No. 21-599

# In the Supreme Court of the United States

MARGARET L. KINNEY, PETITIONER

*v.*

HSBC BANK USA, N.A.

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

**BRIEF FOR THE UNITED STATES AS AMICUS CURIAE**

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## QUESTION PRESENTED

Whether a bankruptcy court may grant a completion discharge under 11 U.S.C. 1328(a) when a debtor misses payments near the end of her Chapter 13 plan's five-year commitment period but completes those payments shortly after the end of that period.

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## INTEREST OF THE UNITED STATES

This brief is submitted in response to the 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. a. The Bankruptcy Code provides various ways for debtors in financial distress to discharge their financial obligations and obtain a "fresh start." *Grogan* v. *Garner*, 498 U.S. 279, 286 (1991). Most individual debtors pursue relief under either Chapter 7 or Chapter 13 of the Bankruptcy Code. In Chapter 7, the debtor's existing assets (subject to various exemptions) are liquidated to pay off creditors, and the debtor may promptly obtain a discharge. *Harris* v. *Viegelahn*, 575 U.S. 510, 512-514 (2015); see 11 U.S.C. 701 *et seq.* Alternatively, Chapter 13 permits a debtor with regular income to re-

tain some existing assets, but the debtor must make monthly payments from her disposable income under a plan that typically lasts between three and five years. See 11 U.S.C. 1301 *et seq.*; *Harris*, 575 U.S. at 514. A Chapter 13 discharge ordinarily can be achieved only after the debtor completes "all payments under the plan." 11 U.S.C. 1328(a).

A debtor seeking Chapter 13 relief is required to propose a repayment plan, which must (among other things) set out how the debtor's disposable income will be used to repay creditors. See 11 U.S.C. 1321, 1322(a). If the debtor's income is below her State's median, the plan generally must include a commitment period of 3 years, "unless the [bankruptcy] court, for cause, approves a longer period, but the court may not approve a period that is longer than 5 years," 11 U.S.C. 1322(d)(1); see 11 U.S.C. 1322(d)(2), 1325(b)(4). If the debtor's income is at or above the state median, the standard commitment period is 5 years, 11 U.S.C. 1325(b)(4)(ii), and "the plan may not provide for payments over a period that is longer than 5 years," 11 U.S.C. 1322(d)(1).[1] A debtor must commence plan payments within 30 days of filing a plan if the court has not yet confirmed the plan. 11 U.S.C. 1326(a)(1).

b. Once the bankruptcy court confirms a Chapter 13 plan, the plan binds the debtor and all creditors. 11 U.S.C. 1327(a). Two types of post-confirmation events that occur in some cases are relevant here. First, "upon request of the debtor, the trustee, or the holder of an allowed unsecured claim," a confirmed plan may be modified in a number of specific ways. 11 U.S.C.

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[1] A shorter commitment period is permitted "only if the plan provides for payment in full of all allowed unsecured claims over a shorter period." 11 U.S.C. 1325(b)(4)(B).

1329(a). A modified plan "may not provide for payments over a period that expires after the applicable commitment period * * * unless the court, for cause, approves a longer period, but the court may not approve a period that expires after five years after such time." 11 U.S.C. 1329(c). Second, at the request of the U.S. Trustee or an interested party, the court "may convert" the case to a Chapter 7 proceeding "or may dismiss" the case, "whichever is in the best interests of creditors and the estate, for cause." 11 U.S.C. 1307(c). One form of "cause" is a "material default by the debtor with respect to a term of a confirmed plan." 11 U.S.C. 1307(c)(6).

In some cases, conversion to Chapter 7 will have the same effect as dismissal. The Bankruptcy Code presumes that it would be an "abuse" for certain debtors—including many with incomes above the state median—to receive Chapter 7 relief, and if such a debtor cannot rebut the presumption of abuse, her Chapter 7 case may be dismissed. See 11 U.S.C. 707(b)(1), (2)(A)(i), and (2)(B)(i).

