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*

**BRIEF IN OPPOSITION**


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## QUESTION PRESENTED

Whether the bankruptcy court correctly held that respondents did not violate the automatic stay provision of 11 U.S.C. § 362(a)?

**CORPORATE DISCLOSURE STATEMENT**

The parent company of Black Stone Minerals Company, L.P., is Black Stone Minerals, L.P. No publicly held company owns 10% or more of the stock of Black Stone Minerals Company, L.P.

Entech Enterprises, LLC has no parent corporation. No publicly held company owns 10% or more of the stock of Entech Enterprises, LLC.

Foundation Energy Management, LLC, is the parent company of Foundation Energy Fund IV-A, LP, and Foundation Energy Fund IV-B Holding, LLC. No publicly held company owns 10% or more of the stock of either Foundation Energy Fund IV-A, LP, or Foundation Energy Fund IV-B Holding, LLC.

The Dolores Jo Matson Trust and the Roger Melvin Matson Trust were created for the natural persons identified therein; neither has a corporate parent nor publicly-held corporation owning more than 10% of its interest.

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## INTRODUCTION

Petitioners ask this Court to resolve a question of nomenclature: whether actions that violate the automatic stay triggered at the commencement of a bankruptcy case are "void" or "voidable." But this case does not implicate that question. As three courts below repeatedly found, respondents "*did not violate the automatic stay in any way*"—a decision that was not timely appealed. Pet.App.45a. Petitioners' failure to acknowledge this basic fact is baffling. In any event, the minor disagreement about terminology petitioners identify—which is

rarely discussed by courts and is almost never outcome-determinative—does not warrant this Court's review.

Under section 362(a) of the Bankruptcy Code, 11 U.S.C. § 362(a), the filing of a bankruptcy petition "operates as a stay" against efforts to collect from the debtor's estate during the pendency of the bankruptcy proceeding. Here, the debtors and non-debtor respondents sued in Kansas state court to vacate a default judgment awarding one of the petitioners ownership over certain undivided interests in mineral rights that had been held by the debtor and respondents. After the Kansas court indicated that petitioners would lose their bid to retain the default judgment, petitioners moved to reopen the debtors' bankruptcy case and invoked the section 362(a) automatic stay over the entire Kansas proceeding. Petitioners now ask the Court to determine that purported violations of that automatic stay are void *ab initio*, not just voidable.

The problem: the bankruptcy court, district court, and Fifth Circuit all held that respondents did not violate the automatic stay, and petitioners failed to timely challenge that holding. Because there is no stay violation at issue among these parties, there is no occasion for this Court to pass on whether such a violation, if it had occurred, would be void or voidable. Beyond that key infirmity, petitioners have since settled with the estate, removing the mineral rights (the focus of the Kansas case) from the bankruptcy estate entirely. This case is thus rife with vehicle problems that would fatally undermine any attempt to resolve the question presented.

Even were the question cleanly presented, it would not warrant this Court's review. The void-voidable distinction is no more than a disagreement over terminology, and the decades-old cases cited in the petition illustrate

that this linguistical difference has little practical significance. In reality, statutory and equitable exceptions to the automatic stay in section 362(d), not the void-voidable label, determine whether an act that violates the stay should be ratified as valid.

On top of all that, the Fifth Circuit's approach is correct. Finding that violations of the automatic stay are voidable is consistent with this Court's precedent, the statutory scheme of the Code, and the rationale of the automatic stay. This Court should deny the petition.

## STATUTORY PROVISIONS INVOLVED

11 U.S.C. § 362 provides, in relevant part:

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of—

…

> (3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;

…

(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—

> (1) for cause, including the lack of adequate protection of an interest in property of such party in interest;

> (2) with respect to a stay of an act against property under subsection (a) of this section, if—
>
> > (A) the debtor does not have an equity in such property; and
> >
> > (B) such property is not necessary to an effective reorganization;
> >
> > …

## STATEMENT

### A. Statutory Background

The Bankruptcy Code's "principal purpose" is "to grant a fresh start to the honest but unfortunate debtor." *Marrama v. Citizens Bank of Mass.*, 549 U.S. 365, 367 (2007) (cleaned up). Two provisions that protect that "fresh start" are relevant here. The first, section 541, provides that a bankruptcy petition "'creates an estate' that includes virtually all the debtor's assets." *Harrington v. Purdue Pharma L.P.*, 603 U.S. 204, 214 (2024); *accord* 11 U.S.C. § 541. The creation of the estate consolidates the debtor's assets into a single "pot out of which creditors' claims are paid." *Mission Prod. Holdings, Inc. v. Tempnology, LLC*, 587 U.S. 370, 373 (2019).

Filing a bankruptcy petition also triggers the second relevant provision, section 362(a), which states that the petition "'operates as a stay'" against "efforts to collect from the debtor outside of the bankruptcy forum." *City of Chicago v. Fulton*, 592 U.S. 154, 156-57 (2021) (quoting 11 U.S.C. § 362(a)). The purpose of the automatic stay is twofold. First, it protects the estate by "'maintai[ning] the status quo and preven[ting] dismemberment of the estate' during the pendency of the bankruptcy case." *Ritzen Grp., Inc. v. Jackson Masonry, LLC*, 589 U.S. 35, 42 (2020). Second, the stay "benefits creditors as a group by

preventing individual creditors from pursuing their own interests to the detriment of the others." *Fulton*, 592 U.S. at 157.

