No. 22-115

In the Supreme Court of the United States

MICHEAL W. BUCKNER, AS TRUSTEE OF THE UNITED MINE WORKERS OF AMERICA 1992 BENEFIT PLAN, ET AL., PETITIONERS

v.

UNITED STATES PIPE & FOUNDRY CO., ET AL.

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

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

ELIZABETH B. PRELOGAR
Solicitor General
Counsel of Record
BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General
CURTIS E. GANNON
Deputy Solicitor General
AIMEE W. BROWN
Assistant to the Solicitor General
MARK B. STERN
MICHAEL SHIH
Attorneys

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

QUESTIONS PRESENTED

1. Whether the equitable right to compel a company required by the Coal Industry Retiree Health Benefit Act of 1992 (Coal Act), 26 U.S.C. 9701 *et seq.*, to maintain an individual employer plan is a "claim" that is dischargeable in bankruptcy under 11 U.S.C. 101(5)(B).

2. Whether respondents' obligations under the Coal Act to pay certain premiums and to maintain an individual employer plan arose when the Act became law in 1992 and were therefore dischargeable when a reorganization plan under Chapter 11 of the Bankruptcy Code was confirmed in 1995.

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This brief is submitted in response to the Court's order inviting the Solicitor General to express the views of the United States. In the view of the United States, the petition for a writ of certiorari should be denied.

STATEMENT

1. The Bankruptcy Code enables debtors in financial distress to discharge their financial obligations and obtain a "fresh start," while ensuring the maximum equitable distribution of assets to creditors. *Grogan* v. *Garner,* 498 U.S. 279, 286 (1991). Chapter 11 of the Code authorizes the discharge of certain "debt[s]" as part of a reorganization. 11 U.S.C. 727. The term "debt" is de-

fined as "liability on a claim." 11 U.S.C. 101(12). And a "claim" is a

> (A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or
>
> (B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

11 U.S.C. 101(5).

2. This case involves the application of Section 101(5) to certain obligations created by the Coal Industry Retiree Health Benefit Act of 1992 (Coal Act), 26 U.S.C. 9701 *et seq*. The Coal Act responded to a crisis that threatened to deprive retired coal miners and their dependents of promised lifetime healthcare benefits. Before the Coal Act, those benefits were financed by trusts established pursuant to several collective bargaining agreements. See *Eastern Enters.* v. *Apfel*, 524 U.S. 498, 504-511 (1998) (plurality opinion). In the 1980s, economic conditions threatened the industry's viability, and many coal companies stopped contributing to the trusts. *Id.* at 511. The Coal Act converted the companies' contractual obligations to provide healthcare benefits into statutory requirements. *Id.* at 514.

The Coal Act's obligations generally apply to "signatory operators" (*i.e.*, the companies that signed the prior collective bargaining agreements), 26 U.S.C. 9701(c)(1), as well as to "related persons" (*i.e.*, entities that were closely affiliated with signatory operators as of July 20,

1992), 26 U.S.C. 9701(c)(2). A related person is jointly and severally liable for its signatory operator's Coal Act obligations. See 26 U.S.C. 9704(a), 9711(c), and 9712(d)(4). Like the petition, this brief refers to signatory operators and their related persons as "covered companies."

This case involves three obligations imposed by the Coal Act. First, covered companies must pay premiums to the United Mine Workers of America Combined Benefit Fund (Combined Fund), which is a private plan that provides benefits to individuals who were receiving benefits from two particular healthcare plans (that the Combined Fund displaced) in 1992. 26 U.S.C. 9703(f). Payments are due annually for as long as a covered company remains "in business." 26 U.S.C. 9706(a); see 26 U.S.C. 9704(a). A company is in business if it "conducts or derives revenue from any business activity, whether or not in the coal industry." 26 U.S.C. 9701(c)(7). The Act imposes a monetary penalty for failure to pay the required premiums. 26 U.S.C. 9707(a).

Second, a subset of signatory operators must provide benefits directly to certain beneficiaries by maintaining their own individual employer plans (IEPs). 26 U.S.C. 9711(a) and (b). Related persons are jointly and severally liable for maintaining IEPs. 26 U.S.C. 9711(c)(1). That obligation also persists while the company remains "in business." 26 U.S.C. 9711(a) and (c)(1).

