No.

In the Supreme Court of the United States

MARTHA G. BRONITSKY, CHAPTER 13 TRUSTEE,
PETITIONER

v.

JORDEN MARIE SALDANA

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

This case presents a clear, recognized, and intractable conflict regarding an important statutory question under the Bankruptcy Code.

According to a split panel of the Ninth Circuit, Chapter 13 debtors can voluntarily choose to fund their own retirement accounts rather than cover their unpaid debt—even if debtors never contributed pre-bankruptcy and even if their future contributions leave unsecured creditors with nothing (a 0.00% recovery) over a five-year bankruptcy plan.

This issue has left the courts in complete disarray: it has split the circuits, divided multiple panels (including this one), fractured countless lower courts, and otherwise created "havoc" in bankruptcy cases nationwide—all over a recurring question with billion-dollar aggregate stakes for thousands of Chapter 13 cases filed each year. All aspects of the debate have been fully exhausted, and additional percolation is pointless—the courts disagree over every facet of the question presented, and there is no chance this split will dissipate on its own. The question presented was the sole basis for the decision below, and this case is an ideal vehicle for resolving this entrenched conflict.

The question presented is:

Whether, under the Bankruptcy Code, debtors can voluntarily contribute to their own retirement accounts rather than pay back unsecured creditors—and if so, when (and in what amount) such contributions might be permissible.

RELATED PROCEEDINGS

United States Bankruptcy Court (Bankr. N.D. Cal.):

In re Jorden Marie Saldana, No. 22-40351-RLE13 (July 28 and 29, 2022) (oral ruling and order sustaining petitioner's objection to confirmation)

In re Jorden Marie Saldana, No. 22-40351-RLE13 (Sept. 26 and 27, 2022) (signed and entered order confirming third amended Chapter 13 plan)

United States District Court (N.D. Cal.):

In re Jorden Marie Saldana, No. 5:22-cv-06223-BLF (May 15, 2023)

United States Court of Appeals (9th Cir.):

Jorden Marie Saldana v. *Martha G. Bronitsky, Chapter 13 Trustee (In re Saldana)*, No. 23-15860 (Nov. 22, 2024)

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Miscellaneous:

Gary M. Kaplan, *Business Law: Saldana v. Bronitsky (In re Saldana)*, California Lawyers Ass'n (Jan. 31, 2025) 19
David R. Kuney, *Time To Resolve Confusion On Pension Contributions*, 37-FEB Am. Bankr. Inst. J. 8 (Feb. 2018) 7
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Troy A. McKenzie, *Judicial Independence, Autonomy, and the Bankruptcy Courts*, 62 Stan. L. Rev. 747 (2010) 22
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PETITION FOR A WRIT OF CERTIORARI

Martha G. Bronitsky, the Chapter 13 trustee, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a-35a) is reported at 122 F.4th 333. The order and opinion of the district court (App., *infra*, 36a-53a) is reported at 651 B.R. 570. The order of the bankruptcy court (App., *infra*, 54a-55a) and its oral ruling (App., *infra*, 56a-58a) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on November 22, 2024. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

Section 541 of the Bankruptcy Code, 11 U.S.C. 541, provides in pertinent part:

Property of the estate

(a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:

(1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.

* * * * *

(b) Property of the estate does not include—

* * * * *

(7) any amount—

(A) withheld by an employer from the wages of employees for payment as contributions—

(i) to—

(I) an employee benefit plan that is subject to title I of the Employee Retirement Income Security Act of 1974 or under an employee benefit plan which is a governmental plan under section 414(d) of the Internal Revenue Code of 1986;

(II) a deferred compensation plan under section 457 of the Internal Revenue Code of 1986; or

(III) a tax-deferred annuity under section 403(b) of the Internal Revenue Code of 1986;

except that such amount under this subparagraph shall not constitute disposable income as defined in section 1325(b)(2); * * *

* * * * *

Section 1322 of the Bankruptcy Code, 11 U.S.C. 1322, provides in pertinent part:

(f) A plan may not materially alter the terms of a loan [from a qualifying retirement account] and any amounts required to repay such loan shall not constitute "disposable income" under section 1325.

Section 1325 of the Bankruptcy Code, 11 U.S.C. 1325, provides in pertinent part:

(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—

* * * * *

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

(2) For purposes of this subsection, the term "disposable income" means current monthly income received

by the debtor * * * less amounts reasonably necessary to be expended—

(A)(i) for the maintenance or support of the debtor or a dependent of the debtor, or for a domestic support obligation, that first becomes payable after the date the petition is filed; and

(ii) for charitable contributions (that meet the definition of "charitable contribution" under section 548(d)(3)) to a qualified religious or charitable entity or organization (as defined in section 548(d)(4)) in an amount not to exceed 15 percent of gross income of the debtor for the year in which the contributions are made; and

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

* * * * *

Other relevant provisions of the Bankruptcy Code, 11 U.S.C. 101 *et seq.*, are reproduced in the appendix to this petition (App., *infra*, 59a-64a).

INTRODUCTION

This case presents a clear, intractable conflict regarding a significant question under the Bankruptcy Code: "whether voluntary contributions to employer-managed retirement plans constitute disposable income in a Chapter 13 bankruptcy." App., *infra*, 5a.

