No. 25-6

In the Supreme Court of the United States

THOMAS KEATHLEY, PETITIONER

v.

BUDDY AYERS CONSTRUCTION, INC.

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

BRIEF FOR THE UNITED STATES
AS AMICUS CURIAE SUPPORTING VACATUR

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QUESTION PRESENTED

Whether courts applying the doctrine of judicial estoppel to a civil claim that was not disclosed in bankruptcy must conduct a holistic assessment of all relevant circumstances, or may instead conclude—based solely on the debtor's knowledge of underlying facts and a potential motive to conceal—that nondisclosure was not inadvertent.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Cases—Continued: Page

Cases—Continued: Page

Statutes and rules: Page

Statutes and rules—Continued: Page

Miscellaneous:

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INTEREST OF THE UNITED STATES

This case concerns the proper application of judicial estoppel to civil claims that a debtor failed to disclose in bankruptcy proceedings. Bankruptcy disclosure requirements ensure that all property of the estate is identified and administered in accordance with the Bankruptcy Code. When courts apply judicial estoppel to debtors who violate those disclosure requirements, they do so to protect judicial integrity, including in the bankruptcy system. See, *e.g.*, Pet. App. 9a. United States Trustees are charged with supervising the administration of bankruptcy cases and have a strong interest in ensuring transparency and deterring violations of disclosure requirements. See 28 U.S.C. 586. In addition, the United States is the Nation's largest creditor. In that capacity, it has an interest in ensuring that debtors' estates include all available assets and that the judicial-estoppel

analysis accounts for creditors' interests. The United States therefore has a substantial interest in the question presented.

INTRODUCTION

Judicial estoppel is an equitable doctrine that prohibits parties from taking inconsistent positions in legal proceedings when doing so would undermine the integrity of the judicial process. The doctrine protects judicial integrity by "prevent[ing] parties from playing fast and loose with the courts" and by guarding against the "risk of inconsistent court determinations." *New Hampshire* v. *Maine*, 532 U.S. 742, 750-751 (citations and internal quotation marks omitted). Without attempting to establish "inflexible prerequisites or an exhaustive formula," this Court has identified three factors that "typically inform the decision whether to apply the doctrine": whether the party's later position is "'clearly inconsistent' with its earlier position"; whether a court "accept[ed] that party's earlier position"; and "whether the party seeking to assert an inconsistent position would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped." *Ibid.* (citations omitted). The Court noted that it "may be appropriate to resist application of judicial estoppel 'when a party's prior representation was based on inadvertence or mistake.'" *Id.* at 753 (citation omitted). And the Court indicated that courts should take into account any "[a]dditional considerations" relevant to the "specific factual context[]" at issue and "balance [the] equities" in light of the doctrine's purpose. *Id.* at 751.

This case involves the application of judicial estoppel to civil claims that a debtor failed to disclose in a timely fashion in bankruptcy proceedings. Courts have held that certain debtors "have a continuing obligation to dis-

close post-petition causes of action." *Flugence* v. *Axis Surplus Ins. Co. (In re Flugence)*, 738 F.3d 126, 129 (5th Cir. 2013). And when a debtor fails to disclose that he may be able to recover damages through a civil suit, courts have considered whether the debtor should be estopped from pursuing the damages claim in light of the previous implicit representation to the bankruptcy court that no such claim exists.

In concluding that judicial estoppel should preclude this tort suit brought by petitioner (a debtor) against respondent, the court of appeals applied a rigid test that largely turns on whether the debtor knew of the facts underlying his tort claim and had a potential motive to conceal that claim. That test is out of step with the holistic analysis for which equity calls. The test fails to account for the interests of innocent creditors who may be harmed if the tort claim cannot go forward, or for the other tools that a bankruptcy court may wield to address a debtor's nondisclosure. And it allows for the application of judicial estoppel without consideration of objective evidence that may indicate that the debtor's failure to disclose was an honest mistake, not an attempt to mislead. Under the court of appeals' test, courts may apply judicial estoppel even when doing so is unnecessary for—or even contrary to—the preservation of judicial integrity. This Court should reject the unwarranted limits the court of appeals imposed on the judicial-estoppel analysis and remand the case to allow the lower courts to consider whether, based on the totality of the relevant circumstances, judicial estoppel is warranted to protect judicial integrity here.

STATEMENT

1. When a debtor commences a bankruptcy case, that triggers the creation of an estate comprising the

debtor's property. 11 U.S.C. 541(a). Under the Bankruptcy Code, the debtor's property includes, with limited exceptions, "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. 541(a)(1). In cases brought by individuals seeking to repay their debts pursuant to plans under Chapter 11, 12, or 13 (rather than liquidate their assets under Chapter 7), property of the estate also includes property that the debtor acquires after the case commences, but before it is closed, dismissed, or converted to a case under another chapter. 11 U.S.C. 1115(a), 1207(a)(1), 1306(a)(1); see 11 U.S.C. 541(a)(7). Within 14 days after filing a bankruptcy petition, the debtor must file a "schedule of assets" listing all property of the estate. 11 U.S.C. 521(a)(1)(B)(i); Fed. R. Bankr. P. 1007(b)(1)(A) and (c). Under Official Form 106A/B, an individual debtor's Schedule B includes a line item for identifying "[c]laims against third parties, whether or not you have filed a lawsuit or made a demand for payment," and gives "[a]ccidents" and "rights to sue" as illustrative "[e]xamples." J.A. 101. There is also a catch-all line for "[o]ther contingent and unliquidated claims of every nature." *Ibid.*

Courts have held that the debtor then has a continuing duty to disclose contingent and unliquidated claims that would qualify as estate property, even if they did not arise until after the debtor had filed for bankruptcy. Pet. App. 11a; see, *e.g.*, *Hughes* v. *Canadian Nat'l Ry. Co.*, 105 F.4th 1060, 1066-1067 (8th Cir. 2024); *Robinson* v. *Tyson Foods, Inc.*, 595 F.3d 1269, 1274 (11th Cir. 2010). Such disclosure is necessary to allow for "identification of all the debtor's assets and affairs so that there can be an objective evaluation of each bankruptcy estate." 1 *Collier on Bankruptcy* ¶ 7.02, at 7-34 to 7-35

(Alan N. Resnick & Henry J. Sommer eds., 16th ed. 2009); see *Chartschlaa* v. *Nationwide Mut. Ins. Co.*, 538 F.3d 116, 122 (2d Cir. 2008) (per curiam) ("[F]ull disclosure by debtors is essential to the proper functioning of the bankruptcy system."), cert. denied, 555 U.S. 1213 (2009).