Subject to certain exceptions, "as soon as practicable after completion by the debtor of all payments under the plan," the bankruptcy court "shall grant the debtor a discharge of all debts provided for by the plan." 11 U.S.C. 1328(a). That type of discharge is known as a completion discharge. If the debtor "has not completed payments under the plan," she may still be eligible for what is known as a hardship discharge, 11 U.S.C. 1328(b)(1), which is generally narrower in scope than a completion discharge because certain categories of debts usually covered by a completion discharge are not covered by a hardship discharge. Compare 11 U.S.C. 1328(a)(1) and (2), with 11 U.S.C. 1328(c). To obtain a hardship discharge, the debtor must establish that her

"failure to complete * * * payments is due to circumstances for which the debtor should not justly be held accountable" and that she meets additional requirements. 11 U.S.C. 1128(c); see 11 U.S.C. 1328(b)(2) and (3). If a debtor is not eligible for a completion or hardship discharge, the case will be dismissed or converted to a Chapter 7 proceeding. See 11 U.S.C. 1307(a), (b), and (c).

2. a. Petitioner is an individual debtor who filed a petition for Chapter 13 relief in the Bankruptcy Court for the District of Colorado in 2013. Pet. App. 26. At the time of that filing, petitioner had an outstanding balance on the mortgage for her principal residence, which she owed to respondent. See *id.* at 3. When petitioner filed for bankruptcy, she was current on her mortgage payments. *Ibid.*

The bankruptcy court confirmed petitioner's plan in May 2014. C.A. App. 118. The plan required petitioner to pay her disposable income to the Chapter 13 Trustee, who then distributed those funds to unsecured creditors. See *id.* at 111. Petitioner's monthly income was above her State's median, so the plan specified that she was required to make those payments for five years starting on November 25, 2013. *Id.* at 110-111. The plan also required petitioner to make direct payments to certain secured creditors, including respondent. Pet. App. 25; C.A. App. 112, 115. Those were treated as payments under petitioner's bankruptcy plan. Pet. App. 3; see 8 *Collier on Bankruptcy* ¶ 1328.02, at 1328-8 to 1328-8.1 (Richard Levin & Henry J. Sommer eds., 16th ed. 2021) (*Collier*).

The five-year commitment under petitioner's plan was scheduled to end in November 2018. Pet. App. 26. In July 2018, respondent filed a document with the

bankruptcy court confirming that petitioner was current on her mortgage payments. *Ibid.*; see Fed. R. Bankr. P. 3002.1(f). But petitioner failed to make mortgage payments due on September 1, October 1, and November 1, 2018, resulting in an arrearage of $2,978.18. Pet. App. 26-27; C.A. App. 147. According to petitioner, she missed those payments because her injuries from a March 2018 car accident resulted in multiple surgeries and substantial medical expenses. Pet. App. 4, 46.

In December 2018, respondent moved to dismiss petitioner's bankruptcy case under Section 1307(c)(6), arguing that petitioner's failure to make the three mortgage payments was a material default with regard to her confirmed plan. Pet. App. 27; C.A. App. 125-127. In February 2019, while respondent's motion to dismiss was pending, petitioner made the three missing payments in full. Pet. App. 27.

b. The bankruptcy court entered an order dismissing the case, but delayed finalizing the order to permit petitioner to instead convert the case to Chapter 7. Pet. App. 25-34; see *id.* at 37. The court held "that the Bankruptcy Code does not permit the Debtor additional time to cure plan arrearages after the plan has ended." *Id.* at 25-26. And the court found that petitioner's "failure to timely pay her mortgage payments during the five-year applicable commitment period constitutes a material default" and "is cause for dismissal" under Section 1307(c)(6). *Id.* at 32.

Petitioner did not move to convert the case to Chapter 7; she instead moved for reconsideration of the dismissal, which was denied. Pet. App. 37-50. The bankruptcy court then entered a final order of dismissal. *Id.* at 35.

