No. 22-142

IN THE

Supreme Court of the United States

FEDERACION DE MAESTROS
DE PUERTO RICO, INC.,

Petitioners,

v.

FINANCIAL OVERSIGHT AND MANAGEMENT
BOARD FOR PUERTO RICO, *et al.*,

Respondents.

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

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. In affirming the Title III court's order confirming the plan of adjustment for the Commonwealth of Puerto Rico, did the court of appeals correctly apply well-established rules of preemption to determine that the federal Puerto Rico Oversight, Management, and Economic Stability Act preempts Puerto Rico laws requiring the full payment of pension obligations and debt?

2. Was the court of appeals correct that the *Insular Cases* have no bearing on this case given that (*i*) this case involves nothing more than a plan of adjustment substituting a more affordable defined-contribution pension plan for a defined-benefit pension plan, (*ii*) the *Insular Cases* were not cited in the decision below; and (*iii*) Petitioners' appellate brief "did not cite to or reference the *Insular Cases* even once in its argument section, much less develop any argument" that those cases were relevant to the preemption issue presented (App. 422)?

RULE 29.6 STATEMENT

Respondent the Financial Oversight and Management Board for Puerto Rico, as representative of the Commonwealth of Puerto Rico, the Employees Retirement System of the Government of the Commonwealth of Puerto Rico, and the Puerto Rico Public Buildings Authority, is not a nongovernmental corporation and is therefore not required to submit a statement under Supreme Court Rule 29.6.

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BRIEF IN OPPOSITION

Respondent respectfully submits that the petition for a writ of certiorari should be denied.

INTRODUCTION

Petitioners' members, public school teachers in Puerto Rico, hold the claims that were given the most favorable treatment under the Commonwealth's Title III plan of adjustment. Under the plan, all the pension benefits earned by the teachers through the plan's effective date will be paid in full. Petitioners' complaint is that, going forward, they will earn additional retirement benefits through a defined-contribution plan rather than a defined-benefit plan. In other words, all that happened here is that a debt-relief plan substituted a more affordable pension plan for a less affordable one that had resulted in unfunded pension liabilities fueling Puerto Rico's fiscal crisis. When a debt-relief plan discharges obligations such as the pre-existing pension plan, it is required to provide an affordable distribution to holders of the discharged claims.

The issue in this case is whether the federal Puerto Rico Oversight, Management, and Economic Stability Act ("PROMESA") preempts Puerto Rico laws providing the teachers with rights to earn more benefits under the former defined-benefit plan. The court below correctly held that the local laws were preempted. The law of every state and territory in the United States provides for valid debt to be paid in full. As explained below, laws imposing and enforcing debt obligations are plainly preempted by federal debt-relief laws that discharge those same obligations.

A central theme of the Petition is that this case provides an opportunity for the Court to overrule the *Insular Cases*. Nothing could be further from the truth. The *Insular Cases* have nothing to do with the issues resolved below. In fact, Petitioners' argument is that Puerto Rico should not be permitted to utilize debt-restructuring powers from the U.S. Constitution to restructure their pension rights. Neither the district court nor the court of appeals cited or relied upon the *Insular Cases*, and neither party so much as mentioned the *Insular Cases* in their principal briefing. The *Insular Cases* concern whether and how the Constitution applies in Puerto Rico. That question is irrelevant to this case, which involved confirmation of a plan of adjustment in bankruptcy and a garden-variety application of preemption principles. Petitioners' strategy of repeatedly invoking the *Insular Cases* is a desperate attempt to deceive the Court into thinking the issues at stake are more important than they are. The court of appeals called Petitioners out on their deceptive strategy when it denied their petition for rehearing. App. 421–22. This Court likewise should not be deceived and should deny the Petition out of hand. If anything, it is Petitioners (not the court below) who have adopted the rationale of the *Insular Cases* by arguing that the power the Constitution grants to address the fiscal crisis in Puerto Rico should not be used to restructure their claims.

