No. 24-1062

In the Supreme Court of the United States

THE HERTZ CORPORATION, ET AL., PETITIONERS

v.

WELLS FARGO BANK, N.A., AS INDENTURE TRUSTEE, ET AL.

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

BRIEF FOR RESPONDENT WELLS FARGO BANK, N.A., AS INDENTURE TRUSTEE, IN OPPOSITION

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QUESTION PRESENTED

Under Chapter 11 of the Bankruptcy Code, a plan of reorganization must classify each class of claims against the debtor as either "impaired," which triggers a host of substantive and procedural protections, or as "not impaired," in which case those protections do not apply. 11 U.S.C. 1123(a)(2)-(3); see also 11 U.S.C. 1129. As is pertinent here, a class of claims is impaired by a plan unless the plan "leaves unaltered the legal, equitable, and contractual rights to which such claim * * * entitles the holder of such claim." 11 U.S.C. 1124(1). The question presented is as follows:

Whether a Chapter 11 plan for an undisputedly solvent debtor may treat a creditor's claim as unimpaired if the creditor is not paid amounts of interest provided under the creditor's contract that accrue after the Chapter 11 petition is filed.

CORPORATE DISCLOSURE STATEMENT

Wells Fargo & Company, a publicly traded company, owns—directly or indirectly—100% of respondent Wells Fargo Bank, N.A. No other publicly held company owns 10% or more of the stock of respondent Wells Fargo Bank, N.A.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Cases—Continued: Page

Statutes:

Statutes—Continued: Page

Miscellaneous:

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OPINIONS BELOW

The amended opinion of the court of appeals (Pet. App. 1-49) is reported at 120 F.4th 1181. The opinion of the bankruptcy court (Pet. App. 95-113) is unreported. An earlier opinion (Pet. App. 52-94) is reported at 637 B.R. 781.

JURISDICTION

The judgment of the court of appeals was entered on September 10, 2024. A petition for rehearing was denied on November 6, 2024 (Pet. App. 50-51). On January 21, 2025, Justice Alito extended the time within which to file a petition for a writ of certiorari to and including March 6, 2025. On February 24, 2025, Justice Alito further extended the time to April 5, 2025, and the petition was filed

on April 4, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

When petitioners emerged from bankruptcy in June 2021, they were so wildly solvent that they distributed more than $1 billion in value to pre-petition equityholders. Petitioners nonetheless refused to pay hundreds of millions of dollars in post-petition interest and redemption premiums that they owed to their unsecured noteholders, even though the noteholders had been deemed unimpaired by petitioners' bankruptcy plan and that plan was thus required to "leave[] unaltered" all of the noteholders' "legal, equitable, and contractual rights." 11 U.S.C. 1124(1). In the decision below, the court of appeals rejected petitioners' gambit. In agreement with the two other courts of appeals to have previously addressed the question presented and in accordance with centuries of bankruptcy practice, the court of appeals held that federal bankruptcy law does not permit a solvent debtor to deny full repayment to unimpaired creditors in order to fund a massive dividend to pre-petition equityholders, the junior-most stakeholders in a bankruptcy proceeding.

1. a. Chapter 11 of the Bankruptcy Code provides for the reorganization of financial obligations of a business enterprise or individual. 11 U.S.C. 1101 *et seq.* Chapter 11 bankruptcies are effectuated according to a "plan" that assigns to "classes" the various claims asserted against the debtor. 11 U.S.C. 1122, 1123. The plan must "specify any class of claims * * * that is not impaired under the plan" and must "specify the treatment of any class of claims * * * that is impaired under the plan." 11 U.S.C. 1123(a)(2)-(3). In order for a class of claims to be unimpaired, the plan must (as pertinent here) "leave[] unaltered the legal, equitable, and contractual rights to which

such claim * * * entitles the holder of such claim." 11 U.S.C. 1124(1).

Whether a class of claims is deemed unimpaired by the plan has important consequences. Holders of impaired claims have a right to vote on the plan, 11 U.S.C. 1126(c), and the bankruptcy court generally may confirm a plan only if every impaired class has voted to accept the plan, 11 U.S.C. 1129(a)(8)(A). When an impaired class has voted to reject the plan, the plan may be confirmed on a non-consensual basis only if the court concludes that it "does not discriminate unfairly, and is fair and equitable, with respect to each class of claims * * * that is impaired under, and has not accepted, the plan." 11 U.S.C. 1129(b)(1). Moreover, if a class of creditors is impaired under the plan, the plan can be confirmed only if at least one other non-insider class of impaired creditors has voted to accept it, 11 U.S.C. 1129(a)(10), thereby ensuring that a non-consensual plan may proceed only if it is acceptable to at least one class of creditors whose interests are affected. In addition, each impaired creditor that does not accept the plan is entitled to receive at least the amount it would receive if the debtor were to be liquidated under Chapter 7 of the Code. 11 U.S.C. 1129(a)(7)(A). That requirement—commonly referred to as the "best interests of creditors" test—ensures that, when there are sufficient resources to do so, an impaired creditor will be paid the full amount of its allowed claim plus "interest at the legal rate from the date of the filing of the petition." 11 U.S.C. 726(a)(5).

