No. ________

In the Supreme Court of the United States

RAW MATERIALS CORP,
A FLORIDA CORPORATION, ET AL.,

Petitioners,

v.

SONYA SALKIN SLOTT, TRUSTEE,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Substantive consolidation is a judge-made enhancement to powers granted Bankruptcy Courts in Title 11 of the United States Code, done without due process, establishment of *in personam* jurisdiction, or any harm done by the targets to a debtor or its estate.

This Court has limited powers of Bankruptcy Courts to those specifically delineated in the Bankruptcy Reform Act of 1978 (Pub. L. 95–598, 92 Stat. 2549, November 6, 1978), as amended (hereinafter the "Bankruptcy Code"). *Law v. Siegel*, 571 U.S. 415, 134 S. Ct. 1188, 188 L. Ed. 2d 146 (2014); *Harrington v. Purdue Pharma L. P.*, 603 U.S. 204, 144 S. Ct. 2071, 219 L. Ed. 2d 721 (2024); *Czyzewski v. Jevic Holding Corp.*, 580 U.S. 451, 137 S. Ct. 973, 197 L. Ed. 2d 398 (2017).

The Bankruptcy Court below stated, "Although the Code itself does not expressly allow for substantive consolidation, a bankruptcy court has the power to substantively consolidate various estates under its general equitable powers contained in § 105(a)." *In re No Rust Rebar, Inc.*, No. 21-12188-PDR, 2023 WL 4497328, at *5 (Bankr. S.D. Fla. July 12, 2023). This extra-judicial power is based upon a fictitious reading of this Court's decision *In re Sampsell v. Imperial Paper Corp.*, 313 U.S. 215 (1941).

The question presented on which Courts of Appeals are only divided on how a target of substantive consolidation should be evaluated for eligibility to be a debtor:

Whether Bankruptcy Courts' powers are only those expressed in the Bankruptcy Code?

PARTIES TO THE PROCEEDINGS

Petitioners and Respondents-Appellants below

- Raw Materials Corp,
  a Florida Corporation
- Raw Energy Materials, Corp,
  a Florida Corporation
- Global Energy Sciences, LLC,
  a Florida Limited Liability Company
- Raw, LLC,
  a Florida Limited Liability Company

Respondent and Movant-Appellee below

- Sonya Salkin Slott,
  Trustee of the Chapter 7 case
  of No Rust Rebar, Inc.

Parties Incorrectly Listed on Appellate Docket

Don Smith, Yellow Turtle Design, LLC, and Green Tech Development, LLC are incorrectly included on the appellate docket. The Order from which the appeals below originated at App.92a shows that the only parties to the Order are: Raw Materials Corp.; Raw Energy Materials Corp.; Global Energy Sciences, LLC; Raw, LLC; and the Trustee. When the bankruptcy court appeal was docketed in the Southern District of Florida, instead of assigning a clean case number, the clerk reopened a closed, unrelated appeal and inserted non-parties into the style.

CORPORATE DISCLOSURE: All petitioners are private companies and no public company owns 10% or more of any of their respective stock or a parent company's stock.

LIST OF PROCEEDINGS

U.S. Court of Appeals for the Eleventh Circuit

No. 24-13383

Published at 177 F.4th 1161 (11th Cir. 2026)

Donald Smith, Et Al., *Plaintiffs-Appellants* v. Sonya Salkin Slott, Et Al., *Defendants-Appellees*

Opinion: June 1, 2026

U.S. District Court, S.D. Florida

No. 22-cv-61666

Donald Smith, Et Al., *Appellants* v. Sonya Salkin Slott, Et Al., *Appellees*

Opinion: October 17, 2024

U.S. Bankruptcy Court, S.D. Florida (Ft. Lauderdale)

No. 21-12188-PDR

In Re: No Rust Rebar, Inc. *Debtor*

Consolidation Order: July 12, 2023

Order Clarifying: September 27, 2023

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The opinion of the United States Court of Appeals for the Eleventh Circuit was issued on June 1, 2026. *In re No Rust Rebar, Inc.,* 177 F.4th 1161 (11th Cir. 2026). (App.1a).

This opinion affirmed the decision of the U.S. District Court for the Southern District of Florida, dated October 17, 2024. *Smith v. Slott,* 754 F. Supp. 3d 1271 (S.D. Fla. 2024). (App.8a).

