG&E contends (Pet. 22-23) that the decision below conflicts with *In re Ultra Petroleum Corp.*, 51 F.4th 138 (5th Cir. 2022), petition for cert. pending, No. 22-772 (filed Feb. 13, 2023). But the Ninth and Fifth Circuits are in violent agreement in rejecting the position PG&E now advances. Both courts have held that unimpaired creditors of a "solvent" debtor "enjoy an equitable right to contractual or state law default postpetition interest before allocation of surplus value from a bankruptcy estate." Pet. App. 33a; accord *Ultra*, 51 F.4th at 159. The Ninth Circuit held here that nothing in the Code's text "unambiguously displace[s] the long-established" principle that a debtor who can pay its debts in full must make unimpaired creditors whole before any value passes through to the debtor.

Pet. App. 22a; see *id.* at 19a-34a. The Fifth Circuit in *Ultra* reached the same conclusion, holding that "the Code does not preclude unimpaired creditors from receiving default-rate post-petition interest in excess of the Federal Judgment Rate in solvent-debtor Chapter 11 cases." 51 F.4th at 159; see *id.* at 150-159.

Unable to identify any inter-circuit conflict, PG&E points repeatedly to a pair of intra-panel splits. It leans heavily (Pet. 2-4, 13, 16-19, 22, 24, 26) on Judge Ikuta's dissent from the decision below in this case, Pet. App. 35a-56a, and Judge Oldham's dissent in *Ultra*, 51 F.4th at 160-164. That PG&E can find support only in dissenting opinions that did not speak for a court, and instead embody a view that the majority in each case rejected, is only further evidence that plenary review of PG&E's new position is unwarranted. PG&E at bottom seeks only to correct the Ninth Circuit's purported error in failing to adopt a position that PG&E previously and repeatedly disclaimed.

2. Both courts, moreover, agreed in rejecting the interest-*rate* argument that PG&E did advance below. The Ninth Circuit here held that an unimpaired creditor of a solvent debtor "enjoy[s] an equitable right to contractual or state law default postpetition interest," *not* interest at the lower federal judgment rate, "before allocation of surplus value from a bankruptcy estate." Pet. App. 33a. The Fifth Circuit in *Ultra* reached the same conclusion. *Ultra*, 51 F.4th at 158 ("[T]he contractual default rate is appropriate here.").

That conclusion also does not conflict with a decision of any other circuit. As the Ninth Circuit noted, it was the first to consider that issue. Pet. App. 9a ("No circuit court has addressed this issue[.]"). Only the Fifth Circuit has passed on that question since. PG&E has identified a single bankruptcy-court decision that rejected that circuit consensus. Pet. 24 (citing *In re Hertz Corp.*, 637 B.R. 781, 800-801 (Bankr. D. Del. 2021)). But PG&E does not argue that a single outlier bankruptcy-court case warrants review.

B. The Asserted Conflict With The Fifth Circuit Regarding Equitable Exceptions Is Illusory And Not Implicated

PG&E is left to argue (Pet. 22-23) that some inconsistency exists at the margin between the approaches the Ninth and Fifth Circuits have articulated. In just two paragraphs, PG&E contends (*ibid.*) that those courts apply different tests to determine what circumstances might justify an *exception* to the general rule they both embraced that requires a debtor that can fully repay its debts to pay post-petition interest owed to unimpaired creditors. No conflict exists, and certainly none is implicated here.

1. The Ninth Circuit explained that, given its origin in equity, the principle that entitles unimpaired creditors to post-petition interest at the contractual interest rate may give way to "compelling equitable considerations." Pet. App. 33a (quoting *In re Ultra Petroleum Corp.*, 943 F.3d 758, 765 (5th Cir. 2019)). PG&E argues that the Ninth Circuit's view "conflicts with the Fifth Circuit's" view expressed in its latest decision in *Ultra*, 51 F.4th 138, which PG&E portrays as embracing a "bright-line rule" impervious to any equitable exceptions. Pet. 21-22.

