No. 25-6

In the Supreme Court of the United States

THOMAS KEATHLEY,
Petitioner,

v.

BUDDY AYERS CONSTRUCTION, INC.,
Respondent.

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

BRIEF FOR PETITIONER

ERIC J. LEWELLYN
ALDERS AND LEWELLYN PLLC
1331 Union Avenue
Suite 1000
Memphis, TN 38104

THOMAS R. GREER
6256 Poplar Avenue
Memphis, TN 38119

GREGORY G. GARRE
Counsel of Record
CHRISTINA R. GAY
LATHAM & WATKINS LLP
555 11th Street, NW
Suite 1000
Washington, DC 20004
(202) 637-2207
gregory.garre@lw.com

KRISTIN C. HOLLADAY
BAPU KOTAPATI
LATHAM & WATKINS LLP
1271 Avenue of the Americas
New York, NY 10020

Counsel for Petitioner

QUESTION PRESENTED

Judicial estoppel is an equitable doctrine designed "'to protect the integrity of the judicial process' by 'prohibiting parties from deliberately changing positions'" to gain an unfair advantage. *New Hampshire v. Maine*, 532 U.S. 742, 749-50 (2001). The doctrine targets those who "'deliberately'" mislead courts, not those whose inconsistent positions stem from "inadvertence or mistake." *Id.* at 750, 753.

Courts regularly apply judicial estoppel when a debtor-plaintiff pursues a claim he failed to disclose to the bankruptcy court. The Eleventh, Ninth, Seventh, Sixth, and Fourth Circuits require courts to look at the totality of the circumstances and find that a debtor subjectively intended to mislead the bankruptcy court before applying judicial estoppel to bar a claim outside of the bankruptcy. In stark contrast, the Fifth and Tenth Circuits have embraced a "rigid" and "unforgiving" judicial estoppel rule in the bankruptcy context that bars claims regardless of whether there is evidence that a plaintiff actually intended to mislead. Pet.App.55a. In those circuits, a debtor's failure to disclose a lawsuit to a bankruptcy court triggers judicial estoppel whenever the debtor knew the facts relevant to the undisclosed claim and had a *potential* motive for concealment—which is virtually always present in the bankruptcy context.

The question presented is:

Whether the doctrine of judicial estoppel can be invoked to bar a plaintiff who fails to disclose a civil claim in bankruptcy filings from pursuing that claim simply because there is a *potential* motive for nondisclosure, regardless of whether there is evidence that the plaintiff in fact acted in bad faith.

PARTIES TO THE PROCEEDINGS BELOW

Petitioner Thomas L. Keathley, Sr. was the plaintiff in the district court and the appellant in the court of appeals.

Respondent Buddy Ayers Construction, Inc. was the defendant in the district court and the appellee in the court of appeals.

Connie Keathley was a plaintiff in the district court but did not participate in the court of appeals. Daniel Fowler was a defendant in district court but did not participate in the court of appeals.

RELATED PROCEEDINGS

There are no proceedings directly related to this case within the meaning of Rule 14.1(b)(iii).

TABLE OF CONTENTS

TABLE OF CONTENTS—Continued

Page

TABLE OF AUTHORITIES

Page(s)

CASES

TABLE OF AUTHORITIES—Continued

Page(s)

TABLE OF AUTHORITIES—Continued

Page(s)

TABLE OF AUTHORITIES—Continued

Page(s)

TABLE OF AUTHORITIES—Continued

Page(s)

TABLE OF AUTHORITIES—Continued

Page(s)

STATUTES

TABLE OF AUTHORITIES—Continued

Page(s)

OTHER AUTHORITIES

TABLE OF AUTHORITIES—Continued

Page(s)

TABLE OF AUTHORITIES—Continued

Page(s)

OPINIONS BELOW

The opinion of the court of appeals (Pet.App.1a-23a) is not reported but available at 2025 WL 673434. The court of appeals' denial of rehearing (Pet.App.57a) is unreported. The district court's decision denying reconsideration (Pet.App.24a-38a) is published at 706 F. Supp. 3d 628, and the district court's order granting summary judgment (Pet.App.39a-56a) is published at 686 F. Supp. 3d 495.

JURISDICTION

The court of appeals entered judgment on March 3, 2025 (Pet.App.1a-23a). The petition for a writ of certiorari was filed on June 27, 2025, and granted on October 20, 2025. This Court has jurisdiction under 28 U.S.C. § 1254(1).

INTRODUCTION

No one wants to go bankrupt. But hundreds of thousands of Americans—many if not most of whom are hardworking and well-intentioned people who, for one reason or another, just cannot make ends meet—have no choice but to file for bankruptcy each year. The bankruptcy laws offer these people a fresh start. The question in this case is what happens when a debtor pursues an action against someone outside of bankruptcy but neglects to timely advise the bankruptcy court of his claim. In that situation, courts may invoke the doctrine of judicial estoppel to bar the suit—but only if they conclude that the debtor-plaintiff sought to mislead the bankruptcy court. That limitation reflects the doctrine's core purpose: Judicial estoppel exists to prevent—and penalize—"deliberate[]" gamesmanship, but not to

punish "inadvertence or mistake." *New Hampshire v. Maine*, 532 U.S. 742, 749-50, 753 (2001).

Courts broadly agree that, in the context here, judicial estoppel should not bar a claim outside of bankruptcy if the debtor-plaintiff's failure to timely disclose the claim in bankruptcy was inadvertent or a mistake. But they are divided over the proper inquiry for determining whether the failure to timely disclose the claim was inadvertent or instead an intentional effort to mislead the courts. Most courts sensibly consider the available evidence to determine whether the lack of timely disclosure was intentional. But the Fifth Circuit has adopted a "rigid" and "unforgiving" rule that presumes bad faith whenever a debtor could "*potentially*" benefit from nondisclosure of a known claim—which, by definition, is almost always the case in a bankruptcy. Pet.App.13a-14a, 55a (emphasis added). Everything else bearing on a debtor's real-world intent is irrelevant: the debtor's sophistication, whether he told his bankruptcy counsel about the claim, misunderstood the disclosure rules, promptly amended his filings, drew no creditor objection following disclosure, received no finding of bad faith from the bankruptcy court, and so on. None of that matters under the Fifth Circuit's "unforgiving" rule.

The Fifth Circuit's outlier approach converts what is supposed to be a flexible, equitable inquiry into a harsh regime that makes judicial estoppel "virtually mandatory" whenever a debtor fails to disclose a claim. *Love v. Tyson Foods, Inc.*, 677 F.3d 258, 271 (5th Cir. 2012) (Haynes, J., dissenting). That approach short-circuits the holistic, fairness-driven analysis equity requires. It is out of step with this Court's precedent, which recognizes that the doctrine of judicial estoppel is designed to thwart "deliberate[]"

and "intentional" switches in position. *New Hampshire*, 532 U.S. at 749-51 (citations omitted). It contravenes Congress's judgment, enshrined in the bankruptcy system, that debtors who make honest mistakes ought *not* be subjected to harsh sanctions. And it creates perverse results. The only "winner" under the Fifth Circuit's regime is the alleged wrongdoer, relieved of any responsibility for its conduct. Meanwhile, innocent debtors and creditors suffer—as does the enforcement of all kinds of civil laws. No equitable doctrine should operate that way.

The far sounder approach—consistent with the majority position of the courts of appeals that have addressed the issue—is straightforward: Before invoking the blunt instrument of judicial estoppel to bar a claim outside of bankruptcy, courts must consider the totality of the circumstances bearing on whether the debtor-plaintiff actually intended to manipulate the courts. That approach respects equity's demand for flexibility, enables courts to meaningfully distinguish inadvertence from gamesmanship, and allows courts to give due weight to what the bankruptcy court itself thought about the omission. And most importantly—and unlike the Fifth Circuit's extreme rule that simply presumes bad faith based on a *potential* motive to mislead—it ensures that judicial estoppel's strong medicine is deployed only where doing so actually serves the doctrine's core purpose: protecting the integrity of the judicial process, not punishing the unwary.

This Court should repudiate the Fifth Circuit's outlier rule, hold that courts must engage in the holistic inquiry that equity demands in determining whether to invoke judicial estoppel in this context, and remand for application of that standard here.

STATEMENT OF THE CASE

A. Individual Bankruptcies

Hundreds of thousands of Americans file for bankruptcy each year. Most individuals filing for bankruptcy because of consumer debts (i.e., debts that come from personal, family, or household expenses) proceed under either Chapter 7 or Chapter 13 of the Bankruptcy Code. Under either Chapter, commencing a bankruptcy case creates a bankruptcy estate, and the debtor generally must file schedules listing what he owns and what he owes. *See* 11 U.S.C. § 521(a)(1)(B)(i); Fed. R. Bankr. P. 1007(b)(1)(A). But there are important differences between a Chapter 7 and Chapter 13 bankruptcy, including in the scope and disposition of estate property. *See generally Harris v. Viegelahn*, 575 U.S. 510, 513-14 (2015).