After surveying "varied" decisions nationwide, the 2-1 panel held that "voluntary retirement contributions" are excluded from "disposable income," effectively shielding those funds from unsecured creditors. *Id.* at 10a, 12a (adopting the so-called *Johnson* approach); contra, *e.g.*, *Davis* v. *Helbling (In re Davis)*, 960 F.3d 346, 351 (6th Cir. 2020) ("squarely reject[ing] *Johnson*[]"). According to the

majority, even without pre-petition contributions, post-petition contributions are fair game—debtors may allocate available funds to their own accounts at the expense of unpaid debts. Contra, *e.g.*, *Schuler* v. *Burden (In re Seafort)*, 669 F.3d 662, 663 (6th Cir. 2012) ("post-petition income * * * must be * * * distribut[ed] to unsecured creditors * * * and may not be used to fund voluntary 401(k) plans"). And in rejecting the contrary views of other courts, the majority's position dramatically upends the dynamic of Chapter 13: as this case illustrates, under the Ninth Circuit's 2-1 view, unsecured creditors now may recover *nothing* (0.00%) rather than receiving at least some portion of their unpaid bills (here, 30%), see App., *infra*, 3a-4a—a result with massive stakes across all Chapter 13 filings. In other jurisdictions, by contrast, unsecured creditors would receive a meaningful recovery. See, *e.g.*, *Penfound* v. *Ruskin (In re Penfound)*, 7 F.4th 527, 530 (6th Cir. 2021) (explaining how the 2-1 panel's approach "significantly reduce[s] the dividend paid" to "unsecured creditors").

This case easily satisfies the traditional criteria for granting review. The conflict over this fundamental bankruptcy question is obvious, acknowledged, and entrenched. It has split courts nationwide a staggering four different ways—with courts sharply dividing whether debtors can make *any* voluntary retirement contributions, and again disagreeing *when* such contributions might be permissible. And with the majority's adoption of *Johnson*—the very approach the Sixth Circuit emphatically rejects—the circuit conflict is now "stark." Bill Rochelle, *Creating a Circuit Split, Ninth Circuit Allows Retirement Contributions in Chapter 13*, ABI (Nov. 27, 2024). The issue has separately split two panels (including

this one),[1] and multiple circuits have rejected longstanding BAP decisions. See, *e.g.*, App., *infra*, 12a-17a (disavowing *Parks* v. *Drummond (In re Parks)*, 475 B.R. 703 (B.A.P. 9th Cir. 2012)). And this says nothing of the deep, persistent conflict among countless district and bankruptcy courts. See, *e.g.*, C.A. E.R. 47 (respondent so conceding). The resulting "confusion" is palpable—with dozens of courts flagging the conflicting views across "bankruptcy cases nationwide," as courts fracture over "four competing interpretations." *Penfound*, 7 F.4th at 531.

The question presented raises legal and practical issues of surpassing importance, and its correct disposition is essential to the Code's effective administration. There are approximately 180,000 Chapter 13 cases filed each year, including approximately 15,000 in the Ninth Circuit alone.[2] This critical issue dictates the proper distribution of billions in funds across Chapter 13 cases nationwide. It has confounded litigants, wasted endless time and resources, and created "havoc" in a system that requires efficiency and certainty.[3] There is a desperate need for a national answer. Yet as it now stands, every Chapter 13 debtor in the Ninth Circuit should seek to maximize their

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[1] See App., *infra*, 20a, 35a (Callahan, J., dissenting); *Davis*, 960 F.3d at 358 (Readler, J., dissenting).

[2] See U.S. Courts, *Federal Judicial Caseload Statistics: U.S. Bankruptcy Courts—Business and Nonbusiness Cases Commenced, by Chapter of the Bankruptcy Code, During the 12-Month Period Ending March 31, 2024*, Tbl. F-2 (tallying 186,113 "nonbusiness" Chapter 13 cases nationwide in the preceding 12-month period—including 15,040 filed in the Ninth Circuit alone) <https://tinyurl.com/chapter-13-cases-2024>.

[3] 9th Cir. Oral Arg. Recording 8:49-9:02 (Judge Callahan: "[W]ould you at least concede that this has been causing havoc in bankruptcy courts for some time?"; respondent's counsel: "I certainly would concede that. Yes. It's been very problematic, and it's been nearly twenty years.") <https://tinyurl.com/saldana-CA9-OA>.

401(k) contributions and eliminate any payments for unsecured debt—while debtors in other circuits will be properly instructed to allocate available funds to cover their unpaid bills. Unsecured creditors should not be paid (or not) based on geography.

While respondent will predictably disagree on the merits of the question presented, she will have no basis for contesting the case for further review. Indeed, respondent herself has already confirmed that every relevant box is checked: (i) the case presents "one, clean legal issue," C.A. E.R. 451; (ii) it has caused staggering confusion nationwide ("a 'vexing issue,'" *id.* at 47; "a hotly-contested issue," *id.* at 149; "the myriad of bankruptcy and appellate cases which have struggled," *id.* at 435; "[c]ourts have been confounded," *id.* at 437; "the nationwide controversy," *id.* at 450; this has "puzzled so many," *id.* at 461); (iii) the deep conflict among the lower courts, *id.* at 14, 146; (iv) the issue's obvious importance ("the [i]mplications are [b]road," E.R. 47; "this issue is important and unsettled," *id.* at 436); and (v) the striking number of cases it will affect—"literally thousands of chapter 13 debtors," *id.* at 465; see also, *e.g.*, *Gorman* v. *Cantu*, 713 F. App'x 200, 206 (4th Cir. 2017) (Thacker, J., concurring in part and dissenting in part) (this "important statutory interpretation issue * * * likely affects thousands of retirees and current and potential debtors"); David R. Kuney, *Time To Resolve Confusion On Pension Contributions*, 37-FEB Am. Bankr. Inst. J. 8, 8 (Feb. 2018) ("there is significant disagreement over the meaning of the relevant Code provisions," "an issue that affects thousands of bankruptcy debtors under chapter 13").