Third, a subset of covered companies must pay premiums to the United Mine Workers of America 1992 Benefit Plan (1992 Plan). The 1992 Plan provides benefits to, among others, individuals who are entitled to receive (but are not in fact receiving) benefits from an IEP. 26 U.S.C. 9712(b)(2)(B). When such individuals are enrolled in the 1992 Plan, the company responsible for maintaining the defunct IEP must pay a monthly

premium based on the number of individuals the 1992 Plan is covering for the company. 26 U.S.C. 9712(d)(1).

3. a. In 1989, Hillsborough Holding Co. and its subsidiaries petitioned for reorganization under Chapter 11. Pet. App. 61. One subsidiary was Walter Industries Inc., a holding company that owned a coal company called Jim Walter Resources, Inc. *Ibid.* Respondents—U.S. Pipe Foundry Co. and JW Aluminum Co.—were also Hillsborough subsidiaries. *Ibid.*; see *id.* at 5.

After the bankruptcy petition was filed but before the reorganization plan was confirmed, Congress enacted the Coal Act. Pet. App. 62. Under the Act, Jim Walter Resources was a "signatory operator" obliged to pay annual premiums to the Combined Fund and to maintain an IEP (or pay monthly premiums to the 1992 Plan to the extent that its failure to maintain an IEP caused individuals to receive coverage from the 1992 Plan). See Pet. 8; Br. in Opp. 5. Respondents were "related persons" that were jointly and severally liable with Jim Walter Resources. See Pet. 8; Br. in Opp. 7.

Petitioners are the trustees of the Combined Fund and the 1992 Plan. During the Hillsborough bankruptcy, petitioners filed a proof of claim against Jim Walter Resources for certain Coal Act obligations, Pet. App. 5, but they did not file such proofs of claim against respondents, Pet. 8.

In 1995, the Hillsborough bankruptcy concluded with a confirmed plan of reorganization. The plan discharged all "[c]laims against * * * [d]ebtors that arose at any time before" the plan's effective date. Pet. App. 40. It also required Walter Industries to continue to fund medical benefits for retirees, though it did not specifically mention Coal Act obligations. *Id.* at 64 (foot-

note omitted). Petitioners did not object to the plan. *Id.* at 5.

For two decades, Jim Walter Resources and Walter Industries continued to maintain an IEP and paid at least $8.8 million in Coal Act premiums. Pet. App. 42.

b. Eventually, Walter Industries changed its name to Walter Energy and spun off or sold respondents. Pet. 9. In 2015, Walter Energy and its remaining subsidiaries, including Jim Walter Resources, petitioned for Chapter 11 reorganization. Pet. App. 5.

Petitioners filed proofs of claim for the Coal Act obligations of the Walter Energy debtors. Br. in Opp. 31. The debtors asked the bankruptcy court to eliminate their Coal Act obligations under 11 U.S.C. 1114, which grants bankruptcy courts broad authority to modify certain retiree benefits. The bankruptcy court granted the debtors' motion. *United Mine Works of America Combined Benefit Fund* v. *Toffel (In re Walter Energy, Inc.)*, 911 F.3d 1121, 1157 (11th Cir. 2018), cert. denied, 139 S. Ct. 2763 (2019). Walter Energy ceased paying Coal Act premiums and shuttered its IEP. Pet. 8. The individuals enrolled in that IEP began receiving benefits through the 1992 Plan. *Ibid.* Those individuals have continued to receive benefits through the 1992 Plan because no replacement IEP has been set up by any of Jim Walter Resources' related persons. *Ibid.*

c. Because respondents were not debtors in the Walter Energy bankruptcy, they were not subject to the Section 1114 order discharging the Coal Act liabilities.

In July 2016, petitioners sent respondents a letter stating that respondents are "liable * * * to pay premiums to the [Combined] Fund and 1992 Plan for the period when Walter Energy was not providing benefits di-

rectly to its retirees." Pet. App. 6. Petitioners also demanded that respondents "provide benefits directly to retirees" by establishing an IEP. *Ibid.* After respondents refused those demands, petitioners sued them in the United States District Court for the District of Columbia, seeking an order directing respondents to pay the Coal Act premiums and establish an IEP. *Ibid.*

4. a. In response, respondents reopened the Hillsborough bankruptcy and filed an adversary complaint against petitioners. Pet. App. 6. The complaint alleged that the 1995 confirmation order concluding the Hillsborough bankruptcy had discharged all of respondents' Coal Act obligations. *Ibid.*