A Chapter 7 case focuses on the debtor's property at the moment he files for bankruptcy. *See id.* at 513-14. A Chapter 7 trustee takes control of non-exempt assets, sells them, and distributes the proceeds to creditors based on the priority rules in the Code. *See* U.S. Courts, *Chapter 7 – Bankruptcy Basics*[1]; *see also* 11 U.S.C. §§ 704, 726. The debtor typically receives a discharge of his qualifying debts. *Chapter 7 – Bankruptcy Basics*; *see* 11 U.S.C. § 727.

By contrast, in a Chapter 13 bankruptcy, individuals usually keep their assets and develop a plan to repay part or all of their debts over time. *See Harris*, 575 U.S. at 514; U.S. Courts, *Chapter 13* –

---

[1] https://www.uscourts.gov/court-programs/bankruptcy/bankruptcy-basics/chapter-7-bankruptcy-basics (last visited December 10, 2025).

Bankruptcy Basics[2]; 11 U.S.C. § 1306(b). The debtor proposes a repayment plan—typically three to five years—to which unsecured creditors and the Chapter 13 trustee may object. 11 U.S.C. §§ 1321, 1325. The bankruptcy court will approve the plan only if unsecured creditors receive at least as much as they would have in a Chapter 7 liquidation. *See id.* §§ 1324-1325. After confirmation, the plan can be modified at the request of the debtor, the bankruptcy trustee, or an unsecured creditor. *Id.* § 1329.

In addition to the fact that a Chapter 13 debtor usually retains possession of his assets, the structure of the Chapter 13 estate also differs sharply from Chapter 7. A Chapter 13 estate includes significantly more of the property a debtor acquires *after* filing his bankruptcy petition. *See Harris*, 575 U.S. at 513-14. As a result, even a lawsuit that arises after the petition is filed may be property of the Chapter 13 estate. *See Chapter 13 Practice & Procedure* § 16:7 (2025, Westlaw); *see also* 11 U.S.C. §§ 541, 1306(a)(1).

Whether and when a Chapter 13 debtor must amend his schedules to disclose property he acquired months or even years after filing his petition is a matter of some uncertainty and disagreement. The Bankruptcy Code and Federal Rules of Bankruptcy Procedure do not expressly impose such a requirement. *See, e.g.*, *Chapter 13 Practice & Procedure* § 16:7; 8 *Collier on Bankruptcy* ¶ 1300.35 (16th ed. 2025). The Fifth Circuit, however, has held that Chapter 13 debtors "have a continuing obligation to disclose post-petition causes of action." *Flugence v.*

---

[2] https://www.uscourts.gov/court-programs/bankruptcy/bankruptcy-basics/chapter-13-bankruptcy-basics (last visited December 10, 2025).

Axis Surplus Ins. Co. (In re Flugence), 738 F.3d 126, 129 (5th Cir. 2013). This case proceeded on that understanding. *See* Pet.App.42a.

B. This Litigation

1. Thomas Keathley and his wife live a life of modest means and, at times, have had trouble making ends meet. In December 2019, the Keathleys—who had undergone prior bankruptcies—filed for Chapter 13 bankruptcy in the Eastern District of Arkansas in hopes of finally regaining control over their financial affairs. *Id.* at 2a. After initial disclosures and proceedings, the bankruptcy court confirmed a modified repayment plan in April 2020. *Id.* The confirmed plan provided for 100%, interest-free repayment of the Keathleys' debts to their creditors. *See id.* at 14a, 22a. The Keathleys then turned their efforts to complying with the plan.

Then respondent—who had no connection to the bankruptcy—suddenly disrupted Mr. Keathley's life and, as it turned out, livelihood. In August 2021, more than a year after the Keathleys' Chapter 13 plan was confirmed, a truck driven by an employee of respondent Buddy Ayers Construction, Inc., struck the vehicle Mr. Keathley was driving and seriously injured him. *Id.* at 1a-2a. The collision injured Mr. Keathley's neck, back, and hands, leading to surgery, injections, and prolonged physical therapy. CA5 Record on Appeal (ROA) 494-95. He still suffers lasting physical limitations that have permanently reduced his earning capacity. ROA496-98.

Mr. Keathley informed his bankruptcy counsel of the accident and the basis for his personal injury claims a few weeks after the accident. JA184. His bankruptcy counsel, however, did not inform the

bankruptcy court. Pet.App.3a. But this was not unusual. Mr. Keathley furnished evidence that "the usual practice in the Eastern District of Arkansas is not to disclose pending personal injury lawsuits to the bankruptcy courts until shortly before they are resolved or settled." *Id.* at 17a; *see* JA252-54.[3]

2. In December 2021, Mr. Keathley—represented by different counsel—filed this personal injury suit against respondent in the United States District Court for the Northern District of Mississippi, alleging claims for negligence and vicarious liability for respondent's role in the crash and seeking damages to compensate for his injuries. ROA17-25.

In March 2023, respondent moved for summary judgment in the personal injury action on the ground that the case should be barred under the doctrine of judicial estoppel, because Mr. Keathley had purportedly sought to manipulate the courts by failing to update his schedule of assets to disclose his personal injury claims to the bankruptcy court. *See* ROA930-33. Yet, instead of trying to show that Mr. Keathley actually attempted to manipulate the courts, respondent argued that, "under Fifth Circuit precedent, motive [to conceal] is a given when a debtor/personal injury plaintiff fails to disclose his personal injury claim to the bankruptcy court." ROA976; *see* ROA970-78; ROA903-33; ROA1239-54.

Less than a week later, the Keathleys filed an amended schedule of assets notifying the bankruptcy

---

[3] In 2022, the Keathleys' bankruptcy counsel filed amended bankruptcy plans in the bankruptcy court. But the relevant forms did not require a schedule of assets and he did not list the personal injury action. *See* JA3-23, JA24-44, JA45-65; JA181.

court of the pending personal injury suit. JA186-205. At that point, the Keathleys were set to continue making payments under the confirmed plan for more than a year. *See* JA49. Yet no creditor moved to modify the Keathleys' plan after receiving notice of the personal injury claims. Nor did the Chapter 13 trustee, who oversaw the Keathleys' bankruptcy. And the bankruptcy court itself did not make any adverse finding, much less formally sanction Mr. Keathley, for any delay. *See generally* Bankruptcy Case Dkt. Nos. 66-110; *see also* Pet.App.22a.[4]

Back in the district court, Mr. Keathley argued that judicial estoppel could not bar his claims because his failure to timely disclose them was "inadvertent." ROA1208-10. In support of that argument, Mr. Keathley submitted an affidavit attesting that he "never intended to make any misrepresentations" about the existence of his personal injury claims; that he "d[id] not know why the personal injury claims were not disclosed to the bankruptcy court sooner"; and that, after he told his bankruptcy attorney about the claims, he "believed [he] had done everything [he] needed to do." JA184. He also submitted an affidavit from his bankruptcy counsel attesting that disclosing the claims to the bankruptcy court "would have had no material effect" on the confirmation of the Keathleys' amended bankruptcy plan, and that

---

[4] Separately, the Keathleys moved the bankruptcy court to approve a workers' compensation settlement Mr. Keathley had received as a result of his work-related accident. *See* JA305-07; JA308-10. The bankruptcy court approved the settlement—again without finding any intention to mislead the court or sanctioning the Keathleys for any delay in disclosure. JA313-14.

Mr. Keathley "received no benefit monetarily, or otherwise, from the nondisclosure." JA181-82.

3. The district court granted respondent's summary judgment motion and dismissed this case. Pet.App.56a; ROA1297. Focusing on inadvertence, the court "follow[ed] the directives of the Fifth Circuit" and asked only whether Mr. Keathley knew of the facts underlying his personal injury claims and had some hypothetical motive to conceal them from the bankruptcy court and creditors. Pet.App.44a; *see id.* at 43a-52a. It concluded that Mr. Keathley's "arguments of inadvertent error and mistakes of counsel" were insufficient to establish inadvertence under the Fifth Circuit's "consciously . . . rigid and unforgiving standards." *Id.* at 55a; *see id.* at 52a-53a.

