No. 24-494

IN THE

Supreme Court of the United States

AMERICAN WARRIOR, INCORPORATED, *et al.*,

Petitioners,

v.

FOUNDATION ENERGY FUND IV-A, L.P., *et al.*,

Respondents.

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

REPLY TO BRIEF IN OPPOSITION

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TABLE OF CONTENTS

Page

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

REPLY 1

I. RESPONDENTS' EFFORTS TO EVADE THE QUESTION PRESENTED ARE BELIED BY THE RECORD AND THEIR OWN CONCESSIONS 5

II. RESPONDENTS' OTHER REASONS FOR DENYING REVIEW ARE INAPPOSITE 9

CONCLUSION 12

TABLE OF AUTHORITIES

Page(s)

Cases

Bronson v. U.S.,
46 F.3d 1573 (Fed. Cir. 1995) 9

E. Refractories Co. v. Forty Eight Insulations Inc.,
157 F.3d 169 (1st Cir. 1998) 8

Echo River Sanctuary, LLC v. 21st Mortg. Corp.,
348 So.3d 1191 (Fla. 1st DCA 2022)..... 9

In re Bitman,
628 B.R. 846 (Bankr. M.D. Fla. 2021)..... 11

In re Dawson,
665 B.R. 796 (Bankr. S.D. Ohio 2025)..... 10

In re HH Tech. Corp.,
649 B.R. 365 (Bankr. D. Mass. 2023) 10

In re Ottoman,
664 B.R. 720 (E.D. Mich. 2024) 10

In re Smith,
636 B.R. 521 (Bankr. E.D. Tenn. 2021)..... 11

In re Valentine,
648 B.R. 324 (Bankr. E.D. Cal. 2022) 10

In re Zausner,
638 B.R. 196 (Bankr. M.D. Fla. 2022)..... 10

Kalb v. Feuerstein,
308 U.S. 433 (1940)..... 2, 5, 11

Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson,
390 U.S. 414 (1968)..... 9

TABLE OF AUTHORITIES
(continued)

Page(s)

Ritzen Grp., Inc. v. Jackson Masonry, LLC,
589 U.S. 35 (2020) 2

Schwartz v. United States (In re Schwartz),
954 F.2d 569 (9th Cir. 1992) 5, 9

Soares v. Brockton Credit Union (In re Soares),
107 F.3d 969 (1st Cir. 1997) 3, 8

Statutes and Rules

11 U.S.C. § 362(a) 5, 6

11 U.S.C. § 362(d) 8, 11

11 U.S.C. § 362(k) 6

11 U.S.C. § 554(d) 6

Notes of Advisory Committee on Bankruptcy
Rule 601 (1976) 12

REPLY

In an effort to evade review of a squarely presented, outcome-determinative issue that has long divided the courts of appeals, Respondents confuse two legally distinct issues: (a) the effect of the automatic stay on the Kansas Litigation (*i.e.*, whether it rendered the litigation void or merely voidable), and (b) separately, the bankruptcy court's election to impose monetary sanctions for the stay violations that occurred only on counsel and not the parties they represented. Largely ignoring the first issue (which is the actual question presented), Respondents seek to divert attention to the second (which is immaterial). Because the latter does not subsume or control the former, Respondents' effort to recast the question presented is simply a distracting attempt to change the subject.

On the first issue (*i.e.*, whether the automatic stay rendered the Kansas Litigation void or merely voidable), Respondents do not deny the bankruptcy court's determination, acknowledged by the court of appeals, that the automatic stay applied to the Kansas Litigation commenced in 2019. *See* Pet. App. 5a-6a. They likewise do not deny that, even *after* the bankruptcy court made this determination, "the Debtors and their lawyers (*who are also counsel to other plaintiffs in the Kansas Litigation*) continued to prosecute the Kansas Litigation in violation of the automatic stay." *Id.* (emphasis added); *see* BIO at 7. Nor do they dispute that, in an effort to remedy this stay violation, Respondents (other than the two Black Stone entities) sought unsuccessfully to annul the stay retroactive to 2019. Pet. App. at 7a-8a