2. Petitioner and his wife filed a petition for Chapter 13 bankruptcy in December 2019 in the Bankruptcy Court for the Eastern District of Arkansas. Pet. App. 39a. He identified $184,054 in liabilities, $160,000 of which were secured by real property or vehicles. J.A. 82, 87-94. Along with his bankruptcy petition, petitioner filed a proposed plan to repay his creditors. Pet. App. 39a; see 11 U.S.C. 1321, 1325. The bankruptcy court confirmed an amended version of that plan in April 2020. Pet. App. 39a. The confirmed plan provided that petitioner would pay 100% of the creditors' claims over a five-year period without interest. *Id.* at 51a. Upon discharge of his debts, the estate property would revest in petitioner. See Bankr. Ct. Doc. 27, at 7 (Mar. 11, 2020); J.A. 20, 41, 62; 11 U.S.C 1327(b).

On August 23, 2021, while petitioner's repayment plan was in effect, he was involved in a car accident with a driver employed by respondent. Pet. App. 1a-2a, 39a-40a. Petitioner retained a personal-injury attorney the day after the accident. *Id.* at 3a. A little more than a month later, petitioner filed this personal-injury suit against respondent in the United States District Court for the Northern District of Mississippi, alleging claims of negligence and vicarious liability. *Ibid.* Petitioner has asserted that he informed his bankruptcy attorney that he had filed this lawsuit, but neither petitioner nor his attorney disclosed its existence to the bankruptcy court during the ensuing eight months, although peti-

tioner modified or amended his repayment plan three times to alter the repayment schedule. *Ibid.*; J.A. 3-65. The bankruptcy court confirmed the modified plan on July 20, 2022. J.A. 66-67.

3. a. More than eight months later, on March 30, 2023, respondent sought summary judgment in petitioner's personal-injury suit on grounds of judicial estoppel. Pet. App. 3a-4a. Respondent relied on Fifth Circuit precedent holding that courts may apply judicial estoppel to prevent a party from asserting a claim when "(1) the party against whom judicial estoppel is sought has asserted a legal position which is plainly inconsistent with a prior position; (2) a court accepted the prior position; and (3) the party did not act inadvertently." *Love* v. *Tyson Foods, Inc.*, 677 F.3d 258, 261 (2012) (citation omitted); see D. Ct. Doc. 143, at 3-4 (Mar. 30, 2023). In the bankruptcy context, Fifth Circuit precedent further established that a "debtor's failure to satisfy its statutory disclosure duty is inadvertent only when, in general, the debtor either lacks knowledge of the undisclosed claims or has no motive for their concealment." *Love*, 677 F.3d at 262 (citation and internal quotation marks omitted).

Respondent alleged that each of those factors was met because (1) petitioner took inconsistent positions by failing to disclose his personal-injury claims to the bankruptcy court, thereby implicitly representing that no such claims existed; (2) the bankruptcy court accepted that position by confirming the bankruptcy plan that did not disclose the lawsuit; and (3) the nondisclosure was not inadvertent because petitioner knew of the facts giving rise to his claims and had a motive to conceal them, lest the bankruptcy court modify the repayment plan to account for them. D. Ct. Doc. 143, at 7-8.

Four days after respondent's summary-judgment motion, petitioner filed an amended schedule notifying the bankruptcy court of his pending personal-injury lawsuit against respondent, which he valued at $275,000. Pet. App. 4a; see Bankr. Ct. Doc. 66 (Apr. 4, 2023). Petitioner then responded to the motion for summary judgment in the personal-injury case. In opposing the motion, petitioner filed an affidavit stating that he had notified his bankruptcy attorney of the personal injury claims, that he believed he had "done everything [he] needed to do," and that he "never intended to make any misrepresentations concerning the existence of [the] personal injury claim." J.A. 184. Petitioner also included an affidavit from his bankruptcy attorney, who stated that even if the bankruptcy court had been made aware of petitioner's personal-injury claims when it considered the amended plan, "the claims would have had no material effect on the Court's confirmation of the plan." J.A. 182.

Two days after responding to the motion in the personal-injury case, petitioner filed a motion in the bankruptcy court seeking the court's approval of a settlement he had received in December 2022 for a worker's compensation claim he had filed after the car accident. Pet. App. 4a. Petitioner had received a net amount of $18,000 from that settlement. J.A. 305, 308. No creditor moved to modify the existing repayment plan in light of the disclosure of the personal-injury claims or the motion for approval of the worker's compensation settlement. Upon receiving no objections, the bankruptcy court approved the settlement and ordered petitioner to submit the remaining proceeds from the settlement to the trustee for distribution. J.A. 313-314. The bankruptcy court did not sanction petitioner for his

delays in disclosing the personal-injury claims and in seeking approval for the settlement.

b. The district court granted respondent's motion for summary judgment, holding that judicial estoppel bars petitioner's personal-injury claims. Pet. App. 39a-56a.

The district court first noted that there is no dispute that petitioner "had an ongoing duty to disclose his cause of action in this case" to the bankruptcy court. Pet. App. 42a. Instead, petitioner argued that he "made an honest mistake * * * and that he has now corrected that mistake" by amending his disclosures. *Id.* at 43a. The court rejected petitioner's claim of inadvertence. *Ibid.* The court held that petitioner could not show either a lack of knowledge of the undisclosed claims or a lack of motive for their concealment, as required to show inadvertence under Fifth Circuit precedent. *Ibid.* Under that Fifth Circuit precedent, the court noted, "the motivation sub-element is almost always met if a debtor fails to disclose a claim or possible claim to the bankruptcy court * * * because of potential financial benefit resulting from the nondisclosure." *Id.* at 44a (quoting *Love*, 677 F.3d at 262). Petitioner did not present the rare case lacking any such motive because his Chapter 13 plan could have been amended to increase payments by requiring the payment of interest. *Id.* at 52a. The court thus found that "there was 'a potential financial benefit that could result from concealment.'" *Ibid.* (citation omitted).