Mr. Keathley moved for reconsideration. In support of his motion, he submitted an affidavit from Kellie Emerson, a staff attorney for the Chapter 13 trustee assigned to the Keathleys' case. JA252-54. Ms. Emerson attested that there was "nothing unusual or misleading about" the Keathleys "not disclosing the personal injury action while [it was] ongoing," and that it was "not uncommon" in the Eastern District of Arkansas "for debtors to amend their bankruptcy filings to disclose post-petition claims for personal injury actions prior to the settlement or resolution of the personal injury action." JA253. And she stated that the Keathleys "ha[d] received no benefit from the non-disclosure": Even if they had "immediately" disclosed the claims after the wreck, "it would not have had any effect on the administration of the bankruptcy" or "the amount the Keathleys would have had to pay or the time they would have had to pay it." JA254.

The district court denied reconsideration.

4. A panel of the Fifth Circuit affirmed. Applying its prior circuit precedent, the Fifth Circuit focused its analysis of whether Mr. Keathley's nondisclosure was "inadvertent" on whether he "stood to potentially benefit" from the concealment of his personal injury claims. Pet.App.12a-14a. The court did not consider evidence that he had told his bankruptcy attorney about the claims or that the bankruptcy court chose not to sanction him for any delay in disclosure. *See supra* at 8. Instead, the court relied on the fact that the Keathleys' 100% repayment plan was interest-free to conclude that Mr. Keathley had a *possible* motive to mislead—i.e., an attempt to avoid interest payments. Pet.App.14a. The court emphasized that this "'motivation sub-element is almost always met if a debtor fails to disclose a claim or possible claim to the bankruptcy court.'" *Id.* (citation omitted).

Judge Haynes concurred only in the judgment, explaining that Fifth Circuit precedent—under which merely a "*hypothetical* motive" to mislead the court was sufficient to trigger judicial estoppel—left her no choice. *Id.* at 20a-21a, 23a (emphasis added). She expressed "doubt" that applying judicial estoppel to bar Mr. Keathley's claims advanced the doctrine's purposes given "evidence that [his] failure to disclose the personal injury claim[s] on his bankruptcy schedules was an honest mistake"—one that "was of little concern to the bankruptcy court and would not impact Keathley's creditors." *Id.* at 21a. She further opined that it made "little sense" for respondent "to benefit from something it ha[d] no involvement in and for which the bankruptcy court [did] not appear to think the plaintiff should be sanctioned." *Id.* at 22a. In her view, applying judicial estoppel in these

circumstances would hand respondent an "unwarranted windfall." *Id.*

5. In late 2024, while this case was pending, the Keathleys completed their Chapter 13 repayment plan—which no creditor had sought to modify based on Mr. Keathley's potential personal injury claims. Bankruptcy Case Dkt. No. 99. Their eligible debts were discharged, and their bankruptcy case was closed. Bankruptcy Case Dkt. Nos. 106, 110. Yet this action remains barred under the Fifth Circuit's extreme judicial estoppel rule, even though Mr. Keathley continues to suffer from injuries that he sustained as a result of respondent's negligence.

SUMMARY OF ARGUMENT

The Fifth Circuit erred in invoking judicial estoppel to dismiss Mr. Keathley's personal injury claim—and thereby hand respondent an undeserved windfall—based on the existence of a *potential* financial motive to mislead the bankruptcy court.

I. The Fifth Circuit's outlier judicial estoppel rule cannot be squared with the equitable roots of the judicial estoppel doctrine, the rules and objectives of the bankruptcy system, or common sense.

First, the Fifth Circuit's rule flouts the flexibility that equity demands. This Court has time and again made clear that "[e]quity eschews mechanical rules" and requires "flexi[ble]," all-things-considered judgments. *Holmberg v. Armbrecht*, 327 U.S. 392, 396 (1946). The Fifth Circuit's presumption of bad faith is precisely the kind of "rigid rule" this Court has repeatedly rejected. *Holland v. Florida*, 560 U.S. 631, 651 (2010). It treats as dispositive a factor present in nearly every bankruptcy—a *potential* motive to conceal assets—while walling off evidence of a

debtor's actual intent, such as reliance on counsel, prompt corrections, the bankruptcy court's own assessment of the debtor's intent, and other context-specific factors. An equitable doctrine like judicial estoppel demands a more holistic analysis.

Second, the Fifth Circuit's rule collapses the crucial line between "intentional" misconduct and honest "mistake" that judicial estoppel exists to police. *New Hampshire*, 532 U.S. at 749-51, 753 (citations omitted). The Fifth Circuit's test "essentially concludes that *any* debtor who fails to disclose a claim has a nefarious motive to do so." *Love*, 677 F.3d at 271 (Haynes, J., dissenting) (emphasis added). But given judicial estoppel's purpose, equity demands a rule that actually distinguishes between intentional manipulation and honest mistakes. And, for similar reasons, the Fifth Circuit's near-absolute presumption of intent cannot be squared with how presumptions operate in civil litigation more generally. The presumption says nothing meaningful about an intent to mislead and is, for all practical purposes, irrebuttable—even though there is no valid reason to think all (or virtually all) bankruptcy omissions are the product of intentional deception.

Third, the Fifth Circuit's rule yields deeply *in*equitable results, undermining the animating purpose of an equitable doctrine like judicial estoppel. It hands windfalls to alleged wrongdoers like respondent that have no connection to the bankruptcy, denies victims the opportunity to recover for tortious conduct, civil rights violations, or other harms, and denies innocent creditors potential recoveries—even when considering the totality of the circumstances would show that the failure to disclose

a claim was inadvertent. These unjust results are further proof that the Fifth Circuit's rule is wrong.

Finally, the Fifth Circuit's rule conflicts with the bankruptcy system's purpose and structure—from the foundational "fresh start" for honest debtors, to Congress's decision to allow liberal amendments to asset schedules, to the Bankruptcy Code's graduated, intent-based sanctions for misconduct, including the concealment of assets. The Fifth Circuit's harsh rule—which effectively treats every omission or belated disclosure as fraud—defies that system.

II. Instead, this Court should hold that courts must consider the totality of the circumstances in deciding whether a debtor's nondisclosure was inadvertent or intentional before invoking the blunt hammer of a dismissal based on judicial estoppel. That approach aligns with equity's tradition of flexibility and ensures that judicial estoppel is not wielded to produce inequitable results or to contravene the bankruptcy system's own calibrated approach to debtor omissions. It is also flexible enough to detect and punish deliberate gamesmanship without ensnaring honest mistakes.

In applying that test, courts should weigh a variety of factors, such as the debtor's sophistication and explanation for the omission, communications with bankruptcy counsel, the timing and promptness of any corrective actions, whether the delay resulted in any unfair benefit to the debtor, and the bankruptcy court's own findings or actions after becoming aware of the omission. Because the bankruptcy court is best positioned to assess the debtor's conduct in context, its actions—including any findings or sanctions—or inaction should

meaningfully inform the analysis. But the Fifth Circuit's rule leaves no room for such considerations.

III. The judgment below should be vacated and the case remanded for application of the proper standard. Because the Fifth Circuit's decision is based on the circuit's outlier presumption of bad faith, it treated evidence bearing directly on Mr. Keathley's intent to mislead as irrelevant and never engaged in a holistic assessment of the facts and surrounding circumstances. Consistent with this Court's usual practice, it should remand for the lower courts to apply the correct standard in the first instance.

ARGUMENT

I. THE FIFTH CIRCUIT'S OUTLIER JUDICIAL ESTOPPEL RULE SHOULD BE REJECTED

Judicial estoppel is an equitable doctrine with a focused aim: to "'protect the integrity of the judicial process' by 'prohibiting parties from deliberately changing positions according to the exigencies of the moment.'" *New Hampshire v. Maine*, 532 U.S. 742, 749-50 (2001) (citations omitted). Its target is not every inconsistency, but "*deliberate[]*" gamesmanship, *id.* (emphasis added) (citation omitted)—preventing litigants from "playing 'fast and loose with the courts,'" *Scarano v. Central R. Co.*, 203 F.2d 510, 513 (3d Cir. 1953) (citation omitted). That purpose distinguishes judicial estoppel from equitable estoppel: "[I]n contrast to equitable estoppel's concentration on the integrity of the parties' relationship to each other, judicial estoppel focuses on the integrity of the judicial process." *Konstantinidis v. Chen*, 626 F.2d 933, 937 (D.C. Cir. 1980).