3. On direct appeal from the bankruptcy court to the court of appeals under 28 U.S.C. 158(d)(2), the court of appeals affirmed. Pet. App. 1-24.

a. The court of appeals identified "ambiguity inherent in the combination of" relevant provisions of the Bankruptcy Code about whether a debtor's payments after the expiration of a plan's five-year term can cure a default and permit a discharge. Pet. App. 7. The court observed that Section 1328(a) requires discharge "as soon as practicable after completion by the debtor of all payments under the plan," 11 U.S.C. 1328(a), but does not address whether to count payments made after the plan ends. Pet. App. 7a. The court further observed that Section 1307(c)(6), which permits but does not require dismissal for material default, "implies some discretion." *Id.* at 8. Although those provisions "don't definitively resolve the extent of discretion over dismissal and discharge," the court concluded that they "suggest that discharge is unavailable when the plan ends with an ongoing material default." *Id.* at 7 (emphasis omitted). In the court's view, "the more natural reading" of Section 1328(a) is that payments can "fall 'under' a plan only if the plan remained in existence" at the time the payments were made. *Id.* at 11. The court also stated that treating "late payments as an informal cure * * * would nullify" Section 1329(c), which prohibits plan modifications that would provide for payments over a period longer than five years. *Id.* at 14.

To resolve the perceived ambiguity in the Bankruptcy Code, the court of appeals turned to legislative history. Pet. App. 17-22. The court noted that, when Congress adopted the five-year limit on commitment periods, the House Judiciary Committee expressed concern about "indefinite extensions of payment plans." *Id.*

at 19 (citing H.R. Rep. No. 595, 95th Cong., 1st Sess. (1977) (House Report)). The court therefore concluded that "Congress intended to strictly limit the time for payments under Chapter 13 plans." *Id.* at 22. In reaching that conclusion, the court indicated that it disagreed with the Third Circuit's decision in *In re Klaas*, 858 F.3d 820 (2017). Pet. App. 7, 15, 19.

Applying its rule to petitioner, the court of appeals held that, "[g]iven [her] material default, the plan's expiration left the bankruptcy court without authority to grant a discharge." Pet. App. 22.[2]

b. Judge Eid concurred in the judgment. Pet. App. 22-24. In her view, there was no need to consult legislative history because the statutory scheme unambiguously provides that "a plan expires after five years, and payments cannot be 'under' a plan that has come to an end." *Id.* at 24.

**DISCUSSION**

A bankruptcy court generally cannot dismiss or convert a Chapter 13 case over a debtor's objection without first finding "cause"—such as a material default by the debtor. 11 U.S.C. 1307(c). And a mere failure to make a plan payment is not automatically a material default. Rather, a court must consider the totality of the circumstances before dismissing or converting a Chapter 13 case on that basis.

The court of appeals erred to the extent it declined to apply that principle to payments missed near the end of a five-year commitment period and instead held that

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[2] The court of appeals also found that petitioner forfeited any argument that her five-year commitment period commenced when the plan was confirmed in May 2014, rather than when the first payment was due in November 2013. Pet. App. 3.

a completion discharge is categorically unavailable whenever a payment is made after that period. None of the Bankruptcy Code provisions governing the approval, modification, or dismissal of Chapter 13 plans requires the Tenth Circuit's approach. If Congress had wanted to adopt that rigid and unforgiving rule for any payment outstanding at the moment the five-year period ends, it could have made that clear. The court's rule undermines the Bankruptcy Code's goals for both debtors and creditors and produces absurd and inequitable results, especially for debtors who unknowingly have a small outstanding balance at the end of five years.

Despite the disagreement between the Third and Tenth Circuits, the question presented does not warrant this Court's review at this time. No other court of appeals has addressed the question presented, and it does not appear to have been frequently litigated in the lower courts. Moreover, the full scope of the Tenth Circuit's decision is unclear. This Court should therefore, at a minimum, defer consideration of the question presented until the Tenth Circuit clarifies the reach of its rule.

### A. The Court Of Appeals Erred To The Extent It Held That A Bankruptcy Court Must Deny A Debtor A Completion Discharge If She Fails To Make All Payments Within The Five-Year Commitment Period

1. If all goes as intended in a Chapter 13 bankruptcy, the case proceeds as follows: the debtor proposes a plan; the bankruptcy court approves the plan; the debtor may seek and the court may grant plan modifications; and, once the debtor has completed the plan payments, the court grants the debtor a completion discharge. See pp. 2-4, *supra*. One way that process can

be derailed is by a conversion or dismissal "for cause." 11 U.S.C. 1307(c). Enumerated forms of "cause" include "unreasonable delay by the debtor that is prejudicial to creditors" and "material default by the debtor with respect to a term of a confirmed plan." 11 U.S.C. 1307(c)(1) and (6). But in the absence of cause, a debtor who makes all her payments is entitled to a completion discharge.

