

No. 12-330

In the Supreme Court of the United States

CATHY PRESCOTT, EXECUTOR OF THE
ESTATE OF DOROTHY R. DUBY, PETITIONER

v.

DEPARTMENT OF AGRICULTURE

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT*

BRIEF FOR THE UNITED STATES IN OPPOSITION

DONALD B. VERRILLI, JR.
*Solicitor General
Counsel of Record*

BETH S. BRINKMAN
Assistant Attorney General

ROBERT LOEB
STEVE FRANK
Attorneys

*Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217*

QUESTION PRESENTED

Whether Section 106(a) of the Bankruptcy Code, 11 U.S.C. 106(a), waives the sovereign immunity of the United States for money damages to compensate for the emotional distress allegedly caused by the government's violations of an automatic stay and a discharge order.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-2) is not reported. The opinion of the United States Bankruptcy Appellate Panel for the First Circuit (Pet. App. 3-32) is reported at 451 B.R. 664. The opinion of the United States Bankruptcy Court for the District of New Hampshire (Pet. App. 33-44) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on April 17, 2012. On June 22, 2012, Justice Breyer extended the time within which to file a petition for a writ of certiorari to and including September 14, 2012, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

This bankruptcy case arises out of an adversary proceeding against the United States Department of Agriculture (USDA) filed by debtor Dorothy R. Duby. Duby alleged that the USDA had violated the bankruptcy court's automatic stay and ultimate discharge of her debts by continuing to mail her demands for payment of amounts she owed to the agency. Pet. App. 5-6. The bankruptcy court agreed and awarded Duby attorney's fees. *Id.* at 8. The court held, however, that Duby was not entitled to damages for emotional distress because the United States has not waived its sovereign immunity from that class of damages in the bankruptcy context. *Id.* at 41. The Bankruptcy Appellate Panel (BAP) for the First Circuit affirmed that holding, *id.* at 16-20, and the court of appeals summarily affirmed, *id.* at 1-2.

1. The Bankruptcy Code imposes limitations on creditors' efforts to collect debts from persons who have commenced bankruptcy proceedings. The filing of a bankruptcy petition triggers an automatic stay, 11 U.S.C. 362(a), which bars, *inter alia*, "any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case," 11 U.S.C. 362(a)(6). "[A]n individual injured by any willful violation of [an automatic stay] shall recover actual damages, including costs and attorney's fees, and, in appropriate circumstances, may recover punitive damages." 11 U.S.C. 362(k)(1).

A debtor may ultimately receive a discharge of debts. For a debt subject to the discharge, the discharge "operates as an injunction against," *inter alia*, "the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether

or not discharge of such debt is waived.” 11 U.S.C. 524(a)(2). The Bankruptcy Code does not expressly establish a remedy for a violation of a discharge order. Section 105(a) of the Code, however, grants bankruptcy courts the general power to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. 105(a).

Section 106(a) of the Bankruptcy Code waives the United States’ sovereign immunity from particular claims that can be asserted in a bankruptcy proceeding. It provides that “[n]otwithstanding an assertion of sovereign immunity, sovereign immunity is abrogated as to a governmental unit to the extent set forth in this section with respect to,” as relevant here, “Sections 105, 106, * * * 362, [and] 524.” 11 U.S.C. 106(a) and (1). With respect to the United States’ liability for monetary relief, Section 106(a)(3) provides that a “court may issue against a governmental unit an order, process, or judgment under such sections * * * including an order or judgment awarding a money recovery, but not including an award of punitive damages.” 11 U.S.C. 106(a)(3). Section 106 also clarifies that “[n]othing in this section shall create any substantive claim for relief or cause of action not otherwise existing under this title, the Federal Rules of Bankruptcy Procedure, or nonbankruptcy law.” 11 U.S.C. 106(a)(5).