At the outset, PG&E overlooks that the Ninth Circuit borrowed its "compelling equitable considerations" formulation *from the Fifth Circuit* itself—namely, an earlier decision in *Ultra*, which the subsequent panel decision on which PG&E relies did not and could not supersede. See Pet. App. 33a (quoting *Ultra*, 943 F.3d at 765). In that earlier decision in *Ultra*, the Fifth Circuit agreed with "other circuits" that, "'absent compelling equitable considerations, when a debtor is solvent, it is the role of the bankruptcy court to enforce the creditors' contractual rights.'" 943 F.3d at 765 (citation omitted). The Fifth Circuit declined to resolve that issue or to "weigh the equities on [its] own," instead remanding that and other issues. *Id.* at 766. It cannot be that the decision below created a conflict with the Fifth Circuit by employing that court's test.

The Fifth Circuit's most recent decision in *Ultra* on which PG&E relies confirms that no conflict exists. It stated that "[s]olvent debtors are, by definition, able to pay their debts in full on their contractual terms, and *absent a legitimate bankruptcy reason to the contrary*, they should." *Ultra*, 51 F.4th at 151 (emphasis added). It further noted that "[t]here exists a gray area, however, where a debtor is solvent enough to pay in full all allowed claims, but the surplus is not enough to cover all creditors' otherwise disallowed interest. In such a case, legitimate bankruptcy interests may well warrant a more nuanced application of the solvent-debtor exception." *Id.* at 152 n.16. The Fifth Circuit in *Ultra* was able to determine based on the record that "that situation is not present here." *Ibid*. But both its recognition that equitable exceptions might exist and its finding that none was present accord with the decision below.

PG&E suggests (Pet. 22) that the Ninth Circuit's elaboration of its approach implies greater leeway for bankruptcy courts to make exceptions. But the Ninth Circuit was at pains to emphasize the limits of the discretion bankruptcy courts possess. Pet. App. 33a-34a. It expressed "confiden[ce] that in most solvent-debtor cases involving unimpaired creditors, the equitable role of the bankruptcy court will be simply to enforce creditors' rights according to the tenor of the contracts that created those rights." *Id.* at 34a (internal quotation marks omitted). The Ninth Circuit merely "acknowledge[d] the possibility that cases could arise where payment of contractual or default interest could impair the ability of other similarly situated creditors to be paid in full, or where other compelling equitable considerations could counsel in favor of payment of postpetition interest at a different rate." *Ibid.* (internal quotation marks omitted).

PG&E points to nothing in Fifth Circuit precedent that conflicts with the Ninth Circuit's discussion of hypothetical circumstances that might justify an exception from the general rule. PG&E's passing invocation of the constitutional requirement of "uniform" bankruptcy laws is thus a distraction. Pet. 25 (quoting U.S. Const. Art. I, § 8, Cl. 4). The Bankruptcy Code uniformly demands that debtors respect the claims held by creditors and this Court has long held that those claims are determined by state law. *Travelers Casualty & Surety Co.* v. *Pacific Gas & Electric Co.*, 549 U.S. 443, 450 (2007) (citing *Raleigh* v. *Illinois Department of Revenue*, 530 U.S. 15, 20 (2000)); see also *Butner* v. *United States*, 440 U.S. 48, 55 (1979).

And the Ninth and Fifth Circuits are aligned on the possibility of narrow equitable exceptions to an equitable rule.

Even if PG&E is correct in contending that the decision below "conflicts with the Fifth Circuit's" purported "bright-line rule," moreover, it is hard to envision how review of that issue could help PG&E here. If PG&E were correct that the Fifth Circuit would categorically require PG&E to pay post-petition interest at the contract rate without exception, while the Ninth Circuit leaves the door ajar to equitable exceptions, a decision by this Court on that question could only hurt any prospects PG&E has.

2. Whatever daylight PG&E perceives between the Ninth and Fifth Circuit's approaches to equitable exceptions would not warrant review in the case's current posture because the Ninth Circuit did not pass on whether such an exception would be appropriate here. To be sure, the court of appeals saw "no sign of any 'compelling equitable considerations' in this case that would defeat the presumption that plaintiffs are entitled to contractual or default postpetition interest." Pet. App. 34a. That observation was astute. PG&E's reorganization left it with billions of dollars in surplus value, and no cause exists for its equity-holders to receive a windfall without first repaying its creditors.