These candid assessments are both correct and compelling. Because this case presents an excellent vehicle for resolving this significant issue of federal law, the petition should be granted.

STATEMENT

1. a. Respondent filed for Chapter 13 bankruptcy in April 2022. She is single with no dependents, and earns $8,481 each month (primarily from her job as a surgical technician). Among other liabilities, she disclosed $56,045 in unsecured debts to various parties. App., *infra*, 2a-3a.

In calculating her disposable income, she initially claimed a $601 deduction for her "qualified retirement deductions." App., *infra*, 3a.[4] This line-item covered both voluntary retirement contributions and all 401(k) loan repayments: "The monthly total of all amounts that your employer withheld from wages as contributions for qualified retirement plans, as specified in 11 U.S.C. § 541(b)(7) plus all required repayments of loans from retirement plans * * * ." C.A. E.R. 262. On the same form, she noted a "special circumstance[]" deduction for "TSA Fidelity, voluntary retirement – 6%." *Ibid.* But she left the amount of the expense blank, and listed a "0.00" total for that category. *Ibid.*

In a separate form setting her anticipated "budget," respondent did list a "[v]oluntary contribution[] for retirement plans" as $484.00. C.A. E.R. 294. But she noted she "may reduce her voluntary retirement contribution," and she did not list or substantiate the total contributions she made (if any) in the sixth-month period before filing her petition—which is the relevant timeframe for calculating a debtor's disposable income. See 11 U.S.C. 101(10A); see also App., *infra*, 41a (describing the statutory framework).

[4] If a proposed Chapter 13 plan does not repay all unsecured creditors and anyone objects, the debtor must apply all of their disposable income to "make payments to unsecured creditors." See 11 U.S.C. 1325(b)(1).

As part of this first plan, respondent committed to paying $300 for 60 months, which would leave her unsecured creditors unpaid ("a 0% distribution"). App., *infra*, 3a.

Petitioner filed a series of objections on the ground that respondent's plan did not appear to "devote all of [respondent's] disposable income to repaying unsecured creditors." App., *infra*, 3a; see also C.A. E.R. 192, 214. As a result of these objections, the parties discovered that (i) respondent had two 401(k) loans, which together carried a $601 premium (C.A. E.R. 185); and (ii) respondent had failed to amortize those loans over the full five-year length of the bankruptcy plan—which ultimately reduced her per-monthly payments. App., *infra*, 3a-4a.

Respondent also submitted two declarations explaining her retirement-related withholdings. The first stated she "reduced [her] voluntary retirement shown as TSA Fidelity EE on my paychecks to 6% which equates to $484 per month[] in order to make ends meet and perform my plan obligations." C.A. E.R. 197. But respondent did not otherwise explain (i) when those deductions occurred (whether before or after her bankruptcy filing); (ii) whether the amounts were withheld for loan payments or additional contributions; and (iii) whether (and in what amount) any voluntary contributions were made in each month leading up to her bankruptcy.

Her second declaration stated that she was "aware" that her prior form "claims a deduction of $601," and she confirmed she was "currently paying $601 per month"—the amount of her "two [outstanding 401(k)] loans." C.A. E.R. 184. This declaration again did not provide any information about her actual voluntary contributions in the relevant pre-bankruptcy period.

Once her monthly loan repayments were properly amortized, respondent again amended her forms—this

time claiming $747.00 as the total "qualified retirement deductions." C.A. E.R. 173. In a statement attached to the amended form, respondent explained the total reflected "an amortization of retirement loans being paid and a *go-forward* 401k contribution of $484." *Id.* at 176 (emphasis added). She did not otherwise state that she had been contributing that same $484 in the preceding periods (which was consistent with the "go-forward" annotation).

b. Petitioner objected to this amended plan on the same ground: it did "not provide for all of the Debtor's projected disposable income" "to be applied to unsecured creditors." C.A. E.R. 159 (citing 11 U.S.C. 1325(b)). As petitioner explained, the new form "includes a deduction in the amount of $484 for voluntary retirement contribution," and "[v]oluntary retirement contributions are not deducted from disposable income." *Id.* at 159.

2. The bankruptcy court held a hearing on the question, and ruled from the bench that voluntary retirement contributions are not allowed. App., *infra*, 57a-58a. The court acknowledged a conflict on the question (*id.* at 58a), but the court ultimately found persuasive "the Ninth Circuit BAP decision in *In re Parks*." *Id.* at 57a (citing *Parks* v. *Drummond (In re Parks)*, 475 B.R. 703 (B.A.P. 9th Cir. 2012)). It subsequently entered an order sustaining petitioner's objection and denying plan confirmation. *Id.* at 54a-55a.

After a series of technical errors, respondent eventually proposed a third amended plan that eliminated any voluntary retirement contributions (and thus increased the payout to unsecured creditors). As part of that plan, unsecured creditors would recover 30% over the life of the Chapter 13 plan. The court confirmed this plan (over respondent's objection to preserve the contribution issue). App., *infra*, 4a-5a.