Central to this case is the longstanding principle—acknowledged by the Court in *New Hampshire*—that

judicial estoppel applies when "the party who is alleged to be estopped 'intentionally misled the court to gain unfair advantage.'" *John S. Clark Co. v. Faggert & Frieden, P.C.*, 65 F.3d 26, 29 (4th Cir. 1995) (citation omitted); *see New Hampshire*, 532 U.S. at 751. Because judicial estoppel "looks toward cold manipulation and not unthinking or confused blunder," *Konstantinidis*, 626 F.2d at 939 (citation omitted), it does not apply when a party's inconsistent positions were the product of "inadvertence or mistake," *John S. Clark*, 65 F.3d at 29; *see New Hampshire*, 532 U.S. at 753 (quoting *John S. Clark*, 65 F.3d at 29); Rand G. Boyers, Comment, *Precluding Inconsistent Statements: The Doctrine of Judicial Estoppel*, 80 Nw. U. L. Rev. 1244, 1249 (1986) (It is only the "*intentional* assertion of an inconsistent position [that] perverts the judicial machinery." (emphasis added)). A contrary rule would uncouple judicial estoppel from its proper object: deterring the intentional manipulation of the courts.

The Fifth Circuit has "recognized three particular requirements" for applying judicial estoppel as to claims potentially impacting bankruptcies: (1) the debtor must have taken "'clearly inconsistent'" positions; (2) the bankruptcy court must have "'accepted the previous position'"; and (3) the inconsistent positions "'must not have been inadvertent.'" *Kane v. National Union Fire Ins. Co.*, 535 F.3d 380, 385-86 (5th Cir. 2008) (citation omitted). The Fifth Circuit treats the first two of these factors as satisfied whenever a debtor fails to disclose a lawsuit to the bankruptcy court and secures plan confirmation or a discharge. *See, e.g.*, *Allen v. C & H Distributors, L.L.C.*, 813 F.3d 566, 572-73 (5th Cir. 2015). Its analysis of those two factors is not

disputed here. Rather, this case turns on the third requirement: that the omission not be "inadvertent." *Kane*, 535 F.3d at 385-86 (citation omitted).

Whereas other circuits look to the totality of the circumstances to assess whether a debtor's omission was inadvertent or an honest mistake before invoking judicial estoppel to bar his claim, the Fifth Circuit mechanically presumes bad faith whenever a *potential* financial motive to mislead the bankruptcy court exists, as it virtually always does in the bankruptcy context. The Fifth Circuit's rule presuming bad faith based on the existence of a potential motive to mislead defies judicial estoppel's nature and purpose. It turns a flexible doctrine into a rigid rule of near strict liability. And it transforms a tool designed to promote equity by policing intentional wrongdoing into a blunt instrument civil defendants can use to secure a windfall without establishing actual intent to mislead. It should be rooted out for multiple, independent reasons.

A. The Fifth Circuit's Rule Cannot Be Reconciled With Equity's Tradition Of Flexibility

As an equitable doctrine, judicial estoppel must be flexible. But the Fifth Circuit's rule is the opposite.

1. This Court has long made clear that "[e]quity eschews mechanical rules" and "depends on flexibility." *Holmberg v. Armbrecht*, 327 U.S. 392, 396 (1946); *see Hecht Co. v. Bowles*, 321 U.S. 321, 329 (1944) ("The essence of equity jurisdiction has been the power of the Chancellor to do equity and to mould each decree to the necessities of the particular case."). The Court has explained that equity's defining features include its "resistance to rigid rules" and

demand for "case-by-case" judgments made based on *all* the relevant circumstances. *Holland v. Florida*, 560 U.S. 631, 649-51 (2010) (citation omitted); *see Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 248 (1944) (underscoring the "flexibility" inherent in "equitable procedure").

Time and again, this Court has rejected categorical or *per se* approaches to equitable doctrines, and instead insisted on a totality-of-the-circumstances inquiry grounded in fairness. In *Hecht*, for example, the Court made clear that the availability of injunctive relief turns on case-specific circumstances, not one-size-fits-all criteria. *See* 321 U.S. at 329-30. In *eBay Inc. v. MercExchange, L.L.C.*, it refused a "categorical rule" for when patent holders could establish irreparable harm to secure injunctions. 547 U.S. 388, 391-94 (2006). And in *Holland*, the Court rejected an "absolute legal rule[]" on when attorney misconduct could trigger equitable tolling in favor of a "'case-by-case,'" context-specific inquiry. 560 U.S. at 649-51, 653-54 (citation omitted).

Across these decisions—and many others—the Court has made clear that equitable principles work only when courts consider the whole picture on the dispositive question. That's because bright-line rules can work real injustice, which undermines the entire point of equitable doctrines: to produce *fair* outcomes.

The Fifth Circuit's outlier judicial estoppel rule is precisely the kind of "rigid rule[]" this Court's precedents—and equity—foreclose. *Holland*, 560 U.S. at 651. It deems a debtor's omission not inadvertent whenever the debtor has some *potential* "motive to conceal" a known claim. *In re Flugence*, 738 F.3d at 130-31; *see Allen*, 813 F.3d at 574; Pet.App.13a-14a. If such a motive exists—as it

almost always does by virtue of the bankruptcy itself—the Fifth Circuit brands the debtor's failure to disclose intentional, and then stops.[5]

Under that blunt framework, evidence probative of the debtor's intent is legally "irrelevant" and need not be considered. *In re Flugence*, 738 F.3d at 130-31 (dismissing possibility that debtor did not understand disclosure obligations). So courts simply ignore evidence that, for example, a debtor told his bankruptcy lawyer about the claim, *see* Pet.App.52a-53a, relied on his attorney's advice, *see In re Flugence*, 738 F.3d at 130, misunderstood his disclosure obligations, *see Fornesa v. Fifth Third Mortg. Co.*, 897 F.3d 624, 628 (5th Cir. 2018), or acted promptly to correct his omission once he realized it, *see In re Vioxx Prods. Liability Litig.*, 889 F. Supp. 2d 857, 861-62 (E.D. La. 2012). None of that matters under the Fifth Circuit's rule. There is thus no effort "to do equity and to mould each decree to the necessities of the particular case." *Hecht*, 321 U.S. at 329.

But as an "equitable" doctrine, judicial estoppel cannot be flattened into a "precise formula or test." *Zedner v. United States*, 547 U.S. 489, 504 (2006); *see New Hampshire*, 532 U.S. at 750 ("[T]he circumstances under which judicial estoppel may appropriately be invoked are probably not reducible to any general formulation of principle." (citation omitted)). Its equitable character instead demands a full, fact-specific review before deploying its strong

---

[5] The Fifth Circuit also considers whether the debtor knew the "facts giving rise to" his claim at the time he failed to disclose it in the bankruptcy court. *In re Flugence*, 738 F.3d at 130 (citation omitted). But that factor is essentially meaningless except in cases that involve latent injuries or concealed harms.

medicine—just as this Court requires for other equitable remedies. *See supra* at 17; *see, e.g.*, *Martineau v. Wier*, 934 F.3d 385, 394 (4th Cir. 2019) ("Whether the equitable doctrine of judicial estoppel should be invoked depends on the 'specific factual context[]' of a case." (alteration in original) (quoting *New Hampshire*, 532 U.S. at 751)). And that principle necessarily requires courts to evaluate the totality of the circumstances bearing on whether an omission was the product of a deliberate attempt to mislead the court, rather than inadvertence or a mistake, before invoking judicial estoppel to bar a claim.

A "rigid rule[]" that presumes bad faith whenever a *potential* motive to mislead exists defies this Court's repeated admonition that equitable doctrines be applied through a case-specific, context-driven analysis. *Holland*, 560 U.S. at 649-51.

2. In opposing certiorari, respondent suggested that requiring courts to assess a debtor's intent before applying judicial estoppel is *itself* a rigid rule at odds with the "flexible" nature of equitable doctrines. BIO 17-18. But the Fifth Circuit *agrees* that judicial estoppel does not apply where a debtor's omission was inadvertent, *see, e.g.*, *Kane*, 535 F.3d at 385-86—as this Court has recognized, *see supra* at 14-15. The only question here is whether courts should look to the totality of the circumstances in gauging whether an omission was inadvertent, or instead presume bad faith based solely on the existence of a hypothetical motive to mislead the bankruptcy court. The answer is clear. Only a totality-of-the-circumstances test honors the flexibility demanded by equity.

Nor does respondent's broader premise—that requiring a defendant to satisfy *any* specific element of judicial estoppel is *always* inherently too "rigid"—

find support in this Court's cases or in common sense. BIO 17-18. Equity is flexible, but it is not amorphous. Indeed, equity is filled with substantive rules that channel the exercise of discretion. In *Minerva Surgical, Inc. v. Hologic, Inc.*, for instance, the Court explained that "assignor estoppel comes with limits" that "guard[] the doctrine's boundaries"—there, that the doctrine "appl[ies] only when its underlying principle of fair dealing comes into play." 594 U.S. 559, 576 (2021). And in *Menominee Indian Tribe of Wisconsin v. United States*, the Court held that it was not "overly rigid" to require a litigant seeking to invoke equitable tolling to establish two "elements" first. 577 U.S. 250, 255-56 (2016).