The Ninth Circuit "acknowledge[d]," however, "that the record before [it] [wa]s limited" and did not disclose "the extent of PG&E's solvency post-bankruptcy." Pet. App. 34a & n.12. The Ninth Circuit accordingly remanded for the bankruptcy court to determine in the first instance whether compelling equitable considerations justified departing from the presumptive contractual or statutory rate. Pet. App. 34a. The court did not resolve, but instead reserved, the question on which PG&E claims it parted ways with *Ultra*. Whether any supposed inconsistency between the Ninth and Fifth Circuits' approaches to exceptions would make any difference in this case is highly doubtful, but at a minimum that issue is premature.

The problems posed by that interlocutory posture well illustrate the wisdom of the Court's typical practice of deferring review until final judgment. *Hamilton-Brown Shoe Co.* v. *Wolf Brothers & Co.*, 240 U.S. 251, 258 (1916) ("[E]xcept in extraordinary cases, the writ [of certiorari] is not issued until final decree."); see *Brotherhood of Locomotive Firemen & Enginemen* v. *Bangor & A. R. Co.*, 389 U.S. 327, 328 (1967). Interlocutory review is sometimes appropriate—for example, if a lower court has decided an important legal issue and this Court's review "may serve to hasten or finally resolve the litigation." Stephen M. Shapiro et al., Supreme Court Practice § 4-57 (11th ed. 2019); see, *e.g.*, *Kellogg Brown & Root Services, Inc.* v. *United States ex rel. Carter*, 575 U.S. 650 (2015) (reviewing and reversing decision reinstating suit dismissed as untimely). But it would serve no purpose to grant review to resolve a purported conflict on a question that may (and should) have no bearing on the outcome of this case and that the bankruptcy court has already been tasked on remand with evaluating in the first instance.

III. The Ninth Circuit Correctly Held That The Code Requires Debtors With A Surplus To Pay Unimpaired Creditors In Full

The centerpiece of PG&E's pitch for plenary review is its contention (Pet. 14-21) that the Ninth Circuit erred in construing the Bankruptcy Code because it applied an improper interpretive approach that failed to heed the Code's "[u]nambiguous text." Pet. 3. That accusation is unfounded. The court of appeals properly acknowledged the primacy of the Code's plain language and thoroughly examined the provisions the parties disputed. Pet. App. 20a & n.4. It simply concluded that none of the provisions PG&E invoked, whether viewed individually or together, preclude payment of post-petition interest to unimpaired creditors of debtors with a surplus. The court accordingly held that the Code did not displace centuries-old bankruptcy practice that requires solvent debtors to pay their creditors before taking residual value for their shareholders. That conclusion is not merely consistent with the Code's text, but compelled by its plain language. PG&E's claim (Pet. 3-4, 14-21) that the Ninth Circuit's reasoning depends on discarding clear text in favor of past practice cannot be reconciled with its opinion.

A. The Code Requires A Debtor Able To Repay Its Debts To Pay Post-Petition Interest Owed To Unimpaired Creditors

The text of the Code itself compelled the Ninth Circuit's conclusion. To deem a claim "[un]impaired," a plan of reorganization must "leav[e] unaltered the legal, equitable, and contractual rights" of that creditor. 11 U.S.C. § 1124(1). Courts have long held that "any alteration" of a creditor's claim "constitutes impairment." *In re L & J Anaheim Associates*, 995 F.2d 940, 942 (9th Cir. 1993) (citation omitted); see also *In re Taddeo*, 685 F.2d 24, 28 (2d Cir. 1982) (the Code's text "define[s] impairment in the broadest possible terms"). The Code's definition of "claim" is similarly expansive, expressly encompassing any "right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured." 11 U.S.C. § 101(5)(A).

Under their contracts and state law, the Trade Committee's members have a "right to payment" that, although "unmatured" at the date of the filing of the bankruptcy petition, has now accrued and is fully "matured" by the time of payment. 11 U.S.C. § 101(5)(A). Taken together, Sections 101(5)(A) and 1124 direct that the Trade Committee must receive complete payment of all that is owed at the time of payment—including interest that accrued during the bankruptcy—because PG&E elected to treat the Trade Committee as holders of "unimpaired" claims. PG&E's choice deprived the Trade Committee of the Code's substantive and procedural protections for impaired creditors. In place of those protections, the Code demands that the Trade Committee receive all they were owed under nonbankruptcy law. See *In re PPI Enterprises (U.S.), Inc.*, 324 F.3d 197, 207 (3d Cir. 2003); *In re Monclova Care Center, Inc.*, 59 F. App'x 660, 664 (6th Cir. 2003).