The district court acknowledged that the Fifth Circuit has "adopted a stringent approach which 'almost always' presumes that a [debtor's] failure to disclose assets [in a bankruptcy proceeding] was intentional." Pet. App. 55a. And the court recognized that the "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." *Id.* at 55a-56a. But the court viewed that as a "regrettable yet unavoidable result" of the Fifth Circuit's "policy decision" to avoid creating "perverse incentives for debtors to defraud their creditors." *Ibid.*

c. Petitioner filed a motion to alter or amend the judgment under Federal Rule of Civil Procedure 59(e), contending that "newly discovered evidence" indicated that judicial estoppel was not appropriate in his case. Pet. App. 24a. The evidence at issue was an affidavit from a staff attorney for the Chapter 13 trustee assigned to his bankruptcy case. *Ibid.*; see *id.* at 58a-60a. The staff attorney averred that "there is nothing unusual or misleading about [petitioner's] not disclosing the personal injury action while the personal injury action is ongoing." *Id.* at 59a. Moreover, the staff attorney explained that, in the Eastern District of Arkansas, "it is not uncommon 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." *Ibid.* Even if petitioner had notified the bankruptcy court immediately after the accident, the staff attorney asserted that it "would not have had any effect on the administration of the bankruptcy" because the plan already provided for 100% payment to creditors, and the disclosure "would not have had any impact on the amount [petitioner] would have had to pay or the time [he] would have had to pay it." *Id.* at 59a-60a. The staff attorney finally opined that it "would be in the best interests of the bankruptcy estate and [petitioner's] creditors" to allow the personal-injury action to proceed "as it could possibly result in

creditors being paid in full in a more timely manner." *Id.* at 60a.

The district court denied the motion for reconsideration. Pet. App. 24a-38a. The court concluded that the affidavit did not constitute newly discovered evidence because "nothing prevented [petitioner] from obtaining and submitting" the affidavit before the summary-judgment ruling. *Id.* at 25a. The court nonetheless "offer[ed] some dicta" with respect to the affidavit. *Ibid.* The court viewed the affidavit as affirmatively harmful to petitioner's position because it indicated that bankruptcy debtors in the Eastern District of Arkansas, "acting through their attorneys, routinely make a conscious and intentional decision *not* to list tort claims which they know about until such time as those claims are close to being resolved." *Id.* at 25a-26a. The court considered that practice to be "motivated by a belief on the part of debtors and their attorneys that they can 'get away with' late disclosure in Arkansas bankruptcy court." *Id.* at 26a.

4. a. The court of appeals affirmed. Pet. App. 1a-23a. The court concluded that all three elements of its test for judicial estoppel were met. *Id.* at 9a.

As to the first element, the court of appeals held that because petitioner had an affirmative duty to disclose his personal-injury claims to the bankruptcy court and failed to do so, he "impliedly represented that [he] had no such claim"—a position that was "'plainly inconsistent' with his later assertion of his personal injury claims in his lawsuit against [respondent]." Pet. App. 12a (citation omitted; first set of brackets in original). As to the second element, the court of appeals held that, when the bankruptcy court confirmed petitioner's mod-

ified plan, it "accepted his prior position of having no pending personal injury cause of action." *Ibid.*

Turning to the third element, the court of appeals noted that under its precedent, a "debtor's failure to satisfy its statutory disclosure duty is inadvertent only when, in general, the debtor either lacks knowledge of the undisclosed claims or has no motive for their concealment." Pet. App. 13a (citation omitted). The court rejected petitioner's argument that he did not know of the duty to disclose the action, noting that it was petitioner's "fourth time to file for bankruptcy," and that, in any event, "lack of awareness of a statutory disclosure duty" is irrelevant to the analysis. *Ibid.* (citation omitted). The court also noted that, "if anything," the affidavit petitioner filed from the Chapter 13 trustee's staff attorney "cuts against" his claim of inadvertence, as it suggests that nondisclosure of pending claims by bankruptcy attorneys is "routine" and "intentional." *Id.* at 13a-14a. Nor did the court view the affidavit as persuasive in suggesting a lack of motive for concealment. *Id.* at 14a. The court pointed to petitioner's "interest-free repayment plan which is spread over five years," and noted that petitioner had "filed multiple times" to have that plan extended. *Ibid.* If petitioner had disclosed his personal-injury claims to the bankruptcy court, the court of appeals reasoned, creditors could have objected to the plan and requested interest. *Ibid.*[1]

b. Judge Haynes concurred in the judgment. Pet. App. 20a-23a. She agreed that the result was compelled by Fifth Circuit precedent, but she noted her disagreement with that precedent. "At its core," Judge Haynes

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[1] The court of appeals also rejected petitioner's argument that the district court abused its discretion in denying his Rule 59(e) motion. Pet. App. 15a-18a.

explained, "judicial estoppel is equitable in nature," and is intended to "deter dishonest debtors" while "protecting the rights of creditors." *Id.* at 20a (citation omitted). In this instance, however, Judge Haynes "doubt[ed] that the goals of the doctrine have been advanced," because of evidence that petitioner's failure to disclose was "an honest mistake," and that the delay in disclosure was "of little concern to the bankruptcy court and would not impact [petitioner's] creditors." *Id.* at 21a. Judge Haynes also expressed concern that "preventing [petitioner's] personal injury action might undermine the judicial system the doctrine claims to protect," by potentially providing respondent with an "unwarranted windfall." *Id.* at 21a-22a.

Judge Haynes noted that "[o]ther circuits take a more holistic approach" to judicial estoppel, and she suggested that courts may be better served by "defer[ring] to the bankruptcy court on whether a sanction is appropriate and, if so, whether it should be in the form of judicial estoppel benefiting a completely unaffected defendant." Pet. App. 22a-23a.

5. The court of appeals denied rehearing en banc. Pet. App. 57a.

SUMMARY OF ARGUMENT

Judicial estoppel is an equitable doctrine that prevents a party who "assumes a certain position in a legal proceeding, and succeeds in maintaining that position," from "assum[ing] a contrary position" "simply because his interests have changed." *New Hampshire* v. *Maine*, 532 U.S. 742, 749 (2001) (citation omitted). In determining whether judicial estoppel applies, courts should consider the balance of the equities in light of the doctrine's underlying purpose of protecting judicial integrity. The court of appeals erred by imposing limitations on the

analysis that are inconsistent with equitable principles and this Court's precedents.