The court of appeals erred to the extent that it held that a bankruptcy court must automatically deny a debtor a completion discharge if she fails to make all payments within the five-year commitment period. As lower courts have repeatedly found in Chapter 13 cases, whether missed payments are a material default depends on the "totality of circumstances": sometimes they are, but sometimes debtors are permitted to make up for missed payments. *In re Brown*, 70 B.R. 10, 12 (Bankr. S.D. Ohio 1986); see 8 *Collier* ¶ 1307.04, at 1307-20.[3] When determining whether the failure to make

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[3] For decisions finding material default when debtors failed to make payments, see, *e.g.*, *In re Silva*, No. 21-55873, 2022 WL 2340802, at *1 (9th Cir. June 29, 2022); *In re Roberts*, 279 B.R. 396, 399-400 (B.A.P. 1st Cir. 2000), aff'd, 279 F.3d 91 (1st Cir. 2002); *Evans* v. *Stackhouse*, 564 B.R. 513, 530-533 (E.D. Va. 2017); *In re Formaneck*, 534 B.R. 29, 32-35 (Bankr. D. Colo. 2015); *In re Heinzle*, 511 B.R. 69, 81-83 (Bankr. W.D. Tex. 2014); *In re King*, 217 B.R. 623, 626 (Bankr. S.D. Cal. 1998). For decisions finding no material default when debtors failed to make payments, see, *e.g.*, *Sievers* v. *Green*, 64 B.R. 530, 530-531 (B.A.P. 9th Cir. 1986); *In re Durben*, 70 B.R. 14, 15-16 (Bankr. S.D. Ohio 1986); *In re Brown*, 70 B.R. at 11-12; *In re Pizzullo*, 33 B.R. 740, 742 (Bankr. E.D. Pa. 1983); *In re Jarvis*, 24 B.R. 46, 47-48 (Bankr. D. Vt. 1982). For decisions recognizing that debtors may be permitted to make up missed plan payments in some situations, see, *e.g.*, *Ferrell* v. *Countryman*, 398 B.R. 857, 860-861, 865-866, 868 (E.D. Tex. 2009); *In re Nicksion*, 631 B.R. 475, 480-481 (Bankr. D. Kan. 2021); *In re Wilson*, No. 04-29916, 2008

payments is a material default, a court may consider a variety of factors, including (1) "why such payments were not made," *In re Howell*, 76 B.R. 793, 795 (Bankr. D. Or. 1986); (2) whether the debtor "intentional[ly] fail[ed] to make payments at a time when the debtor was financially able to do so," *ibid.*; (3) "whether the failure of performance will result in creditors receiving less than they would have [otherwise] received," *In re Jahanian*, No. 08-10030, 2009 WL 3233161, at *3 (Bankr. E.D. Va. Sept. 28, 2009); and (4) whether the debtor "will be able to make up the missing payments over the remaining term of the Plan," *In re Wilson*, No. 04-29916, 2008 WL 4865587, at *1 (Bankr. D. Md. Nov. 7, 2008).

Thus, as relevant here, when a creditor seeks dismissal because a debtor is late on a payment, a bankruptcy court cannot simply dismiss or convert the case on that basis. Rather, the court must first determine that the late payment constituted a material default under Section 1307(c)(6). The court of appeals appears to have rejected that approach when it comes to a late payment that occurs after the end of the five-year commitment period. But, for the reasons discussed below, nothing in the Bankruptcy Code requires that late payments at the end of the five-year period be treated differently from late payments during the five-year period. If Congress had wanted to impose differential treatment with such harsh results, it would have been clear. There is therefore no basis for a strict rule barring a completion discharge whenever a debtor has an outstanding payment at the conclusion of year five, but later makes that payment.

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WL 4865587, at *1 (Bankr. D. Md. Nov. 7, 2008); *In re Howell*, 76 B.R. 793, 793-795 (Bankr. D. Or. 1986).

