

No. 26-194

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**In the Supreme Court of the United States**

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MEI GUO AND HK INTERNATIONAL FUNDS  
INVESTMENTS (USA) LIMITED, LLC,

*Petitioners,*

v.

LUC A. DESPINS, CHAPTER 11 TRUSTEE,

*Respondent.*

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**On Petition for a Writ of Certiorari  
to the United States Court of Appeals  
for the Second Circuit**

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**BRIEF FOR THE RESPONDENT IN OPPOSITION**

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Ben Gifford  
Shlomo Maza  
PAUL HASTINGS LLP  
200 Park Avenue  
New York, NY 10166

Benjamin W. Snyder  
*Counsel of Record*  
Nicholas A. Bassett  
PAUL HASTINGS LLP  
2050 M Street, NW  
Washington, DC 20036  
(202) 551-1700  
bensnyder@paulhastings.com

*Counsel for Respondent*

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**QUESTION PRESENTED**

Whether 11 U.S.C. § 544(a)(1), which vests a bankruptcy trustee with “the rights and powers of” a hypothetical judicial lien creditor, authorizes the trustee to bring a state-law alter ego claim, where a judicial lien creditor could bring such a claim under the applicable state law.

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**BRIEF FOR THE RESPONDENT IN OPPOSITION**

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**INTRODUCTION**

This petition arises from bankruptcy proceedings involving Ho Wan Kwok, a self-described billionaire who was recently sentenced to 30 years in prison for fraud and racketeering. In 2020, one of Kwok’s creditors obtained a multimillion-dollar judgment against Kwok in New York state court. But when the creditor tried to enforce the judgment against Kwok’s assets, including a superyacht named the Lady May, Kwok insisted that the Lady May belonged to petitioner HK International Funds Investments (USA) Limited, LLC (“HK USA”), a shell company of which Kwok’s daughter, petitioner Mei Guo, was the sole owner. In 2022, the New York court held a contempt hearing, found that Kwok was the true owner of the Lady May, and imposed \$134 million in fines.

Kwok promptly filed for bankruptcy. But despite the New York court’s finding that Kwok owned the Lady May—and despite the lavish lifestyle Kwok publicly promoted—Kwok claimed in his bankruptcy filings that he owned only a handful of assets worth a few thousand dollars (and certainly not the Lady May). The bankruptcy court subsequently appointed respondent as Trustee of Kwok’s estate, based on concerns that Kwok had “secreted his assets in a maze of corporate entities and with family members.” *In re Kwok*, 640 B.R. 514, 516 (Bankr. D. Conn. 2022) (citation omitted). The Trustee has since spent more than four years navigating that maze, recovering assets worth more than \$170 million for Kwok’s creditors (including approximately \$24 million from the sale of the Lady May).

This case is part of that broader effort. In the proceedings below, the Trustee established that HK USA was Kwok’s alter ego and that the shell company’s assets, including the Lady May, were therefore property of the estate available for distribution to Kwok’s creditors. HK USA and Guo no longer challenge the merits of that determination. Nevertheless, they argue that this Court should permit them (rather than Kwok’s estate or his creditors) to retain the Lady May and other contested assets because—they claim—Section 544 of the Bankruptcy Code, 11 U.S.C. § 544, does not authorize trustees to bring alter ego claims against third parties.

For multiple reasons, this Court should deny the petition and allow the assets in question to be distributed to Kwok’s creditors. *First*, the petition does not implicate any conflict of authority warranting this Court’s review. While petitioners make broad pronouncements about disagreement among the courts of appeals, they identify only one decision in which a federal appellate court has

ever held that bankruptcy trustees cannot bring alter ego claims under Section 544—and that nearly 40-year-old decision involved claims under Arkansas law that differed from the Delaware-law claim at issue here in important respects. *Second*, the decision below is plainly correct: Section 544 vests bankruptcy trustees with all the “rights and powers” of a hypothetical creditor who has a “judicial lien” on the debtor’s property, 11 U.S.C. § 544(a)(1), and here it is undisputed that such a creditor would have the right to bring a claim against the debtor’s alter egos under Delaware law. Petitioners’ contrary arguments largely ignore the statutory text in favor of unenacted legislative history, but whatever persuasive force such materials may have had four decades ago, this Court has long since recognized that they cannot overcome the clear import of statutory text.

In any event, even if the question presented did warrant the Court’s attention, this would be an exceptionally poor vehicle in which to address it. The Trustee here could assert title to the assets in question under multiple provisions, meaning that a decision in petitioners’ favor would have no practical effect beyond further delaying the distribution of assets to Kwok’s creditors. For that reason, too, the petition for a writ of certiorari should be denied.

### **STATEMENT OF THE CASE**

1. Ho Wan Kwok is a self-described billionaire who led a lavish lifestyle, flaunting his wealth with expensive homes, a private plane, and a yacht called “the Lady May.” C.A. J.A. 547. In 2020, one of Kwok’s creditors, Pacific Alliance Asia Opportunity Fund L.P. (“PAX”), obtained a \$116 million judgment against Kwok in New York state court in connection with a loan that Kwok had personally guaranteed. C.A. J.A. 437-445, 447-450. When PAX began

efforts to enforce the judgment against Kwok's assets, however, the Lady May set sail for the Bahamas, in clear violation of a court order requiring that the yacht stay within the court's jurisdiction. Pet. App. 3a-4a.

