No. _____

In The

Supreme Court of the United States

JAN M. SENSENICH, CHAPTER 13 TRUSTEE,

Petitioner,

v.

PHH MORTGAGE CORPORATION,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The heart of judicial authority is a court's ability to enforce obedience to the court's lawful rules. Here, the bankruptcy court imposed a $75,000 fine against a mortgage creditor for 75 violations of the same bankruptcy rule across three independent cases. The creditor perpetrated these violations despite having promised the court to mend its ways after a previous $9,000 court fine for similar rule violations.

The Second Circuit reversed, holding that the bankruptcy rule at issue did not allow punitive fines. Then, contrary to seven circuits, the panel held that it could not affirm the $75,000 fine on the alternate ground of inherent power because the bankruptcy court did not analyze this ground. The panel also held that this ground required a finding of bad faith. In dissent, Judge Bianco observed the panel decision would endanger the ability of bankruptcy courts to enforce their rules against serial violators.

The questions presented are:

1. Whether appellate courts may affirm a bankruptcy sanctions order on an alternate correct ground even if the order does not analyze the ground.

2. Whether sanctions based on inherent judicial power always require a finding of bad faith.

3. Whether Bankruptcy Rule 3002.1 authorizes punitive fines as a form of "appropriate relief."

PARTIES TO THE PROCEEDING

The parties to this proceeding are identified in the caption of this petition, except as follows.

This proceeding arises from three independent Chapter 13 bankruptcy cases, later consolidated on appeal. The debtors behind these cases are:

- Nicholas Gravel and Amanda Gravel;
- Allen Beaulieu and Laurie Beaulieu; and
- Matthew Knisley and Emilie Knisley.

DIRECTLY RELATED PROCEEDINGS

The *initial sanctions proceedings* here (resulting in a bankruptcy court remand) are as follows:

***In re Gravel* (Initial Sanctions Proceeding)—**

- U.S. Bankruptcy Court for the District of Vermont; Case No. 11-10112; Initial Sanctions Order Entered September 12, 2016.
- U.S. District Court for the District of Vermont; Case No. 5:16-cv-257; Decision on PHH Appeal Entered December 18, 2017; Final Judgment & Remand Entered December 19, 2017.
- U.S. Court of Appeals for the Second Circuit; Case No. 18-154; Order Dismissing Trustee Appeal Entered July 10, 2018.

***In re Beaulieu* (Initial Sanctions Proceeding)—**

- U.S. Bankruptcy Court for the District of Vermont; Case No. 11-10281; Initial Sanctions Order Entered September 12, 2016.
- U.S. District Court for the District of Vermont; Case No. 5:16-cv-256; Decision on PHH Appeal Entered December 18, 2017; Final Judgment Entered December 19, 2017.
- U.S. Court of Appeals for the Second Circuit; Case No. 18-147; Order Dismissing Trustee Appeal Entered July 10, 2018.

DIRECTED RELATED PROCEEDINGS—
Continued

In re Knisley **(Initial Sanctions Proceeding)—**

- U.S. Bankruptcy Court for the District of Vermont; Case No. 12-10512; Initial Sanctions Order Entered September 12, 2016.
- U.S. District Court for the District of Vermont; Case No. 5:16-cv-258; Decision on PHH Appeal Entered December 18, 2017; Final Judgment Entered December 19, 2017.
- U.S. Court of Appeals for the Second Circuit; Case No. 18-156; Order Dismissing Trustee Appeal Entered July 10, 2018.

The *final sanctions proceedings* here (leading to this certiorari petition) are as follows:

In re Gravel **(Final Sanctions Proceeding)—**

- U.S. Bankruptcy Court for the District of Vermont; Case No. 11-10112; Final Sanctions Order Entered June 27, 2019; Certification for Direct Review Entered August 12, 2019.
- U.S. District Court for the District of Vermont; Case No. 5:19-cv-121-gwc; Order Suspending PHH Appeal Entered October 4, 2019.
- U.S. Court of Appeals for the Second Circuit; Case No. 19-2903; Order Granting Direct Review Entered January 2, 2020;
- U.S. Court of Appeals for the Second Circuit; Case No. 20-1; Final Opinion & Judgment Entered August 2, 2021; Final Order Denying Rehearing Entered November 1, 2021.