The bankruptcy court ruled against respondents with respect to petitioners' claims for payment of Combined Fund and 1992 Plan premiums. Pet. App. 60-75. The court explained that a bankruptcy discharge does not apply to claims incurred after bankruptcy. See *id.* at 68-69. The court analogized respondents' obligation to pay Coal Act premiums to the obligation to pay a tax—a claim for which liability typically accrues when the tax comes due. *Id.* at 74-75. Because petitioners were seeking payment of premiums incurred beginning in 2016—more than two decades after the Hillsborough bankruptcy concluded—the court determined that the Hillsborough bankruptcy had not discharged those claims. *Id.* at 75. The court did not address petitioners' claim for an injunction requiring respondents to establish an IEP.

b. The district court affirmed the bankruptcy court's decision on identical grounds. Pet. App. 37-59. In a footnote, the district court noted that the bankruptcy court had "not address[ed]" whether the Hillsborough bankruptcy had also discharged respondents' duty to

maintain an IEP. *Id.* at 58 n.7. The court suggested that the duty "could not be terminated by bankruptcy," *ibid.*, but it granted no relief to petitioners. The court simply affirmed "[t]he decision of the bankruptcy court," *id.* at 59, which held that "any premiums that came due after the effective date of" the Hillsborough reorganization plan "were not discharged" by that plan, *id.* at 61.

c. A divided panel of the court of appeals reversed. Pet. App. 1-23. With respect to the premium-payment claims, the court agreed with the lower courts that the key question is whether those claims arose before the 1995 confirmation of the Hillsborough reorganization plan. *Id.* at 10; see *id.* at 22-23. But the court of appeals concluded that all of those claims arose before the plan's effective date because the Coal Act became effective before confirmation and the claims were "based on the companies' pre-confirmation conduct," including their relationship to signatory operators. *Id.* at 10. The court therefore held that all of petitioners' premium-payment claims had been discharged by the plan. *Id.* at 14.

The court of appeals acknowledged that, during the Hillsborough bankruptcy, the "amount" of those obligations was uncertain. Pet. App. 11. The court further acknowledged that petitioners "could not maintain a suit against" respondents for satisfaction of those obligations because, at the time, Jim Walter Resources was fully complying with its Coal Act obligations. *Ibid.* But the court found that irrelevant because, in its view, petitioners' rights were "merely 'unliquidated' * * * and 'unmatured,'" but still within the definition of a "'claim.'" *Ibid.* (quoting 11 U.S.C. 101(5)(A)).

The court of appeals rejected the conclusion that petitioners' premium-payment claims are best understood as claims for taxes that "arise periodically"—that is,

when the premiums are due. Pet. App. 15; see *id.* at 14-15. The court acknowledged that claims for taxes "ordinarily do not exist before the debtor engages in the taxable conduct," *id.* at 15, and that other courts of appeals have characterized claims for Coal Act premiums as claims for taxes in other contexts, *id.* at 14-15. But the court of appeals reasoned that, "even if Coal Act [premium-payment] obligations could be considered taxes," petitioners' claims still arose before confirmation of the Hillsborough plan because respondents' "liability * * * turn[s] solely on their pre-confirmation conduct"—that is, on the participation of Jim Walter Resources "in the pre-Coal Act health-care system" for retirees. *Id.* at 15.

The court of appeals additionally held that the Hillsborough plan had discharged petitioners' "right to an equitable remedy" compelling respondents to establish an IEP. Pet. App. 16 (citation omitted). The court interpreted the Code's definition of "claim," which includes a "right to an equitable remedy for breach of performance if such breach gives rise to a right to payment," 11 U.S.C. 101(5)(B), to mean that an equitable claim satisfies that definition whenever it gives rise to *any* right to payment, Pet. App. 19. The court "decline[d] to adopt" a narrower interpretation first articulated by this Court's decision in *Ohio* v. *Kovacs*, 469 U.S. 274 (1985), and applied by several other courts of appeals, under which an equitable claim is dischargeable in bankruptcy only if it gives rise to an alternative or substitute monetary remedy. Pet. App. 18.