When Kwok failed to return the Lady May to New York, PAX filed a motion to hold him in contempt. Pet. App. 4a. At the hearing, Kwok's daughter, petitioner Guo, testified that she was the sole owner of petitioner HK International Funds Investments (USA) Limited, LLC ("HK USA"), which in turn held title to the Lady May. C.A. J.A. 549. The court found, however, that notwithstanding that formal ownership structure, Kwok was the true beneficial owner of the Lady May and controlled use of the yacht. *Id.* Indeed, the court found that Guo "provided no confirmation that she came into possession of the Lady May, other than as a ruse to shield the Lady May from being levied upon by her father's creditors." C.A. J.A. 552. The court thus found that Kwok was responsible for removing the yacht from its jurisdiction, in violation of the court's prior order. And on February 9, 2022, the court granted PAX's contempt motion and imposed \$134 million in fines on Kwok. C.A. J.A. 546-555.

2. Less than a week later, Kwok filed for chapter 11 bankruptcy in the District of Connecticut. C.A. J.A. 1-14. Despite the New York court's finding that Kwok beneficially owned the Lady May, and despite all of the other obvious trappings of Kwok's lavish lifestyle, Kwok claimed in his bankruptcy filings that he owned only a handful of assets worth a few thousand dollars. C.A. J.A. 38-41. The bankruptcy court subsequently appointed the Trustee to administer the case and conduct a comprehensive investigation into Kwok's assets and affairs. *See In re Kwok*, 640 B.R. 514 (Bankr. D. Conn.

2022). The court cited concerns that “[Kwok] and his family have interests in numerous limited liability companies that may obfuscate the true nature and value of [Kwok’s] assets,” and that “[Kwok] has engaged in multilayer transactions involving complicated corporate structures . . . that make it difficult to identify and locate [Kwok’s] assets.” *Id.* at 522. The court also noted “the findings of the New York Supreme Court that [Kwok] had ‘secreted his assets in a maze of corporate entities and with family members.’” *Id.* (citation omitted).

3. On April 11, 2022, HK USA initiated the adversary proceeding that gives rise to this petition for a writ of certiorari. C.A. J.A. 229-237. In its complaint, HK USA sought a declaration that it—not Kwok—owned the Lady May. C.A. J.A. 236. HK USA also filed a statement in which it said that it would consent to the entry of an order compelling it to transport and deliver the Lady May to Connecticut. C.A. J.A. 155-164. Not long thereafter, the bankruptcy court entered a stipulated order pursuant to which HK USA agreed to return the Lady May to Connecticut. C.A. J.A. 165-173. To secure the return of the yacht, HK USA placed \$37 million in escrow, C.A. J.A. 174-193, which it had borrowed from an entity called Himalaya International Financial Group Ltd, C.A. J.A. 344-357. Later litigation revealed that Himalaya, like HK USA, was under Kwok’s control. Pet. App. 5a.

The Trustee filed an answer in the adversary proceeding, along with counterclaims against HK USA and Guo. C.A. J.A. 238-307. Two of those counterclaims are relevant here. The first, brought under Section 541 of the Bankruptcy Code, sought a ruling that the Lady May was the property of Kwok (and thus of the estate), and that HK USA and Guo were precluded from arguing otherwise by the New York court’s finding that Kwok beneficially

owned the yacht. C.A. J.A. 295-297. The second, brought under Sections 541 and 544, alleged that HK USA was Kwok’s alter ego, and that HK USA’s assets—including the Lady May and the funds that HK USA had placed in escrow—belonged to the estate. C.A. J.A. 297-299.

The Trustee moved for summary judgment on the first counterclaim, and the bankruptcy court granted the motion on March 27, 2023. C.A. S.A. 1-4 (order); *see* C.A. S.A. 5-35 (supplemental memorandum of decision). Under Section 541, the bankruptcy court explained, a debtor’s estate includes “all legal [or] equitable interests of the debtor in property as of the commencement of the case.” C.A. S.A. 22 (quoting 11 U.S.C. § 541(a)(1)). Because the New York court had found that Kwok beneficially owned—and thus had an “equitable interest[.]” in—the Lady May, the bankruptcy court concluded that the Lady May was property of the estate. C.A. S.A. 35. The bankruptcy court accordingly directed HK USA and Guo to deliver the Lady May to the Trustee immediately. *Id.*<sup>1</sup>

HK USA and Guo moved to dismiss the Trustee’s other counterclaims, including the alter ego counterclaim that the Trustee brought under Sections 541 and 544. On April 14, 2023, the bankruptcy court denied that motion in relevant part. Pet. App. 91a-127a. The court concluded that the Trustee could not bring the alter ego claim under Section 541, but it held that he could bring the claim under Section 544, which vested the Trustee with “the rights and powers of a hypothetical judicial lien creditor.” Pet. App.

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<sup>1</sup> In an amendment to the order issued on March 31, 2023, the bankruptcy court added that Kwok was also the beneficial owner of a second, smaller yacht called the Lady May II, and that the Lady May II was also property of the estate. C.A. S.A. 36-38. For simplicity, the Trustee refers to both yachts collectively as “the Lady May.”