DIRECTED RELATED PROCEEDINGS—
Continued

In re Beaulieu **(Final Sanctions Proceeding)—**

- U.S. Bankruptcy Court for the District of Vermont; Case No. 11-10281; Final Sanctions Order Entered June 27, 2019; Certification for Direct Review Entered August 12, 2019.
- U.S. District Court for the District of Vermont; Case No. 5:19-cv-120-gwc; Order Suspending PHH Appeal Entered October 4, 2019.
- U.S. Court of Appeals for the Second Circuit; Case No. 19-2907; Order Granting Direct Review Entered January 2, 2020;
- U.S. Court of Appeals for the Second Circuit; Case No. 20-2; Final Opinion & Judgment Entered August 2, 2021; Final Order Denying Rehearing Entered November 1, 2021.

In re Knisley **(Final Sanctions Proceeding)—**

- U.S. Bankruptcy Court for the District of Vermont; Case No. 12-10512; Final Sanctions Order Entered June 27, 2019; Certification for Direct Review Entered August 12, 2019.
- U.S. District Court for the District of Vermont; Case No. 5:19-cv-122-gwc; Order Suspending PHH Appeal Entered October 4, 2019.
- U.S. Court of Appeals for the Second Circuit; Case No. 19-2909; Order Granting Direct Review Entered January 2, 2020;

DIRECTED RELATED PROCEEDINGS—
Continued

- U.S. Court of Appeals for the Second Circuit; Case No. 20-3; Final Opinion & Judgment Entered August 2, 2021; Final Order Denying Rehearing Entered November 1, 2021.

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Chapter 13 Trustee Jan Sensenich respectfully petitions the Court for a writ of certiorari to review the Second Circuit's judgment in this case.

OPINION & ORDERS BELOW

The Second Circuit's August 2, 2021 opinion is published at 6 F.4th 503 and reproduced at App.1–58. The Second Circuit's November 1, 2021 denial of rehearing is reproduced at App.148–49.

The bankruptcy court's June 27, 2019 sanctions decision is published at 601 B.R. 873 and reproduced at App.59–138. The bankruptcy order accompanying the decision is reproduced at App.139–42.

JURISDICTION

This Court has jurisdiction under 28 U.S.C. §1254(1) based on: (1) the Second Circuit's August 1, 2021 final judgment (App.1–58); and (2) the Second Circuit's November 1, 2021 denial of Sensenich's timely rehearing petition (App.148–49).

On January 22, 2022, Justice Sotomayor agreed to extend Sensenich's time to file a certiorari petition to and including March 17, 2022 (a 46-day extension) (No. 21A349). On March 10, 2022, Justice Sotomayor granted a further extension to and including March 31, 2022 (a 14-day extension) (No. 21A349).

BANKRUPTCY RULE INVOLVED

Federal Rule of Bankruptcy Procedure 3002.1, in relevant part, establishes that:

> **(c) Notice of Fees, Expenses, and Charges.** The holder of the claim shall file and serve on the debtor, debtor's counsel, and the trustee a notice itemizing all fees, expenses, or charges (1) that were incurred in connection with the claim after the bankruptcy case was filed, and (2) that the holder asserts are recoverable against the debtor or against the debtor's principal residence. The notice shall be served within 180 days after the date on which the fees, expenses, or charges are incurred.
>
> **(i) Failure to Notify.** If the holder of a claim fails to provide any information as required by subdivision (b), (c), or (g) of this rule, the court may, after notice and hearing, take either or both of the following actions:
>
> > (1) preclude the holder from presenting the omitted information, in any form, as evidence in any contested matter or adversary proceeding in the case, unless the court determines that the failure was substantially justified or is harmless; or
> >
> > (2) award other appropriate relief, including reasonable expenses and attorney's fees caused by the failure.