3. The district court affirmed the bankruptcy court. App., *infra*, 36a-53a.

As the court explained, "[t]he central issue presented in this appeal is whether voluntary contributions to a retirement account constitute disposable income." App., *infra*, 40a. The court further noted that "courts in this country have taken various approaches" on that question: "some holding that voluntary contributions to a retirement account are always disposable income; others holding that voluntary contributions to a retirement account are never disposable income; and still others holding that voluntary contributions to a retirement account are not disposable income if made prior to the bankruptcy filing." *Ibid.*

The court noted that this issue is a result of an amendment in the Bankruptcy Abuse Prevention and Consumer Protection Act, Pub. L. No. 109-8, 119 Stat. 23 (2005). As relevant here, Congress made two related amendments addressing retirement accounts. First, it added 11 U.S.C. 541(b)(7) to the Code, which excluded from "property of the estate" "any amount" "withheld by an employer" "for payments as contributions" to a qualified retirement account—thus protecting past contributions from creditor claims. Second, it attached a so-called "hanging paragraph" to that new language: "except that such amount under this subparagraph shall not constitute disposable income as defined in section 1325(b)(2)." 11 U.S.C. 541(b)(7).[5]

[5] Congress also added a third related provision: "A plan may not materially alter the terms of a [qualifying retirement] loan," and "any amounts required to repay such loan shall not constitute 'disposable income' under section 1325." 11 U.S.C. 1322(f). This direct exclusion of *retirement-loan repayments* did not include any comparable exclusion for *retirement contributions*.

The court recounted that "[b]efore BAPCPA," "the overwhelming consensus among bankruptcy courts was that wages voluntarily withheld as 401(k) contributions formed part of a debtor's disposable income." App., *infra*, 42a (citing *Davis* v. *Helbling (In re Davis)*, 960 F.3d 436, 350 (6th Cir. 2020)). As the court observed, the addition of this "hanging paragraph" has produced "'considerable disagreement among courts and litigants nationwide," with courts "reach[ing] no less than four different conclusions." *Ibid.* (citing *Davis*, 960 F.3d at 351, and *In re Aquino*, 630 B.R. 499, 548 (Bankr. D. Nev. 2021)).

The court then summarized the four conflicting approaches. First, the court noted, "[s]everal courts have held that voluntary contributions to a 401(k) are always disposable income." App., *infra*, 43a. The court traced this approach to *In re Prigge*, 441 B.R. 667 (Bankr. D. Mont. 2010), but explained the same approach was later "adopted by the Ninth Circuit Bankruptcy Appellate Panel in *Parks*, which the Bankruptcy Court in this case followed." App., *infra*, 43a.

The second faction held that "voluntary 401(k) contributions are never disposable income"—"regardless of whether [the contributions] began prior to bankruptcy, as long as they are made in good faith." App., *infra*, 44a (the so-called *Johnson* approach—after *Baxter* v. *Johnson (In re Johnson)*, 346 B.R. 256 (Bankr. S.D. Ga. 2006)).

The third and fourth groups "held that voluntary retirement contributions are not disposable income if they were made regularly prior to the filing of the bankruptcy petition"—a position the court explained had been adopted by the Sixth Circuit (in *Davis*). App., *infra*, 44a. As the court detailed, this group itself had split two ways. Per the Sixth Circuit BAP's decision in *Seafort* v. *Burden (In re Seafort)*, 437 B.R. 204 (B.A.P. 6th Cir. 2010), one allows debtors to "exclude voluntary 401(k) contributions

from disposable income if the debtor made an equal or greater monthly voluntary 401(k) contribution prior to filing for bankruptcy." App., *infra*, 44a-45a. And the other (called the "CMI Interpretation") "'construes the hanging paragraph as excluding the debtor's pre-petition contributions from the calculation of her "current monthly income."'" *Id.* at 45a. Because that calculation takes an average of the debtor's income for the six months prior to bankruptcy, the debtor would be permitted to voluntarily contribute the same average amount going forward. *Ibid.*

Having set out the four competing approaches, the court then analyzed the text, structure, history, and purpose of the Code, and it ultimately concluded that the Ninth Circuit BAP's decision was correct: "the interpretation of the statutes determining that voluntary retirement contributions are always disposable income is most persuasive." App., *infra*, 46a. After an extended analysis (*id.* at 46a-53a), the court accordingly affirmed the bankruptcy court.[6]

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[6] In the course of its background discussion, the court noted that respondent's alleged "'reduc[tion]'" in her voluntary retirement contributions "indicated she was making a regular voluntary contribution to her retirement plan." App., *infra*, 37a. The Ninth Circuit majority made a similar remark in passing (suggesting respondent's original form—claiming a $601 withholding—was a "mistake" as she "failed to account for her voluntary retirement contributions of $484 each month"). *Id.* at 4a. While each court's statement was made as background and neither was relevant to either court's holding, these presumptions appear mistaken. As noted above, respondent's original form claimed a $601 total deduction for her two loans—and listed $0.00 as voluntary contributions. Her declaration confirmed that same point, and she eventually added the $484 amount as a "go-forward" contribution—which, if anything, suggests it did not exist in the past. In any event, respondent did not include in the record any evidence quantifying her voluntary contributions in the six-month period before her bankruptcy filing. Should this Court grant review and

4. A split panel of the Ninth Circuit reversed. App., *infra*, 1a-35a; see also *id.* at 20a-35a (Callahan, J., dissenting).

a. Like the district court, the majority stated that "[t]he sole question in this appeal is whether voluntary contributions to an employer-managed retirement plan are considered disposable income in a Chapter 13 bankruptcy." App., *infra*, 5a. And again like the district court, the majority acknowledged four "different interpretations concerning the hanging paragraph." *Id.* at 12a. But unlike the district court, the majority concluded that the so-called *Johnson* approach was correct: "from the plain language of the statute and the canons of statutory construction, we join the majority of courts * * * in concluding that voluntary retirement contributions do not constitute disposable income for the purposes of Chapter 13." *Ibid.*

The majority then proceeded to confront and reject the three remaining approaches (each of the same three outlined by the district court). App., *infra*, 12a-19a. In its discussion, the majority conceded "[t]he *Johnson* approach assuredly allows debtors to devote income to retirement savings that would otherwise go to creditors." *Id.* at 16a. But it concluded that ability is "not without limitation"—because retirement accounts (like 401(k)s) are "generally subject to annual contribution limits," and Chapter 13 plans are otherwise "subject to a goof faith requirement." *Id.* at 16a-17a (also describing the "'fact-intensive examination of the "totality of the circum-