Among other actions, the stay prohibits "any act to obtain possession of property of the estate." 11 U.S.C. § 362(a)(3). With respect to that property, the stay "continues until such property is no longer property of the estate." *Id.* § 362(c)(1). "Because property that the debtor fails to list on the bankruptcy schedules is not abandoned" and cannot be administered through bankruptcy proceedings, it remains property of the estate. 3 *Collier on Bankruptcy* § 362.06[1] (16th ed.). Consequently, "the automatic stay may apply to such property even after the case is closed" under section 362(c)(1). *Id.*; *accord Kane v. Nat'l Union Fire Ins. Co.*, 535 F.3d 380, 385 (5th Cir. 2008).

Even if the bankruptcy court finds that an act has violated the automatic stay, the inquiry does not end there, nor is the stay impenetrably set in stone. The Code permits the bankruptcy court to grant relief from the stay "for cause," including through termination, modification, and annulment. 11 U.S.C. § 362(d); *accord Ritzen*, 589 U.S. at 42. Bankruptcy courts have "wide latitude in crafting relief from the automatic stay." *Schwartz v. United States (In re Schwartz)*, 954 F.2d 569, 572-73 (9th Cir. 1992); *accord Kimbrell v. Brown*, 651 F.3d 752, 755 (7th Cir. 2011).

### B. Factual and Procedural Background

1. In 1990, Patrick and Patricia McConathy filed for chapter 7 bankruptcy in Louisiana. Pet.App.29a. They received a discharge, and their bankruptcy case closed in 1994. Pet.App.4a, 29a. The McConathys' bankruptcy case was reopened and reclosed twice over the ensuing years,

in 1996 and 2006. Pet.App.4a, 29a. At each stage, however, the McConathys failed to disclose their ownership of mineral rights and leases covering 3,000 acres of land in Kansas. Pet.App.4a, 29a. Those mineral rights became the subject of litigation spanning nearly a decade and multiple jurisdictions, culminating in this petition.

2. In 2015, petitioner American Warrior, Inc. sued a range of potential owners of the Kansas mineral rights in Kansas state court, seeking a partition. Pet.App.4a-5a n.1; CA5.ROA.5495. American Warrior failed to serve the defendants through ordinary means and instead attempted to effectuate service by publication. CA5.ROA.7572-78. After the defendants failed to appear, American Warrior secured a default judgment awarding it 100% ownership of the mineral rights. Pet.App.4a-5a n.1. American Warrior subsequently drilled on the land and produced $7 million worth of oil. Pet.App.4a-5a n.1.

3. After learning of American Warrior's activities, Patrick McConathy sued American Warrior, petitioner Heartland Oil, Inc., petitioner Mid-Continent Resources, Inc., and other defendants in Kansas state court in 2019 (the "Kansas Litigation"). CA5.ROA.1649-60. McConathy sought to vacate the default judgment, determine ownership of the mineral rights, and recover damages from the drilling. Pet.App.4a-5a n.1; CA5.ROA.5499-501. Other non-debtor plaintiffs joined the litigation, including respondents Foundation Energy Fund IV-A, LP; and Foundation Energy Fund IV-B Holding, LLC. CA5.ROA.5500-01; *see also Found. Energy Fund IV-A, LP, et al. v. Am. Warrior, Inc., et al.*, No. 2019-CV-000011 (Kearny Cnty. Ct.). Respondents the Estate of Willis J. Magathan, Roger Matson Trust, and Dolores Matson Trust (collectively with the Foundation Energy entities "Foundation Energy") initially were defendants in the

Kansas Litigation but eventually were realigned as plaintiffs. CA5.ROA.1649, 1664, 1688, 1728.

Respondents Black Stone Minerals Company, L.P. and Entech Enterprises, LLC (collectively "Black Stone") were not originally involved in the Kansas Litigation. Pet.App.5a n.1; Black Stone Ct. App. Appellee Br. 4. Instead, petitioners joined Black Stone as a third-party defendant "on a distinct theory of adverse possession" in 2020. Pet.App.5a n.1.

Eventually, petitioners unearthed the McConathys' 1990 bankruptcy case through discovery in the Kansas Litigation. Pet.App.5a. However, petitioners did not immediately move to reopen the bankruptcy case or seek to leverage the automatic stay. Pet.App.5a. Instead, they waited to act until "an allegedly crucial juncture in the litigation," Pet.App.5a—after the Kansas court signaled that service by publication was deficient, CA5.ROA.1790-95, and before the anticipated issuance of a Special Master Report on the mineral rights, *see* CA5.ROA.18666.

