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 THE UNITED STATES AS AMICUS CURIAE

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QUESTION PRESENTED

Under Chapter 11 of the Bankruptcy Code, a plan of reorganization must classify a creditor's claim as either impaired or unimpaired. A claim is impaired unless the plan "leaves unaltered the legal, equitable, and contractual rights to which such claim or interest entitles the holder of such claim or interest." 11 U.S.C. 1124(1). The question presented is:

Whether a Chapter 11 plan that classifies a creditor's claim as unimpaired may decline to pay the creditor post-petition interest at the contractually required rate, while also distributing value to the debtor's equity holders.

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INTEREST OF THE UNITED STATES

This brief is submitted in response to the Court's order inviting the Solicitor General to express the views of the United States. In the view of the United States, the petition for a writ of certiorari should be denied.

INTRODUCTION

A debtor that petitions under Chapter 11 of the Bankruptcy Code may propose a reorganization plan that classifies creditors' claims or interests and specifies the treatment that each impaired class will receive under the plan. See 11 U.S.C. 1121(a), 1123(a)(3). A class of claims or interests is impaired unless, "with respect to each claim or interest of such class," the plan "leaves unaltered the legal, equitable, and contractual rights to which such claim or interest entitles the holder of such claim or interest." 11 U.S.C. 1124(1).

Petitioners—a corporation and its affiliates, which petitioned for reorganization under Chapter 11—classified the claims of certain noteholders as unimpaired, yet proposed to pay them interest at a rate lower than the one provided in the notes. And because petitioners became solvent after filing for bankruptcy, they also proposed to distribute significant value to equity holders. The court of appeals held that doing so would be inconsistent with the Bankruptcy Code and with the pre-Code absolute-priority rule, which prohibits equity holders from receiving value before creditors' obligations are paid in full. In holding that petitioners must pay the noteholders interest at the contract rate, the court of appeals agreed with every court of appeals to have addressed the issue.

In the view of the United States, this Court's review is not warranted. Although the United States disagrees with the reasoning adopted by the court of appeals, the result that court reached is correct. Petitioners point to no conflict in the courts of appeals on the question presented, which arises only in the uncommon circumstance in which a debtor in bankruptcy is solvent. The petition for a writ of certiorari should be denied.

STATEMENT

A. Legal Background

A business may file for bankruptcy under either Chapter 7 or Chapter 11 of the Bankruptcy Code, 11 U.S.C. 101 *et seq*. Under Chapter 7, a trustee liquidates the debtor's non-exempt assets and distributes them to creditors. See, *e.g.*, 11 U.S.C. 704, 726. In Chapter 11 proceedings, the aim is generally to reorganize the debtor's debt structure. The debtor and creditors attempt to negotiate a comprehensive plan that will govern the distributions to creditors while allowing the company to emerge from bankruptcy as a viable economic entity. See, *e.g.*, 11 U.S.C. 1121, 1123, 1129, 1141.

The filing of a bankruptcy petition triggers the creation of an estate comprising all of the debtor's non-exempt property. 11 U.S.C. 541(a)(1). In Chapter 11, the debtor in possession (or, if appointed, a private trustee) acts as a fiduciary to manage the estate in the interest of the creditors. 11 U.S.C. 1106, 1107(a). Once Chapter 11 proceedings have commenced, a debtor may file a proposed plan for reorganization at any time. 11 U.S.C. 1121(a). The proposed plan must designate classes of claims or interests and identify which classes will be "impaired under the plan." 11 U.S.C. 1123(a)(1) and (2). The Bankruptcy Code defines a claim as a "right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured." 11 U.S.C. 101(5)(A). As relevant here, a claim or interest is impaired unless "the plan * * * leaves unaltered the legal, equitable, and contractual rights to which such claim or interest entitles the holder of such claim or interest." 11 U.S.C. 1124(1).

After a plan is proposed, creditors vote on whether to accept or reject the plan. 11 U.S.C. 1126(a). The ability to vote on the plan is subject to two important limitations. First, only those creditors with "allowed" claims are permitted to vote. *Ibid.* In general, a claim is "deemed allowed" unless a party in interest objects. 11 U.S.C. 502(a). If an objection is made, the court shall determine the amount of the claim as of the date of the filing of the petition and "allow such claim in such amount," subject to several exceptions. 11 U.S.C. 502(b).