Applying its broader interpretation of Section 101(5)(B), the court of appeals held that petitioners' IEP claim was a claim dischargeable in bankruptcy. The court reasoned that, "[w]hen a covered entity

breaches its obligation" to maintain an IEP, "the 1992 Plan provides those benefits instead and assesses the entity premiums commensurate with the costs of providing the benefits," such that respondents' breach of their IEP obligation gave rise to a right to payment. Pet. App. 16. The court rejected petitioners' alternative argument that, even assuming that the IEP claim was a claim subject to discharge, it did not arise until Walter Energy dissolved its IEP and respondents declined to establish a new one. See *id.* at 19-21. The court held that the IEP claim arose when the Coal Act was enacted—even if performance was not yet due—given that the relevant coal mining pre-dated the confirmation of the Hillsborough reorganization plan. *Ibid.*

b. Judge Anderson concurred in part and dissented in part. Pet. App. 23-36. He agreed that petitioners' claims for Combined Fund premiums had been discharged by the Hillsborough bankruptcy, but he dissented from the majority's conclusion as to the IEP and 1992 Plan premiums. *Id.* at 23. With respect to petitioners' IEP claim, Judge Anderson concluded that "[t]he natural and plausible meaning of § 101(5)(B) * * * is that the existence of a claim depends upon there being a breach of performance" that occurs "before the date of confirmation." *Id.* at 34. Because "the crucial basis" for respondents' liability under this claim is the "2016 breach of the obligation to maintain an IEP," the Hillsborough debtors' "1995 bankruptcy confirmation could not discharge [petitioners'] claim arising from it." *Id.* at 35. Judge Anderson also viewed petitioners' claims for 1992 Plan premiums as arising in 2016, "when Walter Energy ceased maintaining its IEP" and respondents "declined to do so themselves." *Ibid.* He

therefore would have held that those claims were not discharged in 1995. *Ibid.*

DISCUSSION

This case does not warrant further review. With respect to the first question presented (concerning the equitable IEP claim), although the court of appeals adopted an incorrect interpretation of the Code's definition of a "claim," 11 U.S.C. 101(5)(B), petitioners would not prevail under the proper interpretation. The case thus presents a poor vehicle to resolve the conflict in the circuits on that question. With respect to the second question presented (concerning the premium-payment claims), petitioners have not challenged the standard that the court of appeals applied in determining when a covered company's Coal Act obligations arose. The petition instead contests the court's application of that standard to the facts of this case. The court's fact-dependent conclusion does not squarely conflict with how claims for Coal Act premiums have been treated by other courts of appeals in other contexts. And both questions are presented in an unusual posture that is unlikely to recur with great frequency. The petition for a writ of certiorari should be denied.

A. Further Review Of The Dischargeability Of Petitioners' Equitable Claim Against Respondents Is Unwarranted

1. Section 101(5)(B) specifies when a "right to an equitable remedy for breach of performance" may be considered a "claim" dischargeable in bankruptcy. 11 U.S.C. 101(5)(B). This Court interpreted that provision in *Ohio* v. *Kovacs*, 469 U.S. 274 (1985), which arose from a lawsuit brought by the State of Ohio against William Kovacs for violations of state environmental laws. *Id.* at 276. Kovacs settled the lawsuit by stipulating to a judgment that, among other things, enjoined him from

causing further pollution and required him to remove specified wastes from the property. *Ibid.* When Kovacs failed to remove the wastes, Ohio obtained a state-court order appointing a receiver to seize his assets and use them to implement the clean-up order. *Ibid.* After the receiver's appointment, Kovacs filed for bankruptcy and sought to discharge the clean-up order under Section 101(5)(B). *Id.* at 276-277.

This Court held that the clean-up order was dischargeable. *Kovacs*, 469 U.S. at 279-283. The Court invoked legislative history indicating that Section 101(5)(B) was "intended to cause the liquidation or estimation of contingent rights of payment for which there may be an alternative equitable remedy with the result that the equitable remedy will be susceptible to being discharged in bankruptcy." *Id.* at 280 (quoting 124 Cong. Rec. 32,393 (1978) (remarks of Rep. Edwards)). The paradigmatic example of a dischargeable equitable claim is a "judgment for specific performance [that] may be satisfied by an alternative right to payment in the event performance is refused." *Ibid.* (quoting same). Under such circumstances, "the creditor entitled to specific performance would have a 'claim' for purposes of a [bankruptcy] proceeding." *Ibid.* (quoting same). Because the State had "converted [its equitable claim] into an obligation to pay money" by appointing a receiver before Kovacs's bankruptcy petition was filed, the Court held that the clean-up order was dischargeable. *Id.* at 283. The Court further emphasized, however, that its opinion did not hold that "the injunction against bringing further toxic wastes on the premises" was a dischargeable claim. *Id.* at 285.

As petitioner observes, at least five courts of appeals have relied on *Kovacs* to hold that an equitable claim is

dischargeable only if payment of money is an alternative or substitute remedy. See Pet. 17-18 (listing cases).