4. In January 2021, back in the Louisiana bankruptcy court, petitioners finally moved to reopen the McConathys' bankruptcy case. Pet.App.5a. The Bankruptcy Court granted the motion, holding that "[p]ursuant to 11 U.S.C. § 362, the automatic stay is hereby in effect and all actions involving property of the bankruptcy estate are hereby stayed." Pet.App.5a. Patrick McConathy and his lawyers, however, "continued to prosecute the Kansas Litigation in violation of the automatic stay." Pet.App.5a. In March 2021, the chapter 7 trustee secured an agreed order staying the entire Kansas Litigation pending further order from the bankruptcy court. Pet.App.5a; CA5.ROA.53.

In May 2021, Foundation Energy and Black Stone moved to modify the automatic stay. Pet.App.5a-6a. The bankruptcy court denied that motion in June 2021, holding that the Kansas Litigation could impact the mineral rights, which were property of the estate. CA5.ROA.2344. The bankruptcy court also held that the moving parties failed to provide evidence showing "cause" to lift the stay under 11 U.S.C. § 362(d)(1). Pet.App.6a. However, the bankruptcy court did not decide if Foundation Energy had violated the stay by filing the Kansas litigation in 2019 in the first instance. *See generally* CA5.ROA.2338-53.

Several months later, in March 2022, petitioners moved for sanctions against Patrick McConathy and his lawyers for violating the stay and for a declaration that the Kansas Litigation was void. Pet.App.7a; CA5.ROA.62. Foundation Energy, for its part, moved to annul the stay. Pet.App.7a; CA5.ROA.63.

The bankruptcy court resolved both motions in a memorandum of decision issued on May 20, 2022, which no party ever appealed. As to petitioners' motion, the bankruptcy court held that McConathy and his counsel violated the automatic stay and that counsel should be sanctioned. CA5.ROA.5517-23, 5527. The court also held that McConathy's claims in the Kansas Litigation were "voidable" and "therefore invalid and without effect." CA5.ROA.5527. Finally, the court determined that Foundation Energy (and the other non-debtor plaintiffs in the Kansas litigation) did *not* violate the automatic stay, because petitioners failed to describe "any misconduct." CA5.ROA.5524.

As to Foundation Energy's motion, the court determined that Foundation Energy had failed to satisfy the cause standard for annulment of the stay. CA5.ROA.5526. But the court added: "Considering this

court's ruling that [petitioners] failed to adequately plead a violation of the stay by the non-debtor co-plaintiffs, the moving parties may no longer care whether the stay is annulled." CA5.ROA.5525.

Meanwhile, the chapter 7 trustee filed an adversary proceeding against all parties to the Kansas Litigation in April 2022. Pet.App.6a. The trustee sought to determine "the nature and fractional ownership of the Kansas mineral lease rights at issue in the Kansas Litigation." Pet.App.6a. Ultimately, the trustee and petitioners settled, and the bankruptcy court approved the settlement. Pet.App.44a n.3. Under the terms of the settlement, the trustee transferred all of the estate's rights in the Kansas mineral leases to petitioners in exchange for $175,000. Pet.App.6a. As a result of the settlement, the mineral rights are no longer part of the bankruptcy estate. *See* Pet.App.14a-15a.

Following the settlement, respondents filed renewed motions for relief from the stay at the urging of the bankruptcy court. Pet.App.8a. The bankruptcy court granted both motions in orders issued on October 6, 2022. Pet.App.42a. The bankruptcy court determined that the automatic stay expired when the estate settled with petitioners. Pet.App.44a. The court added that it had previously held that the "*non-debtor parties did not violate the automatic stay in any way*." Pet.App.45a. This, the court reasoned, was because the stay "prevented the non-debtor parties from *adjudicating* their claims in state court *after* this bankruptcy case was reopened. It did not prevent the non-debtor parties from *filing* their claims in state court *before* this bankruptcy case was reopened." Pet.App.45a. The court emphasized that it had already declined to "declare the Kansas [L]itigation to be invalid

with respect to the claims asserted by the non-debtor parties" in a previous order. Pet.App.45a. And petitioners "did not appeal these rulings," making them "final and non-appealable." Pet.App.45a.

5. Petitioners appealed to the district court, but only as to the bankruptcy court's October 6, 2022 orders. Pet.App.28a.[1] The district court affirmed. Pet.App.29a.

The district court agreed with the bankruptcy court that respondents' "initial filing of the Kansas Litigation" did not violate the stay. Pet.App.36a. The district court further held that respondents had not subsequently violated the stay either. The district court explained that the bankruptcy court had "made clear many times that the non-debtors were not acting in violation of the stay," even refusing to sanction them. Pet.App.37a.

The court further concluded that even if respondents had violated the stay, "there [was] no basis to rule that the entire litigation [was] *void ab initio*, permanently preventing the non-debtors from proceeding with their claims." Pet.App.38a. The district court also pointed out that petitioners had failed to appeal several of the bankruptcy court's earlier orders, including the order determining that the non-debtor plaintiffs had not violated the stay. As a result, those rulings were "final and non-appealable" and blocked petitioners' "repeated argument that the Kansas Litigation [was] invalid from inception." Pet.App.39a.