103a. Specifically, Section 544(a)(1) gives a bankruptcy trustee:

[T]he rights and powers of . . . a creditor that extends credit to the debtor at the time of the commencement of the case, and that obtains, at such time and with respect to such credit, a judicial lien on all property on which a creditor on a simple contract could have obtained such a judicial lien, whether or not such a creditor exists . . . .

11 U.S.C. § 544(a)(1). Here, the bankruptcy court explained, the plain language of Section 544 “provides a trustee with the power to pursue the types of claims that the Trustee, standing in the shoes of a hypothetical creditor, could have asserted.” Pet. App. 107a (internal quotation marks omitted). And under Delaware law, “[a]ny judicial lien creditor could, *e.g.*, during post-judgment proceedings, seek to levy on assets of the Individual Debtor’s alter egos.” Pet. App. 110a. Accordingly, Section 544 authorized the Trustee, standing in the shoes of a hypothetical judicial lien creditor, to bring an alter ego claim against HK USA.

Following the bankruptcy court’s denial of the motion to dismiss, the Trustee moved for partial summary judgment on his alter ego counterclaim, and the bankruptcy court granted the motion. Pet. App. 45a-90a. The court incorporated by reference its prior decision that the Trustee had standing to bring the alter ego claim under Section 544. Pet. App. 53a. And the court held on the merits that there was no genuine dispute of material fact as to whether HK USA was Kwok’s alter ego. Pet. App. 67a-79a. It was undisputed that HK USA was undercapitalized, that it did not observe corporate formalities, and that its only business was the nominal

ownership of the Lady May, which—the court had already found—Kwok beneficially owned and controlled. Pet. App. 68a-69a. The court held that the other applicable factors under Delaware law supported a finding of alter ego as well. Pet. App. 69a-73a, 76a-79a.

4. HK USA and Guo appealed to the district court, which affirmed the bankruptcy court's orders. Pet. App. 22a-43a. As relevant, the district court agreed with the bankruptcy court that there was no genuine dispute that HK USA was Kwok's alter ego, and it accordingly held that it was appropriate to pierce HK USA's corporate veil "so as to bring [its] assets into the bankruptcy estate." Pet. App. 38a. Because HK USA's assets included the Lady May, the court determined that the Trustee's first counterclaim asserting beneficial ownership of the Lady May was moot. Pet. App. 39a-40a. The district court nevertheless held in the alternative that the bankruptcy court had correctly concluded that Kwok beneficially owned the Lady May. Pet. App. 40a-42a.

5. The court of appeals unanimously affirmed. Pet. App. 1a-19a.

The court of appeals first confirmed that the Trustee had standing to bring an alter ego claim under Section 544. Pet. App. 9a-15a; *see* Pet. App. 103a-110a. The court explained that Section 544(a) vested the Trustee with the "rights and powers" of a hypothetical judicial lien creditor, meaning that the Trustee was authorized to "assert any generalized claims that would belong to a hypothetical high-priority lien creditor" under applicable state law. Pet. App. 10a. And under Delaware law, a third party such as a creditor would be permitted to bring an alter ego claim—referred to as an "outsider reverse veil-piercing" claim—to "render a company liable on a judgment

against' an insider." *Id.* (quoting *Manichaeen Cap., LLC v. Exela Techs., Inc.*, 251 A.3d 694, 710 (Del. Ch. 2021)).<sup>2</sup>

In so holding, the court of appeals rejected HK USA and Guo's argument that Section 544 does not permit trustees to recover from third parties on behalf of a bankruptcy estate's creditors. Pet. App. 12a. While Section 544 does not authorize a trustee to assert "personal" claims that "belong only to specific sets of creditors harmed in particular ways," the court explained, it does allow a trustee to "pursue general causes of action that would benefit *any* hypothetical creditor." Pet. App. 13a. And under Delaware law, the court reasoned, "reverse veil-piercing claims are general" because they are "claims that enlarge the size of the bankruptcy estate for all creditors," rather than "claims that only certain subsets of creditors could assert." Pet. App. 14a (citation and alterations omitted). "Because a hypothetical creditor could bring these generalized claims against HK," the court determined, "the Trustee may also do so under section 544(a)." Pet. App. 14a-15a.

Having decided that the Trustee had standing to bring his alter ego counterclaim, the court of appeals agreed with the bankruptcy court and district court that the undisputed evidence established that HK USA was Kwok's alter ego and that its assets were therefore properly recoverable by the estate. Pet. App. 15a-18a.<sup>3</sup>

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<sup>2</sup> Because the panel held that the Trustee could bring his alter ego counterclaim under Section 544, it did not address whether the Trustee also could bring the claim under Section 541. Pet. App. 9a n.3.

<sup>3</sup> The panel declined to address the bankruptcy court's order granting summary judgment on the Trustee's counterclaim for beneficial ownership of the Lady May, because the panel's decision on the Trustee's alter ego counterclaim rendered the beneficial ownership counterclaim moot. Pet. App. 8a n.2.

### REASONS FOR DENYING THE PETITION

This case is uncertworthy in every respect. Notwithstanding their sweeping claims of an “entrenched conflict among the courts of appeals” regarding the question presented, Pet. 11 (emphasis and capitalization omitted), petitioners identify only a single decision even arguably holding that a trustee cannot bring an alter ego claim under Section 544. That decision, moreover, involved traditional veil-piercing claims under Arkansas law that differed in important respects from the reverse veil-piercing claims at issue here. There is thus no conflict among the courts of appeals that might warrant this Court’s intervention.