STATEMENT

This case raises questions of central importance to the ongoing ability of bankruptcy courts—and the Chapter 13 trustees who serve them—"to enforce obedience" to the court's "lawful orders, judgments, and processes." *Ex parte Robinson*, 86 U.S. 505, 511 (1873). The Second Circuit's decision entrenches deep circuit splits regarding how appellate courts review bankruptcy sanctions and what findings will permit the imposition of sanctions based on inherent judicial power. The Second Circuit's decision also neuters Federal Bankruptcy Rule 3002.1's plain allowance of "appropriate" sanctions for creditor violations of the rule's notice requirements, thereby "extend[ing] an open invitation to wrongdoing." *In re Fuller Cleaning & Dyeing Co.*, 118 F.2d 978, 979 (6th Cir. 1941).

The Court has previously noted that the "federal court system would grind nearly to a halt" without the "distinguished service" of bankruptcy judges. *Wellness Int'l Network, Ltd. v. Sharif*, 575 U.S. 665, 669 (2015). In accord with her distinguished service, the bankruptcy judge here imposed a $75,000 fine to penalize a recalcitrant creditor's systematic violation of the same rule across multiple cases. The Second Circuit's nonchalant rejection of this fine now risks the fair operation of the bankruptcy system for tens of thousands of innocent debtors. The Court should grant review and reverse. Otherwise, as the panel dissent notes, this case will "undoubtedly hamper" the long-term ability of bankruptcy courts to "ensure basic compliance" with their rules. App.27, 29.

A. Background

1. The Constitution directs Congress to enact "uniform Laws on the subject of Bankruptcies." U.S. Const. art. I, §8. Under this authority, Congress has adopted the Bankruptcy Code (U.S.C. tit. 11), and established a bankruptcy court in each of the nation's 94 federal judicial districts (28 U.S.C. §151). These bankruptcy courts are home to 345 bankruptcy judges,[1] who in 2021 administered 761,709 pending cases.[2] Bankruptcy courts facilitate the "just, speedy, and inexpensive determination" of bankruptcy cases through the Federal Rules of Bankruptcy Procedure, which Congress has directed the Supreme Court to promulgate. Bankr. R. 1001; 28 U.S.C. §2075.

Congress has also established that bankruptcy court orders "are subject to two tiers of intermediate appellate review." *In re Charbono*, 790 F.3d 80, 84 (1st Cir. 2015). First, there is review by the district court or local bankruptcy appellate panel (if one exists). 28 U.S.C. §158(a), (c). These bodies' decisions are then appealable to the federal courts of appeals, which perform what is "in effect direct review of the bankruptcy court's order." *In re Charbono*, 790 F.3d at 84–85. Appellants may also seek certification of a bankruptcy

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[1] ADMIN. OFFICE OF U.S. COURTS, *Status of Bankruptcy Judgeships—Judicial Business 2021*, https:// bit.ly/3DcXeQl (last accessed Mar. 31, 2022).

[2] ADMIN. OFFICE OF U.S. COURTS, *U.S. Bankruptcy Courts—Judicial Business 2021*, https://bit.ly/ 3iBao01 (last accessed Mar. 31, 2022).

court order to obtain immediate court of appeals review. *See* 28 U.S.C. §158(d)(2).

2. The bankruptcy system exists to afford "the honest but unfortunate debtor . . . a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of preexisting debt." *Local Loan Co. v. Hunt*, 292 U.S. 234, 244 (1934). In short, bankruptcy is about "a fresh start." *Stellwagen v. Clum*, 245 U.S. 605, 617 (1918).