2. In 2003, DUBY filed for voluntary Chapter 7 bankruptcy in the United States Bankruptcy Court for the District of New Hampshire, triggering an automatic stay. 11 U.S.C. 362(a)(6); Pet. App. 5. Her filing listed the USDA as an unsecured creditor due an outstanding balance of \$1800 on a loan from the agency’s Rural Housing Service. Gov’t C.A. Br. 6-7. Due to an agency error, however, the USDA continued to send DUBY

monthly billing statements reflecting a payment due of \$11.50. Pet. App. 5.

In July 2004, Duby received a discharge from the bankruptcy court, which had the effect of extinguishing her unsecured debts, including the loan from the USDA. Pet. App. 5. As the result of a processing error, however, the USDA classified the loan as if it were secured by a mortgage and therefore was not subject to the discharge. See *ibid.* The agency therefore continued to send Duby billing statements. See *ibid.* The USDA also mailed her a notice of default indicating that her credit was at risk and that she might lose her home, and it made telephone calls to Duby seeking to collect the payments. See *id.* at 5-6.

Duby's counsel called the USDA in April 2006 and notified the agency of the discharge. See Pet. App. 6. The USDA promptly corrected its records and mailed a letter of apology to Duby. See *ibid.* Duby's counsel then sent a series of letters to the USDA demanding attorney's fees and compensation for emotional distress. See *ibid.* In December 2008, Duby reopened her bankruptcy case and filed an adversary proceeding against the USDA for violation of the automatic stay and the discharge order. *Id.* at 7. She sought sanctions, "actual damages," punitive damages, and attorney's fees. 08-01160 Docket entry No. 1 (Bankr. D.N.H. Dec. 3, 2008).

3. The bankruptcy court granted summary judgment on liability to Duby after finding that the USDA had violated both the automatic stay and the discharge order. Pet. App. 37-40, 43. The court held, however, that emotional-distress damages were not available. It explained that Section 106(a), as interpreted by the First Circuit in *In re Rivera Torres*, 432 F.3d 20 (2005), does not waive the United States' sovereign immunity from emo-

tional-distress damages arising out of the violation of a discharge order. Pet. App. 41. In *Rivera Torres*, the First Circuit explained that in 1994, when Congress adopted the current text of Section 106(a), it was not clearly established that damages for emotional distress were available for violations of an automatic stay or a discharge order. See 432 F.3d at 25-29. The *Rivera Torres* court further observed that Section 106(a)(3)'s use of the term "money recovery" does not unambiguously encompass emotional-distress damages. See *id.* at 29-31. The court concluded that "Congress has not 'definitely and unequivocally' waived sovereign immunity under § 106(a) of the Bankruptcy Code for emotional damages awards in circumstances such as these." *Id.* at 31.

After holding an evidentiary hearing on damages, the bankruptcy court found that Duby had failed to provide any evidence of "actual damages." The court awarded her \$11,848.50 in attorney's fees for the USDA's violation of the automatic stay, however, and it imposed a \$3000 sanction award for the agency's violation of the discharge order. See Pet. App. 8.

4. Relying on *Rivera Torres*, the BAP affirmed the decision of the bankruptcy court to deny Duby damages for emotional distress.¹ See Pet. App. 16-20. The BAP acknowledged that *Rivera Torres* had involved a violation of a discharge order rather than of an automatic stay. See *id.* at 18-19. The BAP concluded, however, that the First Circuit's construction of Section 106 left no room to distinguish between the two types of viola-

¹ The BAP also affirmed the award of attorney's fees, but it reversed the bankruptcy court's award of sanctions against the government as a punitive remedy barred by Section 106(a)(3). See Pet. App. 20-32.

tions. See *id.* at 19-20. The BAP further observed that *Rivera Torres* contained dicta explaining that the applicable waiver of sovereign immunity would not apply to emotional-distress damages arising out of a violation of the automatic stay. See *id.* at 20.

5. The court of appeals summarily affirmed the judgment of the BAP “insofar as it held that the United States has not waived its sovereign immunity from appellant’s emotional distress claims.” Pet. App. 1.