Section 502(b)(2) does not change this result. As the Ninth Circuit explained, that provision prevents creditors from claiming "unmatured interest" as part of "the amount of" the creditor's "*allowed*" claim. Pet. App. 22a-23a (emphasis added). Section 502(b)(2) means simply that a creditor may not include as part of its "allow[ed]" claim interest that had not "[]matured" by the date of the filing of the bankruptcy petition. 11 U.S.C. § 502(b). Congress's reference to an "allowed" claim, rather than "claim" simpliciter—which Section 101(5)(A) addresses—should be given meaning. See, *e.g.*, *Bittner* v. *United States*, No. 21-1195 (U.S. Feb. 28, 2023), slip op. 7-8. "[T]here is a significant distinction between whether postpetition interest can be *part of* an allowed claim and whether there are circumstances under which the debtor may be required to pay postpetition interest *on* an allowed claim." Pet. App. 22a (quoting *In re Mullins*, 633 B.R. 1, 15 (Bankr. D. Mass. 2021)). As the Ninth Circuit noted, Section 502(b)(2) was a "mere recodification" of the former Bankruptcy Act's Section 63, "under which the equitable solvent debtor exception was widely applied." *Ibid.*

The Code's structure confirms that conclusion. The basic bargain of a Chapter 11 reorganization leaves it up to a debtor to classify a creditor as either impaired or unimpaired, but that choice has important substantive and procedural consequences. Holders of impaired claims "may vote on whether to confirm a plan," Pet. App. 15a (citing 11 U.S.C. § 1126(a)), and a court generally may confirm a plan only if every class votes to accept it, see 11 U.S.C. § 1129(a)(8)(A). An impaired creditor receives the substantive protection of the "best interest of creditors" test, which states that a creditor who votes against the plan must receive value "not less than * * * such holder would so receive" in a hypothetical Chapter 7 liquidation. *Id.* § 1129(a)(7)(A)(ii). An impaired class may also withhold its approval of a plan that is not "fair and equitable" to the class. *Id.* § 1129(b)(2); *American National Trust & Savings*

Ass'n v. *203 N. LaSalle St. Partnership*, 526 U.S. 434, 444 (1999).

An unimpaired creditor receives none of these protections—because it does not need them. An unimpaired creditor's rights are, by definition, "unaltered" by the plan. 11 U.S.C. § 1124(1). So long as that criterion set forth in the Code's text is respected, the creditor has no basis to object, no need to rely on the best-interest-of-creditors test, no reason to worry about payments to more junior interest holders, and no stake in the result of other creditors' vote on the plan. An unimpaired creditor's rights should sail through bankruptcy as if no petition had been filed.

PG&E's view defies the bargain that Congress enacted in the text of the Code extending more substantive and procedural protections in the bankruptcy. Under PG&E's reading, while impaired creditors are guaranteed post-petition interest "at the legal rate," 11 U.S.C. §§ 726(a)(5), 1129(a)(7)(A)(ii), unimpaired creditors would receive *no* interest. That would leave the Trade Committee worse off as unimpaired creditors than they would have been as impaired creditors. Moreover, PG&E's view would allow debtors to claim an unjust windfall—here, potentially $200 million funneled past creditors and straight to the company's equity holders—simply by failing to honor their pre-bankruptcy bargains and then insisting that creditors' nonbankruptcy rights have been left "unaltered." *Id.* § 1124(1). That cannot be right.

PG&E's position is also refuted by the Code's history. Far from embracing PG&E's position that unimpaired creditors are owed no post-petition interest, Congress repudiated that position as soon as the possibility that PG&E urges first came to light. Section