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adopt the Sixth Circuit's position—authorizing voluntary contributions but capping those contributions at the same amount contributed pre-bankruptcy—respondent would have to establish on remand both (i) evidence of her actual payments; and (ii) evidence of the total payments made in each of the six months pre-bankruptcy.

stances"'" to determine good faith). And it found its preferred approach both compelled by the Code's plain text and superior to the contrary positions adopted by the Ninth Circuit BAP, the Sixth Circuit, and the Sixth Circuit BAP—in addition to multiple lower courts. *Id.* at 12a-19a & n.2 (recognizing circuit split with Sixth Circuit).

b. Judge Callahan dissented. App., *infra*, 20a-35a. She expressed surprise that the majority found Section 541(b)(7)'s "hanging paragraph" "unambiguous"—an odd characterization of a provision "which has spawned at least four different judicial interpretations." *Id.* at 20a. She then compared the majority's analysis with the contrary rationale of the Ninth Circuit BAP and Judge Readler's Sixth Circuit dissent (which endorsed the same view adopted by the district and bankruptcy courts here—voluntary contributions are not permitted). *Id.* at 21a-34a.

In the end, she endorsed the Sixth Circuit's position: "Perhaps excluding from a debtor's disposable post-petition income contributions to a retirement plan that are consistent with the debtor's contributions for six months prior to bankruptcy is a compromise that will satisfy neither the advocates of *Johnson* nor of *Prigge*." App., *infra*, 35a. But she declared it "a workable solution that recognizes the competing interests and is consistent with the overall purposes of bankruptcy law." *Ibid.* She accordingly "dissent[ed] from the majority's conclusion that voluntary contributions to employer-mandated retirement plans do not constitute disposable income in a Chapter 13 bankruptcy." *Ibid.*

REASONS FOR GRANTING THE PETITION

A. There Is A Square And Intolerable Conflict Over A Fundamental Question Under The Bankruptcy Code

1. The decision below entrenches a square conflict over a significant bankruptcy question infecting Chapter 13 cases nationwide: whether Chapter 13 debtors may contribute to voluntary retirement plans rather than use available funds to satisfy their unpaid debts. That question has generated a direct circuit conflict, split panels on multiple circuits, and sharply divided the lower courts—a remarkable four separate ways. See Statement, *supra*. This issue is creating "havoc" in bankruptcy courts, and the aggregate stakes are massive—in the billions for cases nationwide.

This is the highly unusual situation where the conflict and its precise nature is effectively indisputable. One need only glance at the opinions below (or any opinion on the subject) to see the broad consensus on the four-way split; the courts that line up on each side; and the disagreement over every aspect of how best to read Section 541(b)(7)'s hanging paragraph and its relation to the rest of the Code. The Sixth and Ninth Circuits are squarely at odds. And still other courts and judges reject *both* the Sixth and Ninth Circuits' positions—forbidding any voluntary retirement contribution. This includes dozens of courts, including the Ninth Circuit BAP in a decision that governed for a decade (*Parks* v. *Drummond (In re Parks)*, 475 B.R. 703, 709 (B.A.P. 9th Cir. 2012)[7]); a unanimous Sixth Circuit decision that resolved the issue in dicta (*Seafort* v.

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[7] This Court routinely considers decisions of bankruptcy appellate panels in describing conflicts warranting the Court's review. See, *e.g.*, *Schwab* v. *Reilly*, 560 U.S. 770, 778 & n.4 (2010); *Grogan* v. *Garner*, 498 U.S. 279, 283 & n.7 (1991).

Burden (In re Seafort), 669 F.3d 662, 671-674 & n.7 (6th Cir. 2012)); and Judge Readler's recent emphatic dissent (*Davis*, 960 F.3d at 358); see also, *e.g.*, *In re McCullers*, 451 B.R. 498, 499 (Bankr. N.D. Cal. 2011); *In re Prigge*, 441 B.R. 667, 672-678 (Bankr. D. Mont. 2010).

This widespread division of authority is both telling and entrenched. It confirms the vast confusion nationwide on this issue, and it establishes the need for definitive guidance that this Court alone can provide. As it now stands, jurisdictions nationwide have adopted four separate answers to this question. The resulting "confusion" is undeniable, and the aggregate stakes are breathtaking—as courts grapple with this core question in thousands of Chapter 13 proceedings each year. And there is no promise of clarity in sight: the patterns emerging are unmistakable, with courts now confronting the issue, canvassing the four conflicting answers, and simply choosing a side (*e.g.*, *Parks*, 475 B.R. at 707)—inevitably leaving plans confirmed in one region that would be rejected in another, and leaving unsecured creditors paid (or wiped out) entirely based on geography.

The confusion on such an essential question is untenable. The conflict is both clear and undeniable, and it should be resolved by this Court.

2. In sum: The 2-1 majority here candidly recognized the disarray, repudiated "three * * * different interpretations" (despite their embrace in other jurisdictions), and expressly departed from conflicting decisions of the Sixth Circuit and the Ninth Circuit BAP (among others)—thus reversing settled law governing Chapter 13 cases in the Ninth Circuit for the past decade. See App., *infra*, 12a-13a, 17a & n.2. The debate has been exhausted at each level, with each faction confronting, and rejecting, the opposing analysis. Compare *id.* at 12a (adopting *Johnson*), with *Davis*, 960 F.3d at 351 (rejecting *Johnson*); see also

Penfound, 7 F.4th at 533 ("*Seafort* rejected the *Johnson* view. Then *Davis* rejected the *Prigge* view. Both of those rejections are binding on us."). There is no prospect that any side will back down, and additional percolation is pointless: one view of the Code is correct and the others are wrong, and the remaining courts will simply line up on various sides—while the confusion creates "havoc" in a process that demands certainty. See 9th Cir. Oral Arg. Recording 8:49-9:02. This widespread confusion warrants immediate review.