6. Duby died during the pendency of this case. Petitioner Cathy Lynn Prescott is the executor of her estate.

ARGUMENT

Petitioner contends (Pet. 4-23) that Section 106(a) of the Bankruptcy Code waives the United States’ sovereign immunity from emotional-distress damages arising out of violations of an automatic stay and a discharge order. The First Circuit is the only court of appeals to have addressed that question, and it has correctly held that a waiver of immunity from emotional-distress damages is not “unequivocally expressed in [the] statutory text.” *Lane v. Pena*, 518 U.S. 187, 192 (1996). See *In re Rivera Torres*, 432 F.3d 20, 31 (1st Cir. 2005). Contrary to petitioner’s contention, the First Circuit’s holding does not conflict with the Eleventh Circuit’s decision in *Jove Engineering, Inc. v. IRS*, 92 F.3d 1539 (1996), since the court in *Jove Engineering* did not address whether Section 106(a) waives immunity for emotional-distress damages. Further review is therefore not warranted.

1. The First Circuit correctly held that Section 106(a) does not waive the United States’ sovereign immunity from emotional-distress damages arising out of the violation of an automatic stay or a discharge order.

a. This Court has “said on many occasions that a waiver of sovereign immunity must be ‘unequivocally

expressed' in statutory text." *FAA v. Cooper*, 132 S. Ct. 1441, 1448 (2012). That canon of construction demands that "[a]ny ambiguities in the statutory language are to be construed in favor of immunity." *Ibid.* "Ambiguity exists if there is a plausible interpretation of the statute that would not authorize money damages against the Government." *Ibid.*

The fact that a statute authorizes some monetary awards against the government does not necessarily mean that it waives immunity as to all types of monetary relief. "For the same reason that [courts] refuse to enforce a waiver that is not unambiguously expressed in the statute, [they] also construe any ambiguities in the scope of a waiver in favor of the sovereign." *Cooper*, 132 S. Ct. at 1448; see, e.g., *Department of the Army v. Blue Fox, Inc.*, 525 U.S. 255, 261 (1999) ("[A] waiver of sovereign immunity is to be strictly construed, in terms of its scope, in favor of the sovereign.").

Last Term, for example, this Court held that the Privacy Act's waiver of sovereign immunity for "actual damages" did not encompass emotional-distress damages. See *Cooper*, 132 S. Ct. at 1446. The Court explained that "the meaning of 'actual damages' is far from clear," and that in certain contexts "the term has been used or construed * * * narrowly to authorize damages for only pecuniary harm." *Id.* at 1449. Based on statutory context, and in particular the resemblance of the Privacy Act's remedial scheme to the common-law torts of libel and slander (which require proof of pecuniary harm), the Court concluded that the waiver did not unambiguously include emotional-distress damages. See *id.* at 1450-1453.

Although Section 106(a) clearly waives immunity with respect to liability created by the cross-referenced sec-

tions listed in Subsection (a)(1), it does so only “to the extent set forth in this section.” 11 U.S.C. 106(a). The “extent” of the waiver with respect to monetary relief is delineated in subsection (a)(3): “The court may issue against a governmental unit an order, process, or judgment under such sections * * * including an order or judgment awarding a *money recovery*, but not including an award of punitive damages.” 11 U.S.C. 106(a)(3) (emphasis added). Section 106(a) thus waives the government’s immunity for a given class of damages only if (i) that class of damages is available under the relevant substantive provision cross-referenced in Subsection (a)(1), and (ii) it is unambiguously encompassed within the term “money recovery.”

b. Because the term “money recovery” does not unequivocally include emotional-distress damages, Section 106(a) does not waive sovereign immunity for that class of damages.² The term “money recovery” is not used in