As relevant here, a claim for "unmatured interest"—interest that accrues after the filing of the bankruptcy petition—is listed as an exception and therefore must be disallowed upon an objection. 11 U.S.C. 502(b)(2). Second, if a class is not impaired under the plan, then the creditors holding claims in that class are "conclusively presumed to have accepted the plan" and may not vote. 11 U.S.C. 1126(f); see 11 U.S.C. 1129(a)(8).

A proposed plan may be confirmed if it is accepted by all classes of creditors with impaired claims. 11 U.S.C. 1129(a)(8). If any classes are impaired, the plan may not be confirmed unless it is accepted by "at least one class of claims that is impaired under the plan." 11 U.S.C. 1129(a)(10). In addition, each impaired creditor that does not accept the plan is entitled to receive at least what it would receive if the debtor were liquidated under Chapter 7—an amount that may be only partial payment but might also be the full allowed claim plus "interest at the legal rate from the date of the filing of the petition." 11 U.S.C. 726(a)(5); see 11 U.S.C. 1129(a)(7)(A). The plan must "not discriminate unfairly" and must be "fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan." 11 U.S.C. 1129(b)(1). A plan qualifies as "'fair and equitable'" to impaired unsecured creditors if "the allowed value of the claim is to be paid in full" or "if 'the holder of any claim or interest that is junior to the claims of such [impaired unsecured] class will not receive or retain under the plan on account of such junior claim or interest any property.'" *Bank of Am. Nat'l Trust & Sav. Ass'n* v. *203 N. LaSalle St. Partnership*, 526 U.S. 434, 441-442 (1999) (quoting 11 U.S.C. 1129(b)(2)(B)(i) and (ii)) (brackets in original). The "latter condition is the core of what is known as the 'absolute priority rule.'" *Id.* at 442.

If the Chapter 11 proceedings do not result in a confirmed plan, the case may be converted to a Chapter 7 proceeding "for liquidation of the business and a distribution of [the debtor's] remaining assets." *Czyzewski* v. *Jevic Holding Corp.*, 580 U.S. 451, 456 (2017). Alternatively, the Chapter 11 case may be dismissed in its entirety, in which case there is generally a "return to the prepetition financial status quo." *Ibid.*

B. The Present Controversy

1. Petitioners are The Hertz Corporation—a global vehicle-rental company—and its various corporate affiliates. Pet. App. 3, 96. Petitioners filed for bankruptcy under Chapter 11 during the COVID-19 pandemic, when demand for rental cars cratered. *Ibid.* Respondent Wells Fargo Bank asserted claims in the bankruptcy proceeding as an indentured trustee on behalf of the holders of certain unsecured notes that petitioners issued. *Id.* at 4.[1] The notes at issue provided for interest at specified rates and also stated that if petitioners redeemed the notes ahead of schedule, they would be required to pay a redemption premium "designed to compensate [the] lenders" for the profits they would lose as a result of the early payment. *Ibid.*

While the Chapter 11 proceedings were underway, "the economy recovered" and "so did [petitioners'] financial prospects," to the point that they were once

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[1] Respondent U.S. Bank also served as an indenture trustee on unsecured promissory notes. U.S. Bank adopted Wells Fargo's arguments in the courts below, see Pet. App. 4 n.2, and has waived a response to the petition for certiorari. This brief refers to Wells Fargo as respondent.

again solvent. Pet. App. 3. Petitioners then proposed a reorganization plan that classified the noteholders' claims as unimpaired. *Id.* at 4-5. The plan provided for payment in full of the principal amount of the notes, along with pre-petition accrued interest at the rate specified under the contracts. *Id.* at 4. But with respect to interest for the period after the bankruptcy petition had been filed, the plan provided for interest at the "much lower" federal judgment rate set forth in 28 U.S.C. 1961. Pet. App. 4. The plan also declined to provide for the payment of any premium for early redemption of the notes. *Id.* at 4-5. And because petitioners had remaining assets after making the specified payments to the noteholders and other creditors, the plan provided petitioners' equity holders with "a package of stock, warrants, and cash that it valued in the aggregate at around $1.1 billion." *Id.* at 7-8.