2. None of the Bankruptcy Code provisions governing Chapter 13 plans, their modification, or discharges under them prohibits a completion discharge just because the debtor fails to make a payment before the conclusion of the five-year commitment period.

a. To be confirmed, a Chapter 13 "plan may not provide for payments over a period that is longer than 5 years." 11 U.S.C. 1322(d)(1); see 11 U.S.C. 1322(d)(2) (barring a bankruptcy court from "approv[ing] a period that is longer than 5 years"). By placing limits on the "*commitment* period," 11 U.S.C. 1325(b)(4) (emphasis added), and barring plans that "*provide* for payments" beyond five years, 11 U.S.C. 1322(d)(1) (emphasis added), Congress addressed only the length of the payment schedule—not what happens when a payment is untimely. See 8 *Collier* ¶ 1322.18, at 1322-62.6 ("[T]he fact that a debtor does not actually conclude the payments within the stated period does not constitute a violation of section 1322(d)."). Had Congress wanted to adopt a more stringent rule, it could have used language that referred to more than the plan's approved length—such as stating that "no payment shall be accepted or payable after five years."

The limits on commitment periods in Chapter 13 repayment plans therefore do not speak to whether or when a late payment is permitted. That is confirmed by the Bankruptcy Code's overarching distinction between the prerequisites for confirmation and the conditions for discharge, dismissal, and conversion. For example, at confirmation, a bankruptcy court must determine that "the debtor will be able to make all payments under the plan and to comply with the plan." 11 U.S.C. 1325(a)(6). But if it turns out, after confirmation, that a debtor is unable to make all payments or comply with the plan, the

confirmation provisions do not control. Rather, the court must consider whether post-confirmation modification is appropriate under 11 U.S.C. 1329 or whether the case should be dismissed or converted for cause under Section 1307(c). Similarly, if a debtor fails to complete all payments by the conclusion of a confirmed plan, the confirmation provisions do not control—much less compel automatic dismissal or conversion. Nor do the provisions governing plan modifications. Although a bankruptcy court "may not approve" a modification that would permit a plan's commitment period to "expire[] after five years," 11 U.S.C. 1329(c), that limitation does not dictate whether dismissal or conversion is required if an outstanding payment is made after that period expires.

b. The Bankruptcy Code's discharge provisions likewise do not bar a completion discharge in all cases in which a debtor was missing a payment at the end of the five-year period but subsequently made the payment. Section 1328(a) provides that "as soon as practicable after completion by the debtor of all payments under the plan" the bankruptcy court "shall grant the debtor a discharge." 11 U.S.C. 1328(a). The timing of the discharge depends on what is "practicable" after the completion of "payments under the plan," not after the expiration of the commitment period. *Ibid.* But a late payment—whether it occurs during or after the commitment period—may still be a payment "under the plan."

The preposition "under" "can have many different meanings in different contexts." *In re Hechinger Inv. Co.*, 335 F.3d 243, 252 (3d Cir. 2003) (Alito, J.). In the context of Section 1328(a), the most applicable definition is "[s]ubject to the restraint or obligation of." *The*

*American Heritage Dictionary of the English Language* 1395 (1975) (*American Heritage*); see *Webster's Third New International Dictionary of the English Language* 2487 (1976) (*Webster's*) (def. 8a: "required by : in accordance with : bound by"); 18 *The Oxford English Dictionary* 949 (2d ed. 1989) (*OED*) (def. 14b: "With words denoting an obligation, compact, or formal engagement: Subject to, bound or constrained (legally or morally) by."). The dictionaries' examples of that meaning include "under contract," "[under] contract to deliver," and "rights [under] the law." *American Heritage* 1395 (italics omitted); *Webster's* 2487.