That decision affirmed the Bankruptcy Court. S.D. Florida Granting Trustee's Motion to Substantively Consolidate, dated July 12, 2023. *In re No Rust Rebar, Inc.,* No. 21-12188-PDR, 2023 WL 4497328 (Bankr. S.D. Fla. July 12, 2023). (App.92a). The Bankruptcy Court also issued, on September 27, 2023, a Sua Sponte Order Stating Intended Meaning of Order Granting Trustee's Motion to Substantively Consolidate, Dkt. No. 514. (App.84a).

JURISDICTION

The Eleventh Circuit Court of Appeals entered judgment on June 1, 2026. (App.1a). This Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT STATUTES AND FEDERAL RULES

The appendix reproduces §§ 105; 303; 544; 547; 548; and 549 of the Bankruptcy Code (11 U.S.C. 101 *et seq*.) and Fed. R. Bankr. 7001. (App.133a-153a)

INTRODUCTION

No section of the Bankruptcy Code authorizes the disembowelment of a third party without due process of an adversary proceeding, without obtaining *in personam* jurisdiction over the third party; without taking evidence, and giving that evisceration *nunc pro tunc* effect back more than 2 years. That is what substantive consolidation has become.

Petitioners are legal entities, non-parties to the chapter 7 case of *In re No Rust Rebar, Inc.* (hereinafter the "Bankruptcy Case"), and the targets of a motion for substantive consolidation sought and obtained by Sonya Slakin, Trustee of the Bankruptcy Case (hereinafter the "Trustee"). Petitioners will be referred to as the "Targets" hereinafter.

The Bankruptcy Case was converted from a chapter 11 reorganization case to a chapter 7 liquidation case pursuant to a motion filed by a creditor. After conversion, the Trustee was appointed. Two months after her appointment, the Trustee filed a motion to substantively consolidate the Targets into the chapter 7 estate (the "Sub Con Motion"), based entirely upon findings in the order converting the chapter 11 case to chapter 7. Neither the Trustee, nor the Targets were parties to the conversion motion. The conversion motion had no legal or factual connection to the Sub Con Motion.

The Targets objected to the Sub Con Motion for: lack of due process for failure to proceed as an adversary proceeding as mandated by Federal Rule of Bankruptcy Procedure 7001; lack of personal jurisdiction due to failure to have a subpoena issued and served in connection with an adversary proceeding complaint; inapplicability of the findings in the conversion order because none of the present parties were parties to the conversion motion/order, which dealt solely with statutory provisions of the Bankruptcy Code; and lack of subject matter jurisdiction to substantively consolidate non-debtor entities into a bankruptcy estate.

The Bankruptcy Court acknowledged the absence of any statutory authority for substantive consolidation, yet entered the Order Granting Trustee's Motion to Substantively Consolidate (the "Sub Con Order"). While the Sub Con Order was on appeal, the Bankruptcy Court entered its Sua Sponte Order Stating the Intended Meaning of Order Granting Trustee's Motion to Substantively Consolidate, which gave *nunc pro tunc* effect of the Sub Con Order retroactive to March 5, 2021.

The question presented by this case is critical to bankruptcy practice. As this Court has repeatedly recognized, the Bankruptcy Code circumscribes limited Congressional delegation to the non-Article III courts to administer insolvency cases. Substantive consolidation is not included in powers defined in the Bankruptcy Code. Yet the Bankruptcy Court below found unlimited power, reciting, "Although the Code itself does not expressly allow for substantive consolidation, a bankruptcy court has the power to substantively consolidate various estates under its general equitable powers contained in § 105(a)." *In re No Rust Rebar, Inc.*, No. 21-12188-PDR, 2023 WL 4497328, at *5 (Bankr. S.D. Fla. July 12, 2023).

STATEMENT OF THE CASE

A. Statutory Background

The Bankruptcy Code contains detailed provisions for the recovery of preferential payments (11 U.S.C. § 547); fraudulent transfers (11 U.S.C. § 548); and unauthorized post-petition transfers (11 U.S.C. § 549). The Bankruptcy Code also vests in a trustee any applicable State law remedies available to an actual creditor (11 U.S.C. § 544). Substantive consolidation is not an enumerated power of the Bankruptcy Court. The roots of substantive consolidation are found in federal common law developed during the repealed Bankruptcy Act of 1898 (Nelson Act), specifically this Court's perennially misread decision *In re Sampsell v. Imperial Paper Corp.*,313 U.S. 215 (1941).