6. The Fifth Circuit affirmed. Pet.App.27a. The court concluded that "the bankruptcy court did not err in

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[1] The McConathys were listed as interested parties on the district court's docket but did not otherwise participate in the appeal. *See generally Am. Warrior, Inc., et al. v. Found. Energy Fund IV-A LP, et al.*, No. 5:22-cv-5769 (W.D. La.).

limiting any violation of the automatic stay to the Debtors and their counsel." Pet.App.12a.

To start, the Fifth Circuit reasoned that the order reopening the bankruptcy case in January 2021 "imposed a stay prophylactically on the entirety of the Kansas Litigation," meaning the stay was not in effect when the Kansas Litigation was filed. Pet.App.12a.

Next, the court upheld the bankruptcy court's distinction between Patrick McConathy's invalid state-court claims and non-debtors' valid state-court claims as "correct." Pet.App.12a. The Fifth Circuit underscored that the bankruptcy court had rejected sanctions against respondents, which "again confirm[ed] the bankruptcy court's view" that respondents' claims "in the Kansas Litigation did not violate the automatic stay to begin with." Pet.App.13a. The court added that Black Stone "could not possibly have violated the stay by being impleaded in the Kansas Litigation" via petitioners' "third-party action against them." Pet.App.13a. And the court pointed out that after the estate settled with petitioners, "further litigation in Kansas could not impair the Debtors' estate." Pet.App.14a.

The Fifth Circuit also highlighted petitioners' litigation tactics, explaining that petitioners' "contention that the Kansas Litigation was void *ab initio* is inconsistent with [petitioners'] own behavior, because [petitioners] waited almost eight months from the time it first became aware of the 'bankruptcy defect' to bring it up before the bankruptcy court." Pet.App.15a. And, the court added, petitioners "never appealed the bankruptcy court's rulings recognizing the continued validity of the Kansas Litigation." Pet.App.15a. As the court saw things, petitioners' "only interest in maintaining bankruptcy court

jurisdiction [wa]s to achieve a favorable venue, not to pursue or protect estate assets or the integrity of their disposition according to the Bankruptcy Code." Pet.App.16a. Continuing the stay would thus be inconsistent with the policies underlying the Code. Pet.App.16a.

Finally, the Fifth Circuit concluded that even if it accepted petitioners' "argument, contrary to fact and the bankruptcy court's repeated conclusions, that [Foundation Energy] violated the automatic stay when [it] filed the Kansas Litigation, th[e] court ha[d] expressly refused to hold that all actions taken in violation of the automatic stay are automatically void." Pet.App.21a. The court reasoned that "a favorable ruling on [respondents'] annulment motion[s] would be unnecessary because there had been no finding that the non-debtor parties violated the stay in the first place." Pet.App.22a-23a.

**REASONS FOR DENYING THE PETITION**

The petition should be denied for myriad reasons. To start, this case is an extremely poor vehicle for resolving the question presented. This case does not even implicate that question because the bankruptcy court, district court, and Fifth Circuit uniformly held that respondents did not violate the automatic stay, and each court also held that petitioners had not timely appealed the bankruptcy court's holding on this threshold issue. Since there is no stay violation at issue, there is no basis for this Court to decide whether stay violations should be treated as void or voidable. Additionally, petitioners' settlement with the estate removed the mineral rights from the property of the estate, thereby eliminating the rationale underlying the automatic stay.

Even if the question presented were actually implicated, petitioners overstate the importance of that question. The issue rarely arises, with only a handful of opinions spread across decades. And as petitioners' own cited cases show, a circuit's choice to label stay violations as "void" or "voidable" has no bearing on the outcome of a case. At bottom, the question presented is a formal disagreement over terminology with little practical significance.

Finally, the Fifth Circuit's reasoning is eminently correct. The Fifth Circuit's determination that violations of the automatic stay are "merely voidable" is consistent with precedent, other Code provisions, and furthers the purpose of the automatic stay.

**I. This Case Is A Manifestly Unsuitable Vehicle**

1. The facts of this case do not implicate the question presented. Petitioners ask this Court to decide "whether actions taken in violation of the automatic stay are void or merely voidable." Pet. i, 2. A threshold requirement of that question presented is a stay violation. Petitioners take for granted that such a violation exists, making opaque allusions to a supposed violation throughout the petition.[2] But the petition never clearly states which parties violated the stay or how exactly they did so. That obfuscation is for good reason: *Respondents have never violated the automatic stay*.

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[2] *E.g.*, Pet. 3 ("a state-court action pursued in violation of a bankruptcy stay"); Pet. 7 ("parties in interest violate the stay"); Pet. 9 ("various parties engaged in state-court litigation in violation of the automatic stay"); Pet. 15 ("state-court litigation pursued in violation of the automatic stay"); Pet. 28 ("litigation undertaken in violation of the stay").

Start with respondent Black Stone. Black Stone did not participate in the Kansas Litigation of its own accord. Instead, petitioners dragged Black Stone into the proceedings by initiating a third-party adverse-possession action against it. Pet.App.5a n.1. As the Fifth Circuit put it: Black Stone "could not possibly have violated the stay by being impleaded in the Kansas Litigation after [petitioners] brought a third-party action against [it]." Pet.App.13a. The petition nowhere disputes this conclusion, let alone engages with the implications of Black Stone's third-party status.