² It is unsettled whether emotional-distress damages may be assessed against private parties for violations of an automatic stay or a discharge order. The First and Ninth Circuits have held that emotional-distress damages are available under Section 362(k)(1) for violation of an automatic stay, while the Seventh Circuit has held that they are not available unless they are related to a financial loss. Compare *In re Dawson*, 390 F.3d 1139, 1148-1149 (9th Cir. 2004), cert. denied, 546 U.S. 927 (2005); *Fleet Mortgage Group, Inc. v. Kaneb*, 196 F.3d 265, 269-270 (1st Cir. 1999), with *Aiello v. Providian Fin. Corp.*, 239 F.3d 876, 880 (7th Cir. 2001)); see also *In re Repine*, 536 F.3d 512, 522 (5th Cir. 2008) (declining to resolve issue), cert. denied, 555 U.S. 1138 (2009). With respect to violations of a discharge order, the only circuit to address the issue has held that Section 105(a) does not authorize an award of emotional-distress damages. See *In re Walters*, 868 F.2d 665, 670 (4th Cir. 1989). The First Circuit has declined to reach that question. See *In re Nosek*, 544 F.3d 34, 43 n.7 (2008). If this Court grants review in this case, it may be required to resolve the antecedent question whether emotional-

any other provision of the United States Code; neither is the term “monetary recovery.” The first definition of the word “recovery” in *Black’s Law Dictionary*, however, is “[t]he regaining or restoration of something lost or taken away.” *Black’s Law Dictionary* 1389 (9th ed. 2009). And other provisions of the Bankruptcy Code use the term “recover” in the narrow sense of restoring to the estate property in the possession of another party. See, e.g., 11 U.S.C. 550(a) (“[T]o the extent that a transfer is avoided * * * the trustee may recover, for the benefit of the estate, the property transferred.”); 11 U.S.C. 547(g) (“[T]he trustee has the burden of proving the avoidability of a transfer under subsection (b) of this section, and the creditor or party in interest against whom recovery or avoidance is sought has the burden of proving the nonavoidability of a transfer under subsection (c) of this section.”); see also 28 U.S.C. 157(b)(2)(F) and (H) (conferring jurisdiction on bankruptcy courts over “proceedings to determine, avoid, or recover preferences” and “to determine, avoid, or recover fraudulent conveyances”).³

distress damages are available under Section 105(a) or Section 362(k)(1).

³ To be sure, some provisions of the Bankruptcy Code use the word “recover” in a broader sense. See, e.g., 11 U.S.C. 526(c)(3)(B) (authorizing State to “bring an action on behalf of its residents to recover the actual damages of assisted persons arising from * * * violation” of provisions relating to debt-relief agencies). And the second and third definitions of “recovery” in *Black’s Law Dictionary* are “[t]he obtainment of a right to something (esp. damages) by a judgment or decree” and “[a]n amount awarded in or collected from a judgment or decree.” *Black’s Law Dictionary* 1389. But the fact that a broader reading is possible does not suggest that the narrower reading is implausible, particularly in light of other Bankruptcy Code provisions that use the term in the narrower sense. Moreover, Sec-

In other legal contexts as well, the term “recovery” is often used in that more limited sense. See, *e.g.*, 28 U.S.C. 1346(a)(1) (granting district courts jurisdiction over “[a]ny civil action against the United States for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected”). And in discussions of remedies, the “recovery” of money is sometimes distinguished from ordinary awards of legal damages. This Court’s “cases have long recognized the distinction between an action at law for damages—which are intended to provide a victim with monetary compensation for an injury to his person, property, or reputation—and an equitable action for specific relief—which may include an order providing for the reinstatement of an employee with backpay, or for ‘the recovery of specific property or *monies* * * * .’” *Bowen v. Massachusetts*, 487 U.S. 879, 893 (1988) (quoting *Larson v. Domestic & Foreign Commerce Corp.*, 337 U.S. 682, 688 (1949)) (emphases added and emphasis omitted).