By contrast, unimpaired creditors have no right to vote on the plan and are instead "conclusively presumed to have accepted the plan." 11 U.S.C. 1126(f). Unimpaired creditors likewise cannot invoke Section 1129(b)'s "fair and equitable" requirement or the "best interests" test under Section 1129(a)(7), and they cannot insist on ac-

ceptance of the plan by another impaired class under Section 1129(a)(10). Instead, unimpaired creditors are protected by the requirement that their rights be left unaltered by the plan.

b. The Bankruptcy Code separately provides rules governing when a claim asserted against a debtor will be "allowed." 11 U.S.C. 502. Section 502(a) establishes the general rule that claims will be allowed, absent objection by a party in interest. Section 502(b)(1) then provides that a claim will be disallowed to the extent that "such claim is unenforceable * * * under any agreement or applicable law for a reason other than because such claim is contingent or unmatured." 11 U.S.C. 502(b)(1). Of particular relevance here, Section 502(b)(2) provides that a claim is disallowed "to the extent that * * * such claim is for unmatured interest." 11 U.S.C. 502(b)(2).

In disallowing claims for unmatured interest, Section 502(b)(2), carries forward longstanding practice in bankruptcy proceedings. The default rule that interest ceases to accrue on a claim after a debtor files for bankruptcy was settled in the English bankruptcy system by the eighteenth century and was thereafter "adopted" in American law. *Sexton* v. *Dreyfus*, 219 U.S. 339, 344 (1911) (collecting English authorities). The default rule serves to avoid administrative complexity arising from re-computation of creditors' claims and to promote fairness among creditors with competing claims to the debtor's limited assets. See *Vanston Bondholders Protective Comm.* v. *Green*, 329 U.S. 156, 164 (1946).

That traditional rule was subject to an important exception in cases in which a debtor proved to be solvent. The English authorities held that a solvent debtor would be required to pay interest that accrued during the bankruptcy. *E.g.*, 2 William Blackstone, *Commentaries* *488; *Bromley* v. *Goodere*, 26 Eng. Rep. 49 (1743); *Ex parte*

Mills, 30 Eng. Rep. 640 (1793). This solvent debtor principle was then "carried over into our system" of American bankruptcy law, providing that, "if the alleged 'bankrupt' proved solvent, creditors received post-bankruptcy interest before any surplus reverted to the debtor." *City of New York* v. *Saper*, 336 U.S. 328, 332 n.7 (1949); see also, *e.g.*, *Ruskin* v. *Griffiths*, 269 F.2d 827, 830-832 (2d Cir. 1959); *Brown* v. *Leo*, 34 F.2d 127, 127 (2d Cir. 1929); *Johnson* v. *Norris*, 190 F. 459, 466 (5th Cir. 1911). These decisions reflect the fundamental understanding that "[t]he only good reason for refusing to give a creditor in reorganization all that he bargained for when he extended credit is to help other creditors, the debtor's assets being insufficient to pay all creditors in full." *In re Chicago, Milwaukee, St. Paul & Pac. R.R. Co.*, 791 F.2d 524, 527 (7th Cir. 1986). Thus, when the debtor *can* pay all creditors in full, "the task for the bankruptcy court is simply to enforce creditors' rights according to the tenor of the contracts that created those rights." *Id.* at 528.

2. a. Petitioners, The Hertz Corporation and various corporate affiliates, filed voluntary Chapter 11 petitions in May 2020, largely due to disruption caused to travel and their business by the COVID-19 pandemic. Pet. App. 3 Hertz's prospects quickly improved, however, and petitioners were wildly solvent by the time their Chapter 11 plan was confirmed in June 2021. *Id.* at 3-4. The plan thus deemed each class of creditors unimpaired and distributed more than $1 billion in value to pre-petition equityholders. *Ibid.*

This litigation pertains to the treatment under petitioners' Chapter 11 plan of Hertz's unsecured notes, including four series of unsecured Senior Notes for which respondent Wells Fargo Bank, N.A., serves as indenture

trustee. Pet. App. 4 & n.2.[1] Although petitioners' plan deemed the noteholders to be unimpaired, petitioners did not propose to pay all of the amounts that had been asserted with respect to the notes. *Id.* at 7-8. In particular, petitioners proposed to pay the notes' principal amounts and to pay pre-petition accrued interest at the contract rate applicable to each series of notes (which ranged from 5.5% to 7.125%), but petitioners proposed to pay post-petition interest for the period of the bankruptcy proceedings only at the much lower federal judgment rate (approximately 0.15% here). *Id.* at 4, 7. Petitioners argued that their contractual obligation to pay the higher interest rates was negated by 11 U.S.C. 502(b)(2)'s disallowance of claims for post-petition interest. Petitioners also refused to pay contractually specified premiums for early redemption of the notes, arguing that the premiums had not been triggered under the governing contracts and that the claims would be disallowed under Section 502(b)(2) in any event. Pet. App. 4-5. Respondent, by contrast, argued that the noteholders were entitled to full repayment in order to ensure that the plan would "leave[] unaltered" all of their "legal, equitable, and contractual rights." 11 U.S.C. 1124(1).