The noteholders objected to the proposed plan, contending that they were entitled to post-petition interest at the contract rate, as well as payment of the redemption premiums. Pet. App. 4-5. Petitioners disagreed that such payments were required. They took the position that both the claims for post-petition interest and redemption premiums qualified as claims for unmatured interest that are precluded by Section 502(b)(2). *Id.* at 5. Rather than resolve the dispute before plan confirmation, however, the plan promised "to leave all of [petitioners'] creditors unimpaired." *Id.* at 3. In confirming the plan, the bankruptcy court underscored that the noteholders retained the right to payments that would have been due under the terms of the notes "to the extent necessary to render [their] claims unimpaired." *Id.* at 97 (citation omitted). With no impaired claims—and thus no creditors entitled to vote—the bankruptcy court confirmed the plan. *Id.* at 8.

2. Following confirmation of the plan, respondent filed an adversary proceeding seeking a declaratory judgment that petitioners must pay the noteholders approximately $272 million to account for the contract rate of post-petition interest and the redemption premiums. Pet. App. 97a. The bankruptcy court rejected respondent's arguments. *Id.* at 52-94, 95-113.

In ruling on a motion to dismiss (Pet. App. 52-94), the bankruptcy court rejected respondent's contention that payment of post-petition interest at the contract rate was required to ensure that the plan would "leave[] unaltered" the noteholders' "legal, equitable, and contractual rights." 11 U.S.C. 1124(1). The court reasoned that "any modification of the Noteholders' claim" for such interest "is an impairment of the Noteholders' contract claims by operation of section 502(b)(2)," which disallows claims for unmatured interest, and is not an impairment by operation of the plan itself. Pet. App. 77. Despite Section 502(b)(2)'s disallowance of claims for unmatured interest, the court concluded that the plan correctly paid the noteholders post-petition interest at the federal judgment rate because "the Legislative History provides strong evidence Congress intended that unimpaired creditors in a solvent chapter 11 debtor case should receive post-petition interest" at that rate. *Id.* at 91. The court declined to address whether the redemption premiums were likewise precluded under Section 502(b)(2) at the motion-to-dismiss stage, concluding instead that whether the premiums qualify as unmatured interest is a question of fact. *Id.* at 70.

After developing the factual record, the parties filed cross-motions for summary judgment. Pet. App. 95-96.

The bankruptcy court granted petitioners' motion, holding that the redemption premiums are the economic equivalent of unmatured interest and likewise fall under Section 502(b)(2), such that petitioners were not required to pay those premiums to render the noteholders' claims unimpaired. *Id.* at 95-111. The court certified its decision for direct review by the court of appeals. *Id.* at 111-113.

3. The court of appeals affirmed in part and reversed in part. Pet. App. 1-49.

a. The court of appeals agreed with the bankruptcy court that the redemption premiums qualify as unmatured interest. Pet. App. 12-22. And the court of appeals also agreed that disallowance of the claims for unmatured interest by Section 502(b)(2) "does not result in impairment" because "[i]mpairment is the alteration of a creditor's rights by a plan, not alterations to those rights as directed by the Bankruptcy Code." *Id.* at 30 n.20. But the court reversed the bankruptcy court's holding that petitioners were required to pay the noteholders only the judgment rate on their claims. *Id.* at 22-49.

The court of appeals first explained that both the Fifth and the Ninth Circuits have "required solvent debtors [to] pay contract rate interest," based on the understanding that established pre-Code practice required such payments and the Bankruptcy Code did not displace that practice. Pet. App. 23. The court agreed with the result those courts reached. The court explained that the pre-Code practice stemmed from the absolute-priority rule, which requires debtors to pay all creditors before paying equity holders. *Id.* at 24-25. The court recognized that "[t]oday, the absolute priority rule is housed in § 1129(b)," which "protects impaired creditors." *Id.* at 27. The court then concluded that a "creditor is impaired if its treatment violates the absolute priority rule because every creditor has a right to treatment consistent with that principle." *Id.* at 29.