1124's definition of claims that are not "impaired" previously contained a third subsection. 11 U.S.C. § 1124(3) (1988). That subsection allowed a debtor to treat as "unimpaired" a claim whose holder received a payment of "cash equal to the *allowed* amount of such claim." *Ibid.* (emphasis added). In May 1994, a bankruptcy court embraced the position PG&E advances here—concluding that, under Section 1124(3), a solvent debtor had no obligation to pay post-petition interest to unimpaired creditors once they were paid cash equal to the allowed amount of the claim. *In re New Valley Corp.*, 168 B.R. 73 (Bankr. D.N.J. 1994). Less than six months later, Congress repealed that provision. See Bankruptcy Reform Act of 1994, Pub. L. No. 103-394, § 213, 108 Stat. 4106, 4125-4126. The legislative record reflects that Congress was acutely aware of *New Valley* and that the repeal of Section 1124(3) was designed to "preclude th[e] unfair result" approved in that case. H.R. Rep. No. 835, 103d Cong., 2d Sess. 48 (1994), reprinted in 1994 U.S.C.C.A.N. 3340, 3356-3357. No court has accepted PG&E's current view since that time.

B. The Decision Below Adhered To This Court's Precedent In Construing The Code's Text In Light Of Past Practice

Seeking a hook for certiorari, PG&E asserts (Pet. 3) that the court of appeals abandoned settled norms of statutory construction by elevating historical practice over the Code's "[u]nambiguous text." See Pet. 14-18. PG&E imputes (Pet. 16) to the decision below a view that "historical practice controls" and that only a "clear statement" from Congress can displace it. The court of appeals' opinion refutes that description.

The Ninth Circuit faithfully followed this Court's admonition that pre-Code bankruptcy practice must "infor[m]" courts' "understanding of the language of the Code" but that past practice "cannot overcome that language." Pet. App. 14a (quoting *Hartford Underwriters Insurance Co.* v. *Union Planters Bank, N.A.*, 530 U.S. 1, 10 (2000)). That is a "normal rule of statutory construction"; in the face of a longstanding common-law practice, courts expect that "if Congress intends for legislation to change" the law, it "makes that intent specific." *Midlantic National Bank* v. *New Jersey Department of Environmental Protection*, 474 U.S. 494, 501 (1986). "The Court has followed this rule with particular care in construing the scope of bankruptcy codifications." *Ibid.*; see *Kelly* v. *Robinson*, 479 U.S. 36, 47 (1986) (noting that *Midlantic* "declined to hold that the new Bankruptcy Code silently abrogated another exception created by courts construing the old Act").

The court of appeals applied no countertextual "clear statement" rule. The principle it followed, deeply rooted in this Court's decisions, reflects the recognition that in the bankruptcy context Congress legislated against a backdrop of centuries of common law and well-established practice when it enacted the Bankruptcy Code, and courts therefore should not lightly use ambiguous Code provisions "to erode past bankruptcy practice absent a clear indication that Congress intended such a departure." *Cohen* v. *de la Cruz*, 523 U.S. 213, 221 (1998) (citation omitted); accord *Hall* v. *United States*, 566 U.S. 506, 518 (2012); *Hamilton* v. *Lanning*, 560 U.S. 505, 517 (2010); *Travelers*, 549 U.S. at 453-454; *Lamie* v. *United States Trustee*, 540 U.S. 526, 539 (2004); *Pennsylvania Department of Public Welfare* v. *Davenport*, 495 U.S. 552, 563 (1990), superseded by statute on other grounds, Criminal Victims Protection Act of 1990, Pub. L. No. 101-581, § 3, 104 Stat. 2865.

Mindful of this admonition, the Ninth Circuit surveyed pre-Code history. Pet. App. 11a-14a. But in doing so, it stressed that "pre-Code practice" is "relevant" only to inform—not to supersede—the Code's text. Pet. App. 20a n.4 (citing *Hartford Underwriters*, 530 U.S. at 10). It searched for "unambiguous" language governing the question. Pet. App. 20a (quoting *BFP* v. *Resolution Trust Corp.*, 511 U.S. 531, 546 (1994)).

Contrary to PG&E's characterization, the court of appeals did not conduct a single-minded search for a "clear statement" (Pet. 2) specifically abrogating pre-Code practice. The decision below instead embodies a recognition that the Code's unambiguous text, and even any unambiguous implications from it, override contrary pre-Code practice. Pet. App. 20a ("[T]he Bankruptcy Code can of course override by implication[.]" (citation omitted)). The Ninth Circuit simply did not find in the Code's text any unambiguous statement or implication eliminating the centuries-old rule requiring repayment of accrued interest to creditors before equity holders take value. Finding no such indication, the court determined that, because a creditor of a solvent debtor at common law (and under the pre-Code Bankruptcy Act) had an equitable right to be paid post-petition interest before equity holders could take value from the estate, and because no provision of the Code—either alone or read together as a whole—displaced this well-established principle, the equitable right survived enactment of the Code. Not only did this right survive the Code, it was part of the bundle of rights the Code expressly protected in Section 1124(1).