A payment is therefore made "under the plan," 11 U.S.C. 1328(a), if it is one that the plan "oblig[ed]," *American Heritage* 1395, or "required," *Webster's* 2487, the debtor to make. That means that a debtor has "complet[ed] * * * all payments under the plan," 11 U.S.C. 1328(a), when she has made all payments required by the plan. That remains true even if a required payment was late. Neither the definition of "under" nor the statutory context forbids a late payment or imposes an absolute timeliness requirement.[4] Although Section 1328(a) requires all payments to be made before a completion discharge, it does not reference the timing of payments. And, while various provisions state that a bankruptcy court may not impose a commitment period of more than five years, those provisions do not suggest that a confirmed plan automatically "is no longer in

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[4] The only non-obsolete definition of "under" that refers to a time period, encompassing the reign of an individual ruler, is inapposite. See 18 *OED* 951 (def. 11a: "With names or designations of rulers, passing into the sense of 'during the reign or administration of', 'in the time or period of'."); *Webster's* 2487 (def. 10b: "during the reign or administration of").

force" or that late payments are barred after five years. Br. in Opp. 13.

That reading accords with common parlance. For example, consumers routinely enter into cell-phone contracts that include a term of service and require monthly payments. When a consumer is late in making a monthly payment in the beginning or middle of the contract period, nobody thinks that the late payment is not made "under" the plan. Similarly, if a payment is outstanding at the end of the contract, but is made shortly thereafter, it still satisfies an obligation "under" the contract. By the same token, payments required by a Chapter 13 plan that are made after the plan's five-year commitment period are payments under that plan—though in some cases their lateness may make dismissal or conversion for material default or prejudicial delay appropriate.

Contrary to respondent's assertion (Br. in Opp. 13), this Court's decision in *Florida Department of Revenue* v. *Piccadilly Cafeterias, Inc.*, 554 U.S. 33 (2008), does not suggest that the phrase "under the plan" in Section 1328(a) bars a completion discharge if a payment is made after five years. In *Piccadilly* the Court held that 11 U.S.C. 1146(a), which provides that the transfer of a security "under a plan confirmed under section 1129 or 1191 of this title[] may not be taxed under any law imposing a stamp tax," does not apply to transfers that occur before a plan is confirmed. 554 U.S. at 52-53. Adopting a definition of "under" similar to the applicable one here, the Court found that "under a plan confirmed," 11 U.S.C. 1146(a), was best "read to mean 'with the authorization of' or 'inferior or subordinate' to its referent, here the confirmed plan." *Piccadilly*, 554 U.S. at 39. The Court observed that "a transfer made prior

to the date of plan confirmation cannot be subject to, or under the authority of, something that did not exist at the time of the transfer—a confirmed plan." *Id.* at 40. *Piccadilly*'s textual analysis therefore hinged on what it means to be a "plan *confirmed*." 11 U.S.C. 1146(a) (emphasis added). Here, there is no question that the plan was confirmed well before petitioner's late payment.

And *Piccadilly* does not stand for the broad proposition that a payment is only "under the plan" if it occurs within the commitment period. *Piccadilly* analyzed plan confirmation—which occurs on a certain date pursuant to a specific court order. See 554 U.S. at 37. But no order terminating the plan is entered precisely at the end of the commitment period. Rather, at some time thereafter, the debtor will seek a discharge under Section 1328(a) or, if the debtor has failed to comply with the plan, a party or the U.S. Trustee will seek dismissal or conversion under Section 1307(c).

c. Neither the court of appeals nor respondent has identified a Bankruptcy Code provision that automatically bars a bankruptcy court from granting a completion discharge if a Chapter 13 debtor fails to make all payments within five years. If a debtor fails to make all plan payments by the end of that period, a court, on a proper motion, should consider whether the failure to make timely payments is a material default or otherwise constitutes cause to convert or dismiss the case. See 11 U.S.C. 1307(c). In such situations, courts should be guided by the general considerations for determining whether a default is material. See pp. 9-10, *supra*. Of course, if a default is immaterial, the debtor still must "complet[e]" any missing payments before receiving a completion discharge. 11 U.S.C. 1328(a).