The actual question presented in this case is whether the court of appeals correctly determined that the Commonwealth's laws imposing pension obligations are preempted by PROMESA's provisions providing relief from such obligations. The answer to

that question is a resounding "yes." PROMESA expressly preempts any inconsistent Puerto Rico laws. 48 U.S.C. § 2103. It further provides that a debtor is discharged from all debts and obligations upon confirmation of a plan of adjustment (unless the plan provides otherwise). 11 U.S.C. § 944(b) (incorporated into PROMESA by 48 U.S.C. § 2161(a)). PROMESA also provides for the implementation of a plan of adjustment "[n]otwithstanding any otherwise applicable nonbankruptcy law[.]" 11 U.S.C. § 1123(a) (incorporated by 48 U.S.C. § 2161(a)). That federal debt-relief laws preempt local law imposing and enforcing debt is so clear that the U.S. Bankruptcy Code does not even contain a preemption section like 48 U.S.C. § 2103. Its preemption is universally understood.

Below, as provided in the confirmed plan of adjustment, the Commonwealth's obligation to allow certain active teachers to accrue additional defined benefits over time was discharged under PROMESA. Petitioners nevertheless argued that, notwithstanding such discharge, they are entitled to those additional benefits because such benefits are provided by Puerto Rico law. The courts below correctly rejected that position because Puerto Rico laws obligating the Commonwealth to provide additional defined pension benefits are inconsistent with the discharge of those same obligations pursuant to PROMESA and are thus preempted. That conclusion flows from both basic principles of conflict preemption and common sense. After all, if local laws imposing obligations on a municipal debtor remained enforceable notwithstanding a discharge of those same obligations under federal law, municipal debt restructurings would be impossible.

The Petition should be denied because it does not satisfy any of the traditional criteria for certiorari. Petitioners do not even attempt to show a circuit split, and the question presented—a plain-vanilla application of preemption principles—is unremarkable and not remotely in need of interpretation by this Court. What's more, the decision below was undoubtedly correct. In *Ohio v. Kovacs*, 469 U.S. 274, 278–82 (1985), this Court ruled that statutory debt obligations can be discharged the same as contractual ones. Review is unwarranted.

Through PROMESA, Congress provided Puerto Rico with debt relief, just as it provides debt relief to municipalities on the mainland. Thus, contrary to Petitioners' contention, this is not a case where Congress denied a territory the benefits it is authorized by the Constitution to provide to other parts of the United States. While Petitioners cloak themselves as the enemy of the *Insular Cases*, which questioned the applicability of the Constitution to territories, they are the ones arguing against Puerto Rico's receiving the bankruptcy relief stemming from the Constitution that is available in the United States.

STATEMENT OF THE CASE

1. Puerto Rico has been suffering through what Congress found to be a "fiscal emergency" that left the Commonwealth government unable to provide its residents with basic essential services. 48 U.S.C. § 2194(m)(1)–(2). In 2016, Congress enacted PROMESA to address that fiscal emergency. *Id.* §§ 2101–2241.

PROMESA established the Financial Oversight and Management Board for Puerto Rico (the "Board")

and granted it extensive authority over long-term fiscal plans and budgets in the Commonwealth. *Id.* §§ 2161–2162. The Board's statutory mission is to help the Commonwealth "achieve fiscal responsibility and access to the capital markets." *Id.* § 2121(a).

The Commonwealth or its instrumentalities cannot file a bankruptcy petition under Chapter 9 of the Bankruptcy Code. *See Puerto Rico v. Franklin Cal. Tax-Free Tr.*, 579 U.S. 115, 117–18 (2016). Accordingly, Congress enacted Title III of PROMESA, which establishes a procedure for the Commonwealth and its eligible instrumentalities to restructure their debts. 48 U.S.C. §§ 2161–2177. The Board is authorized to commence a Title III case on behalf of the Commonwealth and its instrumentalities, and the Board serves as the sole representative of the debtor in a Title III case. *Id.* §§ 2164(a), 2175(b). The Board also has the sole authority to file a plan of adjustment for a Title III debtor, *id.* § 2172, and the court must confirm such a plan if it meets the criteria enumerated in PROMESA, *id.* § 2174(b).

PROMESA contains an express preemption provision, which provides that the statute "shall prevail over any general or specific provisions of territory law, State law, or regulation that is inconsistent with [PROMESA]." *Id.* § 2103.