The decision below is also clearly correct. As the court below explained, Section 544 vests a trustee with all the “rights and powers” of a hypothetical judicial lien creditor, which means that a trustee may “assert any generalized claims that would belong to a hypothetical high-priority lien creditor” under applicable state law. Pet. App. 10a (citing 11 U.S.C. § 544(a)). Petitioners seek to avoid that conclusion by resorting to legislative history and naked policy arguments, but those considerations are unpersuasive even on their own terms, and in any event provide no basis for disregarding the statute’s plain text.

Finally, this would be an unusually poor vehicle in which to address the question presented. While the court of appeals focused on the Trustee’s standing under Section 544, the Trustee also has standing to bring an alter ego claim under Section 541. And even if the Trustee could not bring an alter ego claim under either section, he still could gain title to HK USA’s assets by bringing beneficial ownership claims—as he already has with the Lady May. A decision from this Court would accordingly have no real-

world effect beyond further delaying efforts to repay Kwok's creditors.

**A. The Petition Identifies No Conflict Of Authority Warranting This Court's Review**

Contrary to petitioners' assertions (at 11-15), this case does not implicate any entrenched circuit conflict warranting the Court's review.

Petitioners' claim of a conflict rests primarily (at 11-12) on the Eighth Circuit's decision nearly four decades ago in *In re Ozark Restaurant Equipment Co.*, 816 F.2d 1222 (8th Cir. 1987). There, the court considered a traditional veil-piercing claim that a Chapter 7 bankruptcy trustee had brought against the principals of the debtor corporation. *Id.* at 1223. The court acknowledged that "[i]t is possible that some states permit the corporation or its stockholders to assert an alter ego cause of action to pierce the corporate veil, and thus, that a bankruptcy trustee would be able to enforce the claim on behalf of the debtor corporation." *Id.* at 1226 n.7. But "under Arkansas law," the court found, traditional veil-piercing claims were "personal to the corporate creditors rather than the corporation itself." *Id.* at 1225. Accordingly, the trustee could not assert the claim under Section 541, which allows the trustee to assert "causes of action belonging to the debtor." *Id.* Nor, the Eighth Circuit concluded, could the trustee bring an alter ego claim under Section 544, because "there is nothing in Section 544 or the liquidation framework of the Code authorizing a Chapter 7 trustee to collect money not owed to the estate." *Id.* at 1228. Rather, any such claims had to be brought by the corporation's creditors. *Id.* at 1230.

Petitioners contend that *Ozark* broadly held that Section 544 "does not authorize a trustee to assert a general creditor alter ego claim against third parties."

Pet. 11. As *Ozark* explained, however, “under Arkansas law,” the traditional veil-piercing claim at issue was “personal to the corporate creditors.” 816 F.2d at 1225. And that state-law classification precluded the trustee from bringing the claim. *See St. Paul Fire & Marine Ins. Co. v. PepsiCo, Inc.*, 884 F.2d 688, 698 (2d Cir. 1989) (“Under Arkansas law . . . the Eighth Circuit has held that an alter ego action is personal to the creditors, and therefore cannot be asserted by a bankruptcy trustee.”).

In this case, by contrast, the Trustee asserted a reverse veil-piercing claim that Delaware law treats as “general,” rather than “personal.” Pet. App. 14a (explaining that, under “New York reverse veil-piercing doctrine similar to Delaware law,” “reverse veil-piercing claims are general” (citation and alterations omitted)); *see Manichaeon Cap., LLC v. Exela Techs., Inc.*, 251 A.3d 694, 710 (Del. Ch. 2021).<sup>4</sup> That classification was critical to the panel’s decision that the Trustee had standing under Section 544. Pet. App. 13a (“[S]ection 544 allows [trustees] to pursue general causes of action that would benefit *any* hypothetical creditor.”). As the panel explained, “[i]f a claim is a general one, with no particularized injury arising from it, and if that claim could be brought by any creditor of the debtor, the trustee is the proper person to assert the claim.” Pet. App. 12a (quoting *St. Paul Fire*, 884 F.2d at 701).

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<sup>4</sup> As the Delaware Court of Chancery acknowledged in 2021, courts have long debated whether and in what circumstances to permit reverse veil-piercing claims. *See Manichaeon Cap.*, 251 A.3d at 711 (explaining that “many courts have adopted the doctrine, while others have shied away”). Whatever the status of such claims under the law of other States, however, petitioners no longer dispute that Delaware law permits reverse veil-piercing claims by judicial lien creditors in the circumstances here.

Petitioners also point to a handful of other decisions in attempting to establish a circuit conflict. *See* Pet. 12-15. None of those decisions, however, held that a trustee could not bring alter ego claims under Section 544 (either under a traditional veil-piercing theory or a reverse veil-piercing theory), and they accordingly provide no basis for this Court’s review here.