That approach faithfully applied this Court's settled teaching. The Court has made clear that, where a court can identify a "clearly established" pre-Code practice, that practice would have been the "type of rule that * * * Congress was aware of when enacting the Code." *United States* v. *Ron Pair Enterprises, Inc.*, 489 U.S. 235, 246 (1989); see also *Dewsnup* v. *Timm*, 502 U.S. 410, 418 (1992) (relying on "clearly established" pre-Code practice to inform the Code); *Kelly*, 479 U.S. at 46 (crediting "widely accepted" pre-Code practice). When the "meaning of the Bankruptcy Code's text is itself clear," the court must rest its analysis on that plain text alone. *BFP*, 511 U.S. at 546. But courts interpreting the Code must consider the backdrop against which Congress has legislated, *Dewsnup*, 502 U.S. at 417, recognizing that Congress would not have abrogated an "established" practice without evincing a clear intent to do so, *Hartford Underwriters*, 530 U.S. at 10; see, *e.g.*, *Bartenwerfer* v. *Buckley*, No. 21-908 (U.S. Feb. 22, 2023), slip op. 6, 9-10.

Other courts have applied the same sensible approach without difficulty. See *Ultra*, 51 F.4th at 154 n.21 ("Had Congress intended to do away with this practice, it would have said so directly."); *In re Price*, 370 F.3d 362, 368-69 (3d Cir. 2004); *Department of Social Services, Division of Child Support Enforcement* v. *Webb*, 908 F.3d 941, 946 (4th Cir. 2018); *In re Arzt*, 252 B.R. 138, 142 (B.A.P. 8th Cir. 2000); *In re Northeast Gas Generation, LLC*, 639 B.R. 914, 921 (Bankr. D. Del. 2022); *In re Asher*, 488 B.R. 58, 68 n.4 (Bankr. E.D.N.Y. 2013); *In re Bayou Group, LLC*, 431 B.R. 549, 559 (Bankr. S.D.N.Y. 2010) ("ambiguity renders * * * pre-Bankruptcy Code practice * * * relevant"); *In re Dvorkin Holdings, LLC*, 547 B.R. 880, 893 (N.D. Ill. 2016) ("[I]t is not clear * * * that Congress intended to replace the pre-Code rule that in cases involving a surplus bankruptcy estate, the bankruptcy court should enforce creditors' rights according to the tenor of the contracts that created those rights." (internal quotation marks omitted)).

Interpreting a complex, history-laden statutory scheme by reference to pre-existing statutory structure and well-developed case law is an entirely ordinary method of interpretation. This Court regularly adopts this method, reading new enactments against the background of "well grounded" and "centuries-old" practices. *Minerva Surgical, Inc.* v. *Hologic, Inc.*, 141 S. Ct. 2298, 2304 (2021). "Congress 'legislate[s] against a background of common-law adjudicatory principles,' and it 'expect[s]' those principles to 'apply except when a statutory purpose to the contrary is evident.'" *Id.* at 2307 (quoting *Astoria Federal Savings & Loan Ass'n* v. *Solimino*, 501 U.S. 104, 108 (1991)) (brackets in original); see also *United States* v. *Texas*, 507 U.S. 529, 534 (1993) (States' federal-common-law obligation to pay prejudgment interest to federal government not abrogated by the 1982 Debt Collection Act because "courts may take it as a given that Congress has legislated with an expectation that the [common law] principle will apply except when a statutory purpose to the contrary is evident" (internal quotation marks omitted; brackets in original)); *Isbrandtsen Co.* v. *Johnson*, 343 U.S. 779, 783 (1952) ("Statutes which invade the common law or the general maritime law are to be read with a presumption favoring the retention of long-established and familiar principles.").

The Ninth Circuit's holding is in accord with the text of Section 1124 and with centuries of pre-Code practice. PG&E offers no basis for this Court to review, much less reverse, that holding.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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