2. When the Board was established, Puerto Rico was burdened with approximately $74 billion in financial debt, $55 billion in unfunded pension liabilities, and insufficient resources to satisfy those obligations. App. 12–13. Central to the Board's mission was reforming the Commonwealth's three insolvent pension systems: the Employees Retirement System of the

Government of the Commonwealth of Puerto Rico ("ERS"); the Teachers' Retirement System ("TRS"); and the Judiciary Retirement System ("JRS"). Those systems were initially structured as defined-benefit plans funded primarily by employer contributions. *See* App. 15. That structure proved unsustainable due to inadequate employer contributions and the enactment of laws granting additional benefits without sufficient funding. *See id.*

Recognizing the urgent need for pension reform, the Puerto Rico government enacted legislation in 2013 freezing defined-benefit accruals for all ERS participants and TRS participants hired after August 1, 2014. *Id.* (citing 2013 P.R. Act 160, art. 5). TRS participants hired before August 1, 2014, continued to accrue defined benefits, which are paid upon retirement, following the 2013 legislation. App. 15–16.[1]

3. The Board commenced a Title III debt-restructuring case for the Commonwealth in May 2017. App. 14. Before the Board could propose a confirmable plan of adjustment in the Title III case, it spent several years negotiating with relevant stakeholders, including representatives of retirees and teachers' unions, to build support for the plan and its underlying agreements. *See* App. 14, 65–66. The Board ultimately filed an amended plan of adjustment with the Title III court on July 30, 2021. App. 105.

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[1] The 2013 legislation originally froze accruals of defined benefits for all TRS participants, but the Puerto Rico Supreme Court struck down the law as applied to TRS participants hired before August 1, 2014. *See Asociación de Maestros de P.R. v. Sistema de Retiro para Maestros de P.R.*, 190 P.R. Dec. 854, 2014 TSPR 58 (2014).

The proposed plan included creditor classes consisting of the claims for the right to earn future defined benefits held by retired and non-retired teachers. App. 113. The plan treated those claims by providing for payment of all benefits earned and accrued through the plan's effective date in full when due; freezing future defined-benefit accruals; and enrolling the defined-benefit participants in defined-contribution plans in full satisfaction of their existing pension claims, which would be discharged. *See* App. 16. As the court of appeals noted, the TRS participants' treatment under the plan was more favorable than the treatment given to any other class of unsecured claimholders. App. 31 & n.7.

4. All claimholders had the opportunity to object to the plan prior to confirmation. The plan received overwhelming support from creditors and was supported by the Government of Puerto Rico. App. 66, 148, 160.

The TRS participants were among a small minority of stakeholders who objected to the Plan. *See* App. 15, 66. They objected on the ground that they had the right to accrue additional defined pension benefits under Puerto Rico statutes and, in their view, neither PROMESA nor the plan could discharge or preempt those statutory rights. *See* App. 15–16. Petitioners also raised a series of additional objections having no bearing on the Petition. *See* App. 17.

5. After addressing and overruling all objections, the Title III court issued an order confirming the plan of adjustment (the "Confirmation Order"), App. 270–412, and factual findings and conclusions of law in support of the Confirmation Order, App. 45–269.

In confirming the plan, the Title III court overruled each of Petitioners' objections. With respect to preemption, the court held that PROMESA preempts Commonwealth laws that "give rise to obligations of the [d]ebtors discharged by the Plan and the Confirmation Order pursuant to PROMESA." App. 176. The court explained that Puerto Rico statutes imposing obligations on the Commonwealth to accrue pension benefits are "inconsistent with the discharge of claims and treatment provided for pension benefits and payments by the Plan under Title III of PROMESA and would undermine the restructuring contemplated by the Plan." App. 178.

6. Petitioners appealed and asked both the Title III court and the court of appeals to stay the Confirmation Order pending the outcome of the appeal. App. 12. Both courts denied the stay request. *Id.*

The court of appeals then unanimously affirmed the Confirmation Order on the merits. App. 1–32. The court began by observing that Petitioners did not dispute that pension obligations are contractual in nature and may be rejected by a debtor under 11 U.S.C. § 365(a) (incorporated into PROMESA by 48 U.S.C. § 2161(a)). App. 18. As the court noted, the Plan does precisely that: It "rejects any obligation owed to individual workers for accrual of future benefits under the existing regime" and "render[s] unenforceable the statutes that give rise to that obligation." App. 19.

