No. 08-1134

IN THE

Supreme Court of the United States

UNITED STUDENT AID FUNDS, INC.,

Petitioner,

v.

FRANCISCO J. ESPINOSA,

Respondent.

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

BRIEF OF *AMICUS CURIAE* G. ERIC BRUNSTAD, JR. IN SUPPORT OF RESPONDENT

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INTEREST OF THE *AMICUS CURIAE*[1]

The undersigned *amicus curiae* is the Macklin Fleming Visiting Lecturer in Law at the Yale Law School where he teaches courses on bankruptcy law, domestic and international business reorganizations, commercial transactions, secured transactions, and argument and reason. He began teaching at Yale in 1990 and has also taught at the Harvard Law School. In addition to his teaching, the undersigned is a contributing author to COLLIER ON BANKRUPTCY, responsible for writing several chapters of the Treatise. He is also a partner at the law firm of Dechert LLP; a prior Chair of the ABA Business Bankruptcy Committee; a former member of the Judicial Conference Advisory Committee on the Federal Bankruptcy Rules; and a Fellow of the American College of Bankruptcy.

The undersigned has briefed and argued numerous bankruptcy matters before the Court, including *Florida Dep't of Revenue v. Piccadilly Cafeterias, Inc.*, 128 S. Ct. 2326 (2008); *Travelers*

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[1] No counsel for any party has authored this brief in whole or in part, and no party or counsel for a party has made a monetary contribution to the preparation or submission of this brief. *See* Sup. Ct. R. 37.6. All parties have been timely notified of the undersigned's intent to file this brief; both petitioner and respondent have consented to the filing of this brief. Copies of petitioner's and respondent's consents are filed herewith.

Cas. & Sur. Co. v. Pacific Gas & Elec. Co., 549 U.S. 443 (2007); *Marrama v. Citizens Bank of Massachusetts*, 549 U.S. 365 (2007); *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004); and *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1 (2000). During this term, he will be arguing *Schwab v. Reilly*, No. 08-538, and *Milavetz, Gallop & Milavetz, P.A. v. United States*, Nos. 08-1119, 08-1225. He has otherwise participated as counsel for one of the parties in numerous other bankruptcy matters before the Court, including *Central Virginia Community College v. Katz*, 546 U.S. 356 (2006); *Rousey v. Jacoway*, 544 U.S. 320 (2005); *Kontrick v. Ryan*, 540 U.S. 443 (2004); *Lamie v. United States Trustee*, 540 U.S. 526 (2004); *FCC v. NextWave Personal Commc'ns Inc.*, 537 U.S. 293 (2003); and *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249 (1992). In addition, he has prepared and filed with the Court several amicus briefs in bankruptcy cases, including *Howard Delivery Serv., Inc. v. Zurich American Ins., Co.*, 547 U.S. 651 (2006); *Tennessee Student Assistance Corp. v. Hood*, 541 U.S. 440 (2004); *Archer v. Warner*, 538 U.S. 314 (2003); and *Things Remembered, Inc. v. Petrarca*, 516 U.S. 124 (1995).

The undersigned is deeply interested in the subject of bankruptcy law, and has written, taught, and lectured on the subject of bankruptcy plans, the proper treatment of claims under plans, and the finality of orders confirming a

plan. The purpose of this brief is to address matters that bear on the Court's determination of a critically important issue of bankruptcy law: whether a creditor who receives notice of a debtor's bankruptcy case, who fails to object to the proposed treatment of its claim in the debtor's plan, and who then receives payments under the plan following the plan's confirmation, may subsequently ignore the plan and violate the debtor's discharge on the basis of an alleged defect in the plan that the creditor could and should have raised prior to the plan's confirmation.

Bankruptcy courts confirm tens of thousands of plans each year. Creditors routinely decline to object to these plans even though they may have a meritorious objection, in many instances because they conclude that the plan offers the best means of receiving the highest recovery on their claims. In the absence of a timely and successful appeal from an order confirming a plan, confirmation of the plan results in a final judgment that is binding on all parties. Debtors rely on this finality, as do others who interact with debtors following their emergence from bankruptcy.

In this context, petitioners advocate an untenable rule that would essentially defeat the plan process: namely, that they need not assert any objection they may have to a plan prior to

the plan's confirmation, may receive payments from the debtor for years in accordance with the plan, and then, after the debtor believes he or she is finished making all payments, assert their objection in order to avoid the debtor's discharge and obtain perhaps even greater payment. If this were the rule, our bankruptcy system would collapse of its own weight because one of its most essential underpinnings – finality – would be effectively eroded. But this is not the rule, as established by several provisions of the governing Bankruptcy Code and the precedents of this Court. The undersigned presents this brief to address these important matters.