Resolution of the parties' dispute was not necessary prior to confirmation, however, because petitioners' plan included a commitment to pay the noteholders whatever amount was ultimately determined to be required to render them unimpaired under 11 U.S.C. 1124(1). See Pet. App. 8. The bankruptcy court confirmed petitioners' plan on that understanding. *Ibid.* Promptly thereafter, re-

[1] The litigation also involves unsecured promissory notes represented by U.S. Bank, N.A., which adopted respondent's arguments in the courts below. Pet. App. 4 n.2; *id.* at 54.

spondent initiated an adversary proceeding seeking declarations that petitioners were required to pay post-petition interest on each series of notes at the full contract rate and to pay redemption premiums on each series. See Pet. App. 8-9.

b. The bankruptcy court rejected respondent's claims, holding that petitioners were not required to pay post-petition interest at the contract rate or any redemption premiums on account of the notes. Pet. App. 93, 104-105, 107-111. The court agreed with respondent that, under the language of the governing indentures, the early redemption of two series of notes had triggered a contractual obligation to pay "make-whole" redemption premiums totaling approximately $135 million. Pet. App. 67; see also C.A. App. 164. The court ultimately held, however, that the noteholders' claims for the premiums were disallowed by 11 U.S.C. 502(b)(2) as claims "for unmatured interest," because the make-whole formula governing the premiums provided compensation for the present value of scheduled interest payments that would not be paid following redemption. See Pet. App. 104-105.

The bankruptcy court also rejected respondent's argument that payment of contract rate post-petition interest and the make-whole premiums was required to ensure that the Chapter 11 plan would "leave[] unaltered" the noteholders' "legal, equitable, and contractual rights." 11 U.S.C. 1124(1). The court held that Section 1124(1) does not require payment of amounts that are disallowed by the Bankruptcy Code. See Pet. App. 74-77. And although the court agreed that solvent debtors must pay post-petition interest, it held that the noteholders were limited "to payment of interest at the legal rate," 11 U.S.C. 726(a)(5), which the court understood to require application of the federal judgment rate. See Pet. App. 89-93. The court acknowledged that Section 726(a)(5) applies in Chapter 11

cases (via 11 U.S.C. 1129(a)(7)) only to *impaired* unsecured creditors, see Pet. App. 78, but the court nonetheless held that Section 726(a)(5) governs unimpaired creditors' entitlement to post-petition interest as well, see *id.* at 89-93. The result of that decision was to deny recovery of approximately $125 million in post-petition interest owed under the noteholders' contracts, see Pet. App. 7, as well as the make-whole premiums totaling approximately $135 million.[2]

The bankruptcy court certified its judgment for direct appeal under 28 U.S.C. 158(d)(2), see Pet. App. 111-113, which the court of appeals accepted, see *id.* at 9.

3. a. The court of appeals reversed in relevant part. Pet. App. 1-41.[3] The court first agreed with the bankruptcy court's holding that the noteholders' claims for the make-whole redemption premiums were disallowed by 11 U.S.C. 502(b)(2) as claims for unmatured interest. Pet. App. 15-22. The court also held that that a debtor's refusal to pay amounts that are disallowed by the Bankruptcy Code does not constitute impairment of a creditor's contractual rights under Section 1124(1). *Id.* at 30 n.20.

The court recognized, however, that those conclusions did not dispose of respondent's argument that the Bankruptcy Code "require[s] solvent debtors to pay unimpaired creditors post-petition interest at the contract rate." Pet. App. 22. On that question, the court "agree[d]

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[2] In the decision below, the court of appeals referred to redemption premiums totaling $147 million. Pet. App. 7. That total includes approximately $12 million in premiums that were sought in respondent's complaint, but which the bankruptcy court held had not been triggered under the parties' contracts. See Pet. App. 64-65; C.A. App. 164.

[3] The court of appeals affirmed the bankruptcy court's holding that, under the language of the parties' contracts, no redemption premium was owed in connection with two series of notes. Pet. App. 10-12.

with the Noteholders that they have a right to receive contract rate interest and the [make-whole premiums] because Hertz was solvent." Pet. App. 6.