The court then observed that "the Board need not ride on rejection alone" because the Board's "quiver" also contains "the concept of preemption." App. 20. As the court explained, PROMESA's express preemption provision "preempts Commonwealth law insofar as

that law purports to dictate (contrary to the Plan) the adjustment of the Commonwealth's financial obligations to participants in its pension plans." App. 21–22 (citing 48 U.S.C. § 2103). It was undisputed that the Commonwealth statutes imposing pension-related obligations directly conflicted with the Plan's treatment and discharge of those same obligations. App. 21. The sole question, the court noted, was whether the Plan "gives way" to the Commonwealth laws. App. 21. The court found that "Congress provided the answer" by incorporating § 1123(a)(3) and (5) of the Bankruptcy Code into PROMESA. App. 21. Under those subsections, a plan of adjustment shall provide for the treatment of any class of impaired claims "[n]otwithstanding any otherwise applicable non-bankruptcy law." 11 U.S.C. § 1123(a)(3), (5)); *see* App. 21. The court thus held that Puerto Rico's pension statutes could not stand in the way of the plan's impairment and treatment of Petitioners' pension-related claims. *Id.*

The court went on to hold in the alternative that Petitioners' position also failed as a matter of conflict preemption. App. 23. As the court explained, "compliance with the Commonwealth's laws mandating future defined-benefit-plan accruals and cost-of-living adjustments would plainly 'frustrate the purposes of the federal scheme' set out in PROMESA." App. 24.

7. Petitioners sought panel rehearing and rehearing en banc. In their rehearing petition, Petitioners contended that "the Title III court and [the court of appeals] relied on and expanded the holdings of the *Insular Cases*." App. 421.

The rehearing petition was denied. App. 413–27. In denying the petition, the court of appeals observed

that Petitioners "never attempted to develop" any arguments concerning the *Insular Cases* in the Title III court, and their opening brief on appeal "did not cite to or reference the *Insular Cases* even once in its argument section, much less develop any argument" concerning those cases. App. 422. The Petition for a writ of certiorari followed.

REASONS FOR DENYING THE PETITION

I. This Case Does Not Present Any Question Concerning the *Insular Cases*.

Contrary to Petitioners' contention, this case does not present any question concerning the *Insular Cases*, which have nothing to do with the preemption issue decided below. Although the Petition cites the *Insular Cases* no less than sixty times and argues those cases formed the basis of the decision below, that is a complete fabrication. *See* Pet. 22–29, 31–38. Neither the Title III court nor the court of appeals even mentioned the *Insular Cases* in their opinions, and neither relied on their rationale in any manner. *See* App. 1–32; App. 45–412. That is unsurprising given that neither party cited the *Insular Cases* in its merits briefing below. *See* App. 421–22.[2] Additionally, while Petitioners object to the limitations imposed by the *Insular Cases* on the applicability to the territories of certain constitutional rights and powers,

[2] Petitioners argue that they cited the *Insular Cases* in two filings below. The first is "Docket 49969" in Case No. 17-BK-3283 (D.P.R.), but no such docket entry exists. Pet. 22 n.5. The second is a reply that mentions the *Insular Cases* once in passing without any context or argument. Pet. 22 n.6. If the *Insular Cases* had any bearing on the question presented, Petitioners would have discussed them in their principal briefs.

they also ironically seek to limit the applicability to the territories of the Constitution's debt-restructuring powers to prevent the lawful restructuring of the teachers' pension claims.

As Petitioners concede, the decision below turned on the application of preemption. Pet. 17–21. The *Insular Cases* say nothing about preemption. They have no bearing on the issue decided below. The *Insular Cases* held that certain constitutional provisions may not apply in Puerto Rico. *See* Pet. 22–23. None of the *Insular Cases* concerned the Supremacy Clause, which is the only constitutional provision relevant to preemption. *See Fidelity Fed. Sav. & Loan Ass'n v. de la Cuesta*, 458 U.S. 141, 152 (1982) (explaining that preemption is a result of the Supremacy Clause).[3] Petitioners' contention that the *Insular Cases* dictated the outcome below is thus both unsupported and false.