B. The Question Presented Is Exceptionally Important And Warrants Review In This Case

1. a. The legal and practical importance of this case is difficult to overstate. It presents a clear, entrenched conflict on a significant legal question arising in (literally) thousands of Chapter 13 cases each year. It has split the lower courts four separate ways, and continues to cause "havoc" in bankruptcy proceedings. See also *Penfound*, 7 F.4th at 531 (flagging "considerable confusion in bankruptcy cases nationwide"). The analysis turns directly on a proper construction of the Code—yet courts have exhaustively canvassed the competing options without any consensus. This issue will continue generating conflicts and confusion until this Court provides a definitive answer.

In the meantime, the Ninth Circuit's position will directly "frustrate BAPCAP's core purpose of ensuring that debtors devote their full disposable income to repaying creditors." *Ransom* v. *FIA Card Servs., N.A.*, 562 U.S. 61, 78 (2011). This rule will inevitably affect a significant portion of available funds, and the stakes are as high as they get in Chapter 13. The Ninth Circuit's approach is a license for debtors to max out their 401(k)s while paying

nothing to unsecured creditors.[8] This is the first time a circuit-level decision has endorsed that practice—uncabined even by past contributions. It will predictably create chaos for the tens of thousands of Chapter 13 cases proposing to "contribut[e] to one's future retirement" rather than satisfy unsecured debts. *Davis*, 960 F.3d at 366 (Readler, J., dissenting). And it will impose substantial hardship on unsecured debtors (especially small businesses and individuals) who need recoveries to satisfy their own bills, pay their own employees, fund their own retirements, and avoid their own bankruptcies. See, *e.g.*, *In re Pizzo*, No. 20-1758, 2021 WL 2020297, at *4 (Bankr. D.S.C. May 20, 2021) (debtor making $471.53 voluntary retirement contributions "instead of repaying the loan [the unsecured creditor] provided with her own retirement funds").

And while unsecured creditors might lose only a few thousand dollars in individual cases, they stand to lose hundreds of millions (or billions) in the aggregate nationwide—given the 180,000+ "nonbusiness" Chapter 13 cases filed each year, including 15,000+ in the Ninth Circuit alone, see https://tinyurl.com/chapter-13-cases-2024. These voluntary contributions are amounts creditors will never see, and creditors will predicably lose out on any payment in ordinary cases. *E.g.*, *In re Melendez*, 597 B.R. 647, 655 (Bankr. D. Colo. 2019) ("It is a very important question, since many Chapter 13 plans in this jurisdiction

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[8] See, *e.g.*, Gary M. Kaplan, *Business Law: Saldana v. Bronitsky (In re Saldana)*, California Lawyers Ass'n (Jan. 31, 2025) ("The Ninth Circuit's ruling * * * will permit Chapter 13 debtors to make retirement contributions up to the limit in the Internal Revenue Code, regardless of whether, or to what extent, the debtor had been making contributions before bankruptcy. * * * In view of the Circuit split created by the Ninth Circuit[,] the U.S. Supreme Court may grant a petition for *certiorari* to resolve such split.").

contain at least some proposed voluntary retirement contribution."). Debtors have no incentive to do anything other than what respondent did here: allocate every penny of (otherwise) disposable income to her future self, even if it means leaving unsecured creditors with a 0% recovery. See, *e.g.*, *In re Huston*, 635 B.R. 164, 165-166, 181 (Bankr. N.D. Ill. Sept. 30, 2021).[9]

This situation is as urgent as it gets. Review is desperately warranted to restore Congress's design, promote the Code's purpose, safeguard innocent creditors, and protect the integrity of the process—while ensuring a clear, uniform, efficient scheme for all stakeholders.

b. Review is also essential to ensure the Code's effective administration. There is an overriding (even *constitutional*) importance of achieving national "uniform[ity]" in the bankruptcy context. U.S. Const. Art. I, § 8, cl. 4. For that reason, this Court routinely grants review to resolve even shallow conflicts over the interpretation or application of the Bankruptcy Code. See, *e.g.*, *Husky Intl' Elecs., Inc.* v. *Ritz*, 578 U.S. 356 (2016) (2-1 split); *Baker Botts*

[9] See, *e.g.*, *In re Whitt*, 616 B.R. 323, 325 (Bankr. S.D. Miss. 2020) (debtor proposed paying "zero percent (0%) to unsecured creditors"—holding $84,883.91 of unsecured claims—while "contribut[ing]" $8,671.20 to "a voluntary 401(k) plan"); *In re Melendez*, 597 B.R. at 649, 652 ("The plan contemplated that the Debtor would continue to make substantial voluntary retirement contributions (almost $1,000 a month) for his own benefit so that he could retire early. Meanwhile, the Debtor proposed that his general unsecured creditors—including credit card companies holding about $66,000 in debt racked up before the bankruptcy—receive nothing. * * * Put bluntly, the Debtor proposes to stiff the credit card claims by paying nothing whilst voluntarily contributing $59,700 ($995 per month) to his own Retirement Account over the five-year Plan period."); *RESFL FIVE, LLC* v. *Ulysse*, No. 16-62900, 2017 WL 4348897, at *1 (S.D. Fla. Sept. 29, 2017) (debtor proposed contributing $114,000 to his own retirement plan while covering only $12,117.20 of a $71,271.28 unsecured debt).