2. The court of appeals in this case created a circuit split by holding that an equitable claim is dischargeable in bankruptcy if the same breach "'gives rise' to both the right to an equitable remedy and a right to payment." Pet. App. 19; see *id.* at 18-19. The court rejected the approach of other circuits limiting dischargeable claims to those for which a right to payment is an adequate alternative or substitute remedy. *Id.* at 18. Under the court's interpretation, a breach that gives rise to an equitable remedy is susceptible to discharge under Section 101(5)(B) if it gives rise to *any* right to payment, even a *de minimis* one that is an inadequate alternative to equitable relief.

Respondents do not attempt to defend the court of appeals' interpretation of Section 101(5)(B) on the merits. And for good reason: That interpretation is in significant tension with this Court's decision in *Kovacs*, which applied the "alternative or substitute to equitable relief" test. See 469 U.S. at 280. Indeed, the Court there carefully discussed the precise circumstances that had rendered the clean-up order equivalent to a monetary judgment—the receivership that "disabled" Kovacs "from personally taking charge of carrying out the removal of wastes," such that the receiver sought only "money to defray cleanup costs." *Id.* at 283. That focused reasoning indicates that the mere fact that a breach may also lead to some monetary payment would be insufficient to render the order dischargeable. And that view further accords with Congress's intent that bankrupt entities must continue to comply with general laws. See *id.* at 285. The court of appeals failed to jus-

tify its departure from the reasoning of *Kovacs*. See Pet. App. 17-18.

3. The government nevertheless agrees with respondents that the petition should be denied because petitioners' equitable claim would still qualify as a "claim" under *Kovacs*'s reasoning and the test applied by multiple courts of appeals. See Br. in Opp. 23-30.

The Coal Act requires certain covered companies to maintain IEPs that provide healthcare coverage to certain beneficiaries. 26 U.S.C. 9711(a) and (b). But the Act expressly provides for what happens when a covered company breaches its obligation to maintain an IEP: The 1992 Plan provides benefits to those who are entitled to receive (but are not in fact receiving) benefits from an IEP. 26 U.S.C. 9712(b)(2)(B). When such individuals are enrolled in the 1992 Plan, the company that has breached its obligation to provide IEP benefits must pay a corresponding monthly premium to the 1992 Plan. 26 U.S.C. 9712(d)(1). The two obligations are therefore directly correlated. As the court of appeals explained, "[w]hen a covered entity breaches its obligation to provide health-care benefits to retirees," the "1992 Plan provides those benefits instead and assesses the entity premiums commensurate to the costs of providing the benefits." Pet. App. 16; accord *Penn Allegh Coal Co.* v. *Holland*, 183 F.3d 860, 862 (D.C. Cir. 1999) (explaining that the Coal Act "ensures the continued payment of health benefits to certain retired coal mining employees through either an" IEP or the 1992 Plan).

The structure of the Coal Act reinforces the close relationship between the IEP obligation and 1992 Plan premiums. Section 9711(c) provides for the joint and several liability of related persons for failure to main-

tain an IEP. But related-persons liability can be eliminated if a common parent of both the covered company and its related persons provides security, 26 U.S.C. 9711(c)(2), in an amount "equal to 1 year of liability" for maintaining the IEP, "determined by using the average cost of such operator's liability during the prior 3 calendar years," 26 U.S.C. 9711(c)(3)(A)(iii). That security must be paid to the trustees of the 1992 Plan "solely for the purpose of paying" 1992 Plan premiums "if the requirements of this section" (including the requirement to maintain an IEP) "were not met." 26 U.S.C. 9711(c)(3)(A)(ii).

Finally, the outcome is the same whether a covered company in breach of its IEP obligations is either compelled to reestablish its IEP in equity or compelled to pay 1992 Plan premiums. Under the former remedy, individuals receive healthcare benefits from the new IEP, and the 1992 Plan is relieved of the obligation to cover their benefits. Under the latter, individuals receive benefits from the 1992 Plan, and the covered company compensates the 1992 Plan. Given the express alternatives that are automatically triggered under the statute, respondents are correct that the damages remedy is an adequate "substitute for the closely related equitable obligation." Br. in Opp. 26.