Although the court of appeals did not cite the *Insular Cases* even once, Petitioners argue the court was silently motivated by the same racist animus towards Puerto Rico that supposedly underlay the *Insular Cases*. Pet. 23–24. According to the Petition, while the First Circuit used "cautious language" in its preemption analysis, it "echoed agreement with the *Insular Cases* biased portrayal of 'savages' born in territories and the 'alien races' unable to adapt American systems is impossible to miss." Pet. 24; *see also* Pet. 23–24 (accusing court of appeals of using "a tone that

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[3] In a case decided well after the *Insular Cases*, the Court held that the Supremacy Clause does apply in Puerto Rico. *See P.R. Dep't of Consumer Affs. v. Isla Petroleum Corp.*, 485 U.S. 495, 499 (1988).

is not so distant from the insidious remarks that sustain the *Insular Cases*"). With all due respect to Petitioners, such grave and unfounded allegations have no place in a petition to this Court. The Board rejects any notion that the court of appeals' preemption analysis was motivated by racial bias or anything other than a race-blind effort to apply the law.

Petitioners also contend the court of appeals "extended the reach" of the *Insular Cases* because it supposedly "affirmed the decision to treat Puerto Rico differently under the preemption doctrine." Pet. 23. The premise of that argument is demonstrably false. The court of appeals applied the same preemption principles below that it applies in cases challenging State statutes. *See, e.g.*, App. 23–24 (applying principles of express preemption and conflict preemption) (citing *SPGGC, LLC v. Ayotte*, 488 F.3d 525, 531 (1st Cir. 2007); *Pac. Gas & Elec. Co. v. State Energy Res. Conservation & Dev. Comm'n*, 461 U.S. 190, 204 (1983)). Indeed, the First Circuit has long recognized that preemption works the same in Puerto Rico as it does in the States. *See, e.g.*, *Antilles Cement Corp. v. Fortuño*, 670 F.3d 310, 323 (1st Cir. 2012) ("For preemption purposes, the laws of Puerto Rico are the functional equivalent of state laws.").

Petitioners further distort the record when they argue that the court of appeals "expanded" the *Insular Cases* by granting the Board the power to legislate. Pet. 25–29. The court of appeals made no holding concerning the Board's powers. It merely held that certain Puerto Rico statutes were preempted by PROMESA. App. 18–25. And even if the court had held that the Board has the power to legislate (which it did not), that still would not implicate the *Insular*

Cases because those cases have nothing to do with the Board and were decided more than one hundred years before the Board was established.[4]

Petitioners' contention that PROMESA itself would not have been possible but for the *Insular Cases* is both wrong and forfeited. Pet. 35. Congress enacted PROMESA using its plenary powers under Article IV of the Constitution to make all needful rules and regulations for the territories. *See* 48 U.S.C. § 2121(b)(2); *Fin. Oversight & Mgmt. Bd. for P.R. v. Aurelius Inv., LLC*, 140 S. Ct. 1649, 1658 (2020). It did so the same way it enacted nearly identical legislation to restructure the District of Columbia. *See* District of Columbia Financial Responsibility and Management Assistance Act of 1995, Pub. L. No. 104-8, 109 Stat. 97. Congress would have had the power to enact PROMESA under Article IV regardless of whether the *Insular Cases* had ever been decided. Indeed, even before the *Insular Cases*, this Court recognized that Article IV grants Congress "full and complete legislative authority over the people of the Territories and all the departments of the territorial governments." *Nat'l Bank v. Cnty. of Yankton*, 101 U.S. 129, 133 (1879); *see also Aurelius*, 140 S. Ct. at 1659 (citing examples of Congress exercising its Article IV powers to enact laws concerning the governance of the territories prior to the *Insular Cases*). In all events,

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[4] Besides, Petitioners' argument is erroneous. The plan of adjustment provides Petitioners all pension payments they earned and rights to a defined-contribution plan. App. 16. The plan is not legislation. Petitioners simply call it legislation because their prior pension rights (now discharged) were embodied in legislation.

Petitioners did not challenge the constitutionality of PROMESA below (and the court of appeals did not pass upon the question), so any belated argument concerning the viability of PROMESA is not presented. *See* App. 422.

In a final thrust, Petitioners argue the Court should grant certiorari to overrule the *Insular Cases* even if they are "wholly unrelated to this case." Pet. 32. That is a radical request. The Board is aware of no prior case where the Court granted certiorari for the purpose of overruling a case that was "wholly unrelated" to the decision under review. Petitioners cite *Trump v. Hawaii*, 138 S. Ct. 2392 (2018), which overruled *Korematsu v. United States*, 323 U.S. 214, 215 (1944). But the Court did not grant certiorari in *Hawaii* for the purpose of overruling *Korematsu*. *See* Petition for Writ of Certiorari, *Trump v. Hawaii*, 138 S. Ct. 2392 (No. 17–965), 2018 WL 333818, at *1 (Jan. 5, 2018) (Questions Presented unrelated to *Korematsu*). The majority opinion discussed *Korematsu* only because the "dissent's reference to *Korematsu* . . . afford[ed] this Court the opportunity" to overrule it. 138 S. Ct. at 2423.