The court of appeals began by noting that recent decisions of the Fifth and Ninth Circuits, see *In re PG&E Corp.*, 46 F.4th 1047 (9th Cir. 2022); *In re Ultra Petroleum Corp.*, 51 F.4th 138 (5th Cir. 2022), had concluded that "pre-Code practice required solvent debtors [to] pay contract rate interest" and "that the enacted Bankruptcy Code did not clearly reject that tradition." Pet. App. 23. Accordingly, those decisions held, the Code "gives creditors of solvent debtors the equitable right to contractual or state law default rate interest 'before allocation of surplus value' to equityholders 'absent compelling equitable considerations.'" Pet. App. 23 (quoting *PG&E*, 46 F.4th at 1064; citing *Ultra Petroleum*, 51 F.4th at 159-160).

Agreeing with the rule adopted by the Fifth and Ninth Circuits, see Pet. App. 7, the court of appeals rejected petitioners' argument that those courts had impermissibly used pre-Code practice to override the Bankruptcy Code's unambiguous statutory text. Pet. App. 24. As the court of appeals explained, the "pre-Code solvent debtor practice" requiring full payment of post-petition interest before equity could recover "sprung from the pre-Code absolute priority rule." *Ibid.* (citing *PG&E*, 46 F.4th at 1054). And the court read the statutory absolute priority rules codified for impaired creditors at 11 U.S.C. 1129(b) to adopt the pre-Code practice, eliminating any possible inconsistency with the Code's enacted text. See Pet. App. 24-25, 32-35.

The court of appeals thus held that the noteholders' "right to treatment consistent with absolute priority"—under which a creditor is generally entitled to recover in full before equity recovers value—"must be honored to leave them unimpaired" under Section 1124(1). Pet. App.

32; see also *id.* at 30. The court explained that this result was bolstered by this Court's decision in *Czyzewski* v. *Jevic Holding Corp.*, 580 U.S. 451 (2017), where this Court disapproved priority-violating "structured dismissals" of Chapter 11 cases and characterized absolute priority as "bankruptcy's most important and famous rule." *Id.* at 465; see Pet. App. 7, 29-32.

The court of appeals also explained that denying recovery of contract rate interest would "create[] significant tensions with the Code's basic structure." Pet. App. 37. The noteholders would be treated *worse* as unimpaired creditors than they would have been treated as impaired creditors, because they could not insist on acceptance of the plan by another impaired class of creditors under 11 U.S.C. 1129(a)(10) and could not insist on "fair and equitable" treatment under 11 U.S.C. 1129(b). See Pet. App. 37-38.

Finally, the court of appeals rejected the argument that Section 502(b)(2) categorically bars any recovery of post-petition interest. Pet. App. 38-39. The court explained that this argument was incompatible with petitioners' concession that the noteholders could receive post-petition interest *on* their allowed claims at the federal judgment rate, as well with other provisions of the Code providing for payment of post-petition interest on unsecured creditors' allowed claims. *Id.* at 38 (citing Petrs. C.A. Br. 30; 11 U.S.C. 726(a)(5); 11 U.S.C. 1129(a)(7)(A)(ii)).

In conclusion, the court of appeals "award[ed]" the noteholders post-petition interest at the contract rate and the make-whole premiums that were triggered by early redemption. Pet App. 36. Although the court noted that "compelling equitable considerations" might sometimes justify a different rate of interest, the court declined to

remand on that issue because petitioners had not requested a remand and because, under the circumstances of this case, no departure from the contract rate would be warranted. *Id.* at 35-36.

b. Judge Porter dissented in relevant part. Pet. App. 42-49. In his view, "the Bankruptcy Code plainly disallow[ed]" the noteholders' claims for post-petition interest and the make-whole premiums, *id.* at 42, and the noteholders were not entitled to recover those amounts under principles of absolute priority, *id.* at 42-49.

c. The court of appeals denied petitioners' request for rehearing en banc. Pet. App. 50-51.

ARGUMENT

Because petitioners' Chapter 11 plan deemed the noteholders to be unimpaired creditors, the plan was required to "leave[] unaltered" all of their "legal, equitable, and contractual rights." 11 U.S.C. 1124(1). Petitioners nonetheless contend (Pet. 12-36) that they were not required to pay the noteholders post-petition interest at the rate specified in the governing contracts or the premiums triggered by early redemption of the notes, even though petitioners were wildly solvent when the plan was confirmed. The court of appeals correctly rejected that contention, and its decision does not conflict with any decision of another court of appeals. This Court recently denied petitions for writs of certiorari raising the same question presented. See *In re PG&E Corp.*, 46 F.4th 1047 (9th Cir. 2022), cert denied, 143 S. Ct. 2492 (2023) (No. 22-733); *In re Ultra Petroleum Corp.*, 51 F.4th 138 (5th Cir. 2022), cert denied, 143 S. Ct. 2495 (2023) (No. 22-772). The same result is warranted here.