L.L.P. v. *ASARCO LLC*, 576 U.S. 121 (2015) (1-1 split); *Harris* v. *Viegelahn*, 575 U.S. 510 (2015) (1-1 split); *Clark* v. *Rameker*, 573 U.S. 122 (2014) (1-1 split). The existence of *deeper* confusion here is undeniable: the courts have "splintered" four different ways (*Penfound*, 7 F.4th at 530-531), and Chapter 13 plans look vastly different based on the happenstance of a case's location. A debtor's rights and creditors' recoveries under the Code should not be determined by geography. Given the constitutional and practical interests in clarity and uniformity, the existing conflict is particularly intolerable.

c. The conflict is also ripe for the Court's review. The competing arguments on each side have been exhausted and additional percolation is pointless. Indeed, at this point each new decision overwhelmingly tracks the same pattern: the court flags the confusion, recaps the split, and chooses a side. *E.g.*, App., *infra*, 10a-19a; *Penfound*, 7 F.4th at 531-533; *Davis*, 960 F.3d at 351-353; *Seafort*, 669 F.3d at 667-671; *In re Miner*, No. 16-10441, 2017 WL 1011419, at *5 (Bankr. W.D. La. Mar. 14, 2017) ("This Court need not opine on the divergent opinions reached by various courts. Th[ose] opinions * * * do an excellent job summarizing the various competing views."); *In re Green*, No. 11-60506, 2012 WL 8255556, at *2 (Bankr. E.D. Cal. May 7, 2012) ("The court has reviewed the various cases and considered the three competing theories and concludes that the cases in support of the Trustee's Objection reach the correct result.") (citing *Prigge*, *supra*, and *McCullers*, *supra*). The wasted time and resources from this constant litigation benefits no one, and additional delay will only let the problem persist until this Court intervenes.

And it is unclear when the Court will find another opportunity to correct the Ninth Circuit's mistake. Bank-

ruptcy appeals rarely reach the circuit level, despite raising important and recurring issues. Troy A. McKenzie, *Judicial Independence, Autonomy, and the Bankruptcy Courts*, 62 Stan. L. Rev. 747, 782 (2010) ("The nature of bankruptcy cases tends to discourage further appellate review in the Article III courts because of the twin concerns of delay and cost associated with prolonged litigation."). Few litigants find enough at stake to litigate in bankruptcy court and continue all the way through the appellate process—despite the issue's aggregate significance. This is the unusual case where the question is directly presented at this advanced stage.

In short, the decision below upsets Congress's scheme, cements a circuit conflict, and distorts the fundamental operation and goals of Chapter 13—which do *not* include providing a roadmap for debtors to allocate thousands to their future selves while leaving unsecured creditors out to dry. Indeed, quite the contrary: the Code is structured to "ensure that debtors who *can* pay creditors *do* pay them." *Ransom*, 562 U.S. at 64; H.R. Rep. No. 109-31, pt. 1, at 2 (2005) (under BAPCPA, "debtors [will] repay creditors the maximum they can afford"); see also *Seafort*, 669 F.3d at 674. The issue has been carefully considered by dozens of courts, and the conflict is not going anywhere. This Court alone can provide a uniform answer. The issue cries out for immediate review.

2. This case is an excellent vehicle for deciding this significant question. The dispute turns on a pure question of law. App., *infra*, 5a (confirming "sole question" on appeal). It was squarely raised and resolved at each stage below, and all three courts (the bankruptcy court, the district court (in an appellate capacity), and the 2-1 Ninth Circuit) thoroughly addressed the question and treated it as dispositive. The bankruptcy court and district court fol-

lowed the Ninth Circuit BAP (and the Sixth Circuit's initial take) and petitioner won, App., *infra*, 46a-53a, 56a-58a; the 2-1 Ninth Circuit applied the opposite standard and petitioner lost, *id.* at 12a, 19a. The stark division over this fundamental legal issue drives the decision.

Nor are there any factual or procedural obstacles to resolving the question presented. The sole issue before the Court (and the courts below) is a pure question of law: the proper reading of the Code, and the ability (or not) of debtors to voluntarily allocate funds to their own 401(k) accounts and away from unpaid creditors. If the Ninth Circuit is correct, respondent will have the right on remand to contribute up to the IRS statutory maximum without any constraint based on past spending; if the Sixth Circuit is correct, respondent's post-petition contributions will be capped by her pre-petition contributions—an amount (if any) she will have to substantiate on remand. And if petitioner's view is correct (consistent with the Ninth Circuit BAP and *Seafort*), respondent is barred from making any voluntary contributions at all—with no need for any further process or remand.

In sum: If no contributions are allowed, petitioner wins; if past contributions limit future contributions, a remand is necessary establish respondent's past contributions (if any); and if any contributions are allowed, petitioner loses. This ideally tees up this important legal question for this Court's resolution.

C. The Decision Below Is Incorrect

Review is also warranted because the Ninth Circuit's decision is profoundly wrong. Under a proper construction, the Code adopts a "simple, bright-line rule: a debtor's pre-filing 401(k) contributions are protected from creditors; those sought to be made during the post-filing Chapter 13 reorganization period are not." *Davis* v. *Helbling (In re Davis)*, 960 F.3d 346, 358 (6th Cir. 2020)

(Readler, J., dissenting). The Ninth Circuit's contrary position is squarely at odds with the Code's plain text, structure, history, and purpose. It invites debtors to shield income from unsecured creditors, often wiping out any recovery. And it presumes Congress endorsed this staggering upheaval of traditional Chapter 13 practice via an inscrutable, indirect, oblique "hanging paragraph"—one inserted in a 2005 revision (BAPCPA) designed to *bolster* creditor rights. The Ninth Circuit, in short, has shoehorned an elephant into a mousehole—while misreading the mousehole.