*Fifth Circuit.* Petitioners suggest that the Fifth Circuit’s unpublished per curiam opinion in *In re Bradley*, 326 F. App’x 838 (5th Cir. 2009), “followed *Ozark*.” Pet. 14. *Bradley*, however, involved a civil conspiracy claim, not an alter ego claim. *See* 326 F. App’x at 839. Moreover, the court indicated that the trustee could have brought an alter ego claim if Texas law had allowed it, contrary to petitioners’ suggestion that trustees lack any mechanism to bring such claims. *See id.* (citing *In re S.I. Acquisition, Inc.*, 817 F.2d 1142, 1152-53 (5th Cir. 1987)).

*Sixth Circuit.* Petitioners acknowledge (at 15) that the Sixth Circuit’s decision in *Brennan v. Slone (In re Fisher)*, 296 F. App’x 494 (6th Cir. 2008), held that a trustee has standing to bring an alter ego claim on behalf of creditors where the claim is not brought on behalf of creditors “personally.” *Id.* at 505. Indeed, *Brennan* is the only other case petitioners identify that addressed the type of claim at issue here, in which the trustee in an individual bankruptcy pursues assets that had been transferred to a corporation controlled by the debtor, and it agreed with the approach that the Second Circuit took in this case. *See id.*<sup>5</sup> *Brennan* also explained, consistent with the discussion above, that *Ozark* did not dictate whether trustees have standing to bring general alter ego

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<sup>5</sup> In *Ozark*, by contrast, the trustee brought a traditional veil-piercing claim that sought to recover from individuals on behalf of the estate of a corporate debtor they had controlled. *See* 816 F.2d at 1223.

claims, because it “involved application of the holding in *Caplin* that the trustee does not have standing to assert claims on behalf of specific creditors.” *Id.*

*Ninth Circuit:* Petitioners similarly contend that the Ninth Circuit’s decision in *Williams v. California 1st Bank*, 859 F.2d 664 (9th Cir. 1988), “expressly adopted *Ozark*.” Pet. 13. The trustee in *Williams*, however, tried to bring securities law claims that had been assigned by specific individual creditors, not general alter ego claims that could have been brought by any judicial lien creditor. 859 F.2d at 665. Moreover, the Ninth Circuit’s decision addressed Section 541, holding that the trustee could not bring the asserted claims under that provision, without ever addressing whether he could have asserted the claims under Section 544. *Id.*

*Eleventh Circuit:* Petitioners also cite the Eleventh Circuit’s decisions in *E.F. Hutton & Co. v. Hadley*, 901 F.2d 979 (11th Cir. 1990), and *Baillie Lumber Co. v. Thompson (In re Icarus Holding, LLC)*, 391 F.3d 1315 (11th Cir. 2004), claiming that those decisions “questioned” the interpretation of Section 544 that the Second Circuit adopted below. Pet. 14. *E.F. Hutton*, though, involved a trustee’s attempt under Section 541 to bring negligence, conversion, and improper interest claims on behalf of particular creditors, rather than an attempt under Section 544 to bring an alter ego claim general to any creditor. 901 F.2d at 982, 985. And while *Baillie Lumber* expressed some doubt about the use of Section 544 in a footnote, 391 F.3d at 1319 n.4, the case itself considered only whether a debtor-in-possession could bring an alter ego claim under Section 541, *id.* at 1319-21. What is more, after the Georgia Supreme Court confirmed that a corporate entity could bring an alter ego action against its former principal as a matter of state law,

the Eleventh Circuit held that the debtor-in-possession *could* bring the alter ego claim under Section 541. *See Baillie Lumber Co. v. Thompson*, 413 F.3d 1293, 1295 (11th Cir. 2005).<sup>6</sup>

Nothing in those decisions necessitates this Court’s review here. To the extent that courts reached different outcomes, that simply reflects the fact that the cases involved different substantive claims asserted under the laws of different States (and, in some instances, different provisions of the Bankruptcy Code), not an entrenched circuit conflict of the sort petitioners claim. *Cf.* 3 William L. Norton III, *Norton Bankr. L. & Prac.* 3d § 63:5 (explaining that Section 544 “grants a specified status to the trustee, but leaves the determination as to the effect of that status to relevant nonbankruptcy law concerning judgment lien creditors”).

At most, petitioners identify some tension between language in the *Ozark* decision and the reasoning of the court of appeals here. Any such tension, however, simply reflects *Ozark*’s status as a relic of a bygone era of statutory interpretation. The *Ozark* court made no attempt to grapple with the text of Section 544, which—as discussed below—expressly endows trustees with the “rights and powers of” a judicial lien creditor (including the right to bring a state-law alter ego claim). 11 U.S.C. § 544(a). Instead, the Eighth Circuit placed primary emphasis on the fact that Congress had considered, but did not adopt, an amendment to Section 544 that would have authorized trustees to bring claims belonging to

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<sup>6</sup> Petitioners also cite (at 15) the Third Circuit’s decision in *Whittaker, Clark & Daniels, Inc. v. Brenntag AG (In re Whittaker, Clark & Daniels, Inc.)*, 176 F.4th 241 (3d Cir. 2026), but they acknowledge that *Whittaker* declined to weigh in on the question presented. *See id.* at 253 n.5.

particular creditors. As explained below, that unenacted proposal, even considered on its own terms, does not suggest that trustees previously lacked the authority to bring claims on behalf of hypothetical judicial lien creditors. But in any event, *Ozark's* reliance on Congress's inaction is an anachronism that runs afoul of the rule that "failed legislative proposals are a particularly dangerous ground on which to rest an interpretation of a prior statute." *Cent. Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 187 (1994) (internal quotation marks omitted).