A. The purpose of judicial estoppel is to protect judicial integrity by prohibiting parties from "deliberately changing positions" and by preventing the "risk of inconsistent court determinations." *New Hampshire*, 532 U.S. at 750-751 (citations omitted). The Court has acknowledged that the doctrine's application is "not reducible to any general formulation of principle," and it has instead identified various factors that might inform the analysis, which involves a "balance of [the] equities" based on the underlying goal of preserving judicial integrity. *Ibid.* (citation omitted). That type of holistic approach is consistent with the Court's approach to other equitable doctrines, including laches, equitable tolling, and unclean hands. In each case, the Court eschews mechanical rules and embraces flexibility, applying the equitable doctrine only when its underlying principle is implicated.

Consistent with that holistic approach, applying judicial estoppel to cases involving bankruptcy nondisclosure calls for consideration of bankruptcy-specific factors. Courts should consider the interests of innocent creditors, who may be harmed by the application of judicial estoppel, rendering its application inequitable. Courts should likewise consider the alternative remedies available to bankruptcy courts—including a plan modification, the denial or revocation of discharge, or a referral for criminal prosecution. Like judicial estoppel, each of those tools promotes full disclosure of debtors' claims. But because they are bankruptcy-specific, they also protect creditors' interests in ways that simply estopping the debtor's other claims may not.

Judicial estoppel's equitable nature likewise calls for a holistic analysis of inadvertence. Courts should assess all evidence relevant to whether the debtor made an honest mistake, or whether the debtor knew of his obligation to disclose a claim and nevertheless failed to do so. Many objective factors may assist in assessing inadvertence. Those factors include the debtor's sophistication, when and how he corrected the disclosure, whether he informed his attorney or informally disclosed the claim to the trustee or creditors, whether he disclosed other lawsuits to which he was a party, and any findings by the bankruptcy court relevant to his intent. Focusing on those objective indicia of intent rather than the debtor's own testimony will improve the administrability of the standard and will prevent a debtor from playing "fast and loose" with disclosure obligations and later claiming a mistake.

B. The court of appeals erred by limiting its analysis to a test that did not consider either the bankruptcy-specific context or relevant evidence of intent. In doing so, the court adopted the type of inflexible analysis that is inconsistent with equitable principles. The court's analysis would allow for the application of judicial estoppel in a case where creditors would be harmed, bankruptcy tools could address any inconsistent determination, and the debtor made an honest mistake rather than a deliberate attempt to mislead. Applying judicial estoppel in such a case would not be equitable.

C. Because the courts below proceeded under a standard that is too rigid, it is unclear how they would have exercised their discretion when applying the correct legal framework. This Court should follow its typical practice and remand the case to allow the lower

courts to engage in the appropriate analysis in the first instance.

ARGUMENT

JUDICIAL ESTOPPEL CALLS FOR A HOLISTIC ASSESSMENT OF ALL RELEVANT CIRCUMSTANCES, INCLUDING WHEN CONSIDERING INADVERTENCE

"[J]udicial estoppel 'is an equitable doctrine invoked by a court at its discretion'" to protect judicial integrity when a litigant takes inconsistent positions. *New Hampshire* v. *Maine*, 532 U.S. 742, 750 (2001) (citation omitted). Its aim is to prevent the "improper use of judicial machinery" and the "risk of inconsistent court determinations." *Id.* at 750-751 (citations omitted). As an equitable doctrine, its application demands a flexible inquiry, not a strict formulation or rigid prerequisites. And like other equitable doctrines, it should be applied based on the totality of the relevant circumstances in light of its underlying principle. The court of appeals erred by artificially limiting the inquiry, ignoring both the particular bankruptcy context at issue and relevant evidence of petitioner's intent.

A. When Determining Whether To Apply Judicial Estoppel, Courts Should Consider The Totality Of The Relevant Circumstances

This Court has repeatedly emphasized that equitable doctrines demand a flexible, case-by-case analysis that takes account of all relevant facts and circumstances. Judicial estoppel is no different. Accordingly, in determining whether to apply judicial estoppel after a debtor failed to disclose a claim in bankruptcy, courts should balance the equities while taking into account the bankruptcy-specific context and all evidence of the debtor's intent.

1. As an equitable doctrine, judicial estoppel is applied flexibly, on a case-by-case basis

The doctrine of judicial estoppel provides that "where a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter, simply because his interests have changed, assume a contrary position." *Davis* v. *Wakelee*, 156 U.S. 680, 689 (1895). Although courts have been applying judicial estoppel since at least the 1850s, see, *e.g.*, *Hamilton* v. *Zimmerman*, 37 Tenn. (5 Sneed) 39, 47-49 (1857), this Court did not "ha[ve] occasion to discuss the doctrine elaborately" until *New Hampshire* v. *Maine*, 532 U.S. at 749. There, the Court explained that the purpose of the doctrine is "to protect the integrity of the judicial process," both by "prohibiting parties from deliberately changing positions according to the exigencies of the moment," and by preventing the "risk of inconsistent court determinations." *Id.* at 749-751 (internal quotation marks and citations omitted). And the Court described judicial estoppel as "an equitable doctrine invoked by a court at its discretion." *Id.* at 750 (citation omitted).

Consistent with the doctrine's equitable nature, the Court reasoned that "the circumstances under which judicial estoppel may appropriately be invoked are probably not reducible to any general formulation of principle." *New Hampshire*, 532 U.S. at 750 (brackets and citation omitted). Rather than providing such a formulation, the Court identified "several factors" that "typically inform the decision whether to apply the doctrine in a particular case." *Ibid.* "First, a party's later position must be 'clearly inconsistent' with its earlier position." *Ibid.* (citation omitted). Second, "courts regularly inquire whether the party has succeeded in per-

suading a court to accept that party's earlier position," thereby creating "the perception that either the first or the second court was misled." *Ibid.* (citation omitted). And third, courts consider "whether the party seeking to assert an inconsistent position would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped." *Id.* at 751.