STATEMENT

Between 1988 and 1989, respondent Francisco J. Espinosa ("Espinosa") obtained $13,250 in student loans. Joint Appendix ("JA") 16. He apparently hoped that the educational training that these loans funded would generate better employment opportunities. Unfortunately, that did not occur, and he found himself unable to bear the burden of his debt. On December 7, 1992, he commenced a chapter 13 bankruptcy case in the United States Bankruptcy Court for the District of Arizona. JA 5.

The Bankruptcy Code requires each chapter 13 debtor to propose a plan. 11 U.S.C. §

1321.[2] The purpose of the plan is to describe the debtor's proposed treatment of his or her debts, and the plan must provide that the debtor will dedicate future earnings or other income as necessary for the payment of claims as set forth in the plan. 11 U.S.C. § 1322(a)(1). Although creditors are not entitled to vote on a chapter 13 plan, any creditor may insist that the debtor either propose to pay the creditor's claim in full, or, if the debtor cannot pay claims in full, at least dedicate all of the debtor's "disposable income" to the payment of claims for not less than three years. 11 U.S.C. § 1325(b)(1). As is relevant here, the term "disposable income" is defined to mean the amount of the debtor's income that is not reasonably necessary for the debtor's maintenance and support. 11 U.S.C. § 1325(b)(2)(A).

At the time Espinosa commenced his bankruptcy case, his student loans were held by petitioner United Student Aid Funds, Inc. ("Funds"). JA 16. Espinosa's chapter 13 plan (the "Plan") provided for the payment in full of the original principal amount of these loans. JA 26. To accomplish this, Espinosa proposed to dedicate slightly more than his monthly disposable income to pay off this amount over time. JA 22-23.

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[2] References to the Bankruptcy Code are to the provisions of the Code in effect at the time of Espinosa's bankruptcy filing in 1992. Relevant provisions are reproduced in the statutory appendix accompanying this brief.

Further, the plan obligated him to make his monthly payments for a five-year period, rather than the standard three-year term. *See* 11 U.S.C. § 1322(c) (providing that a plan ordinarily cannot propose a payment period greater than three years, and absolutely cannot propose a payment period in excess of five years). In other words, Espinosa proposed to pay the Funds *more* than the maximum monthly amount a creditor may require from the debtor in a chapter 13 case, and to make his payments for the maximum amount of time that chapter 13 permits.

Funds filed a proof of claim asserting that the amount owed under the loans was approximately $17,832, a sum that exceeded the principal balance of the loans by roughly $4,582. JA 35. The Plan specifically provided, however, that "[t]he amounts claimed by the [Funds] for capitalized interest, penalties, and fees shall not be paid for the reasons that the same are penalties and not provided for in the loan agreement between the Debtor and the lender." JA 26. The Plan further provided that "[a]ny amounts or claims for student loans unpaid by this Plan shall be discharged." JA 26. Following the resolution of a minor objection by the trustee, the

bankruptcy court issued an order confirming the Plan on May 6, 1993. JA 42-43.[3]

Funds failed to object to the Plan, either before or after the bankruptcy court entered its confirmation order. Pet. App. 5-6. Indeed, Funds failed to object to the Plan even after the trustee specifically notified Funds that it would receive less than the amount set forth in its proof of claim under the provisions of the Plan. JA 44-45.

By operation of law, after a debtor completes making payments under his chapter 13 plan, the debtor is entitled to a discharge. 11 U.S.C. § 1328. The effect of the discharge is to release the debtor from personal liability for most pre-petition monetary obligations, and the discharge acts as a type of injunction against further debt collection activity on discharged debts. 11 U.S.C. § 1328(c); *see also* 11 U.S.C. § 524. The scope of a discharge is subject to certain exceptions. 11 U.S.C. §§ 523, 1328(c). Student loans insured or guaranteed by a governmental unit are among the exceptions, "unless…excepting such debt from discharge…will impose an undue hardship on the

[3] In chapter 13 cases, a trustee is appointed to supervise the process and administer the confirmed plan. 11 U.S.C. § 1302.

debtor and the debtor's dependents." 11 U.S.C. § 523(a)(8).

A proceeding to declare the dischargeability of a particular debt under section 523, including a debt for a student loan that poses an undue hardship, is customarily pursued as an "adversary proceeding" commenced by either the debtor or the creditor with the filing of a complaint. Fed. R. Bankr. P. 7001(6); *see also* Fed. R. Bankr. P. 4007. In this case, Espinosa did not commence an adversary proceeding or file a motion specifically seeking an undue hardship determination. Instead, as noted, Espinosa provided in his Plan for the full payment of the principal amounts due on his student loans, and provided for the discharge of any other amounts related to the loans. JA 26. In addition, Espinosa proposed to devote more than his available "disposable income" to fund payment of this debt. In other words, Espinosa essentially offered Funds a compromise: he would devote all of his disposable income (and then some) to pay his student loan debt for five years, but beyond that the debt would be extinguished.