1. The court of appeals correctly held that, as unimpaired creditors of a solvent debtor, the noteholders were entitled to be paid in full, including any amounts that were

disallowed by 11 U.S.C. 502(b)(2) as claims for unmatured interest.

a. The noteholders were entitled to full repayment because the plan was required to respect their "equitable * * * rights," 11 U.S.C. 1124(1), and courts have long held that "creditors of solvent debtors" have "the equitable right to contractual or state law default rate interest 'before allocation of surplus value' to equityholders." Pet. App. 23 (quoting *PG&E*, 46 F.4th at 1064); see also *Ultra Petroleum*, 51 F.4th at 159-160. That equitable solvent debtor principle is a specific outgrowth of bankruptcy's fundamental absolute priority rule, see Pet. App. 24, and its pedigree stretches back over centuries of bankruptcy practice, see pp. 4-5, *supra*. It thus falls comfortably within the category of "equitable" rights that Section 1124(1) safeguards. See Pet. App. 30; *PG&E*, 46 F.4th at 1064; *Ultra Petroleum*, 51 F.4th at 159.

Petitioners are thus incorrect in arguing (Pet. 15-21) that the court of appeals erred by allowing pre-Code practice to override unambiguous statutory text. This Court has cautioned that courts should not "read the Bankruptcy Code to erode past bankruptcy practice absent a clear indication that Congress intended such a departure," *Cohen* v. *de la Cruz*, 523 U.S. 213, 221 (1998), in line with "[t]he normal rule of statutory construction * * * that if Congress intends for legislation to change the interpretation of a judicially created concept, it makes that intent specific," *Midlantic Nat'l Bank* v. *New Jersey Dep't of Env't Prot.*, 474 U.S. 494, 501 (1986). The court of appeals invoked that principle, see Pet. App. 33, but was also cognizant of this Court's guidance that historical practice must remain "a tool of construction, not an extratextual supplement." *Hartford Underwriters Ins. Co.* v. *Union Planters Bank, N.A.*, 530 U.S. 1, 10 (2000); see Pet. App.

24-25. The court of appeals simply disagreed with petitioners' submission that respecting the noteholders' entitlement to full repayment required the court to disregard the statutory text. *Ibid.* That conclusion was eminently sound, given that the relevant question here concerned the scope of the "equitable" rights safeguarded by Section 1124(1), a capacious statutory term that is naturally understood by reference to traditional pre-Code practice. See *PG&E*, 46 F.4th at 1064; *Ultra*, 51 F.4th at 159.

b. Unimpairment under Section 1124(1) required full repayment for a second, even more fundamental reason: It is undisputed that, under the noteholders' contracts, the noteholders were entitled to receive post-petition interest at the full contract rate and the make-whole premiums triggered by early redemption of the notes. As a matter of plain text, extinguishing the noteholders' right to be paid those amounts would thus violate Section 1124(1) directive that the plan "leave[] unaltered" the noteholders' "contractual rights." 11 U.SC. 1124(1).

As petitioners observe (Pet. 15), various lower courts, including the court of appeals in this case, have resisted that straightforward conclusion. Those courts have posited that when a plan fails to pay amounts that are disallowed by Section 502(b), it is the Bankruptcy Code—rather than the plan—that has altered the creditor's rights. *E.g.*, Pet. App. 30 n.20; *PG&E*, 46 F.4th at 1063 n.11; *In re PPI Enters. (U.S.), Inc.*, 324 F.3d 197, 203-204 (3d Cir. 2003). But this distinction between so-called "plan impairment" and "Code impairment" has no basis in the Bankruptcy Code.

Under Section 1124(1), a claim may be deemed unimpaired only if the plan "leaves unaltered the legal, equitable, and contractual rights to which such claim * * * entitles the holder." 11 U.S.C. 1124(1). The Code defines "claim" broadly to include any "right to payment,"

whether "matured" or "unmatured." 11 U.S.C. 101(5)(A). And Section 502(b)'s disallowance rules do not themselves alter a creditor's *claim*. Contra *In re PPI Enters.*, 324 F.3d at 204. They instead address whether and in what amount the bankruptcy court shall "allow" a creditor's claim. 11 U.S.C. 502(b). That determination then has consequences under a number of other Code provisions that refer to the "allowed amount" of a claim. *E.g.*, 11 U.S.C. 1129(a)(9)(A) (providing that holders of certain categories of claims "will receive * * * cash equal to the allowed amount of such claim"); 11 U.S.C. 1129(a)(9)(B)-(C), (b)(2). Unlike those provisions, however, Section 1124(1) does not refer to "allowed" claims. It instead refers to the creditor's "claim"—standing alone—and provides that an unimpaired creditor may not be deprived of *any* of the rights to which that claim entitles the creditor.