The same goes here. Judicial estoppel's essential guardrail is the need to show an intent to mislead—a requirement that prevents misuse of its "'strong medicine.'" *Ah Quin v. County of Kauai Dep't of Transp.*, 733 F.3d 267, 277 (9th Cir. 2013) (quoting *Ryan Operations G.P. v. Santiam-Midwest Lumber Co.*, 81 F.3d 355, 363 (3d Cir. 1996)).

B. The Fifth Circuit's Rule Fails To Distinguish Intentional Efforts To Mislead A Court From Honest Mistakes

The Fifth Circuit's rule also fails to separate honest mistakes from intentional manipulation, and thus does not advance the aim of judicial estoppel.

1. The Fifth Circuit's rule triggers judicial estoppel based on only a generic financial motive that exists in practically every Chapter 13 case. It is enough that some "*potential* financial benefit" might flow from concealment—a condition that is almost always met, because nearly every debtor could theoretically benefit from shielding assets from

creditors. *Allen*, 813 F.3d at 574 (emphasis added) (citation omitted); *see* Pet.App.14a (debtor "almost always" has a sufficient motive to conceal (citation omitted)); *Slater v. United States Steel Corp.*, 871 F.3d 1174, 1184 (11th Cir. 2017) (en banc) ("[A] Chapter 13 debtor would always have a potential motive to conceal a civil claim from creditors so as to 'keep the proceeds for herself and den[y] creditors a fair opportunity to claim what was rightfully theirs.'" (alteration in original) (citation omitted)). The result is thus already baked into the analysis under the Fifth Circuit's rule. Proving the point, the Fifth Circuit has *never* found that an omission was inadvertent in a precedential decision in which it applied its rule presuming bad faith.

At the same time, the Fifth Circuit's rule ignores evidence that bears directly on whether a debtor actually intended to mislead. Did the debtor misunderstand his disclosure obligations? Tell his bankruptcy attorney about the claim? Promptly amend his schedules once he realized the omission? Did the bankruptcy court make any finding of misconduct? And so on. Under the Fifth Circuit's rule, none of that—or any other evidence bearing on a debtor's actual intent—matters, because bad faith is presumed based solely on the existence of a potential motive to mislead. *See supra* at 18. Yet such evidence is obviously relevant to whether an omission was inadvertent or instead intentional.

What's more, the Fifth Circuit's presumption of intent is entirely unfounded. There is no reason to think that all, nearly all, or even most debtors are out to game the system whenever possible. That assumption harkens back to the—rightfully repudiated—era in which debtors were categorically

deemed morally corrupt and is wildly out of step with reality. As the American Bankruptcy Institute's Commission on Consumer Bankruptcy explained:

> Even with the aid of an attorney, a consumer has a huge task to assemble the information needed to complete [the upwards of 20 forms that may be required]. Moreover, a consumer might not appreciate that a potential lawsuit is an asset in the same way as a house or a bank account. Also, it can be unclear when a cause of action arises thereby creating a duty to disclose in the debtor.

American Bankruptcy Institute, *Final Report on Consumer Bankruptcy* 29 (2019).

Indeed, most Americans navigating the Chapter 13 bankruptcy process are unsophisticated when it comes to the legal process. Even when they are fortunate enough to have attorneys, it may be unclear to them exactly what obligations they bear. "[M]echanical applications" of judicial estoppel—like the Fifth Circuit's rule—"do not appreciate the context of a consumer bankruptcy filing." *Id.*

To be sure, the possibility for wrongdoing exists. Thus, "*[s]ome* omissions will be culpable and should be punished." *Metrou v. M.A. Mortenson Co.*, 781 F.3d 357, 360 (7th Cir. 2015) (Easterbrook, J.) (emphasis added). "But other omissions will be innocent"—such as where they are "based on poor communication between bankruptcy counsel and tort counsel, or based on a belief that the tort claim will not be valuable"—"and should not be punished." *Id.* The goal of an equitable doctrine like judicial estoppel is to look at the facts and circumstances and sort the bad from the innocent. Yet the Fifth Circuit's rule

forecloses any such inquiry by deeming virtually every untimely disclosure a bad act.

2. The Fifth Circuit's rule is also irreconcilable with how presumptions are supposed to operate in civil litigation more generally.

The Fifth Circuit's approach "effectively creates a presumption" in favor of the defendant asserting the affirmative defense of judicial estoppel. *Love v. Tyson Foods, Inc.*, 677 F.3d 258, 270 n.8 (5th Cir. 2012) (Haynes, J., dissenting). It "presume[s] . . . fraudulent intent simply from nondisclosure itself," because "'knowledge' is a given, and 'motive,' according to the [Fifth Circuit] is 'self-evident.'" *Id.* at 271 n.9; *see* Pet.App.30a (noting that "something approaching an absolute presumption of intent exists" in the Fifth Circuit "in cases where a debtor fails to disclose a tort lawsuit to a bankruptcy court"). In other words, in practical effect, virtually *every* debtor is deemed to have acted in bad faith.

But under this Court's precedents, a presumption must be "rational[ly] connect[ed]" to the ultimate fact it is meant to establish, and it normally must remain genuinely rebuttable. *Mobile, Jackson & Kansas City R.R. Co. v. Turnipseed*, 219 U.S. 35, 43 (1910). Presumptions cannot wall off probative, contrary evidence, *see id.*, or function as a conclusive rule when doing so would cause the court to sometimes "miss the mark," *Johnson v. Williams*, 568 U.S. 289, 301-02 (2013) (refusing to adopt "irrebuttable" presumption in the habeas context); *cf. Vlandis v. Kline*, 412 U.S. 441, 452 (1973) (rejecting an "irrebuttable presumption" under the Due Process Clause that was not "necessarily or universally true").

The Fifth Circuit's rule that presumes bad faith based solely on a potential motive to mislead fails both requirements. It says nothing meaningful about intent, because such a potential motive is present in virtually every bankruptcy. *See supra* at 20-21. And as discussed, the presumption of intent is, for all practical purposes, irrebuttable—even though that inference is often wrong. *See supra* at 21-23. This is precisely the kind of categorical device equity abhors and this Court's presumption precedents forbid.

C. The Fifth Circuit's Rule Grants Unwarranted Windfalls To Wrongdoers, Harms Creditors, And Undermines The Public Interest In Enforcing The Laws

The Fifth Circuit's approach is also fundamentally inequitable. As an equitable doctrine, judicial estoppel is—by definition—supposed to yield *equitable* results. *See, e.g.*, *Meyer v. United States*, 375 U.S. 233, 237-39 (1963). Any faithful interpretation of the doctrine must therefore yield, in the run of cases, "fair and right" outcomes. *Black's Law Dictionary* (12th ed. 2024) (defining "equity" as "[t]he body of principles constituting what is fair and right"). But the Fifth Circuit's rule systematically does the opposite—"produc[ing] a decidedly non-equitable result" by barring honest debtors from vindicating their claims for relief, conferring windfalls on civil defendants accused of wrongdoing, and depriving innocent creditors of potential recoveries. *Martineau*, 934 F.3d at 396. Those results run "counter to the very underpinnings of judicial estoppel." *Id.*

The Fifth Circuit's rule "'operates . . . to the benefit of only an alleged bad actor'"—the civil defendant who

"stand[s] to gain a potential 'windfall'" when the claim against him is dismissed—even without any showing of bad faith by the debtor. *Id.* (omission in original) (citations omitted). When a court applies judicial estoppel, the defendant charged with wrongdoing "avoids liability on an otherwise potentially meritorious civil claim." *Slater*, 871 F.3d at 1187. In cases like this, the result is even more extreme, because the allegedly manipulative conduct is in a different proceeding (the bankruptcy action) in which the civil defendant is not involved. Yet the defendant—like respondent here—walks away scot-free. That "do[es] nothing to protect the integrity of the courts" where there was no intent by the plaintiff to mislead; if anything, it undermines the judicial system. *Ah Quin*, 733 F.3d at 276; *see* Pet.App.21a (Haynes, J., concurring in the judgment) ("[P]reventing Keathley's personal injury action [from proceeding] might undermine the judicial system [judicial estoppel] claims to protect.").