(discussing efforts to annul the stay); *see* BIO at 8 (same). Finally, Respondents do not dispute that no party timely appealed these determinations. *See* Pet. App. at 6a, 8a (no party timely appealed the bankruptcy court's rulings that the stay applied and had been violated, nor the court's decision declining to annul the stay); BIO at 8 (same); *Ritzen Grp., Inc. v. Jackson Masonry, LLC*, 589 U.S. 35 (2020) (an order denying relief from the automatic stay is immediately appealable and an appeal taken later is untimely).

In the circuits holding that litigation undertaken in violation of the stay is void, these final determinations would be conclusive. Under the law applied in these circuits, the commencement of the Kansas Litigation by the Debtors and other plaintiffs in 2019 was void *ab initio* because it was an effort to litigate property rights belonging to the estate. As the bankruptcy court explained, the reason why the Kansas Litigation violated the stay was because the Debtors had no authority to commence the litigation (only the trustee could) and the interests of the estate were "hopelessly intermingled" with the interests of the other plaintiffs (*e.g.*, their collective interests in the property in question were undivided). Pet. App. at 6a, 43a-44a. In other words, the circumstances here are closely analogous to those in *Kalb*, in which only one of the owners of the property involved in the state-court litigation filed for bankruptcy, yet the state-court litigation was rendered void because the interests of the several owners were similarly undivided. *See Kalb v. Feuerstein*, 308 U.S. 433, 436 (1940); Pet. at 24 (discussing *Kalb*).

Of course, the determination that the Kansas Litigation violated the stay did not leave Respondents without a remedy—they could (and most of them did) seek retroactive annulment of the stay. *See* Pet. App. at 7a, 45a; BIO at 8. Because no one appealed the bankruptcy court's denial of that relief, such would end the matter in the First, Second, Third, Ninth, Tenth, and Eleventh Circuits precisely because, in these circuits, litigation commenced in violation of the stay is void unless the stay is retroactively annulled—a form of relief only sparingly granted. *See, e.g., Soares v. Brockton Credit Union (In re Soares)*, 107 F.3d 969, 977 (1st Cir. 1997) (annulment "must rest on a set of facts that is both unusual and unusually compelling."); Pet. at 8.

The Fifth Circuit, however, has charted a different course, opening up a different remedial path. Under longstanding circuit precedent, actions in violation of the stay are not void, but voidable in the discretion of the bankruptcy court. *See* Pet. App. at 21a ("[T]his court has expressly refused to hold that all actions taken in violation of the automatic stay are automatically void. Instead, this court has held that they are merely *voidable*"). Accordingly, even though the bankruptcy court determined that (a) the interests of the Debtors and the other plaintiffs in the Kansas Litigation were "hopelessly intermingled"; (b) the stay applied to the Kansas Litigation; and (c) the stay had been violated, the fact that the Kansas Litigation violated the stay did not render it void. Rather, the bankruptcy court was free to leave the Kansas Litigation untouched (which it ultimately did) and, additionally, consider whether any of the parties and/or their counsel should be sanctioned individually

for their conduct (which it also did). Addressing the second issue, the bankruptcy court sanctioned only the lawyers with monetary penalties, not their clients. *See* Pet. App. 7a.

Respondents' effort to recast the question presented as whether they individually violated the stay is thus addressed to the wrong issue. It is also question-begging because, in most circuits, the commencement of the Kansas Litigation in 2019 would be void unless the stay were annulled, independent of whether some additional monetary sanction might be imposed. It is only because the Fifth Circuit has rejected the majority approach that the bankruptcy court in this case could entertain avoiding the Kansas Litigation on a discretionary basis in conjunction with potentially imposing individual monetary sanctions on the parties and/or their counsel.