Moreover, if a creditor is not paid portions of its claim that are disallowed by the Code, the plan plays an important role in altering the creditor's rights. Contra Pet. App. 30 n.20. In Chapter 11 cases, confirmation of a plan effectuates a discharge of the debtor's pre-petition obligations, and the terms of the plan dictate (in part) the scope of the debtor's discharge. See 11 U.S.C. 1141(d)(1). If a plan combines a discharge of a creditor's claim with a failure to pay all amounts due to that creditor under the governing contract, then it is the plan that alters the creditor's contractual right to receive those unpaid amounts. This additional argument, which was preserved below, see Resp. C.A. Br. 17-22 & n.3, would thus provide a straightforward alternative basis for affirmance of the court of appeals' decision.

c. Statutory context reinforces the conclusion that unimpaired creditors are entitled to full repayment. Indeed, adopting petitioners' contrary position would upset the Code's basic structure by leaving unimpaired creditors,

such as the noteholders, worse off than they would have been as impaired creditors.

Only impaired creditors are eligible to vote on a Chapter 11 plan, see 11 U.S.C. 1126(c), and the plan must generally be accepted by each class of impaired claims, 11 U.S.C. 1129(a)(3). When an impaired class votes to reject the plan, those impaired creditors may invoke Section 1129(b)'s requirements for a non-consensual "cramdown" plan, which require a showing that the plan "does not discriminate unfairly, and is fair and equitable, with respect to each class of claims * * * that is impaired under, and has not accepted, the plan." 11 U.S.C. 1129(b)(1). Moreover, a cramdown plan cannot be confirmed unless at least one non-insider class of impaired creditors has voted to accept the plan. 11 U.S.C. 1129(b)(1). And only impaired creditors may invoke Section 1129(a)(7)'s "best interests" test, which requires the debtor to pay "interest at the legal rate from the date of the filing of the petition," 11 U.S.C. 726(a)(5), when there would be sufficient resources to do so in a Chapter 7 liquidation. See 11 U.S.C. 1129(a)(7).

By contrast, *unimpaired* creditors receive none of these protections. That rule that makes sense only when Section 1124(1)'s core guarantee is honored and the plan "leaves unaltered" all of the creditors' rights. 11 U.S.C. 1124(1). Because the unimpaired creditor's interests are unaffected by the plan, the creditor has no reason to vote on the plan and no basis to invoke any of the Code's other protections and confirmation requirements. If Section 1124(1) were read not to require full repayment, however, Chapter 11's basic bargain would break down. Indeed, because unimpaired creditors cannot invoke Section 1129(a)(7)'s "best interests" test, they would lack any statutory basis to insist on payment of post-petition interest

under the same standard that applies to impaired creditors. Thus, in solvent cases, unimpaired creditors would receive a *reduced* recovery vis-à-vis impaired creditors because they could not claim post-petition interest *at all*. And unimpaired creditors cannot invoke any of the other substantive and procedural protections that Congress deemed necessary for creditors whose rights are altered by a plan. In other words, the Code would treat unimpaired creditors—whose rights are supposed to be left *unaltered* by a plan—decidedly worse than impaired creditors. There is no reason to construe the Code in that deeply incongruous fashion, which would "make[] a hash of the scheme Congress devised." *Pulsifer* v. *United States*, 601 U.S. 124, 149 (2024); see Pet. App. 36-38; *PG&E*, 46 F.4th at 1060-1061; *Ultra*, 51 F.4th at 158.

Section 1124's history also refutes petitioners' position. Former Section 1124(3) previously permitted a Chapter 11 plan to deem a creditor unimpaired if the creditor would receive "cash equal to the *allowed* amount of [its] claim." 11 U.S.C. 1124(3) (1988) (emphasis added). In 1994, a bankruptcy court construed that provision to permit a solvent debtor to withhold post-petition interest from unimpaired creditors, who received only the allowed amount of their claims. See *In re New Valley Corp.*, 168 B.R. 73, 79 (Bankr. D.N.J. 1994). Congress responded only months later to "preclude" the "unfair result" reached in *New Valley*, H.R. Rep. No. 835, 103d Cong., 2d Sess. 48 (1994), by repealing Section 1124(3). See Bankruptcy Reform Act of 1994, Pub. L. No. 103-394, § 213, 108 Stat. 4125-4126.

Congress's action "confirm[s] that creditors of a solvent debtor who are designated as unimpaired *must* receive postpetition interest on their claim." *PG&E*, 46 F.4th at 1060; see also *Ultra*, 51 F.4th at 158. Indeed, the existence of former Section 1124(3*)* demonstrates that

Section 1124(1) has never countenanced unimpairment through payment of a creditor's *allowed* claim without post-petition interest; otherwise former Section 1124(3)'s alternative path to unimpairment would have been duplicative of Section 1124(1). And construing Section 1124(1) to permit unimpairment even if a debtor refuses to pay amounts disallowed as unmatured interest would "effectively nullify the 1994 amendment and allow solvent debtors to replicate 'exactly the same result that led Congress to delete section 1124(3)' in the first place." *PG&E*, 46 F.4th at 1062 (quoting *In re Energy Future Holdings Corp.*, 540 B.R. 109, 123 (Bankr. D. Del. 2015)).