Further counseling against certiorari is the fact that the courts below did not address the viability of the *Insular Cases* in the first instance. As this Court has repeatedly explained, it is "a court of review, not of first view." *Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005). The Court thus regularly declines the opportunity to decide issues not passed upon below. *See, e.g.*, *Ret. Plans Comm. of IBM v. Jander*, 140 S. Ct. 592, 595 (2020) ("The [court of appeals] did not address these arguments, and, for that reason, neither

shall we." (alterations omitted)). If the Court is interested in revisiting the *Insular Cases*, it should await a case where the viability of the *Insular Cases* could affect the outcome and where the Court has the benefit of the views of the lower courts on that question. *Cf. Aurelius*, 140 S. Ct. at 1665 (declining to address an argument that the *Insular Cases* should be overruled because the *Insular Cases* had no effect on the outcome of the case).

II. The Actual Question Presented Does Not Meet Any of the Court's Criteria for Certiorari.

The only question presented in this case is whether the court of appeals correctly applied the well-established rules of preemption to the facts presented below. That question does not remotely satisfy any of the traditional criteria for certiorari.

Petitioners do not argue the preemption ruling below implicates a circuit split. And although they claim a "conflict[] with relevant decisions of this Court," they do not identity any specific decision from this Court that conflicts with the decision below. *See* Pet. 11–15. Instead, they merely recite general "standards set by this Court's [preemption] jurisprudence" and argue the court of appeals misapplied those standards. *See* Pet. 10. Petitioners are thus asking this Court to fix a perceived error in the application of its preemption jurisprudence, which is normally not a basis for granting certiorari, at least if there is no circuit split on the application. *See* Sup. Ct. R. 10 ("A petition for a writ of certiorari is rarely granted when the asserted error consists of . . . the misapplication of a properly stated rule of law."). To be clear, no error was

committed below. *See* Point III, *infra*. But in all events, this Court is not in the business of "[e]rror correction." *Cavazos v. Smith*, 565 U.S. 1, 11 (2011) (Ginsburg, J., dissenting).

The Petition is not even clear concerning which preemption principles were supposedly misapplied. Petitioners argue the court below was supposed to employ a "starting presumption that Congress does not intend to supplant state law." Pet. 13. But PROMESA contains an express preemption provision, 48 U.S.C. § 2103, and this Court has held that there is no presumption against preemption when a federal statute contains an express preemption provision, *see Franklin Cal.*, 579 U.S. at 125. Petitioners also invoke this Court's teaching that "the purpose of Congress is the ultimate touchstone in every pre-emption case." Pet. 12. But the court of appeals *did* consider Congress's purpose when analyzing preemption, so it is not clear what Petitioners are complaining about. App. 21–22.

Nor is the preemption question presented one of extraordinary importance. *Contra* Pet. 29–31. As the court of appeals recognized, PROMESA is a *sui generis* statute (App. 22), and any decision about the preemptive scope of the PROMESA provisions allowing rejection of statutes creating contractual obligations will therefore have no widespread significance. The Petition's long discussion of the specific exhibits attached to the Confirmation Order confirms that the issues at stake here are narrow. Pet. 17–19.

Petitioners argue the decision below is important because it supposedly "allows the Board to preempt any and every state law that is inconsistent with [its]

will." Pet. 30. That is a fundamental misreading of the decision below, which did not give the Board *carte blanche* with regard to preemption. To the contrary, the court of appeals held that *PROMESA* preempts certain Commonwealth laws that "dictate (contrary to the Plan) the adjustment of the Commonwealth's financial obligations." App. 21–22.[5]

III. The Decision Below Was Correct.

Review is further unwarranted because the preemption decision below was undoubtedly correct. If statutes imposing debt obligations are not preempted by debt-relief laws, debt relief is not possible. The courts below identified at least four reasons why the Puerto Rico pension statutes at issue were no longer effective following confirmation of the plan of adjustment. App. 18–25, 175–79. Although the Petition ignores several of those rationales, each independently supports the result below.