Petitioners respond (Cert. Reply Br. 3-4) that the damages remedy is not a perfect substitute for the equitable remedy because a covered company compelled to create an IEP will still be liable in damages for 1992 Plan premiums incurred while the company was in breach, and a company paying 1992 Plan premiums can still be compelled to establish an IEP. But a damages remedy need not be an "outright substitut[e]" to the equitable remedy. *Standard Carpetland USA, Inc. (In re Udell)*, 18 F.3d 403, 408 (7th Cir. 1994). "For example,

the right to foreclose on a mortgage, though not strictly an 'alternative' to the right to the proceeds from the sale of the debtor's property, nonetheless gives rise to a corollary right to payment." *Ibid.* (discussing *Johnson* v. *Home State Bank*, 501 U.S. 78 (1991)); see *Rederford* v. *US Airways, Inc.*, 589 F.3d 30, 36-37 (1st Cir. 2009); *Air Line Pilots Ass'n* v. *Continental Airlines (In re Continental Airlines)*, 125 F.3d 120, 135-136 (3d Cir. 1997), cert. denied, 522 U.S. 1114 (1998).[1]

4. Further review of the first question presented is also unwarranted given the circumstances of this case. The question whether the obligation to maintain an IEP is dischargeable pursuant to Section 101(5)(B) is unlikely to arise in bankruptcies involving coal companies covered by the Coal Act because such companies may be able to eliminate that obligation under 11 U.S.C. 1114, which permits a bankruptcy court to alter certain benefits that a debtor owes retirees that it once employed. That is precisely what Jim Walter Resources achieved in the 2015 Walter Energy bankruptcy. Of

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[1] The Sixth Circuit has suggested that, in the context of a bankruptcy petition filed by an individual debtor, an equitable claim is dischargeable if compliance with the injunction would require the expenditure of money. *United States* v. *Whizco, Inc.*, 841 F.2d 147, 150 (1988). As the United States has explained, that outlier decision "is inconsistent with the text of the Bankruptcy Code and with the weight of relevant case law." U.S. Br. in Opp. at 17, *Apex Oil Co.* v. *United States*, No. 09-1023 (July 6, 2010); see *Apex Oil Co.* v. *United States*, 562 U.S. 827 (2010) (denying petition for a writ of certiorari); see also *Kennedy* v. *Medicap Pharms., Inc.*, 267 F.3d 493, 495-498 (6th Cir. 2001) (agreeing with *Udell* that a covenant not to compete by a franchisee was not dischargeable because payment of money is not an adequate alternative remedy under applicable law). The decision below did not endorse *Whizco*, and the current petition does not implicate any potential divergence in authority between (or within) the Sixth Circuit and other courts of appeals.

course, that avenue is unavailable in bankruptcies involving related persons who never employed any Coal Act beneficiaries. See Pet. App. 54 n.5. In those cases, petitioners—as the trustees of the 1992 Plan—may seek to protect their rights by filing a proof of claim. Indeed, petitioners acknowledge that the court of appeals' decision will not bar them from filing proofs of claim for Coal Act liability in future related-person bankruptcies. Pet. 27 n.7. Petitioners assert that they have "largely not filed proofs of claim" for Coal Act obligations in previous related-person bankruptcies, *id.* at 27, but they do not indicate how many such bankruptcies may exist or suggest that the number would be particularly large.

In addition, because the result in this case would be the same under either test, the degree of divergence between the Eleventh Circuit and other circuits remains uncertain. As petitioners note, the court of appeals "did not explain precisely what it means for a breach of performance to 'give[] rise to a right to payment.'" Pet. 16 n.3 (brackets in original). Accordingly, further percolation is needed to establish whether there will be a practical difference between the tests.

B. Further Review Of Whether Petitioners' Monetary And Equitable Claims Arose Prior To Confirmation Is Unwarranted

Under pre-existing Eleventh Circuit precedent, "[a] claim exists and is dischargeable whenever a debtor's liability on that claim arises from its past conduct" and "'there is a relationship established . . . between an identifiable claimant' and that past conduct." Pet. App. 9 (quoting *Epstein* v. *Official Comm. of Unsecured Creditors of the Estate of Piper Aircraft Corp. (In re Piper Aircraft, Corp.)*, 58 F.3d 1573, 1577 (11th Cir. 1995)). Applying that test, the court of appeals held that

the relevant "conduct" was Congress's decision to enact the Coal Act and the companies' previous participation in the coal industry's healthcare system, which resulted in the imposition of Coal Act obligations on respondents as the related persons of Jim Walter Resources. *Id.* at 10-11; *id.* at 16-17; *id.* at 22-23. Because the Coal Act was enacted well before the conclusion of the Hillsborough bankruptcy and imposed liabilities based on participation in the pre-Coal Act healthcare system, and because petitioners failed to file proofs of claim against respondents during that bankruptcy, the court concluded that petitioners' Coal Act claims arose before confirmation and the liabilities were consequently discharged.