Given the foregoing, it is unsurprising that this Court has repeatedly denied petitions for writs of certiorari raising questions presented similar to the one presented here. *See, e.g.*, Pet. for Cert., *Picard v. JPMorgan Chase & Co.*, No. 13-448, 2013 WL 5555099, at \*32 (denied June 30, 2014) (urging the Court to "grant certiorari to resolve a bankruptcy trustee's standing to bring claims general to all creditors" (emphasis and capitalization omitted)); Pet. for Cert., *Carlyle Fortran Tr. v. nVidia Corp.*, No. 08-1232, 2009 WL 924264, at \*2 (denied Oct. 5, 2009) (asking the Court to resolve "whether a creditor or a trustee in bankruptcy has standing to assert 'general' creditor claims against third parties"). The Court should do so again in this case.

## **B. The Decision Below Is Correct**

Review is also unwarranted because the decision below is plainly correct. Petitioners' arguments to the contrary fail to reckon with the statute's plain text, and their appeals to legislative history and policy are unpersuasive even on their own terms.

1. As discussed above, Section 544 grants to the Trustee:

[T]he rights and powers of . . . a creditor that extends credit to the debtor at the time of the commencement of the case, and that obtains, at such time and with respect to such credit, a judicial lien on all property on which a creditor on a simple contract could have obtained such a judicial lien, whether or not such a creditor exists . . . .

11 U.S.C. § 544(a)(1). Or to paraphrase (as the bankruptcy court did), Section 544 confers on the Trustee “the rights and powers of a hypothetical judicial lien creditor.” Pet. App. 103a.

To determine whether the Trustee can bring an alter ego claim against HK USA, then, the critical question is whether bringing such a claim is one of the “rights and powers” that a hypothetical judicial lien creditor would have had as of the commencement of Kwok’s bankruptcy. And the answer to that question under the governing Delaware law is clearly yes.

The “rights” of a creditor include the claims the creditor can bring. *See* 11 U.S.C. § 101(5)(A) (defining “claim” to include a “right to payment”); *Right*, Black’s Law Dictionary (5th ed. 1979) (“[a] legally enforceable claim of one person against another”). And under Delaware law, a creditor can bring an alter ego claim against a company to satisfy a judgment against the individual or entity that controls it. That type of alter ego claim is referred to as an “[o]utsider reverse veil-piercing” claim, and it “is implicated where an outside third party, frequently a creditor, urges a court to render a company liable on a judgment against its member.” *Manichaeon Cap.*, 251 A.3d at 710 (internal quotation marks omitted). As the panel below correctly recognized, “[t]hat is exactly

the kind of claim that the Trustee brings here.” Pet. App. 11a.

Petitioners offer no response to that straightforward textual analysis. Nowhere in their briefing—not in the bankruptcy court, the district court, the Second Circuit, or this Court—have petitioners ever explained why the “rights” of a judicial lien creditor do not include the right to bring an action that such a creditor could bring under state law. Nor have petitioners offered any response to the lower courts’ determination that Delaware law would permit a judicial lien creditor to bring claims like those that the Trustee asserts against HK USA here—an issue that those courts are particularly well suited to resolve. *See Expressions Hair Design v. Schneiderman*, 581 U.S. 37, 45 (2017) (“We generally accord great deference to the interpretation and application of state law by the courts of appeals.” (citation omitted)).

2. Petitioners instead offer a hodgepodge of arguments that are irrelevant, wrong, or both.

To start, petitioners argue (at 16) that the decision below improperly assigns “creditor-owned causes of action” to trustees, and they suggest that under the court of appeals’ decision, “a trustee may enforce ‘any cause of action’ belonging to creditors.” Neither of those characterizations is correct. Rather, under the decision below, a trustee exercising his rights and powers under Section 544(a) may assert only those claims that a judicial lien creditor could have asserted. Pet. App. 10a. It is of course true that if an actual creditor has a claim that could also have been brought by a judicial lien creditor, then a trustee can bring that claim under Section 544. But if a judicial lien creditor could not have asserted a claim that belongs to an actual creditor, then a trustee has no authority to bring that claim. Pet. App. 12a-13a.

Petitioners' concerns about the improper assignment of actual creditors' claims are accordingly unsupported.

Petitioners relatedly assert that the court of appeals misread this Court's decision in *Caplin v. Marine Midland Grace Trust Co.*, 406 U.S. 416 (1972), and failed to appreciate the significance of Congress's choice not to overrule *Caplin* when enacting the Bankruptcy Code. *See* Pet. 16-18. As the court of appeals explained, though, *Caplin* "involved particularized claims—not general ones." Pet. App. 13a n.6. Specifically, it involved the claims of individual debenture holders against their indenture trustee, and this Court held only that a bankruptcy trustee could not bring those claims in the absence of statutory authorization. *See* 406 U.S. at 428. Here, by contrast, Congress has given trustees authority to bring claims that a hypothetical judicial lien creditor could bring—including alter ego claims, if such claims are authorized by state law.