The Court emphasized that "[i]n enumerating th[o]se factors," it "d[id] not establish inflexible prerequisites or an exhaustive formula for determining the applicability of judicial estoppel." *New Hampshire*, 532 U.S. at 751. Rather, "[a]dditional considerations may inform the doctrine's application in specific factual contexts." *Ibid.* And in applying the standard to the facts before it, the Court noted that "it may be appropriate to resist application of judicial estoppel 'when a party's prior position was based on inadvertence or mistake.'" *Id.* at 753 (citation omitted). The Court's role is simply to assess "the balance of equities" in light of the doctrine's goal of preserving judicial integrity. *Id.* at 751.

That holistic assessment, attuned to the "specific factual context[]" at issue, is in keeping with the Court's general approach to equitable doctrines. *New Hampshire*, 532 U.S. at 751. The Court has repeatedly explained that "[e]quity eschews mechanical rules" and instead "depends on flexibility." *Holmberg* v. *Armbrecht*, 327 U.S. 392, 396 (1946) (laches); see *Holland* v. *Florida*, 560 U.S. 631, 649-650 (2010) (equitable tolling); *Precision Instrument Mfg. Co.* v. *Automotive Maint. Mach. Co.*, 324 U.S. 806, 815 (1945) (unclean hands). When exercising equity powers, courts must act "on a case-by-case basis," considering all the relevant facts and circumstances. *Holland*, 560 U.S. at 649-650 (quoting *Baggett* v. *Bullitt*, 377 U.S. 360, 375 (1964)). Courts should

then apply the equitable doctrine "only when its underlying principle * * * comes into play." *Minerva Surgical, Inc.* v. *Hologic, Inc.*, 594 U.S. 559, 576 (2021). That flexibility and case-by-case analysis "enables [the doctrine] to meet new situations which demand equitable intervention, and to accord all the relief necessary to correct the particular injustices involved." *Hazel-Atlas Glass Co.* v. *Hartford-Empire Co.*, 322 U.S. 238, 248 (1944) (relief from fraudulent judgments).

2. The bankruptcy context calls for consideration of certain bankruptcy-specific factors

The "specific factual context[]," *New Hampshire*, 532 U.S. at 751, at issue here is that of a debtor who failed to disclose tort claims in bankruptcy proceedings and then sought to pursue those claims through a civil action. That context gives rise to certain considerations that should inform the judicial-estoppel analysis: specifically, the interests of the creditors and whether other bankruptcy tools may address the nondisclosure in a more tailored manner.

a. The requirement that debtors in bankruptcy must disclose their assets—including contingent and yet-to-be-liquidated claims—protects creditors by providing a critical safeguard against debtors who conceal assets to avoid paying debts. See 11 U.S.C. 521(a)(1)(B)(i); Fed. R. Bankr. P. 1007-1009; pp. 3-5, *supra*. In a Chapter 13 case like petitioner's, disclosure enables creditors to make informed evaluations of the proposed plan. Creditors may then determine whether to object to the proposed plan, and the bankruptcy court may determine whether confirming the plan is consistent with the Bankruptcy Code. See 11 U.S.C. 1324(a), 1325. Confirmed plans frequently provide for creditors to receive only part of the payment they would otherwise be owed.

See U.S. Courts, *Chapter 13 – Bankruptcy Basics*, https://perma.cc/R4XC-RUSW ("The plan need not pay unsecured claims in full."); see also 11 U.S.C. 1325. In such circumstances, the availability of additional, undisclosed assets could affect the payments distributed to creditors, or the time in which creditors receive money owed. Applying judicial estoppel to extinguish a claim that is property of the estate thus prevents the potential monetization of that claim, decreasing the value of the estate, and reducing the amount that creditors receive.

The interests of the creditors in the proceeds from a claim differentiate the bankruptcy context from other judicial-estoppel cases in which application of the doctrine largely imposes consequences on the individual or entity who successfully took the prior inconsistent position. See, *e.g.*, *New Hampshire*, 532 U.S. at 751-752 (dispute between States as to river boundary); *Davis*, 156 U.S. at 689 (dispute between individuals as to validity of certain judgment); *Occidental Petroleum Corp.* v. *Wells Fargo Bank, N.A.*, 117 F.4th 628, 637-639 (5th Cir. 2024) (dispute between parties to trust agreement). By contrast, "using [judicial estoppel] to land another blow on the victims of bankruptcy fraud is not an equitable application." *Biesek* v. *Soo Line R.R.*, 440 F.3d 410, 413 (7th Cir. 2006) (Easterbrook, J.). Indeed, to the extent that a debtor's recovery on a claim goes to the benefit of the creditors, the debtor may not be said to "derive an unfair advantage * * * if not estopped." *New Hampshire*, 532 U.S. at 751.

In some cases, harm to the creditors can be avoided by estopping the debtor from pursuing the undisclosed claim, but permitting the bankruptcy trustee to litigate the claim for the benefit of the estate. See, *e.g.*, *Reed* v. *City of Arlington*, 650 F.3d 571, 572-573 (5th Cir. 2011)

(en banc); *Parker* v. *Wendy's Int'l, Inc.*, 365 F.3d 1268, 1272 (11th Cir. 2004). For example, in a Chapter 7 case in which all property is liquidated, a trustee is appointed to collect property of the estate, reduce the property to money, and distribute it to creditors in accordance with priority rules. See 11 U.S.C. 701, 702, and 704. As a representative of the estate, the trustee has standing to prosecute any cause of action that belongs to the estate. 11 U.S.C. 323. And because the trustee did not take the inconsistent position before the bankruptcy court, judicial estoppel should not apply. See *Parker*, 365 F.3d at 1273. But trustees are not appointed in every bankruptcy case. In individual Chapter 11 cases, for example, a bankruptcy court typically will not order the appointment of a trustee. See 11 U.S.C. 1104. And in Chapter 12 and 13 cases, even where a trustee serves as a representative of the estate, the right to bring a claim may rest with the debtor. See 11 U.S.C. 1203 and 1303; see also 11 U.S.C. 363(b). Insofar as the debtor is the party responsible for litigating the claim and the proceeds from that litigation could benefit creditors, courts should take those circumstances into account in determining whether to estop the claim.

b. The judicial-estoppel analysis should also consider the availability of a number of bankruptcy-specific tools that may address the failure to disclose, without harming innocent creditors. When employed, those tools serve the same function as judicial estoppel in "'protect[ing] the integrity of the judicial process'" and "prevent[ing] 'improper use of judicial machinery.'" *New Hampshire*, 532 U.S. at 749-750 (citations omitted). But because those tools are bankruptcy-specific, they are more precisely calibrated to address nondisclosure in this context than is judicial estoppel. Courts should

therefore consider whether bankruptcy-specific tools are available and are appropriate alternatives to "discourage bankruptcy fraud," instead of applying judicial estoppel and "vaporizing assets that could be used for the creditors' benefit." *Biesek*, 440 F.3d at 413.