As noted, Funds did not object to this treatment – perhaps because it believed it was a good deal under the circumstances – and the bankruptcy court entered an order confirming the Plan. On May 30, 1997, following Espinosa's successful completion of all payments required

under his Plan, including his payment in full of the principal amounts due on his student loans, the bankruptcy court granted Espinosa his discharge. JA 46.[4]

By operation of law, "[t]he provisions of a confirmed plan bind the debtor and each creditor" regardless of whether "the claim of such creditor is provided for by the plan" and regardless of whether "such creditor has objected to, has accepted, or has rejected the plan." 11 U.S.C. § 1327(a). Likewise, following confirmation of a plan, a party in interest may seek to revoke confirmation within 180 days "after the date of the entry of an order of confirmation" and only "if such order was procured by fraud." 11 U.S.C. § 1330(a). At no time during the 180 days following confirmation of Espinosa's Plan did Funds seek to revoke the order confirming the Plan. Likewise, Funds did not appeal the order confirming the Plan.

Three years after the bankruptcy court granted Espinosa's discharge, and eight years after the Plan was confirmed, Funds (in conjunc-

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[4] While a clerical error in the bankruptcy court's order erroneously included an exception to discharge for any debt "for a student loan or educational benefit overpayment as specified in 11 U.S.C. § 523(a)(8)," that error was acknowledged and corrected by the bankruptcy court on remand from the Ninth Circuit. JA 46, 48.

tion with the Education Department) began intercepting Espinosa's income tax refunds in an effort to obtain the unpaid portion of its claim. Pet. App. 6. Thereafter, Espinosa filed a motion with the bankruptcy court requesting an order holding Funds in contempt for violating the discharge injunction. Pet. App. 6.

The bankruptcy court ruled in favor of Espinosa. Pet. App. 7. On appeal, the district court reversed, ruling that the confirmation order was void for lack of due process. Pet. App. 7. On appeal from the district court, the Ninth Circuit reversed and remanded the case to the bankruptcy court for the resolution of a clerical error.[5] Following the bankruptcy court's resolution of the error, the Ninth Circuit reversed the district court, explaining that "student loan debts can be discharged by way of a Chapter 13 plan if the creditor does not object, after receiving notice of the proposed plan." Pet. App. 26.

SUMMARY OF THE ARGUMENT

Sections 523(a)(8) and 1328(a)(2) provide that student loans are dischargeable only upon a showing of "undue hardship." In contrast, section 1327(a) provides that the provisions of a confirmed plan "bind" the debtor and creditors, and section 1330(a) provides that a confirmation

[5] *See supra* note 4.

order may be revoked within 180 days of its entry "if…procured by fraud." Funds argues that sections 523(a)(8) and 1328(a)(2) trump the bankruptcy court's order confirming Espinosa's Plan, and that Funds' failure to object to the Plan is therefore of no effect. But consistent with sections 1327(a) and 1330(a), this Court has repeatedly upheld the enforceability of a bankruptcy court's orders once they have become final, including orders confirming bankruptcy plans, and has turned away subsequent attempts to challenge the enforceability of those orders for procedural defects or substantive deficiencies that could have been raised earlier. *See, e.g., Travelers Indem. Co. v. Bailey*, 129 S. Ct. 2195, 2198 (2009); *Celotex Corp. v. Edwards*, 514 U.S. 300, 313 (1995); *Chicot County Drainage Dist. v. Baxter State Bank*, 308 U.S. 371, 376 (1940); *Stoll v. Gottlieb*, 305 U.S. 165, 172 (1938).

Consistent with the Court's precedents, as well as the text, logic, history, and purpose of the Bankruptcy Code, the better view is that sections 1327 and 1330 supply the correct rule of decision here. If a creditor with notice has grounds for objecting to a plan, including on the basis that its claim is not being treated in a manner consistent with the Code, the creditor must assert those grounds prior to confirmation, or forfeit any right to do so. A creditor with notice may not wait until after confirmation to assert an objection on the theory that the unarticu-

lated objection silently rendered the confirmation order void.

Important reliance interests are at stake, as well as interests of fundamental fairness. In proposing their plans in good faith to resolve their financial difficulties, chapter 13 debtors rely on creditors to object if, in fact, a creditor intends to oppose the debtor's proposal. Likewise, debtors rely on the finality of plans in making their payments under them, as do other persons who interact with these debtors. A creditor cannot withhold an objection to confirmation, receive payments under a confirmed plan, and then successfully assert its objection thereafter in the hope of receiving still more. Such a rule would only encourage creditors to ignore the confirmation process, and would essentially hobble the bankruptcy system and the goals that it promotes, including the debtor's fresh start. The decision of the court below should be affirmed.

A. Funds' Position Irreconcilably Conflicts with Sections 1327(a), 1330(a), and Prior Decisions of this Court.

Section 1327(a) provides that "[t]he provisions of a confirmed plan bind the debtor and each creditor, whether or not the claim of such creditor is provided for by the plan, and whether or not such creditor has objected to, has accepted, or has rejected the plan." 11 U.S.C. §

1327(a). By its plain terms, section 1327(a) thus fixes the effect of a confirmed plan.