This result leaves victims without redress, even for serious wrongdoing. As explained in the petition, the Fifth Circuit's rule has led to the dismissal of a broad range of claims, including claims not only for personal injuries (as here), but also for sex discrimination, pregnancy discrimination, disability discrimination, and other wrongs. Pet.22-23 (citing cases). In those cases, wrongdoers evade responsibility, no matter how blatant their misconduct or how serious the harm they caused. By the same token, the Fifth Circuit's rule "undermines enforcement of the substantive law"—from contract to antidiscrimination law, and everything in between. 18B Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 4477.9 (3d ed. 2025,

Westlaw). There is "little in the way of equities" to recommend such an undesirable and grossly unfair outcome. *Martineau*, 934 F.3d at 396.

Finally, innocent creditors lose out, too, because applying judicial estoppel may "vaporiz[e] assets that could be used for the creditors' benefit." *Biesek v. Soo Line R.R. Co.*, 440 F.3d 410, 413 (7th Cir. 2006) (Easterbrook, J.). When judicial estoppel wipes out a civil claim, it can do more than bar the debtor's own personal recovery—it may also erase an asset that could otherwise "increase the value of the bankruptcy estate." *Slater*, 871 F.3d at 1188. That outcome "in turn harms creditors" by depriving them of a potential source of recovery through no fault of their own, undermining a central purpose of the bankruptcy process: to marshal estate assets for the creditors' benefit. *Id.*; *see Ah Quin*, 733 F.3d at 275 ("By not permitting the civil action to go forward, the *creditors lose out* on a potential recovery."). In other words, the Fifth Circuit's rule unfairly penalizes the very stakeholders it is supposedly intended to protect.[6]

---

[6] In some cases, a Chapter 13 trustee might be able to pursue a claim for the benefit of creditors. *See, e.g.*, *In re Flugence*, 738 F.3d at 128, 131-32. *But see In re Bowker*, 245 B.R. 192, 200 (Bankr. D.N.J. 2000) (concluding that Chapter 13 debtor alone had standing to pursue pre-petition claim); *Boyden v. City of Villa Rica, Georgia*, No. 05-cv-033, 2006 WL 8553652, at *3 (N.D. Ga. Jan. 31, 2006) (same). But requiring Chapter 13 trustees to pursue civil claims in place of the actual plaintiffs would impose significant "administrative burden[s]"—like having to "assess [the] merits" of a debtor's claim; "make a cost benefit analysis of pursuing" it; "select and retain counsel" and potentially "expert witnesses and investigators"; "incur expenses for filing fees, transcripts and other costs of litigation"; and participate in "formulating litigation strategy, discovery and

This case illustrates the pernicious consequences of the Fifth Circuit's approach. The lower courts barred Mr. Keathley's personal injury action seeking damages for serious injuries that required costly medical care and continue to impact his daily life and the kind of work he can do, even though "there was evidence that Keathley's failure to disclose the personal injury claim[s] on his bankruptcy schedules was an honest mistake," and his delay in disclosing the claims did "not impact Keathley's creditors." Pet.App.21a (Haynes, J., concurring in the judgment). Meanwhile, respondent will simply walk away without bearing any responsibility for the injuries its employee's negligence inflicted on Mr. Keathley, even though respondent was in no way harmed by Mr. Keathley's delay in disclosing the claims because this action is "totally unrelated to the bankruptcy." *Id.* That result is in no way fair or just.[7]

D. The Fifth Circuit's Rule Is At Odds With The Rules And Policies Underlying The Bankruptcy System

Finally, the Fifth Circuit's rigid rule contravenes the policy judgments Congress enshrined in the bankruptcy system itself. And that is no small matter: Even the Fifth Circuit recognizes that judicial estoppel must be applied "against the

---

negotiating settlement." *In re Bowker*, 245 B.R. at 200. As a result, a Chapter 13 trustee may abandon claims the debtor would have pursued, to creditors' potential detriment.

[7] On the other side of the ledger, the Fifth Circuit has suggested that its harsh rule "deter[s] dishonest debtors." *Reed v. City of Arlington*, 650 F.3d 571, 574 (5th Cir. 2011). But petitioner's rule excuses only inadvertent or honest mistakes—and thus equally deters dishonest debtors.

backdrop of the bankruptcy system and the ends it seeks to achieve." *Reed v. City of Arlington*, 650 F.3d 571, 574 (5th Cir. 2011) (en banc) (citation omitted). Yet its rule undercuts those very ends.

For starters, the Fifth Circuit's rule is incompatible with "[t]he principal purpose of the Bankruptcy Code": "grant[ing] a 'fresh start' to the 'honest but unfortunate debtor.'" *Marrama v. Citizens Bank of Mass.*, 549 U.S. 365, 367 (2007) (citation omitted). The Code is designed to give debtors the chance to restart—and rebuild—their lives. Denying victims recovery for wrongs committed against them impedes that objective. Yet the Fifth Circuit's rule does just that, extinguishing potentially valuable claims and related remedies based solely on good-faith mistakes. A rule that deprives honest debtors of the means to restart their lives cannot be squared with the Code's core purpose.

Nor does the Fifth Circuit's rule remotely reflect how bankruptcy law itself understands the realities of disclosure obligations. Disclosure is undoubtedly important. But "bankruptcy law, perhaps more than any other legal field, recognizes that people will make mistakes and need not be penalized for every error." *Mayor of Baltimore v. West Virginia (In re Eagle-Picher Indus., Inc.)*, 285 F.3d 522, 529 (6th Cir. 2002) (citation omitted). For example, "[o]missions frequently occur in the . . . Schedules of Assets and Liabilities a debtor files with his bankruptcy petition." *Slater v. United States Steel Corp.*, 820 F.3d 1193, 1240 (11th Cir. 2016) (Tjoflat, J., specially concurring), *on reh'g en banc*, 871 F.3d 1174 (11th Cir. 2017). And that is hardly surprising: The forms are complicated, and individual debtors often rely on

overburdened or inexperienced counsel—to the extent they have counsel at all. *See supra* at 22.

The Bankruptcy Rules account for that reality, permitting a Chapter 13 debtor to "amend a voluntary petition, list, schedule, or statement at any time before the case is closed." Fed. R. Bankr. P. 1009(a)(1). That liberal amendment regime reflects Congress's recognition that omissions inevitably will occur—and policy judgment that debtors should be able to correct them without forfeiting valuable rights. It is flatly "inconsistent" with that congressional judgment to treat a failure to list a lawsuit as presumptive "manipulat[ion]" and then wield judicial estoppel in the name of protecting the bankruptcy system. *Slater*, 871 F.3d at 1187.

The Fifth Circuit's rule also is at odds with the fact that the bankruptcy system itself distinguishes between intentional omissions and honest mistakes. For example, when a Chapter 13 debtor mistakenly omits an asset, the bankruptcy court can order him to amend an incomplete schedule, Fed. R. Bankr. P. 1009(a); the trustee can request that the debtor modify a Chapter 13 plan, including to increase the amount paid, 11 U.S.C. § 1329; and a closed bankruptcy can be reopened for the undisclosed asset to be administered, preventing an unwarranted windfall to the debtor, *id.* § 350. In other words, mistakes are corrected, not punished.

Knowing concealment, by contrast, can trigger far more severe sanctions: The bankruptcy court can revoke a Chapter 13 plan's confirmation or revoke a Chapter 13 debtor's discharge. *Id.* §§ 1330(a), 1328(e). And a bankruptcy court or trustee must report a debtor to a U.S. Attorney if there are reasonable grounds for believing that the debtor

knowingly and fraudulently concealed estate property or knowingly and fraudulently made various false statements. 18 U.S.C. §§ 3057(a), 152; *see, e.g.*, U.S. Department of Justice, Executive Office for United States Trustees, *Handbook for Chapter 13 Standing Trustees*, at 5-1 to 5-4 (Jan. 31, 2025 update), https://www.justice.gov/media/1293866/dl?inline (describing duty to report and refer suspected criminal activity, including knowing or fraudulent concealment of assets); 28 U.S.C. § 586(a)(3)(F) (imposing similar duty on U.S. Trustee). This calibrated scheme reflects Congress's judgment that consequences should track a debtor's intent—harsh sanctions for knowing misconduct, but far more leniency for honest errors.

The Fifth Circuit's rigid rule stands in stark contrast. By failing to distinguish fraud from honest mistakes, it punishes the latter just as harshly as the former. As the district court below put it, the Fifth Circuit's "stringent approach will, no doubt, result in many debtors who did, in fact, make an honest mistake being barred from pursuing potentially meritorious tort claims." Pet.App.55a-56a. That outcome is irreconcilable not just with equity, but with the policy judgments that Congress embedded in the very system the Fifth Circuit's rule purports to protect. *See, e.g.*, *Reed*, 650 F.3d at 574.

The Fifth Circuit's outlier rule cannot stand.