For example, if an individual Chapter 11, 12, or 13 debtor discloses a claim after a plan has been confirmed, but before the completion of payments, the plan may be modified to increase payments on creditors' claims. 11 U.S.C. 1127, 1229, 1329. "[C]ourts routinely deem modification appropriate when there has been a postconfirmation change in the debtor's financial circumstances that affects his or her ability to make plan payments." *Germeraad* v. *Powers*, 826 F.3d 962, 971 (7th Cir. 2016). In those circumstances, the bankruptcy court would be able to evaluate the modified plan with knowledge of the claim, thus mitigating any reliance on the prior misrepresentation and reducing the need for judicial estoppel.

Similarly, in a Chapter 7 case, if a debtor belatedly discloses prepetition assets that belong to the estate while the case is still open, the trustee may administer the claim and distribute proceeds to the creditors. If the claim is not disclosed until after the case is closed, the debtor or creditors may move to reopen the case so that the trustee can administer the claim. 11 U.S.C. 350(a); Fed. R. Bankr. P. 5010.

Alternatively, if the failure to disclose was in bad faith, a trustee or a creditor may ask the bankruptcy court to convert a Chapter 11, 12, or 13 case to Chapter 7 or to dismiss the case, "whichever is in the best interests of creditors and the estate, for cause." 11 U.S.C. 1112(b)(1), 1307(c); see 11 U.S.C. 1208(c) and (d); see also *Marrama* v. *Citizens Bank of Mass.*, 549 U.S. 365, 373 (2007). Conversion to Chapter 7 may allow a trustee

to administer the claim for the benefit of creditors. 11 U.S.C. 323. Dismissal will prevent the debtor from receiving a discharge, leaving creditors free to pursue their own claims against the debtor outside of bankruptcy.

In addition, in a Chapter 7 case, if the failure to disclose is discovered within a year after discharge, the bankruptcy court may deny or revoke the debtor's discharge, if the court determines that the debtor intentionally concealed property. See 11 U.S.C. 727(a)(2) and (4)(A). And in a Chapter 11, 12, or 13 case, the bankruptcy court may likewise revoke the discharge or the confirmation of a plan (which would, in turn, revoke the discharge), within certain time frames. See 11 U.S.C. 1144, 1228(d), 1230, 1328(e), 1330.

Finally, where there is reason to believe that the debtor is sufficiently culpable, the bankruptcy court or the Office of the United States Trustee can refer an individual debtor in a case under any chapter for criminal prosecution. Criminal penalties are available when a person "knowingly and fraudulently conceals * * * in connection with a case under title 11, from creditors or the United States Trustee, any property belonging to the estate of a debtor," 18 U.S.C. 152(1); "knowingly and fraudulently makes a false oath or account in or in relation to any case under title 11," 18 U.S.C. 152(2); "knowingly and fraudulently makes a false declaration, certification, verification, or statement under penalty of perjury * * * in or in relation to any case under title 11," 18 U.S.C. 152(3); or "knowingly and fraudulently transfers or conceals" property "in contemplation of a case under title 11," 18 U.S.C. 152(7). Those crimes may be punished through fines, imprisonment, and criminal restitution, which would require the debtor to pay cred-

itors the amount of actual loss they suffered from the concealment of the claim. See, *e.g.*, *United States* v. *Feldman*, 338 F.3d 212, 219-221 (3d Cir. 2003).

The availability of those bankruptcy-specific tools is an important distinction between bankruptcy nondisclosure and other contexts in which judicial estoppel may be applied. In many nonbankruptcy cases involving judicial estoppel, the inconsistent representation occurred and was accepted by a court in a case that has been finally resolved. In *New Hampshire*, for example, the original position was taken by the State more than 20 years earlier. 532 U.S. at 745. In other cases cited in *New Hampshire*, a court had accepted the prior inconsistent representation and entered final judgment. See, *e.g.*, *Scarano* v. *Central R. Co.*, 203 F.2d 510, 511 (3d Cir. 1953); *Allen* v. *Zurich Ins. Co.*, 667 F.2d 1162, 1163-1164 (4th Cir. 1982). Because it is often impossible to undo any effect that resulted from the court's acceptance of the prior representation, the only way to ensure judicial consistency across cases is to prevent a party from contradicting its earlier representation in the later action. In bankruptcy, by contrast, proceedings may be ongoing or susceptible to reopening, providing opportunities to address the inconsistency in positions and remedy it in a more tailored fashion—a possibility that the judicial-estoppel analysis should take into account.

3. Inadvertence should be assessed holistically

As the Court in *New Hampshire* recognized, "it may be appropriate" to decline to apply judicial estoppel in cases of "inadvertence or mistake." 532 U.S. at 753 (citation omitted). A holistic analysis of inadvertence alongside other relevant factors is consistent with protecting judicial integrity in the bankruptcy context.

a. When an unsophisticated debtor fails to disclose a claim due to inadvertence, bankruptcy courts possess tailored remedies that can address the omission while protecting innocent creditors. In those circumstances, there is no need to apply judicial estoppel "to protect the integrity of the judicial process." *New Hampshire*, 532 U.S. at 749 (citation omitted). Because the nondisclosure was not "deliberate[]," there is no "improper use of judicial machinery." *Id.* at 750 (citations omitted). Because the bankruptcy court may take steps to address the nondisclosure, any "perception that either the first or the second court was misled" will be minimized. *Ibid.* (citation omitted). And because bankruptcy tools can address harm to creditors, there is less cause for concern that the debtor "would derive an unfair advantage or impose an unfair detriment" on another. *Id.* at 751.[2]

When determining whether a debtor acted inadvertently, courts should consider all relevant evidence of whether the debtor knew of the obligation to disclose and nevertheless failed to do so. That holistic analysis is in keeping with the equitable nature of the judicial estoppel. See pp. 17-18, *supra*. The Eleventh Circuit has identified the following potentially relevant factors:

> the plaintiff's level of sophistication, whether and under what circumstances the plaintiff corrected the

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[2] The court of appeals resolved this case on the premise that the application of judicial estoppel turned on whether petitioner's failure to disclose his claim was inadvertent. See Pet. App. 9a-15a; *Kane* v. *National Union Fire Ins. Co.*, 535 F.3d 380, 386 (5th Cir. 2008) (per curiam). This case accordingly does not present the question whether every inadvertent nondisclosure will preclude application of judicial estoppel, see Pet. Br. 19-20, or whether inadvertence is always required to defeat judicial estoppel.