It is therefore reasonable to construe the unique term “money recovery” in Section 106(a)(3) to refer only to claims seeking to restore to the estate sums of money unlawfully in the possession of governmental entities—not to broader measures of damages. Although a more expansive reading is possible in light of the ambiguity of the word “recovery,” the sovereign-immunity canon dictates that courts adopt the narrower reading—particularly given that other waivers of immunity use terms that clearly authorize a wider array of monetary awards. See, *e.g.*, Federal Tort Claims Act, 28 U.S.C.

tion 526(c)(3)(B)’s authorization of a suit “to recover the actual damages of” a defined class of persons does not unambiguously encompass a suit for emotional-distress damages. See *Cooper*, 132 S. Ct. at 1449; pp.7-8, *supra*.

2674 (“The United States shall be liable * * * to the same extent as a private individual under like circumstances * * *.”). “We must assume that had Congress meant to waive sovereign immunity for all forms of ‘monetary relief’ or ‘money damages’ specifically, it could have done so.” *Rivera Torres*, 432 F.3d at 34 (Torruella, J., concurring).

c. The narrower interpretation of “money recovery” is also the construction most consistent with the history of Section 106. In *Hoffman v. Connecticut Department of Income Maintenance*, 492 U.S. 96 (1989), and *United States v. Nordic Village, Inc.*, 503 U.S. 30 (1992), this Court held that a prior version of Section 106 did not waive the States’ or federal government’s sovereign immunity from monetary relief. At issue in *Hoffman* was the ability of the trustee to “recover * * * payments owed” by a state agency in a “turnover” proceeding, 11 U.S.C. 542(b), and to “avoid [a] payment” to a different state agency “as a preference and recover the amount paid,” 11 U.S.C. 547(b). 492 U.S. at 99 (opinion of White, J.). Similarly in *Nordic Village*, the question was whether an “unauthorized, postpetition transfer” from the debtor to the Internal Revenue Service (IRS) “could be avoided * * * and recovered from the IRS under § 550(a) of the Bankruptcy Code.” 503 U.S. at 31. The Court concluded that the version of Section 106 in effect at that time, which did not refer to monetary relief at all, failed to “establish[] an unequivocal textual waiver of the Government’s immunity from a bankruptcy trustee’s claims for monetary relief.” *Id.* at 39.

Congress responded in 1994 by amending Section 106 to refer expressly to a “money recovery.” See Bankruptcy Reform Act of 1994, Pub. L. No. 103-394, § 113, 108 Stat. 4117-4118. The purpose of the change was to

“effectively overrule” *Hoffman* and *Nordic Village*. H.R. Rep. No. 835, 103d Cong., 2d Sess. 42 (1994). The legislative history reflects Congress’s concern that *Hoffman* “had the effect of providing that preferences could not be recovered from the States,” and that *Nordic Village* had made it impossible for “a trustee to recover a postpetition payment by a chapter 11 debtor to the Internal Revenue Service.” *Ibid.* Thus, the “amendment expressly provide[d] for a waiver of sovereign immunity by governmental units with respect to monetary recoveries as well as declaratory and injunctive relief.” *Ibid.*

The purpose of the revised language of Section 106 thus was to enable bankruptcy trustees to recover sums of money owed to the estate by governmental entities—a power that the trustees had been held to lack in *Hoffman* and *Nordic Village*. There is no indication that Congress intended a broad waiver of immunity from damages judgments “intended to provide a victim with monetary compensation for an injury to his person, property, or reputation.” *Bowen*, 487 U.S. at 893; see *Rivera Torres*, 432 F.3d at 31 (“Neither *Hoffman* nor *Nordic Village* involved emotional distress damages, but only classic recovery of moneys already paid to the United States that the estate wished to recover.”).

d. To be sure, Section 106(a)(3)’s express exclusion of punitive damages, which would be unnecessary if the term “money recovery” is given the narrow meaning described above, “might indicate * * * that ‘money recovery’ should be read broadly to include all categories of monetary relief, including ‘money damages.’” *Rivera Torres*, 432 F.3d at 32 (Torruella, J., concurring). “This inference is plausible, but it surely is not unavoidable.” *Cooper*, 132 S. Ct. at 1455 n.12. Although the interpre-

tation of “money recovery” advanced here renders the express exclusion of punitive damages unnecessary, “[t]here are times when Congress enacts provisions that are superfluous.” *Microsoft Corp. v. i4i Ltd. P’ship*, 131 S. Ct. 2238, 2249 (2011) (quoting *Corley v. United States*, 129 S. Ct. 1558, 1572-1573 (2009) (Alito, J., dissenting)).