The court of appeals found support for its holding in this Court's decision in *Czyzewski*, *supra*, which the court of appeals understood to hold that the absolute-priority rule "applie[s] everywhere"—not only in the specific context that Section 1129(b) addresses—"absent a clear statement authorizing a departure." Pet. App. 29; see *id.* at 29-32. The court of appeals further explained that applying the absolute-priority rule "tracks the basic principles of impairment in bankruptcy," a status that Congress defined " 'in the broadest possible terms' to ensure that creditors affected by a bankruptcy plan can vote on it." *Id.* at 30-31 (citation omitted).

The court of appeals noted that application of the absolute-priority rule to post-petition interest "does not always" require payment of contract interest in cases with solvent debtors. Pet. App. 35. Instead, the rule "imposes the equitable rate of post-petition interest, whatever that may be." *Ibid.* In the circumstances of this case, the court determined that equitable considerations weigh in favor of awarding the noteholders the contract rate of interest, as well as the redemption premiums. *Id.* at 36.

b. Judge Porter concurred in part and dissented in part. Pet. App. 42-49. Although he acknowledged that the majority reached the same result as the Fifth and Ninth Circuits, Judge Porter expressed his agreement with the dissents in those cases. *Id.* at 42. He would have held that the Bankruptcy Code "plainly disallows claims 'for unmatured interest,' " including those for the premiums and post-petition interest here. *Ibid.* Judge Porter rejected the majority's holding that a claim is impaired if the plan breaches the absolute-priority rule. In his view, Section 1124's definition of impairment does not incorporate that rule, and the majority erred by reading *Czyzewski* as holding that the rule applies unless the Code states otherwise. *Id.* at 43-49.

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

DISCUSSION

A Chapter 11 reorganization plan treating noteholders' claims as unimpaired must pay those noteholders post-petition interest at the contract rate. That result follows from the plain text of the Bankruptcy Code, which states that to be unimpaired, a plan must "leave[] unaltered" creditors' "legal, equitable, and contractual rights." 11 U.S.C. 1124(1). Although the court of appeals rejected that analysis, it reached the correct result through different reasoning and held that the noteholders here are entitled to such payments. Every other court of appeals to have addressed the issue has reached the same conclusion. Because this case does not implicate a division in the circuits and the issue arises only in the unusual circumstances in which a debtor is able to pay all creditors in full, this Court should deny the petition for a writ of certiorari.

A. The Court Of Appeals Reached The Correct Result In Holding That The Noteholders Are Entitled To Redemption Premiums And Post-Petition Interest At The Contract Rate

1. Section 1124(1) provides that a creditor's claim or interest is impaired unless the plan "leaves unaltered the legal, equitable, and contractual rights" to which the

creditor is entitled by its pre-bankruptcy "claim or interest." 11 U.S.C. 1124(1). Under the plain meaning of that statutory text, the noteholders' claims here would be impaired if the plan did not pay the rate of interest and redemption premiums set out in their contracts.

It is undisputed that the notes at issue provided the noteholders with a contractual right to interest payments at specified rates, as well as redemption premiums if petitioners chose to redeem the notes early. Pet. 5; Br. in Opp. 6. Those rights plainly fall within the Bankruptcy Code's definition of a claim, which encompasses any "right to payment, whether or not such right is * * * matured[or] unmatured." 11 U.S.C. 101(5)(A). As this Court has recognized, "Congress intended by this language to adopt the broadest available definition of 'claim.'" *Johnson* v. *Home State Bank*, 501 U.S. 78, 83 (1991).

It is irrelevant for purposes of Section 1124(1) that a claim for unmatured interest may not be allowed under 11 U.S.C. 502(b). As this Court has explained, a claim that is disallowed remains "a 'right to payment,' [and] hence a 'claim,' as the Code uses those terms." *Midland Funding, LLC* v. *Johnson*, 581 U.S. 224, 229 (2017). And importantly, Section 1124(1)'s definition of impairment is not limited to the alteration of *allowed* claims. While other provisions of the Code address only allowed claims, see, *e.g.*, 11 U.S.C. 726, 1126(a), 1129(a)(9)(A)-(C), Section 1124(1) does not draw that distinction. Congress presumably "act[ed] intentionally and purposely when it include[d]" that "particular language in one section of" the Code but "omit[ted] it" in Section 1124(1). *BFP* v. *Resolution Trust Corp.*, 511 U.S. 531, 537 (1994) (citation omitted).