3. Chapter 13 of the Bankruptcy Code enables debtors with regular income to obtain a fresh start "while retaining their property." *Bullard v. Blue Hills Bank*, 575 U.S. 496, 498 (2015). A Chapter 13 debtor "must propose a plan to use future income to repay" their debts over three to five years. *Id.* "If the bankruptcy court confirms the plan and the debtor successfully carries it out, he receives a discharge of his debts according to the plan." *Id.*

Chapter 13 also enables debtors to save their homes. Under 11 U.S.C. §1322(b)(5), debtors may "stop foreclosure proceedings" and "cure delinquent mortgage payments."[3] Bankruptcy courts are thus "filled" with debtors who have commenced Chapter 13 cases "simply to save their homes." *In re Cherokee Simeon Venture I, LLC*, No. 12-12913, 2013 Bankr. LEXIS 4794, at *12 (Bankr. D. Del. Nov. 12, 2013).

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[3] ADMIN. OFFICE OF U.S. COURTS, *Chapter 13—Bankruptcy Basics*, https://bit.ly/2WVYROl (last accessed Mar. 31, 2022).

In 2021, 119,150 individual debtors nationwide commenced Chapter 13 cases.[4] For all these debtors, "Chapter 13 bankruptcy is a promise." *Saccameno v. U.S. Bank Nat'l Ass'n*, 943 F.3d 1071, 1077 (7th Cir. 2019). That promise is: "if you comply with the bankruptcy plan, then you can get a fresh start." *Id.* Bankruptcy courts fulfill that promise through the indispensable aid of Chapter 13 trustees.

4. Standing trustees are "private individual[s] appointed by the Executive Branch to perform a public office under the Bankruptcy Code." *In re Brookover*, 352 F.3d 1083, 1089 (6th Cir. 2003). They perform a "variety of functions previously performed by bankruptcy judges." *In re Castillo*, 297 F.3d 940, 950 (9th Cir. 2002). For Chapter 13 trustees, this means handling "practically all problems" in Chapter 13 cases. *In re Gorski*, 766 F.2d 723, 726 (2d Cir. 1985). By law, Chapter 13 trustees are responsible for everything from investigating a debtor's financial affairs, to ensuring that creditors properly apply a debtor's payments, to advising the bankruptcy court on Chapter 13 decisions like plan confirmation. *See* 11 U.S.C. §§1302(b)–(c), 1325, & 1326.

Chapter 13 trustees are then well-positioned to detect and rectify "egregious conduct" that "strikes at the heart" of the bankruptcy system. *In re Andreas*, 373 B.R. 864, 876 (Bankr. N.D. Ill. 2007). The trustee is

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[4] ADMIN. OFFICE OF U.S. COURTS, *F-2: U.S. Bankruptcy Courts—Business & Nonbusiness Cases Commenced, by Chapter of the Bankruptcy Code, During the 12-Month Period Ending Dec. 31, 2021*, https://bit.ly/3qE7VWZ.

"involved in every phase of the process and is a vital component to [its] success." *In re Perez*, 339 B.R. 385, 389 (Bankr. S.D. Tex. 2006). Bankruptcy courts "look to the trustee to supervise compliance with the terms of [a debtor's] plan." *In re Gorski*, 766 F.2d at 727. In this regard, the trustee is responsible for ensuring that creditors play by the rules—especially those rules protecting a debtor's fresh start.

5. In 2011, this Court adopted Bankruptcy Rule 3002.1. The rule requires mortgage creditors to file with the bankruptcy court and "serve on the debtor, debtor's counsel, and the trustee" timely notice of all fees that a debtor incurs on her mortgage during her Chapter 13 case. Bankr. R. 3002.1(c). The rule also "specifies [the] sanctions that may be imposed" if the creditor "fails to provide" the required notice. Bankr. R. 3002.1—2011 Adv. Cmte. Note. The bankruptcy court may "preclude" the creditor from asserting the "omitted information" against the debtor. Bankr. R. 3002.1(i)(1). The court may further (or alternatively) "award other appropriate relief, including reasonable expenses and attorney's fees." *Id.* 3002.1(i)(2).