In turn, section 1330(a) provides that, on request of a party in interest "at any time within 180 days after entry of an order of confirmation," the bankruptcy court may revoke the order if "procured by fraud." 11 U.S.C. § 1330(a). By its plain terms, section 1330(a) thus prescribes the parameters for revoking an order of confirmation.

By design, sections 1327(a) and 1330(a) inject strong rules of finality into the plan confirmation process. These rules mirror the precedents of this Court, and likewise supply the relevant rule of decision applicable in this controversy.

1. *Travelers Indemnity Co. v. Bailey*

In *Travelers Indemnity Co. v. Bailey*, the Court considered the finality of a bankruptcy court's orders barring claims against a debtor's third party insurer entered in conjunction with the debtor's confirmed chapter 11 plan. 129 S. Ct. at 2198. The case involved the Johns-Manville Corporation ("Manville"), a processor of asbestos and manufacturer of asbestos-containing products. The Travelers Indemnity Company and its affiliates ("Travelers") were Manville's primary liability insurers. In 1982, Manville filed for bankruptcy in response to a

deluge of lawsuits seeking to hold it responsible for a broad variety of asbestos-related injuries. *Id.* at 2198-99.

Manville's reorganization plan created the Manville Personal Injury Settlement Trust ("Trust") to pay asbestos claims filed against Manville, and Manville's plan provided that all such claims would be "channeled" to the Trust, leaving the reorganized Manville free from these liabilities. *Id.* at 2199. The "cornerstone" of the plan was a settlement whereby Manville's insurers, including Travelers, agreed to provide most of the initial funding for the Trust. *Id.* The settlement was made possible by a December 18, 1986 order of the bankruptcy court (the "Settlement Order") approving the settlement agreement and enjoining all persons from "commencing and/or continuing any suit, arbitration or other proceeding of any type or nature for Policy Claims against any or all members of the Settling Insurer Group." *Id.* The bankruptcy court's December 22, 1986 order confirming Manville's plan incorporated the Settlement Order by reference, and both the confirmation order and the Settlement Order were affirmed by the district court and, subsequently, the court of appeals. *Id.* at 2219-20.

Over ten years later, plaintiffs filed various asbestos actions against Travelers for liability related to its provision of insurance to Man-

ville (the "Direct Actions"). *Id.* at 2200. In 2002, Travelers returned to the bankruptcy court, invoking the terms of the 1986 orders and moving to enjoin the Direct Actions. *Id.* The bankruptcy court held an evidentiary hearing, made extensive findings, and held that the Direct Actions arose out of and were related to the insurance policies, and were therefore barred under the terms of the 1986 orders. *Id.* at 2201. The district court affirmed, but the Second Circuit reversed, holding that the bankruptcy court "mistook its jurisdiction when it enjoined 'claims brought against a third-party non-debtor solely on the basis of that third-party's financial contribution to a debtor's estate,' because 'a bankruptcy court only has jurisdiction to enjoin third-party non-debtor claims that directly affect the *res* of the bankruptcy estate.'" *Id.* at 2202. In other words, the Second Circuit concluded that the bankruptcy court lacked the authority to enjoin the actions against Travelers in the first place.

On further review, this Court reversed the Second Circuit, holding that "the 1986 Orders became final on direct review over two decades ago," and therefore "whether the Bankruptcy Court had jurisdiction and authority to enter the injunction in 1986 was not properly before the Court of Appeals in 2008 and [likewise was] not properly before [this Court]." *Id.* at 2203. The Court held further that,

> where the plain terms of a court order unambiguously apply, as they do here, they are entitled to their effect. . . . If it is black-letter law that the terms of an unambiguous private contract must be enforced irrespective of the parties' subjective intent, *see* R. Lord, *Williston on Contracts* § 30:4 (4th ed. 1999), it is all the clearer that a court should enforce a court order, a public governmental act, according to its unambiguous terms. This is all the Bankruptcy Court did.

Id. at 2204 (internal citations omitted). In addition, the Court held that, even if it found the 1986 orders to be ambiguous, "it is far from clear that respondents would be entitled to upset the Bankruptcy Court's interpretation of the 1986 Orders," because a "bankruptcy court's interpretation of its own confirmation order is entitled to substantial deference." *Id.* at 2204 n.4. Stressing the need for finality, the Court concluded that "[a]lmost a quarter-century after the 1986 Orders were entered, the time to prune them is over." *Id.* at 2206.

The Court's decision in *Bailey* has direct bearing here. Just as the plaintiffs in *Bailey* could not ignore or avoid the bankruptcy court's

confirmation of Manville's plan or its injunction barring actions against Manville's insurers, Funds cannot ignore the bankruptcy court's confirmation of Espinosa's Plan or its order granting Espinosa his discharge following completion of his plan payments. Whatever merit Funds' objection to the discharge of its claims might have had prior to confirmation, Funds' opportunity to assert its objection has long since passed, and it cannot now upset the finality of Espinosa's Plan or the bankruptcy court's order granting Espinosa his discharge.