Respondent Foundation Energy likewise never violated the automatic stay. The bankruptcy court held as much three times over in its May 2022 order—which, again, petitioners never appealed:

- "Debtor's counsel did not violate the stay by: 1) filing the lawsuit on behalf of the non-debtor co-plaintiffs, 2) prosecuting the claims held by the non-debtor co-plaintiffs…." CA5.ROA.5511.
- "In this case, [petitioners] argue[] that all claims asserted in the Kansas lawsuit are invalid, including the claims asserted by the non-debtor co-plaintiffs, because they too violated the stay. The motion, however, is entirely silent with respect to any misconduct by the non-debtor co-plaintiffs…. [Petitioners'] claim for declaratory relief against the non-debtor co-plaintiffs should be denied." CA5.ROA.5524.
- "Considering this court's ruling that [petitioners] failed to adequately plead a violation of the stay by the non-debtor co-plaintiffs, the moving parties may no longer care whether the stay is annulled." CA5.ROA.5525.

The bankruptcy court doubled down on this conclusion in its October 2022 order:

- "*The non-debtor parties did not violate the automatic stay in any way*." Pet.App.45a.
- In the May 2022 order, the court "expressly denied [petitioners'] request to declare the Kansas litigation to be invalid with respect to the claims asserted by the non-debtor parties. [Petitioners] did not appeal these rulings which are now final and non-appealable." Pet.App.45a.

Those holdings survived two levels of review. The district court affirmed the bankruptcy court's finding that respondents did not violate the stay and noted that petitioners failed to challenge that decision. Pet.App.39a, 41a. The district court framed the issue as "whether the non-debtor parties violated the automatic stay by filing the Kansas Litigation" and determined that they did not. Pet.App.36a. As the district court explained, the bankruptcy court "made clear many times that the non-debtors were not acting in violation of the stay." Pet.App.37a. The Fifth Circuit agreed, also adopting "the bankruptcy court's view that the claims asserted by the non-debtor [plaintiffs] in the Kansas Litigation did not violate the automatic stay to begin with." Pet.App.13a.

Not only is the question presented not "outcome-determinative," Pet. 3, 28, but petitioners essentially invite this Court to issue an advisory opinion. Whether a stay violation should be labeled as void or as voidable has no effect here, because respondents have committed no violation of the stay.

To be sure, the bankruptcy court held that Patrick McConathy and his counsel violated the stay. *E.g.*, Pet. 13. But McConathy and his counsel are not respondents

to this petition, nor were they involved in any of the past appellate proceedings. *Supra* p. 10 n.1. Regardless, even if McConathy and his counsel were involved at this stage of the case as respondents, the petition still would not implicate the question presented. The bankruptcy court declared "that the claims *asserted by Debtor* in the Kansas lawsuit are voidable and are therefore invalid and without effect" and awarded sanctions against McConathy's counsel. CA5.ROA.5527 (emphasis added). In other words, petitioners already obtained relief as to those parties. Whether McConathy's and his counsel's actions violating the stay were void or voidable makes no practical difference here, because the bankruptcy court declared their actions to be "invalid and without effect." CA5.ROA.5527. The void-voidable distinction does not "matter[]" in this case because the court already declared invalid the only actions that violated the stay. *Contra* Pet. 8.

To the extent petitioners contend that the *entire* Kansas Litigation should have been declared void *ab initio*—and not just the debtors' specific claims and actions—then what petitioners really challenge is the bankruptcy court's differential treatment of the debtor and non-debtor plaintiffs when analyzing the stay violations. *E.g.*, Pet.App.13a. But that sideshow dispute is fact-bound and not fairly encompassed by the question presented to boot. It presents only further reason to deny the petition.

2. The lack of a stay violation alone provides ample grounds for denial, but the vehicle problems do not stop there. Take the settlement next. As petitioners (at 12 & n.8) concede, they settled with the estate, purchasing "all of the estate's interest in the Kansas Property." After this settlement, the lower courts unanimously agreed that the mineral rights were no longer property of the estate,

meaning "further litigation in Kansas could not impair the Debtors' estate." Pet.App.14a-16a, 40a, 44a.

Moreover, as the Fifth Circuit pointed out, after the settlement, Patrick McConathy was "no longer a party to the Kansas Litigation" and petitioners were not "creditor[s] of the Debtors." Pet.App.15a-16a. As a result, "[petitioners'] only interest in maintaining bankruptcy court jurisdiction [wa]s to achieve a favorable venue, not to pursue or protect estate assets or the integrity of their disposition according to the Bankruptcy Code." Pet.App.16a. The policies underlying the automatic stay, *see* Pet. 5-6, are no longer implicated, Pet.App.15a-16a. Rather, non-debtor petitioners "invoke the stay as a sword for a strategic advantage in a dispute with []other nondebtor[s]"—"troubling" behavior that is fundamentally inconsistent with the stay's rationales. *E.g.*, *Textile Mgmt. Assocs., Inc. v. FieldTurf USA, Inc. (In re Astroturf, LLC)*, 2017 WL 3889710, at *17 n.84 (Bankr. N.D. Ga. Sept. 5, 2017).[3]