II. THE COURT SHOULD HOLD THAT COURTS MUST LOOK TO THE TOTALITY OF THE CIRCUMSTANCES IN DETERMINING WHETHER A FAILURE TO DISCLOSE WAS INADVERTENT

In deciding whether to invoke judicial estoppel, courts should undertake a holistic assessment of all facts and circumstances bearing on a debtor's intent to mislead. Such a holistic approach is consistent with the Court's broader equity jurisprudence. It accords with the majority approach to the question presented in the court of appeals. And it ensures that judicial estoppel is not deployed in ways that work inequity or contravene the bankruptcy system's own calibrated approach to debtor omissions.

A. Courts Must Consider The Totality Of The Circumstances To Determine Whether A Debtor's Nondisclosure Was Inadvertent

The proper rule is the one already embraced by numerous circuits: When a debtor-plaintiff fails to timely disclose a claim, judicial estoppel should not bar that claim unless a court determines that the debtor intended to mislead the bankruptcy court about the claim's existence after considering the totality of the circumstances. If a court concludes that the failure to timely disclose a claim was inadvertent or mistaken, estoppel is not warranted.

In *Slater v. United States Steel Corp.*, for example, the unanimous en banc Eleventh Circuit reconsidered and rejected its prior precedent "treat[ing] the fact that the plaintiff could *potentially* benefit from the nondisclosure as sufficient to establish that the plaintiff, in fact, intended to deceive the court and manipulate the proceedings." 871 F.3d at 1182

(emphasis added). Instead, the en banc court held that a court "must consider all the facts and circumstances" concerning whether a debtor actually intended to mislead the courts before invoking judicial estoppel to bar his claim. *Id.* at 1180. As the court explained, this holistic approach also "allows a district court to consider any findings or other actions by the bankruptcy court that might help in determining whether the debtor purposely intended to mislead the court and creditors." *Id.* at 1186.

Other circuits likewise use a holistic approach. The Fourth Circuit requires courts to undertake "a full analysis of all the 'specific facts and circumstances'" of a debtor-plaintiff's case to determine whether he "'intentionally misled the court to gain [an] unfair advantage.'" *Martineau*, 934 F.3d at 393-96 (alteration in original) (citations omitted). The Ninth and Seventh Circuits have recognized that, when a debtor tries to correct his error, "[t]he relevant inquiry is not limited to the plaintiff's knowledge of the pending claim and the universal motive to conceal a potential asset," but instead must look more "broadly" to the debtor's "intent when filling out and signing the bankruptcy schedules." *Ah Quin*, 733 F.3d at 276-77; *see Spaine v. Community Contacts, Inc.*, 756 F.3d 542, 547-48 (7th Cir. 2014) (considering debtor's testimony about oral disclosure). And the Sixth Circuit likewise considers facts bearing on whether the plaintiff actually intended to mislead the courts before invoking judicial estoppel to bar a claim. *See, e.g.*, *Stanley v. FCA US, LLC*, 51 F.4th 215, 219, 221 (6th Cir. 2022); *Eubanks v. CBSK Fin. Grp., Inc.*, 385 F.3d 894, 898-99 (6th Cir. 2004).

Such a holistic approach to this inquiry honors judicial estoppel's equitable—and flexible—nature.

See Part I.A, *supra*. As the Eleventh Circuit explained, "[r]equiring the district court to consider all facts and circumstances in evaluating the plaintiff's intent is the more flexible, less mechanical approach that equity demands." *Slater*, 871 F.3d at 1187. And "limiting judicial estoppel to those cases in which the facts and circumstances warrant it is more consistent with the equitable principles that undergird the doctrine." *Id.* at 1186. The holistic approach is also better calibrated than the Fifth Circuit's "one-size-fits all" rule to "ensure[] that judicial estoppel is applied only when a party acted with a sufficiently culpable mental state." *Id.* at 1185-86; *see supra* at 20-24. In addition, undertaking a holistic assessment "reduce[s] the risk that the application of judicial estoppel will give the civil defendant a windfall at the expense of innocent creditors." *Slater*, 871 F.3d at 1186.

The holistic inquiry is also consistent with the approach recommended by the American Bankruptcy Institute's Commission on Consumer Bankruptcy. In 2019, the Commission—whose members included retired bankruptcy judges, scholars, and practitioners—expressed "concern[]" that, in the bankruptcy context, some courts apply judicial estoppel "mechanically in a way that is not faithful to the Supreme Court's directive in *Maine v. New Hampshire* as well as the doctrine's historical roots." *Final Report on Consumer Bankruptcy*, *supra*, at 28; *see id.* Appendix A (identifying members). The Commission thus recommended that, "[i]n deciding whether to apply judicial estoppel, courts should consider the totality of the circumstances"—an analysis "consistent with the Eleventh Circuit's

approach in *Slater*." *Id.* at 28-29; *see* Amici Hon. Melanie Cyganowski (Ret.) *et al.* Br. 15-17.

A holistic approach also aligns with how bankruptcy courts *themselves* regularly assess debtors' intent—by "consider[ing] the 'totality of circumstances.'" *Warchol v. Barry (In re Barry)*, 451 B.R. 654, 659 (B.A.P. 1st Cir. 2011) (citation omitted) (assessing intent "to hinder, delay, or defraud" that would support denying a discharge under 11 U.S.C. § 727(a)(2)(A) (citation omitted)); *see also, e.g.*, *Cook v. Knight (In re Knight)*, 621 B.R. 529, 536-37 (Bankr. N.D. Ga. 2020) (when determining whether debtor committed embezzlement or larceny, court should consider "the totality of the circumstances . . . as to fraudulent intent"); *Webb v. Isaacson (In re Isaacson)*, 478 B.R. 763, 788 (Bankr. E.D. Va. 2012) (absent "direct evidence of fraudulent intent," "the Court must consider all of the facts and circumstances presented by the evidence" in assessing whether debtor acted with fraudulent intent that would warrant denying discharge under 11 U.S.C. § 727 (a)(4)(A)). It makes no sense for federal district courts weighing judicial estoppel to consider a narrower universe of evidence than would a bankruptcy court contemplating intent-based sanctions.

B. A Range Of Factors Bear On Whether The Failure To Disclose A Claim Was Inadvertent Or An Honest Mistake

The totality-of-the-circumstances test is just that. Under a proper test for inadvertence or mistake, "[t]he relevant inquiry is not limited to the plaintiff's knowledge of the [facts underlying his] claim and the universal motive to conceal a potential asset—though those are certainly factors." *Ah Quin*, 733 F.3d at 276.

Instead, courts should consider *all* relevant facts and circumstances, which also may include:

- The debtor's level of sophistication;[8]
- The debtor's explanation for the nondisclosure;[9]
- Whether the debtor told his bankruptcy attorney about the civil claim;[10]
- Whether the same, or different, counsel handled the bankruptcy and civil claim;[11]
- Whether the debtor had filed for bankruptcy before;[12]
- The clarity of the bankruptcy form(s) the debtor filed[13] or rules governing disclosure;
- Whether the debtor's cause of action accrued before or after his initial bankruptcy filings;[14]

---

[8] *Slater*, 871 F.3d at 1185; *e.g.*, *Ryder v. Lifestance Health Grp., Inc.*, No. 22-cv-2050, 2024 WL 1119821, at *4 (M.D. Fla. Feb. 12, 2024); *Pruitt v. Quality Labor Servs., LLC*, No. 16-cv-9718, 2018 WL 5808461, at *3 (N.D. Ill. Nov. 6, 2018).

[9] *Slater*, 871 F.3d at 1177; *e.g.*, *Ellis v. Alexander*, No. 16-cv-5155, 2018 WL 1942650, at *3-4 (N.D. Ill. Apr. 25, 2018); *Pruitt*, 2018 WL 5808461, at *2-3.

[10] *Slater*, 871 F.3d at 1185; *e.g.*, *Javery v. Lucent Techs., Inc. Long Term Disability Plan for Mgmt. or LBA Emps.*, 741 F.3d 686, 698 (6th Cir. 2014).

[11] *E.g.*, *Brown v. Keystone Foods LLC*, No. 20-cv-1619, 2022 WL 2346376, at *4 (N.D. Ala. June 29, 2022); *see Ryder*, 2024 WL 1119821, at *4.

[12] *E.g.*, *Weakley v. Eagle Logistics*, 894 F.3d 1244, 1246-47 (11th Cir. 2018).

[13] *E.g.*, *Henderson v. Franklin*, 782 F. App'x 866, 872 (11th Cir. 2019) (per curiam).

[14] *See James v. Penney OpCo, LLC*, No. 24-12086, 2025 WL 883963, at *1, *3 (11th Cir. Mar. 21, 2025) (per curiam).