> disclosures, whether the plaintiff told his bankruptcy attorney about the civil claims before filing the bankruptcy disclosures, whether the trustee or creditors were aware of the civil lawsuit or claims before the plaintiff amended the disclosures, whether the plaintiff identified other lawsuits to which he was party, and any findings or actions by the bankruptcy court after the omission was discovered.

Slater v. *United States Steel Corp.*, 871 F.3d 1174, 1185 (2017) (en banc).

Each of those factors may shed light on whether the debtor acted inadvertently or intentionally. The debtor's level of sophistication may indicate whether he was aware of the obligation to disclose. See *Ashmore* v. *CGI Group, Inc.*, 923 F.3d 260, 276 (2d Cir. 2019). If the debtor belatedly corrected the disclosure, but undervalued or otherwise misrepresented the claim, that may suggest an intent to conceal or mislead. See *Stanley* v. *FCA US, LLC*, 51 F.4th 215, 221 (6th Cir. 2022). If the debtor told his bankruptcy attorney about the claims, that may indicate that the bankruptcy attorney either intentionally or negligently failed to disclose. See *Cannon-Stokes*, v. *Potter*, 453 F.3d 446, 448-449 (7th Cir.), cert. denied, 549 U.S. 1099 (2006). If the debtor informed the trustee or creditors of the claim but failed to formally disclose it, that may suggest that the debtor did not understand the formal obligation, but did not intentionally fail to disclose the claim. See *Spaine* v. *Community Contacts, Inc.*, 756 F.3d 542, 544-545 (7th Cir. 2014). If a debtor disclosed other lawsuits, that may indicate that the debtor in fact understood the disclosure obligation and intentionally omitted the claim at issue. See *Weakley* v. *Eagle Logistics*, 894 F.3d 1244, 1246 (11th Cir. 2018) (per curiam), cert. denied, 586 U.S. 1089 (2019).

And if the bankruptcy court has addressed the debtor's failure to disclose and determined that it was fraudulent, that finding should preclude any claim of inadvertence.

b. While it is appropriate for courts to consider all evidence relevant to determining whether the debtor's nondisclosure was inadvertent, it remains necessary to prevent debtors from playing "fast and loose" with disclosure obligations. *New Hampshire*, 532 U.S. at 750 (citation omitted). The judicial-estoppel analysis should not be applied in such a way that debtors can decline to disclose claims until they are caught, and then avoid any consequences by claiming inadvertence or mistake.

For that reason, the debtor's own testimony regarding her subjective intent should not overcome objective evidence to the contrary. Cf. 10A Charles Alan Wright et al., *Federal Practice and Procedure* § 2726.1, at 467 (4th ed. 2016) ("[C]ourts have found that if [an] affidavit itself presents incredible assertions contradicted by otherwise objective evidence, it is insufficient to prevent summary judgment from being entered."). Focusing on objective indicia of intent is consistent with the way courts commonly identify subjective intent, particularly in contexts in which crediting a party's statement could produce perverse incentives. See, *e.g.*, *Robb-Fulton* v. *Robb* (*In re Robb)*, 23 F.3d 895, 897 (4th Cir. 1994) (affirming district court holding that payments were excepted from discharge in bankruptcy because "the objective indicia of intent" established that the parties intended the payments to be alimony); *FDIC* v. *National Union Fire Ins. Co.*, 205 F.3d 66, 71 (2d Cir. 2000) (determining an employee's "subjective state of mind" by looking to "'objective indicia of intent,'" including "the

employee's actions, words, and all of the surrounding circumstances") (citation omitted).

Looking to objective indicia of intent is likewise consistent with the Court's analysis of inadvertence in *New Hampshire*. 532 U.S. at 753. There, the Court considered New Hampshire's prior briefing, which revealed that it had "engage[d] in 'a searching historical inquiry' into" the relevant question. *Id.* at 753-754. And the Court further noted that New Hampshire did not lack "the opportunity or incentive" to examine the issue, but rather took an express position in the prior litigation. *Id.* at 754.

B. The Court Of Appeals' Restricted Inquiry Is Inconsistent With Equitable Principles

While the court of appeals purported to recognize that "[j]udicial estoppel is not governed by inflexible prerequisites or an exhaustive formula," the court went on to apply a test that allowed consideration of only "three elements." Pet. App. 9a-10a (citations omitted). And with respect to inadvertence in particular, the court again applied a restrictive formulation, asking only whether petitioner had knowledge of the undisclosed claims and a motive for concealment. *Id.* at 13a. Both aspects of that analysis are incompatible with equitable principles, including the flexibility embraced in *New Hampshire* and the judicial integrity the doctrine is intended to protect.

1. By limiting its judicial-estoppel inquiry to three factors, the court of appeals imposed the type of "inflexible prerequisites" or "exhaustive formula" that this Court declined to adopt in *New Hampshire*. 532 U.S. at 751. While courts may look to particular guideposts in determining whether an equitable doctrine's "underlying principle * * * comes into play," *Minerva Surgical*,

594 U.S. at 576, those guideposts are not a license to ignore other factors that are relevant to the overall "balance of equities," *New Hampshire*, 532 U.S. at 751.

Here, the underlying principle of judicial estoppel is preserving judicial integrity by preventing litigants from playing "fast and loose" with the courts and by preventing inconsistent judgments that create a "perception that either the first or the second court was misled." *New Hampshire*, 532 U.S. at 750 (citations omitted). While the three factors the court of appeals identified are plainly relevant to that underlying principle, so too are the interests of the creditors and the bankruptcy-specific tools that may protect them. Judicial integrity is not furthered when courts impose remedies that deprive innocent creditors of assets through no fault of their own. See *Slater*, 871 F.3d at 1188; *Biesek*, 440 F.3d at 413; *Ah Quin* v. *County of Kaui Dep't of Transp.*, 733 F.3d 267, 275 (9th Cir. 2013). And when other remedies are available to address the nondisclosure, any perception of inconsistent judgments is minimal. See *Ah Quin*, 733 F.3d at 274.