3. The procedural history raises additional impediments. Petitioners' argument that the Kansas Litigation should be declared void *ab initio* hinges on the automatic

[3] Petitioners (at 12 n.8) argue by footnote that "the estate retains an interest" in the mineral rights because "depending on the outcome of the Kansas Litigation, the estate is entitled to receive a substantial sum from [petitioners] to be administered as part of the bankruptcy estate." This appears to be a reference to an additional $50,000 that petitioners promised to pay the estate if they prevailed in the Kansas Litigation. *See* Pet.App.6a-7a. Petitioners admittedly "design[ed]" this payment as a ploy to "retain" bankruptcy-court jurisdiction. CA5.ROA.11336-37. But the Fifth Circuit properly rejected their maneuver, explaining that "the amount that might be owed to the trustee from [petitioners], although contingent, was liquidated and certain." Pet.App.15a. As a result, the Kansas Litigation "could not impair the Debtors' estate." Pet.App.14a.

stay's continuation between the second closure of the McConathys' bankruptcy case in 2006 and the filing of the Kansas Litigation in 2019. But American Warrior filed a suit to partition the mineral rights in 2015 and obtained a default judgment thanks to faulty service, which is what instigated the 2019 Kansas Litigation. *Supra* pp. 6-7. If the automatic stay remained in effect from 2006 to 2019, then American Warrior's 2015 Partition Litigation violated the stay too.

## II. The Question Presented Does Not Warrant This Court's Review

Even if this case presented the question on which petitioners seek review, that question would not warrant this Court's attention. Although courts have sometimes used different terminology to describe the effect of a violation of the automatic stay, that distinction has limited practical importance. Indeed, petitioners' own case citations illustrate that the issue is neither meaningful nor recurring.

1. As petitioners note, some circuits, like the Fifth Circuit below, label violations of the automatic stay "voidable." *See Sikes v. Glob. Marine, Inc.*, 881 F.2d 176, 178-79 (5th Cir. 1989); *Easley v. Pettibone Mich. Corp.*, 990 F.2d 905, 910-11 (6th Cir. 1993); *Bronson v. United States*, 46 F.3d 1573, 1578 (Fed. Cir. 1995). Other circuits have labeled these violations as "void," not merely voidable. *See Soares v. Brockton Credit Union (In re Soares)*, 107 F.3d 969, 976 (1st Cir. 1997); *In re Myers*, 491 F.3d 120, 127 (3d Cir. 2007); *In re Schwartz*, 954 F.2d at 571.[4]

[4] The Second, Tenth, and Eleventh Circuits have similarly called violations "void," but have done so without any analysis or even acknowledgement of the void-voidable distinction. *FDIC v. Hirsch*

Petitioners (at 27) contend that the void-voidable distinction is a "recurring issue." But petitioners cite only one decision published in the last fifteen years discussing that distinction. *See Bank of N.Y. Mellon v. Enchantment at Sunset Bay Condo. Ass'n*, 2 F.4th 1229, 1230 (9th Cir. 2021). Rewinding the clock further, petitioners cite only three cases from the first decade of this century that consider the void-voidable distinction. *In re Myers*, 491 F.3d at 127-28; *Far Out Prods., Inc. v. Oskar*, 247 F.3d 986, 995 (9th Cir. 2001); *Chapman v. Bituminous Ins. Co. (In re Coho Res., Inc.)*, 345 F.3d 338, 344 (5th Cir. 2003). And one of these cases, *In re Coho*, does not even turn on the distinction, finding instead (as was found in this case) that the actions at issue did not violate the automatic stay. 345 F.3d at 343-46.

Petitioners' cited cases also fail to establish that the distinction between void and voidable actions is outcome determinative. Even where a court finds a violation of the automatic stay, the bankruptcy court may nevertheless grant relief from the stay and validate the violation. The Code requires that "for cause" and "[o]n request of a party in interest and after notice and a hearing, the court *shall* grant relief from the stay … such as by terminating, annulling, modifying, or conditioning such stay." 11 U.S.C. § 362(d) (emphasis added). Consistent with this mandate, the courts of appeals widely recognize statutory

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*(In re Colonial Realty Co.)*, 980 F.2d 125, 137 (2d Cir. 1992); *Picard v. Fairfield Greenwich Ltd.*, 762 F.3d 199, 207 (2d Cir. 2014); *Ellis v. Consol. Diesel Elec. Corp.*, 894 F.2d 371, 372 (10th Cir. 1990); *Jubber v. Bank of Utah (In re C.W. Mining Co.)*, 749 F.3d 895, 899 (10th Cir. 2014); *United States v. White*, 466 F.3d 1241, 1244 (11th Cir. 2006); *Albany Partners, Ltd. v. Westbrook (In re Albany Partners, Ltd.)*, 749 F.2d 670, 675 (11th Cir. 1984).

and equitable exceptions meriting relief from the automatic stay, up to and including retroactive annulment.[5]

As a practical matter, therefore, the application of section 362(d)'s exceptions to the stay, not the void-voidable label, determines the fate of an act that violates the automatic stay. Even a circuit that finds such violations void *ab initio* may ratify the act because, if relief is appropriate, "whether violations of the stay are void or voidable is not at issue." *In re Schwartz*, 954 F.2d at 573. And if relief is not warranted, even voidable violations "*will* be voided by the court in which the invalid action against the debtor was filed." *Easley*, 990 F.2d at 910. In other words, relief is contingent upon whether granting relief makes sense in the context of the bankruptcy proceeding, not upon whether the violation was void or voidable.