2. *Celotex Corp. v. Edwards*

In *Celotex Corp. v. Edwards*, 514 U.S. 300 (1995), plaintiffs sued Celotex in the federal district court, alleging asbestos-related injuries. *Id.* at 302. The district court entered a judgment against Celotex, and, to stay execution pending appeal, Celotex posted a supersedeas bond with Northbrook Property and Casualty Insurance Company (Northbrook) serving as surety. *Id.* The Fifth Circuit affirmed the judgment, rendering it "final." *Id.* On the same day, Celotex commenced a chapter 11 bankruptcy case. *Id.*

Shortly thereafter, the bankruptcy court entered an injunction pursuant to 11 U.S.C. § 105 staying all proceedings involving Celotex, including any action against Northbrook. *Id.* at 303. Ignoring the injunction, plaintiffs filed a motion with the district court seeking permission

to execute against Northbrook on the supersedeas bond pursuant to Fed. R. Civ. P. 65.1. *Id.* Celotex and Northbrook argued that the bankruptcy court's injunction applied, barring execution. *Id.* The district court disagreed, and permitted plaintiffs to execute on the bond against Northbrook. *Id.* at 304. On appeal, the Fifth Circuit affirmed, but this Court reversed. *Id.* at 305-6.

The Court began by noting the well-settled rule that "persons subject to an injunctive order issued by a court with jurisdiction are expected to obey that decree until it is modified or reversed, even if they have proper grounds to object to the order." *Id.* at 306 (citation and internal quotation marks omitted) (citing *Oriel v. Russell*, 278 U.S. 358 (1929)). Plaintiffs attempted to argue that section 1334(b), vesting the bankruptcy court with jurisdiction to apply the provisions of the Bankruptcy Code, must be "harmonized" with Fed. R. Civ. P. 65.1, providing an expedited procedure for executing on supersedeas bonds. *Celotex*, 514 U.S. at 311. The Court disagreed, holding that the bankruptcy court's order trumped the procedural rule: "This Rule outlines a streamlined *procedure* for executing on bonds…Just because the Rule provides a simplified procedure for collecting on a bond, however, does not mean that such a procedure, like the more complicated procedure of a full-

fledged lawsuit, cannot be stayed by a lawfully entered injunction." *Id.* at 312.

The Court concluded that if plaintiffs desired to challenge the injunction, "they should have challenged it in the Bankruptcy Court." *Id.* at 313. Moreover, this Court explained that if the plaintiffs were dissatisfied with the bankruptcy court's decision, they should have taken a direct appeal to the district court and, if necessary, to the Eleventh Circuit. *Id.* What they could not do was "collaterally attack the Bankruptcy Court's Section 105 injunction…without seriously undercutting the orderly process of the law." *Id.*

The Court's decision in *Celotex* also has bearing here. Just as the plaintiffs in *Celotex* could not ignore the bankruptcy court's injunction and proceed to enforce their claim against the debtor's surety, Funds cannot ignore the bankruptcy court's confirmation of Espinosa's Plan and discharge order. To the extent Funds desired to challenge the Plan and its provision for the discharge of its claim, Funds was required to object to the Plan on a timely basis. If Funds were dissatisfied with the bankruptcy court's resolution of its objection, Funds could and should have taken a direct appeal to the district court or, if necessary, to the Ninth Circuit. What Funds cannot do without seriously undercutting the orderly process of the law is ignore

the bankruptcy court's discharge order, commence debt collection activities against Espinosa after Espinosa completed his payments under his Plan, and then claim that the bankruptcy court's order was void on the basis of an alleged defect that Funds could and should have asserted in the confirmation proceeding.

3. *Chicot County Drainage Dist. v. Baxter State Bank*

In *Chicot County Drainage Dist. v. Baxter State Bank*, 308 U.S. 371 (1940), the bankruptcy court[6] approved the plan of reorganization of the Chicot County Drainage District ("District") canceling the bonds of Baxter State Bank ("Baxter"). *Chicot*, 308 U.S. at 373. In reliance on the bankruptcy court's jurisdiction to confirm the plan, the Reconstruction Finance Corporation ("RFC") made a loan to the District and purchased a number of the District's old bonds. *Id.* Subsequently, in an unrelated case, this Court declared unconstitutional the provisions of the Bankruptcy Act under which the bankruptcy court had approved the District's plan. *Id.* at

[6] Under the prior bankruptcy acts, district courts were vested with the jurisdiction of bankruptcy courts and would sit as a court of bankruptcy in bankruptcy matters. *See* Act of July 1, 1898, ch. 541, § 2, 30 Stat. 545, 11 U.S.C. § 11 (repealed 1979). For clarity, the term "bankruptcy court" will be used to refer to such circumstances in this brief.