Indeed, the presumption that Congress intended impairment under Section 1124(1) to cover the alteration of disallowed claims is particularly strong because, as originally enacted, another paragraph of Section 1124 had distinguished between allowed and disallowed claims. Former Section 1124(3) deemed a claim to be unimpaired if a creditor was paid "cash equal to * * * the *allowed* amount of [its] claim." 11 U.S.C. 1124(3)(A) (1988) (emphasis added). Thus, Congress considered whether impairment should be evaluated only with respect to allowed claims. Section 1124 provided for that treatment in certain circumstances, but not in Section 1124(1).

The history of Congress's repeal of Section 1124(3) provides further indication that Congress did not understand Section 1124(1) to be limited to the alteration of the rights encompassed in allowed claims. Congress repealed Section 1124(3) in response to a bankruptcy court's decision applying that provision to a contractual claim that included post-petition interest. See *In re New Valley Corp.*, 168 B.R. 73, 75-76 (Bankr. D.N.J. 1994). The court held that because post-petition interest is disallowed under Section 502(b), the debtor was not required to pay such interest to render the claims unimpaired under the text of Section 1124(3). *Id.* at 77-80. The court reached that conclusion even though the debtor at issue was solvent and pre-Code practice would have required such a debtor to pay post-petition interest. *Ibid.*

When reporting a bill that would make various amendments to the Bankruptcy Code, the House Judiciary Committee described the result in *New Valley* as "unfair" because it permitted the debtor to avoid contractual obligations to pay creditors interest without giving them an opportunity to vote, and then permitted the debtor to use money that could have gone to those creditors to pay its equity holders. H.R. Rep. No. 835, 103d Cong., 2d Sess. 47-48 (1994) (House Report). To "preclude" that result in the future, the bill would "delete section 1124(3) from the Bankruptcy Code." *Id.* at 48. The House Report explained that for creditors claiming post-petition interest, "[a]s a result of this change, if a plan proposed to pay a class of claims in cash in the full *allowed* amount of the claims, the class would be impaired, entitling creditors to vote for or against the plan of reorganization." *Ibid.* (emphasis added). In enacting that bill, Congress therefore understood that, under the amended Section 1124, a claim that includes a contractual right to post-petition interest may be impaired even if the allowed amount is paid in full.

As the House Report recognized, classifying claims as impaired based on the failure of a proposed plan to pay unmatured interest does not mean that creditors will always obtain full payment of unmatured interest. See House Report 48. Rather, treating the claims as impaired simply provides the creditors with important protections, including the right to vote on the proposed plan. See pp. 3-4, *supra*. If those creditors vote against the plan, that triggers Section 1129(a)(7)(A), which ensures they will receive at least post-petition interest at the legal rate. See 11 U.S.C. 1129(a)(7)(A) and 726(a)(6). And the creditors' vote also triggers Section 1129(b)(1), which requires the bankruptcy court to ensure that the plan "does not discriminate unfairly, and is fair and equitable" to the impaired claims. 11 U.S.C. 1129(b)(1); see p. 4, *supra*.

Requiring debtors to pay all contractually owed amounts to treat a claim as unimpaired is also consistent with the Bankruptcy Code's broader statutory context. The Code provides the right to vote on a proposed plan only to those creditors who have impaired claims. 11 U.S.C. 1129(a)(8). That limitation makes good sense if unimpaired creditors receive everything to which they would have been entitled outside of bankruptcy. Such creditors have no basis to reject a plan that gives them everything they could have received absent the bankruptcy. But when a proposed plan provides creditors less than what "their prepetition legal, equitable, and contractual rights" would permit, the Code ensures that they may vote on plan confirmation. *Bank of Am. Nat'l Trust & Sav. Ass'n* v. *203 N. LaSalle St. Partnership*, 526 U.S. 434, 441 n.14 (1999); see 11 U.S.C. 1129(a)(8). And if an impaired class of creditors votes against the plan, the Code also requires the bankruptcy court to ensure that the plan is "fair and equitable" with respect to that class. 11 U.S.C. 1129(b)(1).