Respondents' further assertion that all of this is purely a matter of "nomenclature," *see* BIO at 1, is not only wrong, it slights the exhaustive analysis of the courts of appeals that have carefully explained why Respondents are mistaken. *See* Pet. at 17-23. Respondents oddly (and inconsistently) contend that "petitioners' argument rests on the faulty assumption that circuits calling violations voidable treat violations as presumptively valid until the party seeking to void the violation demonstrates otherwise." BIO at 22. But, as noted, that is exactly the holding of the court below. *See* Pet. App. at 21a (holding that actions taken in violation of the stay "are merely *voidable*" rather than void). And to the limited extent Respondents address the merits of the actual question

presented, they merely offer their view that the Fifth Circuit is correct in holding that "violations of the automatic stay are voidable," BIO at 3, supported by reference to statutory provisions concerning the "transfer" of property, not the commencement of litigation involving the estate's rights, *see id*. at 22-23, and policy considerations, *see id*. at 23-24, each rejected by other courts of appeals, *see, e.g., Schwartz v. United States (In re Schwartz),* 954 F.2d 569, 571-74 (9th Cir. 1992); Pet. at 22-23. Similarly unavailing are Respondents' efforts to distinguish *Kalb*, which arguments have likewise been rejected by other courts of appeals that have consistently relied upon *Kalb* in support of their conclusion that violations of the stay are void. *See* Pet. at 25.

In sum, Respondents offer no legitimate reason to deny certiorari review. This matter involves an established circuit split on an important and recurring issue that is squarely presented and outcome-determinative. It likewise involves a frequently litigated question, as legions of cases attest. Because this Court's resolution of the longstanding conflict among the courts of appeals would be immensely useful to the administration of bankruptcy law, certiorari is warranted.

I. RESPONDENTS' EFFORTS TO EVADE THE QUESTION PRESENTED ARE BELIED BY THE RECORD AND THEIR OWN CONCESSIONS.

Section 362(a) of the Bankruptcy Code prohibits a broad assortment of activities that interfere with the administration of property of the bankruptcy estate, including state-court litigation involving such

property. *See* 11 U.S.C. § 362(a). As the bankruptcy court determined, the Kansas Litigation ran afoul of this prohibition from its inception. *See* Pet. App. at 5a.[1] The question presented involves the effect of this violation—was the Kansas Litigation void or merely voidable?

In the Fifth Circuit, actions taken in violation of the stay are not void *ab initio*, but rather voidable in the discretion of the bankruptcy court. *See* Pet. App. at 21a. Here, the bankruptcy court exercised that discretion, declining to void the Kansas Litigation, which determination the court of appeals affirmed. *See id*. at 24a.

Separately, the Bankruptcy Code authorizes the bankruptcy court to impose individual monetary sanctions on parties and/or their counsel for violations of the stay, including certain violations that are "willful." *See, e.g.,* 11 U.S.C. § 362(k) (authorizing the court to award "actual damages, including costs and attorneys' fees, and, in appropriate circumstances, … punitive damages" for "willful violation of a stay");

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[1] As the bankruptcy court explained, "[t]he nature of the Kansas lawsuit is a determination of who owns what[,]" which necessarily involved a determination of the estate's interest. ROA.2353, case no. 23-30529 [ECF 224]. Thus, "the automatic stay applies to all claims asserted in the Kansas litigation." ROA.2346, case no. 23-30529 [ECF 224]. As the court further explained, the stay had been in place since the Debtors first commenced their bankruptcy case: "[i]n this case, the mineral rights were property of the estate because they were not listed in the Debtor's bankruptcy schedules and the trustee did not administer them prior to the closure of the bankruptcy case. 11 U.S.C. § 554(d). Thus … the automatic stay remained in place." ROA.5527 n. 4, case no. 23-30529 [ECF 321]; *see* Pet. at 11 n.7.