373-74. Thereafter, Baxter sought to recover on its bonds, arguing that the bankruptcy court lacked jurisdiction to cancel them owing to the unconstitutionality of the governing statutory scheme. *Id.*

Rejecting Baxter's claim, the Court stated bluntly: "We think the argument untenable." *Id*. at 376. As the Court recognized, "[t]he lower federal courts are all courts of limited jurisdiction, that is, with only the jurisdiction which Congress has prescribed." *Id*. Nevertheless, "they are courts with authority . . . to determine whether or not they have jurisdiction to entertain the cause and for this purpose to construe and apply the statute under which they are asked to act." *Id*. The Court concluded that "[t]heir determinations of such questions, while open to direct review, may not be assailed collaterally." *Id*; *see also Underwriters Nat'l Assurance Co. v. North Carolina Life & Accident & Health Ins. Guar. Ass'n*, 455 U.S. 691, 706 n.13 (1982) ("The need for finality within our federal system…applies with equal force to questions of jurisdiction.") (citations omitted).

The Court's decision in *Chicot* is directly analogous. Just as the creditor in *Chicot* could not ignore the bankruptcy court's confirmation order cancelling its bonds on the belated theory that the bankruptcy court's exercise of its authority was unconstitutional, Funds cannot now

argue successfully long after the fact that the bankruptcy court's orders confirming Espinosa's Plan and granting him a discharge exceeded the court's authority. Once again, the need for finality prevails.

4. *Stoll v. Gottlieb*

Finally, in *Stoll v. Gottlieb*, 305 U.S. 165 (1938), the bankruptcy court entered an order confirming the plan of reorganization of the debtor Ten Fifteen North Clark Building Corp. ("Ten Fifteen"). *Id.* at 169. The plan and confirmation order enjoined creditor William Gottlieb ("Gottlieb") from pursuing a claim directly against third party J. O. Stoll ("Stoll") based on Stoll's guaranty of Ten Fifteen's debt to Gottlieb. *Id.* at 168-69. Notwithstanding the bankruptcy court's order extinguishing the liability, Gottlieb subsequently pursued his guaranty claim against Stoll in a collateral proceeding. *Id.* at 169. Gottlieb argued in the subsequent proceeding that the bankruptcy court lacked authority to enter any order barring his pursuit of his guaranty claim against Stoll. *Id.* On review, this Court held that, regardless of whether the bankruptcy court had jurisdiction to enter its order in the first place, the bankruptcy court's original jurisdiction was not subject to challenge in a collateral proceeding, but was binding on Gottlieb. *Id.* at 172.

The Court began its analysis by reciting the familiar rule that "[a] court does not have the power, by judicial fiat, to extend its jurisdiction over matters beyond the scope of the authority granted to it by its creators." *Id.* at 171. Nonetheless, the Court explained that "[t]here must be admitted . . . a power to interpret the language of the jurisdictional instrument and its application to an issue before the court." *Id.* The Court likewise explained that "[i]t is just as important that there should be a place to end as that there should be a place to begin litigation." *Id.* at 172. Further, "[t]here is no reason to expect that the second decision will be more satisfactory than the first." *Id.*; *see also* 18A CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 4428, at 23 (2d ed. 2002); 18 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE § 131.30[1][d][iii] (3d ed. 2009); *see generally Willy v. Coastal Corp.*, 503 U.S. 131, 137 (1992) (describing the *Stoll* decision as one where "a judgment rendered in a case in which it was ultimately concluded that the District Court was without jurisdiction was nonetheless res judicata on collateral attack made by one of the parties") (citing *Stoll v. Gottlieb*, 305 U.S. 165 (1938)); *Insurance Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702 n.9 (1982).

The Court's decision in *Stoll* is directly analogous. Just as the creditor in *Stoll* could not

ignore the bankruptcy court's order enjoining him from pursuing his guaranty claim, Funds cannot ignore the bankruptcy court's confirmation of Espinosa's Plan and its discharge of Espinosa's unpaid indebtedness. *Stoll* is all the more relevant because the nature of the creditor's objection in *Stoll* is precisely the same as the Funds' objection here.

Stoll was decided under the former Bankruptcy Act of 1898. Section 16(a) of the Act provided expressly that "[t]he liability of a person who is a co-debtor with, or guarantor or in any manner a surety for, a bankrupt shall not be altered by the discharge of such bankrupt." Act of July 1, 1898, ch. 541, § 16(a), 30 Stat. 550, 11 U.S.C. § 35 (repealed 1979).[7] In other words, section 16(a) rendered Gottlieb's guaranty claim against Stoll nondischargeable in Ten Fifteen's bankruptcy proceeding. Nonetheless, Ten Fifteen provided in its plan that Stoll's guaranty liability would be extinguished. Gottlieb had notice of the bankruptcy, yet failed to object to this provision prior to confirmation of the plan. Accordingly, the court confirmed the plan, which thus became binding on all parties and discharged the guaranty obligation.[8] As a result,

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[7] The Bankruptcy Code contains a similar provision. *See* 11 U.S.C. § 524(e).