B. The No Rust Bankruptcy

No Rust Rebar, Inc., a Florida corporation, voluntarily commenced a case under Chapter 11, Sub V, bankruptcy reorganization on March 5, 2021. A disputed creditor of the Debtor filed a motion to convert the Chapter 11 case to a case under Chapter 7. After several days of evidentiary hearings the Bankruptcy Court entered an order and extensive findings, converting the case to a case under Chapter 7 on May 23, 2022. Sonya Salkin Slott was appointed as the Chapter 7 Trustee on May 24, 2022.

The Trustee filed a motion to substantively consolidate the Petitioners/Targets into the Chapter 7 estate. Without the required formality of an adversary proceeding, without obtaining *in personam* jurisdiction by service of a summons and complaint, and without holding an evidentiary hearing, the Bankruptcy Court substantively consolidated the Targets into the Chapter 7 estate.

C. Appeals

The United States District Court for the Southern District of Florida affirmed. The Eleventh Circuit Court of Appeals affirmed.

REASONS FOR GRANTING THE PETITION

I. There Is a Split Among the Circuits on Interpretation of the Question Presented

Most Circuit Courts have held that bankruptcy courts have the unfettered power to order substantive consolidation. All Circuit Courts acknowledge that the Bankruptcy Code does not authorize substantive consolidation. The Eighth Circuit has digressed from the majority by conditioning substantive consolidation upon a lack of conflict with provisions of the Bankruptcy Code.

> As a general rule, "a bankruptcy court may not contravene specific statutory provisions"

> of the Bankruptcy Code. *Law v. Siegel*, 571 U.S. 415, 134 S.Ct. 1188, 1194, 188 L.Ed.2d 146 (2014). Thus, the broad, catch-all equitable powers conferred under 11 U.S.C. § 105(a) do not allow a bankruptcy court to "override explicit mandates of other sections of the Bankruptcy Code." *Id.* (citation omitted).

In re Archdiocese of Saint Paul & Minneapolis, 888 F.3d 944, 952 (8th Cir. 2018).

II. All of the Circuit Courts Are in Error for Finding Support for Substantive Consolidation Based Upon a Misreading of this Court's decision in *Sampsell v. Imperial Paper & Color Corp.*, 313 U.S. 215, 218-20, 61 S.Ct. 904, 85 L.Ed. 1293 (1941)

"No court has held that substantive consolidation is not authorized . . . " *In re Owens Corning*, 419 F.3d 195, 208 (3d Cir. 2005), as amended (Aug. 23, 2005), as amended (Sept. 2, 2005), as amended (Oct. 12, 2005), as amended (Nov. 1, 2007).

As the *Owens Corning* court acknowledged,

> "[T]he Supreme Court, little more than six decades ago, approved (at least indirectly and perhaps inadvertently) what became known as substantive consolidation. *Sampsell v. Imperial Paper & Color Corp.*, 313 U.S. 215, 61 S.Ct. 904, 85 L.Ed. 1293 (1941). In *Sampsell* an individual in bankruptcy had transferred assets prepetition to a corporation he controlled. (Apparently these became the corporation's sole assets.) When the bankruptcy referee ordered that the transferred assets be

> turned over by the corporation to the individual debtor's trustee, a creditor of the non-debtor corporation sought distribution priority with respect to that entity's assets. In deciding that the creditor should not be accorded priority (thus affirming the bankruptcy referee), the Supreme Court turned a typical turnover/fraudulent transfer case into the forebear of today's substantive consolidation by terming the bankruptcy referee's order (marshaling the corporation's assets for the benefit of the debtor's estate) as 'consolidating the estates.' *Id.* at 219, 61 S.Ct. at 907."

Owens Corning, at 206. (emphasis added).

Substantive consolidation is the product of headnote hallucinations, not based upon the facts or holding of *Sampsell.* The opinion of the Ninth Circuit Court of Appeals more accurately states the procedural history of *Sampsell*,

> "In this case the referee's certificate stated that on April 7, 1939—several months prior to the order under review—he, the referee, had made an order 'decreeing (the corporation) to be the alter ego of the bankrupt.'"