Petitioners do not challenge the test that the court of appeals applied. They contend instead that the court misapplied the test to the facts of this case. Although petitioners may be correct that the court erred at a minimum with respect to the IEP claim and 1992 Plan premiums, that fact-bound dispute does not warrant this Court's review.

1. Petitioners contend (Pet. 24; Cert. Reply Br. 7) that the court of appeals erred in concluding that respondents' Coal Act liability arises "solely" from past conduct and was therefore discharged. The government agrees that, at a minimum, the court likely erred in reaching that conclusion with respect to the IEP claim and the alternative 1992 Plan premiums.

Under 11 U.S.C. 101(5)(B), a creditor has a claim only when it has "[a] right to an equitable remedy for breach of performance if such breach gives rise to a right to payment." But those rights do not arise at all until the breach occurs. And it is incorrect to view the right as "contingent" on the debtor's possible future

breach because "a debtor's own future conduct cannot make a claim contingent." Pet. App. 30 (Anderson, J., concurring in part and dissenting in part) (citing *Siegel* v. *Federal Home Loan Mortg. Corp.*, 143 F.3d 525, 532-533 (9th Cir. 1998)). The majority's acknowledgement that petitioners could not have maintained a suit against respondents while Jim Walter Resources complied with its Coal Act obligations demonstrates that the right to an equitable remedy could not exist prior to the breach. *Id.* at 11.

In addition, to determine whether a "contingent" right to equitable relief exists, courts consider whether the "triggering event" that gives rise to liability is an "extrinsic event" and "one reasonably contemplated by the debtor and creditor at the time the event giving rise to the claim occurred." *In re Ford*, 967 F.2d 1047, 1051 (5th Cir. 1992) (emphasis omitted). But, at the time of the Hillsborough plan's confirmation in 1995, it appears that Walter Energy took on the responsibility for Coal Act obligations.[2] See Pet. App. 5-6. Given Walter Energy's assumption of that responsibility, it would be illogical to conclude that the parties anticipated the relevant breach at the time of the plan's confirmation. Under those circumstances, the relevant conduct—and the

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[2] Petitioners contend (Pet. 9 n.2) that Walter Energy did not expressly assume responsibility for Coal Act payments in the reorganization plan because it assumed only the obligation "to fund retiree health benefits." Pet. App. 5. Because that term was undefined, petitioners claim it must incorporate the definition in Section 1114(a) and exclude benefits like Coal Act obligations that were established after the bankruptcy. Pet. 9 n.2. It is unclear whether that is the best reading of the plan. Regardless, it is undisputed that Walter Energy satisfied the Coal Act obligations for two decades after the 1995 bankruptcy, suggesting that it did not view those obligations as having been discharged.

accompanying claim—arose in 2016, when Walter Energy failed to maintain the IEP. And because that failure occurred post-confirmation, the court of appeals erred in concluding that the claims arising from the breach had already been discharged. See *Id.* at 30 (Anderson, J., concurring in part and dissenting in part).

2. Petitioners contend (Pet. 19) that this Court should grant certiorari because the court of appeals' decision conflicts with decisions of the Second and Tenth Circuits. But neither decision directly addresses the question presented here.

Petitioners rely principally on the Second Circuit's decision in *LTV Steel Co.* v. *Shalala (In re Chateaugay Corp.)*, 53 F.3d 478, cert. denied, 516 U.S. 913 (1995). In that case, the debtors were LTV Steel Company and three subsidiaries (collectively, LTV). LTV was in the coal business and filed for bankruptcy in 1986. *Id.* at 484. When Congress enacted the Coal Act several years later, LTV—which was a covered company with Coal Act obligations—had not emerged from bankruptcy. *Id.* at 496. LTV sought to avoid its obligation to pay Combined Fund premiums by characterizing its obligations as "pre-petition debts" that arose when its employees "supplied" LTV with "labor." *Id.* at 496-497. Such pre-petition debts must be disallowed if no timely proof of claim has been filed. *Id.* at 496. The Second Circuit rejected LTV's arguments, instead holding that "LTV's liability to the Combined Fund [wa]s newly imposed by the Coal Act," and that "[n]o right to payment on the part of the Combined Fund existed until the enactment of the Coal Act six years after the filing of LTV's petition." *Id.* at 497. That holding does not conflict with the court of appeals' similar conclusion here:

that respondents' Coal Act liability arose when the Coal Act was enacted.