The relevant facts are straightforward. Certain Puerto Rico statutes granted teachers hired before August 1, 2014, the right to accrue additional defined pension benefits as they continued to work. App. 15–16. The Plan discharged and treated any claims that the teachers had to earn additional benefits under those statutes. App. 19. Petitioners nevertheless contend the statutes remain in effect notwithstanding the discharge of the Commonwealth's obligations. *See*

[5] For similar reasons, Petitioners' contention that certiorari is warranted to decide whether the Board has the power to legislate (Pet. 31) misses the mark because the lower courts did not decide that the Board has such a power and the Board enacted no legislation in any event. *See* pages 12–13, *supra*.

Pet. 16–17. In other words, Petitioners' position is that even though unfunded pension liabilities were a central cause of Puerto Rico's fiscal crisis, the statutes creating those very liabilities should survive the Commonwealth's restructuring unscathed. They are wrong for at least four independent reasons, as the courts below explained.

A. Obligations Under the Pension Statutes Were Properly Rejected and Discharged Under the Plan.

As Petitioners concede (*e.g.*, App. 18–19), Puerto Rico law treats statutory obligations to pay pension benefits as contractual in nature. *See Bayrón Toro v. Serra*, 119 P.R. Dec. 605, 19 P.R. Offic. Trans. 646, 649, 663 (1987). The Bankruptcy Code provides that (with certain exceptions inapplicable here) the trustee—or, in this case, the Board, *see* 48 U.S.C. § 2161(c)(7)—may assume or reject any executory contract of the debtor, subject to the court's approval. *See* 11 U.S.C. § 365(a) (incorporated into PROMESA by 48 U.S.C. § 2161(a)). A rejection of an executory contract gives the counterparty a general unsecured claim for contract damages subject to treatment and discharge, and it frees the debtor from any obligation to perform. *See Eagle Ins. Co. v. BankVest Cap. Corp. (In re BankVest Cap. Corp.)*, 360 F.3d 291, 296 (1st Cir. 2004).

Here, the court of appeals correctly held that the Commonwealth's pension obligations were rejected under § 365(a) and the debtor was no longer obligated to perform. App. 19. In the court's words, the plan of adjustment permissibly rejects "any obligation owed

to individual workers for accrual of future benefits under the existing regime" and "render[s] unenforceable the statutes that give rise to that obligation." *Id.* The Petition does not address—let alone challenge—that ruling, which independently supports the result reached below.

B. The Pension Statutes Are Expressly Preempted by PROMESA's Discharge Provision.

The Puerto Rico statutes at issue are also expressly preempted by PROMESA, which provides that it "shall prevail over any general or specific provisions of territory law, State law, or regulation that is inconsistent with [the statute]." 48 U.S.C. § 2103. PROMESA further provides for the discharge of all obligations of a debtor, whether they arise from a statute or otherwise, upon confirmation of a plan of adjustment. 11 U.S.C. § 944(b) (incorporated into Title III by 48 U.S.C. § 2161(a)).

The express preemption analysis under those two PROMESA provisions is straightforward. Upon confirmation of the plan of adjustment, all claims and obligations arising under Puerto Rico's pension statutes are discharged pursuant to 11 U.S.C. § 944(b) (incorporated into Title III by 48 U.S.C. § 2161(a)). *See* App. 177 n.32. Following that discharge, any Commonwealth statute imposing those very same discharged obligations would be inconsistent with PROMESA's discharge provision and thus expressly preempted by 48 U.S.C. § 2103. *See* App. 20, 178.

A contrary rule would make a successful restructuring impossible. When the Board began its work in 2016, most of the Commonwealth's crushing debt

arose from pension and bond obligations imposed by statute. Unless the statutes imposing those obligations can be preempted, the obligations that created Puerto Rico's fiscal crisis could never be adjusted. As the Title III court explained, it would be illogical for Congress "[t]o create a federal statute . . . based upon the theory that federal intervention was necessary to permit adjustment of a municipality's debts and then to prohibit the municipality from adjusting such debts." App. 175.