In amending Section 106, Congress had good reason to exercise an abundance of caution by underscoring that the waiver did not extend to punitive damages. Unlike emotional-distress damages, which are nowhere mentioned in the Bankruptcy Code, punitive damages are expressly authorized in three of the provisions cross-referenced in Section 106(a)(1) (including Section 362(k)(1)). See 11 U.S.C. 303(i)(2)(B), 362(k)(1) and 363(n). Congress may have simply wished to make absolutely clear that punitive damages are not encompassed by the waiver, given their potential to significantly increase the government’s total liability and their unquestioned availability as elements of relief against private parties. By contrast, as the First Circuit explained in *Rivera Torres*, in 1994 Congress would have had little reason to suspect that emotional-distress damages might fall within the ambit of Section 106(a). At that time, “the background law was that § 105(a) did not encompass an award for monetary damages” at all, and “there was no consensus in the background law that emotional distress damages are encompassed within ‘actual damages’” under the predecessor to Section 362(k)(1) (a question that no circuit had yet addressed). 432 F.3d at 27, 28; see also n.2, *supra*. If Congress did not foresee that these provisions and others cross-referenced in Section 106(a) would be interpreted in the future to allow for emotional-distress damages, it would

have perceived no need to insert a precautionary exclusion as it did for punitive damages.

Petitioner thus cannot establish that there exists no “plausible interpretation of the statute that would not authorize [emotional-distress] damages against the Government.” *Cooper*, 132 S. Ct. at 1448; see *Rivera Torres*, 432 F.3d at 32-33 (Torruella, J., concurring) (Because “[w]aivers of immunity must be express, not implied,” it would be error to “imply from the failure to specifically exclude emotional distress damages—even where punitive damages are specifically excluded—that such damages are included.”). Although a broader reading of “money recovery” might plausibly be inferred from the express exclusion of punitive damages, that reading is by no means compelled.

2. The decision below does not warrant further review because the courts of appeals have not reached conflicting conclusions as to whether the United States has waived its immunity from emotional-distress damages arising out of violations of an automatic stay or discharge order. No circuit other than the First Circuit has addressed the question. Petitioner alleges a conflict between the First and Eleventh Circuits, but the Eleventh Circuit decision on which she relies did not address emotional-distress damages.

a. In *Jove Engineering, supra*, the Eleventh Circuit considered whether a district court could grant the plaintiff, a corporation in bankruptcy, attorney’s fees under Section 105 against the IRS for violation of an automatic stay. See 92 F.3d at 1542, 1544. The Eleventh Circuit held that the provision “grants courts independent statutory powers to award monetary and other forms of relief for automatic stay violations to the extent

such awards are ‘necessary or appropriate’ to carry out the provisions of the Bankruptcy Code.” *Id.* at 1554.

In a one-paragraph discussion of the government’s immunity from Section 105 awards of monetary relief, the court explained, consistent with the analysis set forth above, that “Congress amended § 106 to waive expressly and unequivocally sovereign immunity under § 105 and other sections ‘to the extent set forth in this section.’” *Jove Eng’g*, 92 F.3d at 1554-1555 (quoting 11 U.S.C. 106(a)(1)). The court reasoned that, because Section 106(a)(3) provides that the waiver extends to “monetary recovery” other than an “award of punitive damages,” 11 U.S.C. 106(a)(3), “§ 106(a) unequivocally waives sovereign immunity for court-ordered monetary damages under § 105, although such damages must not be punitive.” 92 F.3d at 1555.