The Third Circuit's decision in *In re Myers*, which petitioners (at 17, 19) characterize as conflicting "irreconcilably" with the Fifth Circuit's case law, proves the point. 491 F.3d at 129. Although the Third Circuit labeled the actions in question as "void," it noted the "semantic confusion" deriving from "the fact that the void-versus-voidable nomenclature is itself problematic" because "the term 'void' implies an absolute bar amenable to no exception." *Id.* at 127. Rejecting the debtor's argument that violations must *always* be set aside because they are void, the court instead concluded that equitable considerations weighed in favor of annulling the stay and validating the violation. *Id.* at 129-30. Those equitable

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[5] *In re Soares*, 107 F.3d at 976-77; *In re Myers*, 491 F.3d at 127-28; *Sikes*, 881 F.2d at 178-79; *Easley*, 990 F.2d at 910-11; *Kimbrell*, 651 F.3d at 755-56; *In re Hoffinger Indus., Inc.*, 329 F.3d 948, 951-52 (8th Cir. 2003); *In re Schwartz*, 954 F.2d at 573; *Franklin Sav. Ass'n v. Off. of Thrift Supervision*, 31 F.3d 1020, 1023 (10th Cir. 1994); *In re Albany Partners*, 749 F.2d at 673.

considerations, not the "void-versus-voidable nomenclature," determined the outcome of the case.

2. Petitioners (at 8-9) argue that the disagreement over terminology nevertheless carries "serious practical implications." Those practical implications are overblown, as the Sixth Circuit has noted, because "in either case, the debtor must respond in some fashion to the action" by filing a motion to dismiss. *Easley*, 990 F.2d at 910. That burden is the same, whether a circuit calls violations void, calls violations voidable, or has not addressed the issue. "Indeed, this is the procedure followed in all cases in which the void/voidable issue has arisen." *Id.*

Petitioners (at 20) cite *In re Schwartz*, 954 F.2d at 571, to support the contention that the differences in terminology "place distinctly different burdens on the parties." In that case, the Ninth Circuit reasoned that treating violations as void obviates "the need for direct challenge," but treating violations as voidable causes debtors to "spend a considerable amount of time and money policing and litigating creditor actions." *Id.*; *accord In re Soares*, 107 F.3d at 976.

There are at least two problems with this reasoning. First, even in a circuit that labels violations as void, a party seeking the stay's protection against a violation cannot simply do nothing. Instead, that party will respond by invoking the protections of section 362, a procedure that is consistent across circuits. *Easley*, 990 F.2d at 910. Indeed, *In re Schwartz*'s own procedural history reflects this process despite the Ninth Circuit's position that violations are void *ab initio*. The case arrived on the Ninth Circuit's doorstep because the debtors "objected" to the violation. 954 F.2d at 570.

Second, 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. That assumption is inaccurate. Because the stay is automatic, it "requires no affirmative action by either the bankruptcy court or the debtor to prompt its proscriptions." *In re Smith*, 636 B.R. 521, 531 (Bankr. E.D. Tenn. 2021). The enforcing party's only burden is to give notice of the stay; that party "is not required to build the walls of the church, but only to retreat behind them." *Id.* Indeed, unless the party seeking relief from the stay can demonstrate that relief is warranted, the violation is presumed "'invalid and voidable' and of no effect." *Id.* (quoting *Easley*, 990 F.2d at 910-11).

In short, the practical implications of a few circuits' variations in terminology are negligible. The Court should not grant certiorari to weigh in on a minor, non-dispositive procedural question.

**III. The Fifth Circuit's Decision Was Correct**

The Fifth Circuit correctly concluded that even if it accepted petitioners' "argument, contrary to fact and the bankruptcy court's repeated conclusions, that [Foundation Energy] violated the automatic stay when [it] filed the Kansas Litigation," actions taken in violation of the automatic stay are not "automatically void" but "merely *voidable*." Pet.App.21a.

1. Petitioners' contention that actions taken in violation of the automatic stay are void *ab initio* is inconsistent with key provisions of the Bankruptcy Code.

Start with section 549(a), which provides that "the trustee may avoid a transfer of property of the estate … that occurs after the commencement of the case" under

certain circumstances. The Code defines "transfer" broadly such that section 549(a) applies to a wide range of transactions, including "the creation of a lien," "the retention of title as a security interest," and "the foreclosure of a debtor's equity of redemption." 11 U.S.C. § 101(54). But if all actions taken in violation of the automatic stay are void *ab initio*, the trustee's avoidance power under section 549(a) would be limited to the narrow subset of "unauthorized debtor transfers of estate property" not covered by the section 362 stay. *In re Schwartz*, 954 F.2d at 574. That interpretation would render much of section 549(a)'s broad grant of authority meaningless. *See Sikes*, 881 F.2d at 179.