[8] Ten Fifteen confirmed its plan under section 77B of the former Bankruptcy Act of 1898. *See Stoll*, 305 U.S. at

Gottlieb was bound by the plan and his claim was discharged notwithstanding the clear terms of section 16(a) providing that the debt was *not* dischargeable. Gottlieb could and should have voiced his objection based on section 16(a) prior to confirmation of the plan. Because he failed to do so, he was bound by the plan and his claim was released.

In this case, Funds makes the same argument. Funds asserts that section 528(a)(8) renders its claims nondischargeable absent a finding of undue hardship. Yet Funds failed to voice this objection prior to confirmation of Espinosa's Plan, which clearly provided that, upon completion of his plan payments, any unpaid portion of Funds' claim would be discharged. Because Funds failed to make its argument in a timely fashion, its argument has been waived. As a result, following Espinosa's discharge, Funds could not engage in any debt collection activity against

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168; Act of June 7, 1934, ch. 424, § 77B, 48 Stat. 912, 11 U.S.C. § 207 (repealed 1938). Like section 1327(a), section 77B(g) provided that the provisions of a confirmed plan "shall be binding upon…the debtor…and…all creditors…" Act of June 7, 1934, ch. 424, § 77B(g), 48 Stat. 920, 11 U.S.C. § 207(g) (repealed 1938). Similarly, section 77B(h) provided that the final decree in the case operated to "discharge the debtor from its debts and liabilities…except as provided in the plan…" Act of June 7, 1934, ch. 424, § 77B(h), 48 Stat. 920, 11 U.S.C. § 207(h) (repealed 1938).

Espinosa attempting to recover any additional sums beyond the payments Espinosa made under his Plan.

B. Funds' Position Conflicts With The Essential Logic and Operation of the Bankruptcy Process.

Bankruptcy proceedings are fundamentally *in rem* in nature. Upon commencement of a bankruptcy case, the debtor's property resides in the custody of the bankruptcy court. *Straton v. New*, 283 U.S. 318, 320-21 (1931); *Hanover Nat'l Bank v. Moyses*, 186 U.S. 181, 189-90 (1902). Likewise, a bankruptcy court's *in rem* jurisdiction is premised on the debtor and his estate, not his creditors. *Tennessee Student Assistance Corp. v. Hood*, 541 U.S. 440, 447 (2004). Jurisdiction of this kind allows a bankruptcy court to "determin[e] all claims that anyone, whether named in the action or not, has to the property or thing in question. The proceeding is 'one against the world.'" *Id.* at 448 (quoting 16 JAMES WM. MOORE, MOORE'S FEDERAL PRACTICE § 108.70[1], at 108-106 (3d ed. 2004)).

The discharge of a debt is also an *in rem* remedy, and creditors are generally bound by a discharge order. *Hood*, 541 U.S. at 447. Similar to admiralty law, the *in rem* aspects of bankruptcy law are essential to the functioning of the bankruptcy court and, for over two centuries, have been an intrinsic part of bankruptcy juris-

prudence. It is only because the bankruptcy process is binding on all creditors that the critical functions of bankruptcy law – granting the debtor a fresh start, protecting and preserving an insolvent debtor's assets, and the adjustment and payment of claims against those assets – may be performed. As this Court has noted, it is by virtue of the binding nature of its determinations that "[a] bankruptcy court is able to provide the debtor a fresh start . . . despite the lack of participation of all of his creditors, because the court's jurisdiction is premised on the debtor and his estate, and not on the creditors." *Id.* Accordingly, once a bankruptcy plan is confirmed, it is binding on all parties, and once the opportunity for direct appeal has passed, the confirmation order is a final judgment, immune from challenge on collateral review. *Travelers*, 129 S.Ct. at 2206; *Stoll*, 305 U.S. at 171-72; *Trulis v. Barton*, 107 F.3d 685, 691 (9th Cir. 1997).

The Funds' position in this case stands at odds with these essential principles and places in jeopardy a variety of bankruptcy objectives by eroding the finality of the bankruptcy court's jurisdiction to implement them. Obviously, the benefits of a bankruptcy court's confirmation of a debtor's plan and entry of a discharge order would be eroded dramatically if the bankruptcy court's orders were subject to collateral attack, or could be simply ignored. *See* 5 COLLIER ON BANKRUPTCY ¶ 1141.01[1] (15th ed. 1995).

Funds seeks shelter in this Court's decision in *Hood*, but *Hood* does not support its position. To begin with, *Hood* involved a proceeding under chapter 7 of the Bankruptcy Code, in which plans are not used and payments under plans are not made. More important, finality was irrelevant in *Hood* because the debtor had failed in the first instance to list her student loans and have them included in her general discharge order. 541 U.S. at 444 ("Hood did not list her student loans in the bankruptcy proceeding, and the general discharge did not cover them."). Accordingly, her creditor was not given the opportunity to contest the discharge's coverage of her debt because no order had been issued purporting to discharge it.