2. Petitioners and various courts of appeals—including in the decision below—have rejected that understanding of Section 1124(1) by drawing a distinction between plan impairment and Code impairment. See Cert. Reply Br. 4; Pet. App. 30 n.20; *In re Ultra Petroleum Corp.*, 943 F.3d 758, 763-764 (5th Cir. 2019); *In re PG&E Corp.*, 46 F.4th 1047, 1063 n.11 (9th Cir. 2022), cert. denied, 143 S. Ct. 2492 (2023). That distinction is flawed.

Nothing in the Code precludes confirmation of a plan that pays disallowed claims, so long as the plan complies with other statutory requirements. See 11 U.S.C. 1129 (setting out requirements for plan confirmation). As this Court has recognized, Chapter 11 provides "flexibility" in distributions when affected parties consent. *Czyzewski* v. *Jevic Holding Corp.*, 580 U.S. 451, 457 (2017). Thus, unlike Chapter 7 liquidations, which "must follow" the distribution order for allowed claims prescribed under 11 U.S.C. 726, Chapter 11 plans "may impose a different ordering with the consent of the affected parties." *Czyzewski*, 580 U.S. at 457. See 7 *Collier on Bankruptcy* ¶ 1100.01, at 1100-7 (Richard Levin & Henry J. Sommers eds., 16th ed. Sept. 2025) ("[T]he debtor and classes of its creditors can agree to treatment that does not match the order of creditor and equity holder priority, and a plan based on such an agreement may be confirmed."). Similarly, while the Code does not obligate petitioners to pay unmatured interest in at least some circumstances, petitioners nonetheless could have crafted a plan that provided the noteholders with those payments while complying with the Code's requirements. Because the Code would permit such payments, where a debtor nevertheless proposes a plan that discharges its pre-petition obligations without paying contractually required unmatured interest, it is the plan—not the Code itself—that effectuates the alteration of those contractual rights under Section 1124.

The plan's essential role in altering the contractual rights is further evidenced by the treatment of a claim during bankruptcy proceedings. The right to recovery underlying a creditor's claim continues to exist throughout the bankruptcy process regardless of whether the claim is allowed, up until plan confirmation. For example, if a bankruptcy case is dismissed before plan confirmation, parties are generally "return[ed] to the prepetition financial status quo." *Czyzewski*, 580 U.S. at 457. In such a case, the "debtor's debts and property are subject to the general laws, unaffected by bankruptcy concepts," *In re Income Prop. Builders, Inc.*, 699 F.2d 963, 965 (9th Cir. 1982) (per curiam), meaning that even disallowed claims may be restored. It is thus inaccurate to say that the Code itself alters the legal rights underlying a claim. Those rights are altered only through the confirmation of a proposed reorganization plan that includes rights-altering terms.

Some courts have expressed concern that interpreting Section 1124(1) to mean that a class is impaired when a plan does not pay disallowed claims "would create 'perverse incentives' for all creditors, effectively urging them to file 'inflated claims, disputed claims, or claims of questionable validity.'" *In re PPI Enters. (U.S.), Inc.*, 324 F.3d 197, 205 (3d Cir. 2003). But creditors that file illegitimate proofs of claim may be subject to appropriate sanctions. See Fed. R. Bankr. P. 9011 (incorporating Fed. R. Civ. P. 11 into bankruptcy proceeding); see also Fed. R. Bankr. P. 3001(f) (providing that "[a] proof of claim signed and filed in accordance with these rules is prima facie evidence of the claim's validity and amount"). Moreover, if a claim is frivolous and subject to complete disallowance, its holder will not have the right to vote. See 11 U.S.C. 1126(a). And even if the claim is not entirely disallowed and the claimant is permitted to vote, that right to vote does not guarantee that the claimant will ultimately obtain the full amount of his claim. See p. 13, *supra*.

3. The decision below did not embrace the understanding of Section 1124(1) set forth above, adopting instead the distinction between plan impairment and Code impairment. Pet. App. 30 n.20. The court of appeals nevertheless required petitioners to pay the noteholders post-petition interest at the contract rate by holding that the absolute-priority rule applies. Although the court reached the right result, the United States disagrees with its reasoning.