Consider also sections 542(c) and 549(c), which ratify good-faith actions, even though "they may be technical violations of the stay." *In re Oliver*, 38 B.R. 245, 248 (Bankr. D. Minn. 1984) (citation omitted). Under section 542(c), "an entity that has neither actual notice nor actual knowledge of the [bankruptcy case] may transfer property of the estate … in good faith … as if the case … had not been commenced." And under section 549(c), "[t]he trustee may not avoid under subsection (a) … a transfer of an interest in real property to a good faith purchaser without knowledge of the … [bankruptcy] case and for present fair equivalent value." That the Code explicitly provides that some violations are valid squarely contradicts petitioners' position that the entire Kansas Litigation must be void *ab initio* unless retroactively validated through an annulment order. *See In re Oliver*, 38 B.R. at 248.

2. Labeling violations of the automatic stay voidable is also consistent with the broad purpose of the automatic stay. As petitioners (at 5) note, the automatic stay "protect[s] the interests of debtors by, among other things,

providing a 'breathing spell from [their] creditors'" (quoting S. Rep. No. 95-989, at 54 (1978)). But not all actions that violate the stay "frustrate the purpose, policies or objectives" of the Code, and in some cases, finding such actions valid in fact advances the goals of bankruptcy. *See Bronson*, 46 F.3d at 1581.

For that reason, circuits recognize equitable exceptions to the operation of the stay. *See supra* pp. 19-21 & n.5; *e.g.*, *Job v. Calder (In re Calder)*, 907 F.2d 953, 956 (10th Cir. 1990); *Matthews v. Rosene (In re Matthews)*, 739 F.2d 249, 251 (7th Cir. 1984); *In re Smith Corset Shops, Inc.*, 696 F.2d 971, 976 (1st Cir. 1982). Equitable exceptions are necessary to prevent parties from exploiting the automatic stay to gain an unfair advantage; for example, parties (like petitioners here) may strategically delay asserting the stay as a defense. *Easley*, 990 F.2d at 910-11. In those circumstances, courts find that actions in violation of the stay are not necessarily void. *Id.* These equitable exceptions illustrate that "the characterization of every violation of section 362 as being absolutely void is inaccurate and overly broad." *Sikes*, 881 F.2d at 178 (citation omitted).

3. Nor does the Fifth Circuit's decision conflict with this Court's decision in *Kalb v. Feuerstein*, 308 U.S. 433 (1940), which was based on the Court's interpretation of a different bankruptcy provision not at issue here. *Contra* Pet. 23-26.

In *Kalb*, the Court interpreted the language of the Frazier-Lemke Act, a 1934 amendment to the Bankruptcy Act of 1898 that restricted the ability of banks to repossess farms. Pub. L. No. 72-420, 47 Stat. 1467. The Frazier-Lemke Act provided that "the filing of a petition … shall immediately subject the farmer and all his

property, wherever located, … to the exclusive jurisdiction of the court," and foreclosure actions "*shall not be maintained, in any court or otherwise*, against the farmer or his property, at any time after the filing of the petition under this section." *Kalb*, 308 U.S. at 440 (emphasis added; citation omitted). Based on that clear language, the Court held that a state court's adjudication of mortgagees' foreclosure action violated the statutory prohibition and was "not merely erroneous but was beyond its power, void, and subject to collateral attack." *Id.* at 438.

The unambiguous language of the Frazier-Lemke Act is not implicated in this case or any of the other cases that petitioners cite. By contrast, section 362(a), the provision at issue here, provides only that the filing of a bankruptcy petition operates as an "automatic stay." Thus, if anything, *Kalb* underscores the absence of any clear textual basis supporting petitioners' position. The Court's interpretation of a 90-year-old statute does not stand for the proposition that violations of the automatic stay under a different provision—with very different language—are void *ab initio*.

Further, when the Court decided *Kalb* in 1940, the Code only provided trustees authority to modify or terminate the automatic stay; the power to annul the stay was nowhere to be found. *See Easley*, 990 F.2d at 911 n.4. In 1978, Congress included the power to annul the automatic stay in the Bankruptcy Reform Act, Pub. L. No. 95-598, 92 Stat. 2549. *Kalb* was thus decided under a statutory scheme that "no longer applies." *Easley*, 990 F.2d at 911; *Sikes*, 881 F.2d at 179 n.2.

Finally, this case is distinguishable from *Kalb* on its facts. Unlike this case, *Kalb* involved a clear violation of the automatic stay, specifically, foreclosure on a farm

while the mortgagor's bankruptcy case was pending. 308 U.S. at 435-36. If anything, *Kalb* proves that variations of the question presented arise in much simpler cases, even if *Kalb* itself dealt with a different statutory scheme. *Supra* pp. 24-25. To the extent this Court views the question presented as sufficiently important to warrant the use of scarce judicial resources, *but see supra* pp. 18-22, this Court should wait for a case like *Kalb* that cleanly presents the question and involves an actual violation of the automatic stay.

## CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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