While a merits discussion is better suited for plenary review, a few short points for now.

1. As a matter of plain text and structure, it is inconceivable that Congress opted for the hanging paragraph to exempt voluntary retirement funds from disposable income. When Congress actually intended to provide a clear exemption, it knew precisely how to do it—as it did when exempting retirement-plan *loans*: "any amounts required to repay such loan shall not constitute 'disposable income' under section 1325." 11 U.S.C. 1322(f). That would be the natural place for a counterpart addressing retirement *contributions*—and yet Congress included loans and omitted contributions. Its choice was presumptively deliberate. See, *e.g.*, *Davis*, 960 F.3d at 360 (Readler, J., dissenting).

Moreover, Chapter 13 takes into account both pre- and post-petition funds. See 11 U.S.C. 1306(a). Pre-petition funds are handled in Section 541—which is limited to the debtor's property "as of the commencement of the case." 11 U.S.C. 541(a)(1). And the "hanging paragraph" is limited to that section: it targets "such amount under this subparagraph" (11 U.S.C. 541(b)(7))—which necessarily is limited (again) to amounts contributed "as of the commencement of the case."

This twice undermines the Ninth Circuit's position: there is no reason, structurally, that Congress would opt to address *post*-petition contributions in a section textually restricted to *pre*-petition amounts. And even if Congress felt that odd placement made sense, it would not have chosen the language that it did: "such amount under this subparagraph"—which is the only "amount" that "shall not constitute disposable income"—is strictly *limited to those pre-petition withholdings*. Any *post*-petition withholding falls outside all of Section 541(b)(7)—including its hanging paragraph (with its textual referent: "*such amount* under this subparagraph").[10]

2. The Ninth Circuit's reading also contravenes BAPCPA's "core purpose": "ensuring that debtors devote their full disposable income to repaying creditors." *Ransom*, 562 U.S. at 78. It is puzzling to presume Congress intended to grant a license to shield vast income from unsecured creditors in a provision specifically designed to repay those very creditors. And while the Ninth Circuit suggested Congress wished to encourage debtors to resort to Chapter 13 (App., *infra*, 9a), it missed the point: Congress preferred Chapter 13 because "*unsecured creditors* often receive more money under successful Chapter 13 plans than they would under a Chapter 7 liquidation bankruptcy." *McDonald* v. *Master Financial, Inc. (In re McDonald)*, 205 F.3d 606, 614 (3d Cir. 2000) (emphasis added). Yet the Ninth Circuit's holding creates a direct license to harm that very class.

3. The Ninth Circuit's position is also out of step with the Code's history. As all sides agree, courts before 2005

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[10] It is also telling that Section 541(b)(7) is framed in the past tense—amounts "withheld"—another reason to presume Congress was not addressing *future* contributions/amounts.

refused to let debtors make voluntary retirement contributions at the expense of unpaid creditors. "If Congress intended to effect 'significant change' from the pre-BAPCPA background rule," "it is odd to think it chose to do so through an apparently misplaced hanging paragraph." *Davis*, 960 F.3d at 364. This is a major question. It implicates massive economic and political stakes. It is inconceivable that Congress would have upended settled law (with such dramatic consequences) with a provision as imprecise, haphazard, and inscrutable as this.

4. Finally, the Ninth Circuit's position is largely motivated by a concern to give the hanging paragraph some effect—and to avoid reading it as mere surplusage. This concern is unfounded. This provision has obvious effect: it shields any amounts *withdrawn* from the existing retirement account during bankruptcy (which would be withdrawing "such amount under this subparagraph"); it prevents amounts withheld by an employer in transition before they are deposited; and it negates any inference that amounts excluded somehow give rise to disposable income. *Davis*, 960 F.3d at 361-362 (Readler, J., dissenting). These explanations are more than sufficient to provide meaning commensurate with a random insertion best described as "'oddly-worded,' 'awkward,' and a 'Gordian knot.'" *Penfound*, 7 F.4th at 531.[11]

In sum, the Ninth Circuit was wrong to "create a massive loophole permitting a Chapter 13 debtor * * * to dramatically undermine creditors by dedicating her post-petition income to a 401(k), for her own future use." *Id.* at 364. It threatens the proper division of available assets—

[11] Nor does the Sixth Circuit's approach (capping future contributions to past amounts) fare any better. Among other flaws: this position rewards those who did *less* pre-bankruptcy to pay off debts—while forbidding future contributions from those who devoted every available penny to satisfying creditors.

with billions in the aggregate at stake. This Court's immediate review is warranted to correct the Ninth Circuit's error.

* * *

At bottom, a divided panel of the Ninth Circuit analyzed the intractable four-way split, exploring every aspect of the debate. The question is cleanly presented. The lower courts have set up conflicting rules for a basic question arising in virtually every Chapter 13 case, and litigants are left guessing which side of the four-way split their circuit will pick—creating confusion and uncertainty over a threshold issue under the Code. And this is no small question: Chapter 13 debtors rarely have sufficient funds to max out their 401(k) accounts *and* cover unsecured debt. Those debtors in the nation's largest circuit (and its 15,000 annual Chapter 13 filings) now have a roadmap for maximizing their retirement savings while erasing any payments for unsecured creditors—a path under this decision alone that will likely shift hundreds of millions of dollars over the upcoming decade.

It is inconceivable that courts and litigants nationwide lack a clear answer to such a fundamental question—one arising in any case where a debtor has access to a 401(k) account. A definitive answer is long overdue, and the Court's urgent guidance is warranted.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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