In order to escape the consequences of its interpretation of impairment under Section 1124(1), the court of appeals held that the absolute-priority rule codified in Section 1129(b) applies to all creditors, "not just the dissenting impaired creditors who can invoke" that provision directly. Pet. App. 30; see *id.* at 29-35. That holding disregards the express limits on the scope of Section 1129(b)'s application. See 11 U.S.C. 1129(b)(1) (requiring "fair and equitable" treatment "with respect to each class of claims or interests that is impaired under, and has not accepted, the plan"). The court's efforts to require the payment of post-petition interest under the circumstances here reveal its obvious discomfort with permitting debtors to "use the Bankruptcy Code to force [creditors] to give up" significant amounts of "contractually valid interest and spend that money on a massive dividend to [s]tockholders." Pet. App. 22. But rather than stretching the text of Section 1129(b) past its limits, the court should have adhered to the text of Section 1124(1) and held that a class of claims is impaired under that provision where the plan alters the creditors' contractual rights by refusing to pay post-petition interest at the contractually required rate.

B. This Court's Review Is Not Warranted

Although the government disagrees with the court of appeals' reasoning, that court joined every other court of appeals in ultimately reaching the right result. The lack of any circuit conflict, combined with the unusual factual circumstances presented here, counsels against review by this Court.

1. Like the court of appeals below, both the Fifth and Ninth Circuits have held that unimpaired creditors must receive full payment of all post-petition interest owed under their contracts, where the debtor is solvent.

See *In re PG&E*, 46 F.4th at 1060-1061; *In re Ultra Petroleum Corp.*, 51 F.4th 138, 159-160 (5th Cir. 2022), cert. denied, 143 S. Ct. 2495 (2023); see Pet. App. 6-7. Petitioners contend (Pet. 31) that the reasoning of those decisions differs from that of the court of appeals below. But while the Fifth and Ninth Circuits did not rely on Section 1129(b), those courts grounded their analysis in the same pre-Code practice invoked by the court of appeals here, which required solvent debtors to pay post-petition interest at the contractual rate. See *In re PG&E*, 46 F.4th at 1057-1061; *Ultra Petroleum*, 51 F.4th at 150-156; Pet. App. 23-25. In any event, to the extent there are distinctions in the reasoning of the lower courts, this Court "reviews judgments, not statements in opinions," and such differences do not warrant review. *Black* v. *Cutter Labs.*, 351 U.S. 292, 297 (1956).

Petitioners note that the Ninth Circuit and the court of appeals below authorized imposition of post-petition interest at the "equitable rate," which may differ from the contractual rate in some circumstances, whereas the Fifth Circuit has not expressly adopted that position. Pet. 31 (citation omitted). But the Fifth Circuit has indicated that circumstances could arise that might justify a "more nuanced application of the solvent-debtor exception," suggesting that full payment of interest at the contract rate may not always occur. *Ultra Petroleum*, 51 F.4th at 152 n.16. And all three courts awarded the creditors post-petition interest at the contract rate in the cases before them. See *id.* at 151; *In re PG&E*, 46 F.4th at 1064; Pet. App. 36-38. With no court applying a rate different from the contract rate and no court expressly rejecting any equitable departures, there is no division in the circuits that necessitates review.

2. The remaining cases that petitioners cite likewise do not create any conflict that warrants this Court's review. Petitioners allege (Pet. 25-29) that the decision below conflicts with *In re LATAM Airlines Group S.A.*, 55 F.4th 377 (2d Cir. 2022), cert. denied, 143 S. Ct. 2609 (2023), and *In re Cardelucci*, 285 F.3d 1231 (9th Cir.), cert. denied, 537 U.S. 1072 (2002). But neither of those decisions addressed the question presented.