§ 105 (authorizing ancillary relief). In this case, the bankruptcy court imposed monetary sanctions on counsel, who, as the court of appeals noted, were not only counsel for the Debtors but "also counsel to other plaintiffs in the Kansas Litigation[.]" Pet. App. at 5a. In other words, the bankruptcy court held the lawyers monetarily liable for the stay violation, not the parties. *See* Pet. App. at 7a.[2]

In deciding to sanction only the attorneys, the bankruptcy court obviously did not rescind its prior determination that the Kansas Litigation violated the stay. Among other things, doing so would have left no basis for sanctioning counsel. Accordingly, when Respondents recite that *they* were not found to have violated the stay, *see, e.g.,* BIO at 1, 13, what that means is that they were not, on an individual basis, held monetarily liable for the stay violations that occurred. Thus, Respondents' statement that "there is no stay violation at issue," BIO at 12, is not only wrong, it is refuted by the court of appeals' contrary recitation, *see, e.g.,* Pet. App. at 5a (observing that counsel for the Debtors, who were "also counsel to other plaintiffs in the Kansas Litigation," violated the stay)—a recitation Respondents acknowledge (albeit omitting the court of appeals' identification of the sanctioned attorneys as "also counsel to other plaintiffs in the Kansas Litigation"), *see* BIO at 7.[3]

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[2] Respondents contend that sanctioned counsel "are not respondents to this petition …." BIO at 15-16. That is beside the point. As the court of appeals noted, they were "also counsel to other plaintiffs in the Kansas Litigation …." Pet. App. at 5a.

[3] Respondents contend that Respondent Black Stone could not have violated the stay because Black Stone was added to the Kansas Litigation later. *See* BIO at 14. But if the Kansas

More important, Respondents' protestation is immaterial. What matters is that the stay applied and was violated. *See id.* at 15-16 (conceding that multiple "stay violations" occurred). The actual question presented concerns the effect of the stay on the Kansas Litigation, not who should pay monetary sanctions to the trustee, which is a separate issue.

The Bankruptcy Code further authorizes the bankruptcy court to grant relief from the automatic stay, including by annulling it. *See* 11 U.S.C. § 362(d) (authorizing the court to grant relief "such as by terminating, annulling, modifying, or conditioning such stay"). As numerous courts have explained, there would be no point to the specific authorization of 'annulment' if violations of the stay were not void *ab initio*—that is exactly what the remedy of annulment is for. *See, e.g., E. Refractories Co. v. Forty Eight Insulations Inc.*, 157 F.3d 169, 172 (1st Cir. 1998). As numerous courts have also determined, annulment is relief only sparingly granted. *See, e.g., Soares*, 107 F.3d at 977.

Respondents' argument that this is all just semantics and "nomenclature" is nonsensical. *See* BIO at 1, 13, 20. Respondents contend that, as a practical matter, whether the stay is annulled or whether the bankruptcy court declines to void an action as a matter of discretion reduces to the same thing. *See id*. at 19-21. But that ignores the decisions of the many courts of appeals that have painstakingly rejected *exactly* that argument, elaborating the

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Litigation were void *ab initio*, there would be nothing for Black Stone to join.

reasons why they are indeed different. *See, e.g., Schwartz*, 954 F.2d at 570-72; Pet. at 20. For example, the burdens are different, as are the standards for relief. *See id.*[4] In any event, Respondents raise no issue here that is not the subject of the reasoned analysis of numerous courts of appeals—which only highlights the ripeness of the issue and the need for this Court's intervention to resolve the existing deadlock.

II. RESPONDENTS' OTHER REASONS FOR DENYING REVIEW ARE INAPPOSITE.

Respondents note that Petitioners settled with the Trustee over the estate's interest in the Kansas Litigation. *See* BIO at 16. It is difficult to see, however, how reference to this settlement—which was approved by the bankruptcy court as fair and equitable (as all bankruptcy settlements must be, *see Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968))—somehow advances their cause. If the Kansas Litigation were void *ab initio* (as Petitioners