Imperial Paper & Color Corp. v. Sampsell, 114 F.2d 49, 52 (9th Cir. 1940), rev'd, 313 U.S. 215, 61 S. Ct. 904, 85 L. Ed. 1293 (1941).

The determination of alter ego as to the target corporation was made under California law.

> "[I]n determining the relationship of the corporation and the bankrupt to each other

> and the effect thereof, the applicable law is that of California. In California, when one person owns all the stock of a corporation and uses the corporation as a mere conduit for the transaction of his own business, the corporation is regarded as his alter ego."

Sampsell, at 52.

III. The Question Presented Is Important And Likely To Recur In Practice

For over eight decades, the lower courts have flaunted this judicially-created super power, unabated.

> "[W]hatever equitable powers remain in the bankruptcy courts must and can only be exercised within the confines of the Bankruptcy Code."

Norwest Bank Worthington v. Ahlers, 485 U.S. 197, 206, 108 S. Ct. 963, 969, 99 L. Ed. 2d 169 (1988).

> "We have long held that 'whatever equitable powers remain in the bankruptcy courts must and can only be exercised within the confines of' the Bankruptcy Code. *Norwest Bank Worthington v. Ahlers*, 485 U.S. 197, 206, 108 S.Ct. 963, 99 L.Ed.2d 169 (1988); *see, e.g., Raleigh v. Illinois Dept. of Revenue*, 530 U.S. 15, 24-25, 120 S.Ct. 1951, 147 L.Ed.2d 13 (2000); *United States v. Noland*, 517 U.S. 535, 543, 116 S.Ct. 1524, 134 L.Ed.2d 748 (1996); *SEC v. United States Realty & Improvement Co.*, 310 U.S. 434, 455, 60 S.Ct. 1044, 84 L.Ed. 1293 (1940)."

Law v. Siegel, 571 U.S. 415, 421, 134 S. Ct. 1188, 1194-95, 188 L. Ed. 2d 146 (2014).

> "[A] bankruptcy court's general and equitable powers 'must and can only be exercised within the confines of the Bankruptcy Code.'"

Marrama v. Citizens Bank of Massachusetts, 549 U.S. 365, 382, 127 S. Ct. 1105, 1116, 166 L. Ed. 2d 956 (2007) (Justice Alito dissenting, Chief Justice Roberts and Justices Scalia and Thomas joined.)(*citing Norwest Bank Worthington v. Ahlers*, 485 U.S. 197, 206, 108 S.Ct. 963, 99 L.Ed.2d 169 (1988).

> "The statutory language of the Bankruptcy Code should not be trumped by generalized equitable pronouncements, especially when Congress has been explicit when it intends for courts to exercise equitable discretion in the bankruptcy arena. *See* § 365(d)(10) (instructing court to look at 'equities of the case'); § 502(j) (instructing court to act 'according to the equities of the case'); § 524(g)(4)(B)(ii) (instructing court to make determination that naming certain persons in injunction is "fair and equitable") . . . "

In re Welzel, 275 F.3d 1308, 1318 (11th Cir. 2001).

"Substantive consolidation, a construct of federal common law, emanates from equity." *Owens Corning*, at 205.

> "Federal courts, unlike state courts, are not general common-law courts and do not possess a general power to develop and apply their own rules of decision. *Erie R. Co. v. Tompkins*, 304 U.S. 64, 78, 58 S.Ct. 817, 822,

> 82 L.Ed. 1188 (1938); *United States v. Hudson & Goodwin*, 7 Cranch 32, 3 L.Ed. 259 (1812). . . . *Erie* recognized as much in ruling that a federal court could not generally apply a federal rule of decision, despite the existence of jurisdiction, in the absence of an applicable Act of Congress."

City of Milwaukee v. Illinois & Michigan, 451 U.S. 304, 312-13, 101 S. Ct. 1784, 1790, 68 L. Ed. 2d 114 (1981).

CONCLUSION

The petition for a writ of certiorari should be granted, finally ending 85 years of tyranny with remand to the Eleventh Circuit Court of Appeals to reverse the lower courts.

Respectfully submitted,

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August 28, 2026