In alleging a conflict between the First and Eleventh Circuits, petitioner construes the Eleventh Circuit’s analysis in *Jove Engineering* as equating the phrase “money recovery” with “monetary damages.” See Pet. 6-9. But because emotional-distress damages were not at issue in the case, the Eleventh Circuit had no occasion to address whether Section 106(a)’s waiver of immunity for “money recovery” encompasses emotional-distress damages. Nor did the Eleventh Circuit purport to announce any interpretive test for applying Section 106(a) to categories of relief other than attorney’s fees. The *Jove Engineering* court’s passing reference to “monetary damages” cannot reasonably be viewed as a holding that Section 106(a) encompasses all non-punitive monetary relief.⁴

⁴ Petitioner also cites (Pet. 5) *In re Hardy*, 97 F.3d 1384 (11th Cir. 1996), a companion case to *Jove Engineering*, but that decision merely reiterated *Jove Engineering*’s sovereign-immunity holding without

Petitioner is also wrong in contending that “[t]he First Circuit has acknowledged the conflict.” Pet. 7. In *Rivera Torres*, the First Circuit recognized that its “temporal approach to the issue of availability of emotional distress damages”—*i.e.*, the court’s inquiry into whether Congress would have believed in 1994 that it was waiving immunity from that class of damages—“may differ from that of the Eleventh Circuit, which has held that § 106(a) unequivocally waives sovereign immunity for court-ordered monetary damages under § 105.” 432 F.3d at 27. The court in *Rivera Torres* further observed, however, that “the Eleventh Circuit has not said that emotional distress damages are available.” *Id.* at 28. Moreover, Judge Torruella, who joined *Rivera Torres* in full, observed in a concurrence that “*Jove Engineering’s* brief discussion of § 106(a)(3)[] leaves unclear whether the court simply assumed that the terms ‘money recovery’ and ‘monetary damages’ were interchangeable.” 432 F.3d at 32 n.1. He explained that he did “not believe that our holding today is inconsistent with *Jove Engineering* because the Eleventh Circuit did not elaborate on the scope of ‘monetary damages’ available under Section 106(a)(3), except to suggest that it would cover at least ‘actual expenses,’ assuming such expenses were consistent with other statutory provisions.” *Ibid.* Thus, while a future Eleventh Circuit panel interpreting Section 106(a) in light of circuit precedent *might* read the waiver of sovereign immunity to encompass emotional-distress damages, no conflict of authority on that question currently exists.

addressing emotional-distress damages. Petitioner additionally includes a “cf.” citation of *In re Death Row Records, Inc.*, No. 06-11205, 2012 WL 952292 (B.A.P. 9th Cir. Mar. 21, 2012). See Pet. 6. That BAP decision did not address the question presented here either.

b. Petitioner cites ten bankruptcy-court decisions and one district-court decision holding that emotional-distress damages are available against the government for violation of an automatic stay or a discharge order. See Pet. 7-8. This Court's ordinary practice, however, is to resolve conflicts among the courts of appeals, not among bankruptcy or district courts. Moreover, "[i]t is clear from a review of these cases, that * * * the issue of sovereign immunity in the context of damages for emotional distress was given little, if any, consideration or analysis by those courts." *In re Griffin*, 415 B.R. 64, 70 (Bankr. N.D.N.Y. 2009).

3. Finally, petitioner overstates the importance of the question presented. Although "[t]he government is a frequent creditor in bankruptcy cases" (Pet. 17), only one circuit court since the 1994 amendments has had occasion to decide whether Section 106(a) waives the government's immunity from emotional-distress damages. If the question presented has the practical significance that petitioner ascribes to it, other courts of appeals will have the opportunity to assess the merits of petitioner's interpretation in the future. At this time, however, this Court's review would be premature.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

DONALD B. VERRILLI, JR.
Solicitor General

BETH S. BRINKMAN
Assistant Attorney General

ROBERT LOEB

STEVE FRANK

Attorneys

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