With respect to Congress's attempt to overrule *Caplin*, the proposed legislation on which petitioners rely would have given trustees the ability to "enforce any cause of action that a creditor, a class of creditors, an equity security holder, or a class of equity security holders has against any person." 123 Cong. Rec. 35641, 35656 (Oct. 28, 1977). In other words, the proposed legislation would have granted trustees new powers to bring specific claims held by particular creditors, like the individual debenture holders in *Caplin*. That result would have gone much further than authorizing trustees to bring claims that were general to all creditors—a power which the predecessors to Section 544(a) already granted, and which the unambiguous text of Section 544(a) simply maintained. *See* Jonathan M. Landers, *A Unified Approach to Parent, Subsidiary, and Affiliate Questions in Bankruptcy*, 42 U. Chi. L. Rev. 589, 616 (1975). And it would have run

contrary to longstanding bankruptcy goals and policies by enabling trustees to redistribute claims and assets belonging to particular creditors to the creditor body as a whole. The fact that Congress ultimately (and wisely) chose not to give trustees that additional power says nothing about whether Congress intended to preserve trustees' existing ability to bring general creditor claims.

Petitioners next argue (at 18-19) that the panel erred in drawing a distinction between general claims of creditors (which can be asserted by trustees under Section 544(a)) and personal claims (which cannot). The distinction between general and personal claims, however, follows from the fact that Section 544(a) authorizes trustees to bring claims that any judicial lien creditor could bring under applicable state law. As the panel explained, "section 544(a) permits the trustee to assert any generalized claims that would belong to a hypothetical high-priority lien creditor." Pet. App. 10a; *see* Pet. App. 12a ("If a claim is a general one, with no particularized injury arising from it, and if that claim could be brought by any creditor of the debtor, the trustee is the proper person to assert the claim." (quoting *St. Paul Fire*, 884 F.2d at 701)). Claims that are personal to specific creditors, by contrast, would not be available to a hypothetical judicial lien creditor, and thus cannot be asserted by a trustee under Section 544(a). Pet. App. 13a.<sup>7</sup>

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<sup>7</sup> Petitioners argue (at 19) that the decision below departed from the Second Circuit's prior decision in *Shearson Lehman Hutton, Inc. v. Wagoner*, 944 F.2d 114 (2d Cir. 1991). But *Wagoner* involved the personal claims of the clients of the debtor. *See id.* at 119-20. The *Wagoner* court accordingly had no occasion to consider whether a trustee could assert general claims of creditors; indeed, because the trustee in *Wagoner* "insist[ed] he [wa]s not asserting the claims of the" clients, the court found it "unnecessary . . . to delve deeply into when,

Finally, petitioners appeal to policy. *See* Pet. 19-21. They suggest that the panel opinion could be used to circumvent this Court’s decision in *Harrington v. Purdue Pharma L.P.*, 603 U.S. 204 (2024), because it could allow trustees to assume and settle claims that creditors have against third parties. As explained above, however, if a claim is personal to creditors, then a trustee cannot assert the claim against third parties under Section 544. Petitioners’ concerns are thus entirely imagined.<sup>8</sup>

3. Indeed, any policy considerations cut in the opposite direction. As the court of appeals explained, reading Section 544 according to its plain terms “promotes the ‘equitable distribution [of assets] among creditors’” by empowering the trustee to “‘recover corporate assets for the benefit of all creditors of the corporation,’ thus preventing a race for assets in which the savviest creditors would reap the greatest rewards.” Pet. App. 12a-13a

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if ever, a trustee may sue a third party on behalf of the bankrupt’s creditors.” *Id.* at 118.

<sup>8</sup> The Official Committee of Unsecured Creditors in *In re Vanderbilt Minerals, LLC*, No. 26-60110 (Bankr. N.D.N.Y.), filed an amicus brief in support of petitioners in which it argues that the bankruptcy court in *Vanderbilt* relied on the decision below to settle claims held by individual talc claimants against third parties. That is incorrect. The *Vanderbilt* court made clear that “any direct claims by talc claimants . . . are not being released,” ECF No. 491, at 11, and subsequently admonished the *Vanderbilt* Committee for making misleading representations to the contrary, *see* ECF No. 583, at 15:12-13 (observing that “an appellate court may be misled by [the Committee’s] statements” that the talc claimants’ claims had been released). In any event, the *Vanderbilt* Committee has argued in its own appeal that the Second Circuit’s decision here does not authorize the settlement of claims that belong to only a subset of creditors—undermining petitioners’ contention that the decision broadly authorizes trustees to assert all creditor-owned causes of action. *See Off. Comm. of Unsecured Creditors v. Vanderbilt Mins., LLC*, No. 26-cv-986 (N.D.N.Y. May 13, 2026), ECF No. 5-2, at 11-12.

(quoting *Stadtmauer v. Tulis (In re Nordlicht)*, 115 F.4th 90, 105 (2d Cir. 2024)). Conversely, “creditors—not the trustee—‘are exclusively entitled to pursue personal claims,’ which belong only to specific sets of creditors harmed in particular ways.” Pet. App. 13a (quoting *Nordlicht*, 115 F.4th at 105). Under the decision below, therefore, creditors retain full control over their individual claims, while trustees are able to assert control over generalized claims in an efficient manner that best serves all creditors (and the bankruptcy system more broadly).