3. The broader statutory context supports an approach that permits some debtors who complete their plan payments after five years to obtain completion discharges. As an initial matter, debtors who fall behind on payments *during* the five-year period may be permitted to make up those payments in some cases. See pp. 9-10, *supra*. And nothing in the Bankruptcy Code justifies "denying that opportunity to debtors after a lengthy track record of good faith payments" and thereby "'impos[ing] a standard of perfection at the conclusion of the plan term that does not exist at any other point in the case.'" *In re Klaas*, 858 F.3d 820, 831 (3d Cir. 2017) (citation omitted). Indeed, the rule in the decision below undermines "a central purpose of the Code": to "provide a procedure by which certain * * * debtors can reorder their affairs, make peace with their creditors," and be "'unhampered by the pressure and discouragement of preexisting debt.'" *Grogan* v. *Garner*, 498 U.S. 279, 286 (1991) (citation omitted). In many situations, permitting a brief period for the debtor to complete payments will best serve both the debtor's interest in obtaining a completion discharge and the creditor's interest in receiving its payments. The facts of this case illustrate the point: Once petitioner made up the missed mortgage payments, respondent repeatedly disavowed any interest in the dismissal of petitioner's case. See C.A. Doc. 10110366727 (June 25, 2020); Br. in Opp. 11-12.

The court of appeals' approach could also create results bordering on the absurd. For example, a plan may require payment of a fee that the debtor is not notified about until after the five-year commitment period ends. See *In re Klaas*, 858 F.3d at 824, 833 & n.1. And U.S. Trustees have informed this Office that they are aware

of situations in which a debtor, because of a calculation error or mistake, owes less than $100 after the applicable commitment period has ended. Under a strict reading of the Tenth Circuit's rule, such a debtor would be automatically barred from obtaining a completion discharge—even if the debtor believed she had timely made all plan payments, the calculation error was not her fault, and she paid promptly after learning of the outstanding amount.

4. Because the statutory text and context resolve the meaning of the relevant statutory provisions, there is no need to consult legislative history. See *Food Mktg. Inst.* v. *Argus Leader Media*, 139 S. Ct. 2356, 2364 (2019). In any event, the legislative history invoked by the court of appeals does not support its approach. The House Judiciary Committee's Report stated that the predecessor to the Bankruptcy Code permitted too many "[e]xtensions on plans" that "put some debtors under court supervised repayment plans for seven to ten years." House Report 117. The Committee criticized such plans as "the closest thing there is to indentured servitude," in that they "last[] for an [unidentifiable] period, and do[] not provide the relief and fresh start for the debtor that is the essence of modern bankruptcy law." *Ibid.*

That criticism does not suggest that the Committee drafted a rule that completely disallows payments after the five-year commitment period—and thereby prevents a completion discharge. Such a strict rule would frustrate the Committee's desire to provide "relief and [a] fresh start for the debtor." House Report 117. And the Committee did not indicate that the five-year cap on Chapter 13 plans—which was meant to shield debtors from indefinitely long repayment periods—would also

be a sword preventing debtors from obtaining relief for minor payment anomalies that happen to arise at the end, rather than the beginning or middle, of their plans. See *In re Klaas*, 858 F.3d at 830.

5. Respondent's and the court of appeals' remaining substantive arguments lack merit. Permitting late payments in appropriate cases does not "nullify" Section 1329(c)'s requirement that a plan may not be modified to extend beyond five years. Pet. App. 14; see Br. in Opp. 13-14. A debtor who fails to make all payments by the end of five years must be prepared to rebut any claim of material default and complete the payments in order to obtain a completion discharge. See p. 15, *supra*. That approach best accounts for both Section 1329(c)'s limits on modification and Section 1307(c)'s proviso that a case may not be dismissed or converted over a debtor's objection absent cause (such as a material default). And, just as an immaterial late payment *during* the five-year period does not "nullify" the Bankruptcy Code's general timeliness requirements, permitting a debtor to rectify an immaterial payment failure *at the end of* five years does not "nullify" Section 1329(c).

Respondent suggests (Pet. 17-18) that conversion to Chapter 7 will provide relief to Chapter 13 debtors who miss payments at the end of their repayment plans. But conversion to Chapter 7 will have the same effect as dismissal in some cases. See *Hamilton* v. *Lanning*, 560 U.S. 505, 523 (2010); see also p. 3, *supra*. Similarly, contrary to respondent's suggestion (Br. in Opp. 4), a hardship discharge under Section 1328(b)(1) is unlikely to provide relief to many debtors. To obtain a hardship discharge, a debtor must establish, among other things, that she "fail[ed] to complete" plan payments. 11 U.S.C.