2. Contrary to petitioners' contention (Pet. 24-32), the decision below does not implicate any conflict of authority.

a. As petitioners acknowledge (Pet. 29), the decision below is consistent with the decisions of the only other courts of appeals to have addressed unimpaired creditors' entitlement to post-petition interest when a Chapter 11 debtor is solvent. Both the Fifth Circuit and the Ninth Circuit have held that, in this situation, unimpaired creditors have an equitable entitlement to full repayment of all post-petition interest owed under their contracts or under governing state law, which must be left unaltered under Section 1124(1). See *In re PG&E*, 46 F.4th at 1060-1061; *Ultra Petroleum*, 51 F.4th at 159-160. As the court of appeals noted, see Pet. App. 6-7, its decision in this case accords with that consensus of appellate authority.

Petitioners nonetheless accuse (Pet. 31) the court of appeals of "chart[ing] its own course" by resting its decision on principles of absolute priority, rather than the solvent debtor principle that primarily drove the decisions of the Fifth and Ninth Circuits in *Ultra Petroleum* and *PG&E*. But even if the analysis of the court below differed from the reasoning of those circuits in some respects, such inconsistency would not warrant this Court's intervention

because this Court "reviews judgments, not statements in opinions." *Black* v. *Cutter Labs.*, 351 U.S. 292, 297 (1956). As petitioners concede (Pet. 29), the court of appeals reached the same "bottom-line conclusion" as the Fifth and Ninth Circuits. See Pet. App. 6-7. In any event, petitioners do not identify any meaningful difference in reasoning. In the decision below, the court of appeals observed that "pre-Code solvent debtor practice sprung from the pre-Code absolute priority rule," Pet. App. 24; the court's emphasis on principles of absolute priority thus largely reflects an issue of nomenclature, rather than substance. And the court of appeals relied on the reasoning of both *Ultra Petroleum* and *PG&E* repeatedly throughout its opinion, belying any suggestion that those decisions adopted a meaningfully different approach. See Pet. App. 6-7, 23-24, 35-38; see also *PG&E*, 46 F.4th at 1054 (tracing the solvent debtor principle to "[t]he common-law absolute priority rule"); *Ultra Petroleum*, 51 F.4th at 160 (holding that, "per the absolute priority rule, creditors' rights prevail").

Petitioners glancingly assert (Pet. 31) a conflict with the Fifth Circuit's *Ultra Petroleum* decision on a subsidiary issue. They note that the decision below stated that equitable considerations could justify a departure from an unimpaired creditor's contract rate of interest in appropriate cases, see Pet. App. 35-36, whereas the Fifth Circuit did not mention the possibility of any such equitable exception. In an earlier appeal in the *Ultra Petroleum* litigation, however, the Fifth Circuit characterized the solvent debtor principle as providing that, "*absent compelling equitable considerations*, when a debtor is solvent, it is the role of the bankruptcy court to enforce the creditors' contractual rights." *In re Ultra Petroleum Corp.*, 943 F.3d 758, 765 (5th Cir. 2019) (quoting *In re Dow Corning Corp.*,

456 F.3d 668, 679 (6th Cir. 2006)) (emphasis added). Accordingly, it is unclear whether the Fifth Circuit has categorically rejected the possibility that equitable considerations could justify a departure from the contract rate of interest in an appropriate case.

In any event, to the extent that there is any narrow disagreement between the decision below and *Ultra Petroleum*, the court of appeals adopted the legal approach that is more favorable to *petitioners'* position by stating that an equitable exception could potentially be available. The court held that no such exception would be warranted here. Pet. App. 36-38. Because petitioners would derive no benefit from a decision holding that equitable considerations can never justify an exception to the contract rate of interest, this case does not implicate the purported conflict that petitioners identify.

b. Petitioners' assertions (Pet. 3, 29) of a "square conflict" with the Second Circuit's decision in *In re LATAM Airlines Grp. S.A.*, 55 F.4th 377 (2022), are similarly unfounded. Indeed, that case did not directly present the question whether unimpaired creditors of a solvent debtor may receive post-petition interest at their contract rates because the Second Circuit "[a]ffirm[ed] the Bankruptcy Court's finding that [the debtor] was insolvent." *Id.* at 389. In the course of rejecting one of the objecting creditors' arguments, however, the Second Circuit observed that the "equitable rights" protected by Section 1124(1) "include[] whatever survives of the solvent-debtor exception," *id.* at 387, and the court quoted with apparent approval the Ninth Circuit's holding in *PG&E* that "pre-Code practice conclusively establishes creditors' equitable entitlement to contractual postpetition interest when a debtor is solvent, subject to any other countervailing equities," *ibid.* (quoting *PG&E*, 46 F.4th at 1060).