2. Disregarding evidence relevant to intent likewise leads to an incomplete analysis that is inconsistent with the principles underlying judicial estoppel. By focusing only on knowledge of the underlying facts and a potential motive to conceal, the court of appeals' inadvertence test necessarily excludes those who mistakenly failed to disclose a claim because they were unaware of the duty to do so. See Pet. App. 21a, 55a-56a.

Indeed, the Fifth Circuit has acknowledged the narrow reach of its inadvertence test. The court of appeals has explained that a potential motive for nondisclosure is "almost always" present in the bankruptcy context, *Love* v. *Tyson Foods, Inc.*, 677 F.3d 258, 262 (5th Cir.

2012) (citation omitted), such that the district court viewed the test as "something approaching an absolute presumption of intent," Pet. App. 30a. In practice, the Fifth Circuit has never found its inadvertence test met in a precedential decision involving bankruptcy nondisclosure. That is because the test requires lower courts to credit a "hypothetical motive" while ignoring evidence that a debtor's "failure to disclose the personal injury claim on his bankruptcy schedules was an honest mistake." *Id.* at 21a (Haynes, J., concurring in the judgment). But applying judicial estoppel to debtors who have made such honest mistakes is generally not necessary to "protect the integrity of the judicial process," particularly where bankruptcy tools can address the nondisclosure. *New Hampshire*, 532 U.S. at 749 (citation omitted). And when there is no threat to judicial integrity, "there is no ground for applying [judicial] estoppel." *Minerva Surgical*, 594 U.S. at 576.

Some courts have suggested that such a "rigid and unforgiving" test is necessary to "ensur[e] that debtors do not have an incentive to lie in their bankruptcy filings." Pet. App. 48a, 55a; see *Eastman* v. *Union Pac. R.R.*, 493 F.3d 1151, 1160 (10th Cir. 2007). That is incorrect. The bankruptcy-specific tools themselves provide significant deterrence, allowing courts to dismiss a bankruptcy case, revoke or deny a discharge, or refer a case for criminal prosecution for fraudulent concealment. See pp. 20-23, *supra*. Moreover, judicial estoppel will remain an available tool where the evidence in fact shows that a debtor intentionally lied rather than inadvertently failed to disclose a claim and other remedies are insufficient.

Nor is the Fifth Circuit's rule justified by the difficulty of discerning a debtor's intent. Contra Pet. App.

48a-49a. Experience in other circuits shows that courts can determine intent largely based on objective indicia surrounding the debtor's conduct. See, *e.g.*, *Cannon-Stokes*, 453 F.3d at 448-449 (affirming application of judicial estoppel where debtor had "repudiated the core of her affidavit" claiming inadvertence); *Stanley*, 51 F.4th at 221 (affirming application of judicial estoppel where debtor filed only a "late, perfunctory disclosure"); *White* v. *Wyndham Vacation Ownership, Inc.*, 617 F.3d 472, 480-483 (6th Cir. 2010) (affirming application of judicial estoppel where debtor made "limited and ineffective attempts to correct her initial misfiling"). Intent-based standards are prevalent throughout the law, see pp. 26-27, *supra*; there is no basis to suggest that courts are incapable of applying such a standard here.

3. By applying judicial estoppel mechanically to cases involving bankruptcy nondisclosure without taking relevant circumstances into account, the Fifth Circuit's rule allows civil defendants to "avoid[] liability on an otherwise potentially meritorious civil claim." *Slater*, 871 F.3d at 1187. While the application of judicial estoppel necessarily risks providing a windfall to a party that might not have prevailed on the merits, that result should occur only when there is a "corresponding benefit to the court system." *Ibid.* Evaluating whether there is such a benefit requires analyzing factors that might affect the integrity of the judicial system. When a court prevents a debtor from pursuing his claim notwithstanding a potential harm to creditors, the availability of bankruptcy tools that could otherwise address the nondisclosure, and evidence that the debtor made an honest mistake, that outcome can "undermine the judicial system [that the judicial-estoppel] doctrine claims to

protect." Pet. App. 21a (Haynes, J., concurring in the judgment).

C. The Case Should Be Remanded To Allow The Lower Courts To Assess The Totality Of The Circumstances In The First Instance

The courts below proceeded on the view that judicial estoppel is based on consideration of only three factors, and that inadvertence may be assessed based on only knowledge and potential motive. That view is "too rigid." *Holland*, 560 U.S. at 649. Judicial estoppel permits consideration of any circumstances relevant to the doctrine's underlying principle of preserving judicial integrity. Here, those circumstances include the interests of the creditors and bankruptcy-specific remedies that could be employed, as well as evidence of inadvertence beyond knowledge and potential motive.

The decisions below did not engage in that type of inquiry. Instead, the courts failed to consider whether creditors' interests would be harmed and whether any bankruptcy-specific tools could adequately address the nondisclosure, and the courts further declined to place any weight on certain evidence of intent. See Pet. Br. 39-40. And because petitioner was operating under Fifth Circuit precedent adopting the incorrect legal standard, he may not have developed all available evidence that would be relevant under the proper analysis.

In these circumstances, it would be appropriate for the Court to vacate the judgment below and remand the case so as to allow petitioner to develop the factual record and the lower courts to conduct the appropriate analysis. While it is possible that the lower courts may come to the same result after considering all the relevant circumstances, whether to apply judicial estoppel is a matter of discretion vested in the first instance in

the district court, and this Court typically does not assume that a court would exercise its discretion in the same way after the Court has clarified the applicable principles. See, *e.g.*, *Holland*, 560 U.S. at 653 (remanding for lower courts to determine whether petitioner was entitled to equitable tolling when the court of appeals "erroneously relied on an overly rigid" approach); *Golan* v. *Saada*, 596 U.S. 666, 683 (2022) (remanding for the district court to make a "discretionary determination" under the "proper legal standard in the first instance").

CONCLUSION

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

Respectfully submitted.

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DECEMBER 2025