1328(b)(1). A hardship discharge therefore appears to be unavailable to debtors like petitioner, who made up her missed plan payments before the bankruptcy court determined whether dismissal or discharge was appropriate. At the same time, encouraging debtors "to withhold the remainder of the plan funding that they have at their disposal" in order to be eligible for the more limited discharge associated with non-completion does not "make sense," as it "deprive[s] creditors of those distributions," which disserves a basic purpose of Chapter 13. *In re Klaas*, 858 F.3d at 831. Thus, in *Hamilton* v. *Lanning*, this Court declined to adopt a "mechanical approach" to Chapter 13 in part because it would "produce senseless results" by "deny[ing] creditors payments that the debtor could easily make." 560 U.S. at 520.

**B. The Question Presented Does Not Warrant This Court's Review At This Time**

Although the court of appeals' decision is erroneous, and although it conflicts with a decision from the Third Circuit, further review of the question presented is unwarranted at this time. This issue appears to have been litigated infrequently. And the Tenth Circuit should have the opportunity to clarify the reach that its decision will have.

1. As respondent appears to acknowledge (Br. in Opp. 6-10), the court of appeals' decision conflicts with the Third Circuit's decision in *In re Klaas*, *supra*. Although the facts here differ from those in *In re Klaas*—which involved debtors who were unaware of an end-of-plan shortfall resulting from unpaid fees for the Chapter 13 Trustee, 858 F.3d at 824 & n.1, 833—the Third Circuit's rule is incompatible with the rule that the court of appeals appears to have adopted in this case.

Instead of imposing a bright-line rule barring a completion discharge whenever a debtor has not completed all payments within five years, the Third Circuit held that "bankruptcy courts have discretion to grant a brief grace period and discharge debtors who cure an arrearage in their payment plan shortly after the expiration of the plan term." *Id.* at 823. And the Third Circuit instructed bankruptcy courts contemplating payments after the five-year period to examine the sort of factors that they normally consider when determining whether a debtor has materially defaulted. *Id.* at 831-833.

But as the shallowness of the split suggests, the question presented appears to have been litigated infrequently and therefore does not currently warrant this Court's review. Petitioner and the court of appeals identify (Pet. 10-12; Pet. App. 7) only 16 other cases in the past 35 years in which bankruptcy courts have confronted the question of how to treat missing payments at the end of five years. It is therefore not clear that this case presents a sufficiently "important matter" for this Court's review. Sup. Ct. R. 10(a).

2. The question presented also does not warrant this Court's review at this time because the breadth of the court of appeals' decision is unclear. The decision below could be understood to adopt a sweeping rule that bars a bankruptcy court from granting a debtor a completion discharge whenever any payment comes after the five-year window closes. But the decision alternatively could be read more narrowly, as holding that if a late payment after the end of the five-year period constitutes a material default, only then is a court prohibited from granting a completion discharge.

That reading is possible because the issue of materiality was not briefed by petitioner in the court of ap-

peals; she did not contest the bankruptcy court's determination that her three untimely mortgage payments constituted a material default under Section 1307(c)(6). See Pet. C.A. Br. 8-11, 16; see also Resp. C.A. Br. 25 n.5 (noting that petitioner "does not argue in her brief that the three missed mortgage payments were immaterial"). The court of appeals therefore may not have independently considered whether the default in this particular case was material, see Pet. App. 5, 7, 8, 12-13, 22, and instead may have taken the materiality of the default as a "[g]iven," *id.* at 22. It is therefore possible that, in the future, the Tenth Circuit will limit the decision below by directly considering the materiality question. The court could hold that some missed payments at the end of a five-year plan are immaterial—perhaps depending on their amounts and the degree of lateness in ultimate payment—*and* that the rule in this case does not bar a completion discharge when the default is immaterial. Such an interpretation would limit the effects of the court's decision in this case and reduce any need to resolve the shallow circuit split.

This Court should therefore, at a minimum, defer review of the question presented until the court of appeals has an opportunity to clarify the scope of the decision below. That approach is particularly appropriate because petitioner did not seek en banc rehearing, and, to the government's knowledge, neither a court of appeals panel nor the en banc court has had an opportunity to interpret the decision below.

## CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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