Petitioners emphasize (Pet. 21-22) that the Second Circuit also rejected LTV's alternative argument that Coal Act liabilities incurred post-petition but pre-confirmation should not be treated as administrative expenses entitled to priority under 11 U.S.C. 507(a)(1). *Chateaugay*, 53 F.3d at 498. The court reasoned that, for purposes of determining whether Coal Act liabilities are administrative expenses, such liabilities are best understood as taxes incurred by the estate (which are defined as administrative expenses by 11 U.S.C. 503(b)(1)(B)). *Chateaugay*, 53 F.3d at 498. But the court of appeals here expressly distinguished that conclusion, noting that "nothing in this appeal turns on whether the premiums are taxes." Pet. App. 15. The court instead concluded that, "even if Coal Act obligations could be considered taxes," that status "has no bearing" on the separate question of "when claims for those [Coal Act] premiums arise." *Ibid.*

Petitioners also emphasize (Pet. 20-21) that, in a single sentence at the end of its opinion, the Second Circuit stated that "[t]he remainder of LTV's obligations was not dischargeable in bankruptcy and is an obligation of the reorganized LTV." *Chateaugay*, 53 F.3d at 498. As petitioners rightly note, that sentence cannot be reconciled with the Eleventh Circuit's treatment of post-confirmation Coal Act liabilities. But the sentence is dictum because it was not necessary to the resolution of any of the questions presented in *Chateaugay*, which involved an appeal from two district court decisions: one holding that LTV's Coal Act obligations "were not pre-petition claims that must be disallowed under Chapter 11 of the Bankruptcy Code," and the other rejecting

LTV's attacks on the constitutionality of the Coal Act. *Id.* at 480-481.[3] Accordingly, the decision below is not in direct conflict with *Chateaugay*.

Petitioners' reliance (Pet. 22-23) on *United Mine Workers of America 1992 Benefits Plan* v. *Rushton (In re Sunnyside Coal Co.)*, 146 F.3d 1273 (10th Cir. 1998), is similarly misplaced. There, the Tenth Circuit held that premium payments to the 1992 Plan are administrative expenses because they qualify as taxes under 11 U.S.C. 503(b)(1)(B). *Sunnyside*, 146 F.3d at 1278. As petitioners explain, the court of appeals suggested that Coal Act premiums "'accrue for each tax period.'" Pet. 22 (quoting *Sunnyside*, 146 F.3d at 1279). That statement is in tension with the Eleventh Circuit's conclusion that all Coal Act liability must be said to arise as of the Coal Act's enactment in 1992. But it does not directly conflict with the decision on review, not least because *Sunnyside* did not present the question whether and to what extent Coal Act obligations are dischargeable, as petitioners concede. See Pet. 23. Thus, any tension is not a direct conflict necessitating this Court's intervention.

3. Further review is also unwarranted given the unique circumstances of this case. Like the first question presented, the second question will arise only if Section 1114 has not been invoked and petitioners do

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[3] Petitioners contend (Cert. Reply Br. 9) that the Second Circuit has treated the dictum as a holding, but in the single case they cite, the court relied on *Chateaugay*'s holding that Coal Act claims could not constitute pre-petition claims because the statute had been enacted post-petition. See *Goldman* v. *Esso Virgin Islands, Inc. (In re Duplan Corp.)*, 212 F.3d 144, 151 (2000). The court expressly declined to determine precisely when the claims at issue arose, see *id.* at 155 n.10, and had no reason to rely on the single sentence in *Chateaugay* addressing discharge of post-petition claims.

not file a proof of claim or objection to plan feasibility of a related party to protect their rights in a pending bankruptcy. Nothing in the court of appeals' decision prohibits petitioners from doing that in future bankruptcies. And their assertion (Pet. 27) that they have "largely not filed proofs of claim" for Coal Act obligations in past bankruptcies does not speak to the magnitude of this asserted problem.

Nor will the court of appeals' decision have broad effects outside of the context of the Coal Act. Indeed, the court made clear that the result would be different in cases involving "generally applicable laws" that "impose penalties" or "obligations on any entity that engages in specified conduct," which "arise regardless of bankruptcy status" and do not turn "solely on * * * pre-confirmation conduct." Pet. App. 12.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

ELIZABETH B. PRELOGAR
Solicitor General
BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General
CURTIS E. GANNON
Deputy Solicitor General
AIMEE W. BROWN
Assistant to the Solicitor General
MARK B. STERN
MICHAEL SHIH
Attorneys

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