[4] Respondents contend that, "even in a circuit that labels violations as void, a party seeking the stay's protection against a violation cannot simply do nothing." BIO. at 21. But that is not true. Suppose, for example, that the action that violates the stay is the taking of a lien. The trustee indeed may do nothing—the lien is void, and hence unenforceable. *See, e.g., Echo River Sanctuary, LLC v. 21st Mortg. Corp.*, 348 So.3d 1191 (Fla. 1st DCA 2022). It is only if the lien is *voidable* that action must be taken—*i.e.*, to avoid it, which is costly. *See, e.g., Bronson v. U.S.*, 46 F.3d 1573, 1579, 1581-82 (Fed. Cir. 1995).

contend), the subsequent settlement with the Trustee does not obviate that consequence.[5]

Respondents' assertion that the question presented is "neither meaningful nor recurring," BIO at 18, is plainly belied by the sheer volume of decisions that have carefully considered it—resulting in the current 6-4 circuit split. Respondents complain that some circuits have taken a position on the question presented with relatively less elaboration. But that simply reflects the fact that courts tend to rely on the considered analyses of leading decisions they find persuasive without the need to repeat all the arguments. At bottom, what Respondents criticize is the maturity of the circuit split, not its lack of depth.

Respondents' contention that the issue is non-recurring is likewise refuted by a representative sampling of recent lower court decisions applying the competing approaches. *See, e.g.*, *In re Valentine*, 648 B.R. 324, 332-33 (Bankr. E.D. Cal. 2022) ("all acts that violate the automatic stay are void"); *In re Dawson,* 665 B.R. 796, 804 (Bankr. S.D. Ohio 2025) (violations of the stay are "voidable"); *In re Ottoman*, 664 B.R. 720, 738 (E.D. Mich. 2024) (same); *In re HH Tech. Corp.*, 649 B.R. 365, 380 (Bankr. D. Mass. 2023) ("a transfer in violation of the automatic stay … is void ab initio, not merely voidable."); *In re Valentine*, 648 B.R. 324, 333 (Bankr. E.D. Cal. 2022) (same); *In re Zausner*, 638 B.R. 196, 197 (Bankr. M.D. Fla. 2022)

[5] Respondents suggest that, if the Kansas Litigation were void *ab initio*, then other litigation might be as well. *See* BIO at 17-18. But that has nothing to do with the merits of the question presented in *this* proceeding.

(violations of the automatic stay are "null and void."); *In re Smith*, 636 B.R. 521, 531 (Bankr. E.D. Tenn. 2021) (same); *In re Bitman*, 628 B.R. 846, 849 (Bankr. M.D. Fla. 2021) (same).

On the other hand, with so many courts of appeals having taken a position already on the question presented, it is increasingly unlikely that these new cases will find their way into the appellate ranks. And those that do are likely to be resolved by summary order. It is only in cases such as this one—in which resolution of the question presented is indeed outcome-determinative and the parties are willing to expend the resources to bring the issue to the Court—that the opportunity to resolve the conflict among the courts of appeals will arise.

Finally, Respondents' efforts to distinguish *Kalb* are misguided. *See* BIO at 24-26. Like *Kalb*, this case involves a clear violation of the automatic stay, as the bankruptcy court determined. Also like *Kalb*, this case involves state-court litigation involving some, but not all, of the parties to the bankruptcy. In reality, it is difficult to imagine a case more like *Kalb*.

Respondents contend that differences between the current Bankruptcy Code and its predecessor, the former Bankruptcy Act under which *Kalb* was decided, compel a different result. *See* BIO at 25. But that does not square with the fact that current § 362(d) derives from former Bankruptcy Rule 601(c), which was designed to codify *Kalb*:

> an act or proceeding [taken in violation of the automatic stay] is void, but

> subdivision (c) recognizes that in appropriate cases the court may annul the stay so as to validate action taken during the pendency of the stay.

Notes of Advisory Committee on Bankruptcy Rule 601 (1976). For these and other reasons, the decision of the court below is wrong.

CONCLUSION

This Court's review of the question presented is warranted.

Respectfully submitted,

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