The proceedings here confirm the wisdom of that approach. The Trustee has made no effort in Kwok’s bankruptcy to control or extinguish claims belonging to any individual creditors. To the contrary, the Trustee has worked diligently over the last four years to recover assets that Kwok tried to hide away or shield, with the goal of making those assets available to be shared equitably among all creditors. That goal is not only proper, but also one the Trustee is obligated to pursue. *See CFTC v. Weintraub*, 471 U.S. 343, 352 (1985) (describing the trustee’s “duty to maximize the value of the estate”).

### **C. This Case Is A Poor Vehicle**

Even if questions about the scope of a trustee’s authority under Section 544 arguably warranted this Court’s review, the present case would be an exceptionally poor vehicle in which to address those questions. That is true for multiple reasons.

As an initial matter, it is obviously proper for a bankruptcy trustee to recover assets that a debtor has secreted with shell companies, family members, and close associates. The Trustee’s action to recover such assets here accordingly falls within the heartland of Section 544, as even the Eighth Circuit’s decision in *Ozark* appeared to anticipate. *See* 816 F.2d at 1229 (observing that “Sections

544(a) and (b) are flavored with the notion of the trustee having the power to avoid ‘transfers’ of the debtor,” but finding that the claims at issue there did not fit that mold). As a result, this case would not provide the Court with an opportunity to address other types of claims that might provide closer questions about the scope of a trustee’s Section 544 authority, such as the civil conspiracy claim in *Bradley, supra*.

Moreover, a decision on the question presented here would be unlikely to have any real-world practical effect (beyond further delaying distributions to Kwok’s creditors), because the Trustee has multiple options under the Bankruptcy Code for transferring HK USA’s assets to the estate. As noted above, *see* pp. 5-6, *supra*, the Trustee brought his alter ego claim under both Section 541 and Section 544. The court of appeals found it unnecessary to decide whether the Trustee had standing under Section 541 given its holding that the Trustee had standing under Section 544. *See* Pet. App. 9a n.3. As the Trustee has explained throughout this litigation, however, either provision is independently sufficient to allow assertion of the alter ego claim. *See, e.g.*, Resp. C.A. Br. 37-40; *see also Nordlicht*, 115 F.4th at 107-08. Accordingly, even if this Court were to hold that Section 544 does not authorize the Trustee to bring an alter ego claim against HK USA, Section 541 would provide an alternative basis for the Trustee to achieve the same result.

Even if the Trustee could not bring an alter ego claim under Section 544 or Section 541, there is no question that he would have standing to bring beneficial ownership claims for each of HK USA’s assets. Indeed, the bankruptcy court granted the Trustee’s motion for summary judgment on his claim for beneficial ownership of the Lady May, and petitioners never suggested the

Trustee lacked standing to bring that claim. C.A. S.A. 1-35. And aside from the Lady May, HK USA’s only other asset is the \$37 million in proceeds from the Himalaya loan. *See* Pet. App. 23a. Although the Trustee did not initially bring a beneficial ownership claim for the \$37 million, subsequent litigation has revealed that Himalaya was yet another of Kwok’s shell companies. *See* Pet. App. 5a. The Trustee could accordingly bring such a claim on remand, thereby permitting recovery of all of HK USA’s assets—just as an alter ego claim would.

Given those alternative grounds for recovery of the assets in question, petitioners’ own amicus concedes that “§ 544(a) may not have been necessary to the result below, and the Court may find itself confronted by an unrelated (and uncertworthy) alternative rationale for affirmance.” *Vanderbilt* Committee of Unsecured Creditors Amicus Br. 21. As the amicus brief explains, “[t]he claims asserted in this particular case may resemble a traditional turnover action in which the debtor demands recovery of its own property from a third party,” and “[i]f so, they may be asserted as such.” *Id.* at 5. The brief even concedes (at 21 & n.7) that “the underlying facts here may be thought to resemble an action to compel delivery of estate property under the Bankruptcy Code’s turnover provision,” which the Trustee would “unquestionably have standing to enforce.” Those (unusually candid) concessions only serve to confirm that review is not warranted here.<sup>9</sup>

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<sup>9</sup> The *Vanderbilt* Creditors Committee, unlike petitioners, does suggest (at 19-21) that the Court hold the petition pending resolution of *Official Committee of Talc Claimants v. Whittaker, Clark & Daniels, Inc.*, No. 26-263 (pet. for cert. filed Aug. 25, 2026). But *Whittaker* asks the Court to address the circumstances under which “a creditor’s claim against a nondebtor third party can be ‘property of the estate’ under 11 U.S.C. § 541(a)(1).” Pet. for Cert. at i, *Whittaker*, No. 26-263.

## CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

Ben Gifford  
Shlomo Maza  
PAUL HASTINGS LLP  
200 Park Avenue  
New York, NY 10166

Benjamin W. Snyder  
*Counsel of Record*  
Nicholas A. Bassett  
PAUL HASTINGS LLP  
2050 M Street, NW  
Washington, DC 20036  
(202) 551-1700  
bensnyder@paulhastings.com

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Resolution of that issue would have no bearing on the question presented here; even if the Court held that the creditor claims at issue in *Whittaker* cannot be property of the estate under Section 541, it would still be the case that a trustee can bring reverse veil-piercing claims under Section 544 that could be asserted by a hypothetical judicial lien creditor.