C. The Pension Statutes Are Expressly Preempted by 11 U.S.C. § 1123(a)(5).

As the court of appeals held, the Puerto Rico pension statutes are also expressly preempted by Bankruptcy Code § 1123(a)(5), incorporated into PROMESA by 48 U.S.C. § 2161(a). *See* App. 21. Section 1123(a)(5) preempts any "otherwise applicable non-bankruptcy law" that prevents an adequate means for the implementation of a plan of adjustment. 11 U.S.C. § 1123(a)(5). Preemption under § 1123(a) has "considerable breadth and flexibility" because, without it, "routine and unobjectionable features of [restructuring] plans" such as "payment of claims less than in full" would be "impossible." *Irving Tanning Co. v. Me. Superintendent of Ins. (In re Irving Tanning Co.)*, 496 B.R. 644, 662–63 (B.A.P. 1st Cir. 2013). In analyzing preemption under § 1123(a)(5), the "purpose of Congress is the ultimate touchstone." App. 21.

Here, as the court of appeals explained, PROMESA "was designed by Congress with the clear purpose of facilitating the adjustment of the Commonwealth's debt obligations," including its mounting pension liabilities. App. 21, 23. Precluding the plan

of adjustment from "restrict[ing] accruals under the very pension payment regime that helped create the crisis in the first place" would plainly contravene Congress's purpose. App. 23. PROMESA thus "preempts Commonwealth law insofar as that law purports to dictate (contrary to the Plan) the adjustment of the Commonwealth's" pension obligations. App. 21–22. In other words, § 1123(a)(5) preempts Commonwealth's pension statutes that would otherwise stand in the way of a successful restructuring. *See id.*[6]

Petitioners' challenge to the court of appeals' § 1123(a) analysis makes little sense. They argue that "preemption pursuant to Section 1123(a) of the Bankruptcy Code does not preempt or amend laws. It merely impedes the application of these laws to a debtor whose obligations under that law were discharged." Pet. 20. That is precisely the point. The Commonwealth's obligations under the pension statutes *were discharged*, and therefore the laws no longer impose obligations on the Commonwealth. Petitioners further contend that "a Plan can only cause preemption to the extent that it is necessary for the implementation of its provisions." Pet. 20. Even if that were the test under § 1123(a), preemption would still occur because, as the Title III court found, "absent

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[6] Petitioners also argue that this Court's intervention is needed because the court of appeals' interpretation of § 1123(a)(5) supposedly permits the Board to rewrite the pension statutes. Pet. 21. But as the court of appeals explained, that argument "misapprehends what the Plan does." App. 24. The Plan "does not amend or replace any law"; rather, it "rejects pre-Plan obligations going forward, adopts substitute obligations as part of the Plan," and preempts "only inconsistent components of Commonwealth laws." App. 24–25.

preemption, the Commonwealth statutes establishing these [pension] obligations would undermine the restructuring contemplated by the Plan." App. 23.

D. The Pension Statutes Are Preempted Under Conflict Preemption Principles.

Even putting aside express preemption, the pension statutes at issue would be preempted under standard conflict preemption principles, as the court of appeals held. App. 23. It is common ground that a federal statute preempts a local statute if (i) compliance with the local statute would make compliance with the federal statute impossible; or (ii) the local statute "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Arizona v. United States*, 567 U.S. 387, 399 (2012).

Here, the Puerto Rico pension statutes trigger both prongs of the conflict preemption test. *First*, there is a direct conflict between Puerto Rico statutes imposing obligations on the Commonwealth to accrue and pay pension benefits and PROMESA's discharge of those same obligations. The two are mutually exclusive, and the Commonwealth cannot comply with both. In the face of that inconsistency, PROMESA's discharge under federal law must prevail.

Second, as the court of appeals found, allowing local statutes to remain in effect notwithstanding PROMESA's discharge of the Commonwealth's obligations under those same statutes would frustrate PROMESA's purpose of restoring Puerto Rico to fiscal health and access to the capital markets. App. 24; *see*

48 U.S.C. § 2121(a). The vast majority of the Commonwealth's crippling obligations—such as its obligations to pay principal and interest on its outstanding bonds—are required by Commonwealth statutes. As the court of appeals explained, unless the statutes imposing those obligations are preempted, Congress's goal of restoring Puerto Rico to fiscal health could not be accomplished. App. 24. The Petition makes no argument challenging that conflict-preemption holding, which independently supports the result below.

CONCLUSION

The Petition for a writ of certiorari should be denied.

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Respectfully submitted,

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