In *LATAM*, the Second Circuit held that the debtor was insolvent, such that any solvent-debtor exception requiring payment of post-petition interest did not apply. 55 F.4th at 387-389. Petitioners emphasize (Pet. 27) that the Second Circuit rejected reliance on the absolute-priority rule for purposes of determining whether the debtor was solvent, and that the court explained that the rule "cannot be imported *in toto* into practice under the new Code." *LATAM*, 55 F.4th at 388 (citation omitted). The court of appeals here considered the Second Circuit's reasoning to be in tension with its view that the absolute-priority rule applies beyond the circumstances addressed in 11 U.S.C. 1129(b)(2). Pet. App. 34 n.22. But the Second Circuit did not understand its reasoning to be at odds with the Fifth and Ninth Circuits' recognition of the solvent-debtor exception with "roots in the absolute priority rule," because "neither addressed the proper standard for determining solvency." *LATAM*, 55 F.4th at 388 n.8. And indeed, the Second Circuit suggested that the solvent-debtor exception survives in some form through Section 1124(1)'s protection of a creditor's equitable rights. *Id.* at 387. It is therefore unclear whether the Second Circuit would ultimately recognize that the Code requires a debtor who is solvent to pay post-petition interest at the contract rate before paying equity holders. At this juncture, it would be premature for the Court to grant certiorari based on the possibility of some future disagreement from the Second Circuit.

Petitioners' reliance on *Cardelucci* fares no better. As the Ninth Circuit itself has explained, "*Cardelucci* merely held that the phrase 'interest at the legal rate' in § 726(a)(5) refers to the federal judgment rate." *In re PG&E*, 46 F.4th at 1056. Because that provision applies only to impaired claims, it has no bearing on "what rate of postpetition interest must be paid on * * * *unimpaired* claims" like those of the noteholders here. *Ibid.* Petitioners contend (Cert. Reply Br. 7) that *Cardelucci*'s treatment of impaired claims cannot be squared with the Third Circuit's conclusion in this case that the absolute-priority rule entitles creditors to postpetition interest at the contract rate before junior claimants receive anything. But the decision below held (Pet. App. 30) that the Code entitles creditors to "treatment consistent with absolute priority absent a clear statement to the contrary," and the court did not have occasion to consider whether Section 726(a)(5)'s requirement that interest be paid "at the legal rate" would qualify as such a clear statement. 11 U.S.C. 726(a)(5).[2]

3. Aside from claiming a division in the lower courts, petitioners assert (Cert. Reply Br. 5) that if Section 1124(1) is properly interpreted to mean that a plan impairs claims when it fails to provide for disallowed amounts, that would "only strengthen the case for plenary review" because it would mean that multiple cir-

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[2] The remaining cases petitioners cite in asserting a conflict among the lower courts come from district courts and bankruptcy courts. See Pet. 24-25. Those nonprecedential decisions do not create a conflict that warrants this Court's review. See Sup. Ct. R. 10; *Camreta* v. *Greene*, 563 U.S. 692, 709 n.7 (2011).

cuit decisions are erroneous. But petitioners point to no conflict on that question, and courts have ameliorated the effect of their interpretation in cases like this one by construing the Code as nonetheless requiring the payment of post-petition interest. To the extent that this Court is interested in resolving the proper interpretation of Section 1124(1), it should take up the question in a case in which its resolution would have a meaningful practical effect.

4. Review is also unwarranted because the question presented arises infrequently. Each of the three cases that petitioners invoke (including their own) involved idiosyncratic factual circumstances that allowed the debtors to return money to equity holders after paying all of their creditors. In bankruptcy, such cases are "admittedly rare." *United Sav. Ass'n* v. *Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 379 (1988); see *Ultra Petroleum*, 51 F.4th at 150 (describing the "unusual case of a solvent debtor"). In this case, petitioners faced dramatic swings in their business outlook due to the COVID-19 pandemic. Pet. App. 3-4. The debtor in *Ultra Petroleum* dealt with "volatile commodity prices" that first propelled the company into insolvency and then led it to become "'massively solvent.'" *Ultra Petroleum*, 51 F.4th at 143. And PG&E entered bankruptcy due to "catastrophic wildfires" in Northern California, only to be bailed out when California enacted a law creating a "multi-billion-dollar safety net" for victims of utility-sparked fires. *In re PG&E*, 46 F.4th at 1051. The question presented is irrelevant to nearly all bankruptcy proceedings because the vast majority of debtors remain insolvent throughout their reorganization proceedings under Chapter 11 and do not pay all

creditors in full and then distribute funds to equity in their plans.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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