In this case, petitioners have never disputed that they were solvent when their Chapter 11 plan was confirmed, and the framing of their question presented concedes as much. See Pet. i. There is thus no basis to conclude that petitioners would have prevailed under the approach adopted by the Second Circuit in *LATAM*, where the court strongly suggested that unimpaired creditors of a solvent debtor *are* entitled to post-petition interest at the contract rate. See *LATAM*, 55 F.4th at 387.

Petitioners instead emphasize (Pet. 27-28) an arguable tension between the Second Circuit's reasoning in *LATAM* and the court of appeals' analysis in this case. In *LATAM*, the Second Circuit rejected the objecting creditors' contention that a debtor should automatically be treated as solvent for purposes of the solvent debtor principle whenever the debtor's plan distributes value to equityholders. See 55 F.4th at 388-389. In the decision below, by contrast, the court of appeals stated that "the absolute priority rule requires creditors' obligations be paid in full before owners, with junior rights to the business, take anything at all," Pet. App. 35, without expressly limiting that observation to cases like this one, in which an undisputedly solvent debtor seeks to extinguish unimpaired creditors' right to post-petition interest. See also Pet. App. 34 n.22 (suggesting disagreement with an aspect of *LATAM*'s reasoning). It is unclear, however, whether the court of appeals will apply that reasoning more broadly in future cases. And even if the court of appeals' reasoning is understood broadly, that would at most suggest that the objecting creditors in *LATAM* might have prevailed under the approach adopted by the court below. As just explained, petitioners cannot demonstrate that they would have prevailed under the Second Circuit's approach, as would be required for them to establish that this case im-

plicates a conflict in bottom-line results that might conceivably warrant this Court's review. See *Black*, 351 U.S. at 297.[4]

3. Petitioners significantly overstate (Pet. 32-36) the practical importance of the question presented and otherwise fail to justify intervention by this Court. To be sure, as petitioners observe (Pet. 33), resolution of the question presented has determined the distribution of large sums of money in this case and in a small number of other solvent-debtor Chapter 11 cases. But the same could be said of any number of other issues of bankruptcy law, not to mention other substantive areas of federal law. The financial stakes of a dispute, standing along, do not justify certiorari in the absence of a circuit conflict or a particularly important issue of federal law. See Sup. Ct. R. 10(a), (c); *Layne & Bowler Corp.* v. *Western Well Works, Inc.*, 261 U.S. 387, 393 (1923).

Petitioners are also incorrect in arguing (Pet. 33-35) that the decision below will have adverse practical conse-

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[4] Petitioners cite (Pet. 24-26) a host of additional decisions, but none justifies further review. With one exception, petitioners' remaining cases are nonprecedential decisions of district courts and bankruptcy courts, which would not establish any conflict warranting review by this Court. See Sup. Ct. R. 10(a). The only additional court of appeals case that petitioners cite, *In re Cardelucci*, 285 F.3d 1231 (9th Cir. 2002), did not involve unimpaired creditors' entitlement to receive post-petition interest from a solvent debtor. Rather, *Cardelucci* held that 11 U.S.C. 726(a)(5)'s provision for payment of "interest at the legal rate" refers to the federal judgment rate. See 285 F.3d at 1234. As the Ninth Circuit subsequently explained in *PG&E*, Section 726(a)(5) does not apply to limit an *unimpaired* creditor's recovery, and *Cardelucci*'s analysis thus does not bear on that question. See *PG&E*, 46 F.4th at 1056-1057. The decision below is consistent with *PG&E*, see pp. 17-18, *supra*, and likewise does not conflict with the Ninth Circuit's decision in *Cardelucci*.

quences that justify review by this Court. Petitioners' concerns are entirely speculative; they identify no evidence that respecting unimpaired creditors' entitlements in solvent Chapter 11 cases has actually led to undue administrative complexity or produced wasteful litigation. And petitioners' observation (Pet. 35) that courts and litigants in the Third, Fifth, and Ninth Circuits will be bound by circuit precedent on the question presented does not advance their cause. That is true *whenever* a court of appeals resolves a legal question in a precedential opinion; it cannot be a factor counseling in favor of review of any particular decision.

At bottom, petitioners fail to grapple with this Court's denial of certiorari less than two years ago in both *Ultra Petroleum* and *PG&E*. In denying certiorari in those cases, the Court rejected arguments for review that were virtually identical to those pressed by petitioners here. See Pet. for Cert. at 11-37, *Ultra Petroleum*, *supra* (No. 22-772); Pet. for Cert. at 12-27, *PG&E*, *supra* (No. 22-733). The arguments for certiorari are even weaker now, with a third circuit having adopted the same consensus approach to unimpaired creditors' entitlement to post-petition interest in solvent Chapter 11 cases. See pp. 17-19, *supra*. No further review is warranted.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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