- Whether the debtor submitted amended bankruptcy filings (especially asset schedules) without adding the omitted claim;[15]
- The time and distance between the relevant proceedings;[16]
- Whether and under what circumstances the debtor corrected his initial nondisclosure (or tried to do so);[17]
- Whether the bankruptcy trustee or creditors were aware of the undisclosed claim;[18]
- What actions, if any, creditors or the trustee took after a belated disclosure;[19]
- Whether the debtor identified other lawsuits to which he was party;[20]
- Other irregularities in bankruptcy schedules, like under-valuing disclosed assets;[21]
- Whether the debtor secured an unfair

---

[15] *See Weakley*, 894 F.3d at 1246.

[16] *E.g.*, *Brown*, 2022 WL 2346376, at *4.

[17] *Slater*, 871 F.3d at 1185; *e.g.*, *Ah Quin*, 733 F.3d at 272-73; *Eubanks*, 385 F.3d at 898-99; *Pruitt*, 2018 WL 5808461, at *4.

[18] *Slater*, 871 F.3d at 1185; *e.g.*, *Eubanks*, 385 F.3d at 898.

[19] *See Nowling v. SN Servicing Corp.*, No. 19-cv-1605, 2020 WL 1244809, at *7 (D. Minn. Mar. 16, 2020); *Harper-Cox v. Gateway-Detroit E.*, No. 14-cv-13048, 2015 WL 3652750, at *5 (E.D. Mich. June 11, 2015).

[20] *Slater*, 871 F.3d at 1185; *e.g.*, *Weakley*, 894 F.3d at 1246.

[21] *E.g.*, *Leighton v. Homesite Ins. Co. of the Midwest*, No. 21-cv-490, 2022 WL 5585907, at *6 (E.D. Va. Aug. 5, 2022), *report and recommendation adopted*, 2022 WL 19075650 (E.D. Va. Oct. 18, 2022).

advantage from nondisclosure;[22]

- Any findings or actions by the bankruptcy court after the omission was discovered;[23] and
- Any other relevant consideration.

Considering all of the facts and circumstances bearing on intent "ensures that judicial estoppel is applied only when a party acted with a sufficiently culpable mental state." *Slater*, 871 F.3d at 1185-86.

C. A Holistic Approach Allows For Consideration Of The Bankruptcy Court's Own, Firsthand Findings And Actions

A holistic approach also allows for consideration of the bankruptcy court's own findings or actions as to any omissions or delayed disclosures. Bankruptcy courts are uniquely positioned to evaluate a debtor's intent because they have firsthand knowledge of the debtor, his estate, and the way in which he has acted during the course of the proceedings. Moreover, as several courts of appeals have noted in this context, "[b]ankruptcy courts have multiple ways of protecting their own integrity against fraudulent nondisclosures." *Martineau*, 934 F.3d at 395; *see also, e.g.*, *Slater*, 871 F.3d at 1187; *Ah Quin*, 733 F.3d at 275. So in cases (like this one) where "the bankruptcy court exercised none" of its sanctioning powers, that is "a strong indication that it did not believe [the debtor] acted in bad faith." *Martineau*, 934 F.3d at 395. Particularly given judicial estoppel's goal of

---

[22] *E.g.*, *Krystal Cadillac-Oldsmobile GMC Truck, Inc. v. General Motors Corp.*, 337 F.3d 314, 324 & n.11 (3d Cir. 2003); *cf. Nowling*, 2020 WL 1244809, at *7.

[23] *Slater*, 871 F.3d at 1185; *e.g.*, *Martineau*, 934 F.3d at 395; *Harper-Cox*, 2015 WL 3652750, at *5-6 & n.6.

"'protect[ing] the integrity of the judicial process,'" "it makes little sense" for a civil defendant like respondent "to benefit from something it has no involvement in and for which the bankruptcy court does not appear to think [the debtor-plaintiff] should be sanctioned." Pet.App.22a (Haynes, J., concurring in the judgment) (citation omitted).

Bankruptcy courts are also best positioned to assess the financial ramifications, if any, of a debtor's belated disclosure. In this case, the district court observed that it "certainly d[id] not consider itself knowledgeable regarding Chapter 13 bankruptcy law, and it doubt[ed] that most district courts are." *Id.* at 49a. Yet the court concluded that Mr. Keathley had a motive to conceal his personal injury claims because his creditors might have sought interest on their own claims, *id.* at 51a-52a—even though neither the bankruptcy trustee nor any of the Keathleys' creditors sought post-petition interest, and bankruptcy courts themselves "are split as to whether [Chapter 13] debtors opting to pay unsecured claims in full . . . must pay interest on the unsecured claims." *In re Peters*, No. 25-80018, 2025 WL 3144843, at *2 (Bankr. M.D.N.C. Nov. 10, 2025); *see In re Gillen*, 568 B.R. 74, 77-78 (Bankr. C.D. Ill. 2017) (collecting cases).

A bankruptcy court's own statements or actions, or lack thereof, therefore are an important part of the equation in assessing the totality of the circumstances in determining whether a debtor acted in bad faith.

III. THE COURT SHOULD VACATE AND REMAND FOR RECONSIDERATION UNDER A PROPER HOLISTIC ANALYSIS

The customary course when this Court concludes that a lower court applied the wrong legal standard is

to remand for consideration under the right one. That tried and true path is particularly appropriate here. Both the district court and the Fifth Circuit treated evidence that bore on Mr. Keathley's actual intent to mislead as irrelevant—focusing instead on whether Mr. Keathley *might have* gained from nondisclosure. *See* Pet.App.13a-15a; *id.* at 41a-44a, 51a-53a.

For example, the Fifth Circuit declined even to weigh Mr. Keathley's own sworn statement that he told his bankruptcy attorney about the accident, JA184; that he then believed he had done all he needed to do, *id.*; and that he never intended to mislead the bankruptcy court, *id.* Nor did either lower court meaningfully consider facts or evidence bearing directly on Mr. Keathley's intent, such as:

- Mr. Keathley's personal injury claims arose more than a year after the bankruptcy court first confirmed his Chapter 13 plan.
- The Keathleys promptly amended their bankruptcy filings once the omission was brought to their attention. Pet.App.4a.
- No creditor sought to modify the Keathleys' repayment plan or sought post-petition interest after Mr. Keathley's personal injury claims were disclosed, despite having ample time (months) to do so. *See generally* No. 19-bk-16848 (Bankr. E.D. Ark.), Dkt. Nos. 66-110.
- Disclosing the claims sooner would not have materially affected the Keathleys' plan. JA253-54.
- The Keathleys obtained no benefit from the delayed disclosure. JA254; JA182.
- The bankruptcy court itself did not find any wrongdoing on the Keathleys' part, much less

> find any intent to mislead the court or impose any sanction, even though it was fully aware that the Keathleys had not promptly updated their schedules to reflect the personal injury claims. *See id.*; Pet.App.22-23a (Haynes, J., concurring in the judgment).

None of these facts—or other circumstances bearing on Mr. Keathley's actual intent—was relevant under the Fifth Circuit's rigid rule that simply presumes bad faith based on the existence of a hypothetical motive to mislead. But all of this evidence should be considered under the holistic inquiry equity requires. In addition, Mr. Keathley never had an opportunity to develop the factual record under the proper legal standard.

This case should be remanded for the lower courts to engage in a proper holistic inquiry. Because the courts below "erroneously relied on an overly rigid *per se* approach, no lower court has yet considered in detail the facts of this case" to determine whether Mr. Keathley actually intended to mislead. *Holland*, 560 U.S. at 653-64. In circumstances like these—where the Court adopts an "'equitable, often fact-intensive' inquiry"—it has "recognize[d] the prudence . . . of allowing the lower courts 'to undertake [that inquiry] in the first instance.'" *Id.* at 654 (citation omitted).

The lower courts are best equipped to undertake this inquiry in the first instance, applying the standard adopted by this Court's decision.

CONCLUSION

The court of appeals' judgment should be vacated and the case remanded for further proceedings.

Respectfully submitted,

ERIC J. LEWELLYN
ALDERS AND LEWELLYN PLLC
1331 Union Avenue
Suite 1000
Memphis, TN 38104

THOMAS R. GREER
6256 Poplar Avenue
Memphis, TN 38119

GREGORY G. GARRE
Counsel of Record
CHRISTINA R. GAY
LATHAM & WATKINS LLP
555 11th Street, NW
Suite 1000
Washington, DC 20004
(202) 637-2207
gregory.garre@lw.com

KRISTIN C. HOLLADAY
BAPU KOTAPATI
LATHAM & WATKINS LLP
1271 Avenue of the Americas
New York, NY 10020

Counsel for Petitioner

December 12, 2025