In contrast, in this case Espinosa's Plan specifically dealt with his student loan obligations, and Funds had every opportunity prior to confirmation to object to its proposed treatment under the Plan. JA 26, 42-45. Following Espinosa's full completion of his payments under his Plan, the bankruptcy court issued its discharge order, which order did *not* except Espinosa's student loans from discharge (leaving aside the clerical error that was later rectified). JA 46, 48. Funds' failure to make a timely objection to the Plan, or otherwise challenge or appeal the orders confirming the plan and granting

Espinosa his discharge, are properly fatal to its arguments in this case.

CONCLUSION

For the foregoing reasons, as well as those offered by respondent, the decision of the court below should be affirmed.

Respectfully submitted,

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STATUTORY APPENDIX

11 U.S.C. § 523 (1992) EXCEPTIONS TO DISCHARGE

(a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt—

***

(8) for an educational benefit overpayment or loan made, insured or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution, or for an obligation to repay funds received as an educational benefit, scholarship or stipend, unless—

(A) such loan, benefit, scholarship, or stipend overpayment first became due more than 7 years (exclusive of any applicable suspension of the repayment period) before the date of the filing of the petition; or

(B) excepting such debt from discharge under this paragraph will impose an undue hardship on the debtor and the debtor's dependents;

11 U.S.C. § 1321 (1992) FILING OF PLAN

The debtor shall file a plan.

Statutory Appendix

11 U.S.C. § 1322 (1992) CONTENTS OF PLAN

(a) The plan shall—

(1) provide for the submission of all or such portion of future earnings or other future income of the debtor to the supervision and control of the trustee as is necessary for the execution of the plan;

(2) provide for the full payment, in deferred cash payments, of all claims entitled to priority under section 507 of this title, unless the holder of a particular claim agrees to a different treatment of such claim; and

(3) if the plan classifies claims, provide the same treatment for each claim within a particular class.

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(c) The plan may not provide for payments over a period that is longer than three years, unless the court, for cause, approves a longer period, but the court may not approve a period that is longer than five years.

Statutory Appendix

11 U.S.C. § 1325 (1992) CONFIRMATION OF PLAN

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(b)(1) If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan—

(A) the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or

(B) the plan provides that all of the debtor's projected disposable income to be received in the three-year period beginning on the date that the first payment is due under the plan will be applied to make payments under the plan.

(2) For purposes of this subsection, "disposable income" means income which is received by the debtor and which is not reasonably necessary to be expended—

(A) for the maintenance or support of the debtor or a dependent of the debtor; and

(B) if the debtor is engaged in business, for the payment of expenditures necessary for the continuation, preservation, and operation of such business.

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Statutory Appendix

11 U.S.C. § 1327 (1992) EFFECT OF CONFIRMATION

(a) The provisions of a confirmed plan bind the debtor and each creditor, whether or not the claim of such creditor is provided for by the plan, and whether or not such creditor has objected to, has accepted, or has rejected the plan.

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11 U.S.C. § 1328 (1992) DISCHARGE

(a) As soon as practicable after completion by the debtor of all payments under the plan, unless the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter, the court shall grant the debtor a discharge of all debts provided for by the plan or disallowed under section 502 of this title, except any debt—

(1) provided for under section 1322(b)(5) of this title;

(2) of the kind specified in paragraph (5) or (8) of section 523(a) or 523(a)(9) of this title; or

(3) for restitution included in a sentence on the debtor's conviction of a crime.

(b) At any time after the confirmation of the plan and after notice and a hearing, the court may grant a discharge to a debtor that has not completed payments under the plan only if—

> (1) the debtor's failure to complete such payments is due to circumstances for which the debtor should not justly be held accountable;
>
> (2) the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 of this title on such date; and
>
> (3) modification of the plan under section 1329 of this title is not practicable.

(c) A discharge granted under subsection (b) of this section discharges the debtor from all unsecured debts provided for by the plan or disallowed under section 502 of this title, except any debt—

> (1) provided for under section 1322(b)(5) of this title; or
>
> (2) of a kind specified in section 523(a) of this title.

(d) Notwithstanding any other provision of this section, a discharge granted under this section does not discharge the debtor from any debt based on an allowed claim filed under section 1305(a)(2) of this title if prior approval by the trustee of the debtor's incurring such debt was practicable and was not obtained.

(e) On request of a party in interest before one year after a discharge under this section is granted, and after notice and a hearing, the court may revoke such discharge only if—

(1) such discharge was obtained by the debtor through fraud; and

(2) the requesting party did not know of such fraud until after such discharge was granted.

11 U.S.C. § 1330 (1992) REVOCATION OF AN ORDER OF CONFIRMATION

(a) On request of a party in interest at any time within 180 days after the date of the entry of an order of confirmation under section 1325 of this title, and after notice and a hearing, the court may revoke such order if such order was procured by fraud.

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