Mortgage creditor compliance with Rule 3002.1 is essential to debtors, trustees, and the bankruptcy system. To fulfill the obligations that the Bankruptcy Code imposes on Chapter 13 debtors seeking to save their homes, "a debtor and the trustee have to be informed of the exact amount" that the debtor owes on her mortgage. Bankr. R. 3002.1—2011 Adv. Cmte. Note. Should this amount "change[] over time" due to a mortgage creditor's "assessment of fees," then "notice

of any change . . . needs to be conveyed to the debtor and trustee." *Id.* Timely notice "permit[s] the debtor or trustee to challenge the validity of any such charges" if appropriate and, otherwise, to adjust the debtor's plan to cover the charges. *Id.*

Rule 3002.1 thus works to "prevent unexpected deficiencies in residential mortgage payments when a Chapter 13 case is completed." *In re Figueroa*, No. 09-07725, 2021 Bankr. LEXIS 3337, at *12 (Bankr. D.P.R. Dec. 7, 2021). Chapter 13 debtors face the ongoing difficulty of mortgage creditors who assess "unnoticed increases . . . believing they can collect . . . upon completion of an otherwise successful Chapter 13 plan." *In re Payne*, 387 B.R. 614, 631 (Bankr. D. Kan. 2008). Instead of "rejoicing over a successful financial reorganization," debtors in this situation must endure the turmoil of "possible foreclosure." *In re Figueroa*, 2021 Bankr. LEXIS 3337, at *10.

One of the main drivers of this situation is "mortgage-servicing abuse," especially "unwarranted . . . fees."[5] The way this works is mortgage creditors assess fees "without proper notice," knowing that debtors may pay these fees "even if invalid." App.45. Given the often small amounts at issue, creditors bet that most debtors will fail to notice improper fees or will conclude that the cost of challenging these fees exceeds the cost of paying them. *Id.* Technology also makes it easy for creditors to "harvest" billions of dollars in improper

[5] Katherine Porter, *Misbehavior & Mistake in Bankruptcy Mortgage Claims*, 87 TEX. L. REV. 121, 131 (2008).

fees through software allowing collection "from large pools of accounts with minimal cost." No. 20-1 (2d Cir.), Doc. 99-2 at 5 (amici brief of Nat'l Consumer Bankr. Rights Ctr., et al.).

This reality has garnered national attention for its harm to debtors and "the ability of courts and trustees to administer bankruptcy cases correctly."[6] Rule 3002.1 changed this equation, as underscored by recent "multimillion dollar penalties negotiated by the Department of Justice's U.S. Trustee Program with certain national banks" over serial violations of Rule 3002.1. *In re Lescinskas*, 628 B.R. 377, 382 n.8 (Bankr. D. Mass. 2021). Absent such punitive fines, mortgage creditors face almost no risks in harvesting improper fees other than "to occasionally forego the (relatively small) fees when caught." App.45.

B. Facts & Procedural History

1. PHH Mortgage Corporation (PHH) is "one of the largest sub-servicers of residential mortgages in the United States." App 27. For example, in 2018, PHH's portfolio included 586,609 loans "representing $129 billion of unpaid principal balance." App.99. At any given time, these numbers include thousands of mortgages in Chapter 13 cases under the supervision of bankruptcy courts and Chapter 13 trustees. *See* No. 20-1 (2d Cir.), Doc. 72 at JA.741, ¶5.

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[6] Porter, *supra* note 5, at 131; *see* Gretchen Morgenson, *Dubious Fees Hit Borrowers in Foreclosures*, N.Y. TIMES, Nov. 6, 2007, https://nyti.ms/3AdM23t.

PHH has a long history of mortgage-servicing abuse. In 2018, PHH agreed to pay $45 million after 49 states sued PHH for harming 52,000 homeowners between 2009 and 2012.[7] PHH's misconduct included "failing to maintain accurate account statements" and "charging unauthorized fees."[8]

In 2019, PHH agreed to pay $750,000 to six veterans and implement new staff training after the U.S. Department of Justice sued PHH for violating the Servicemembers Civil Relief Act (SCRA), 50 U.S.C. §§3901–4043.[9] PHH foreclosed on all six of the veterans' homes between 2010 and 2012 without obtaining SCRA-required court orders—misconduct stemming from PHH's failure to "take adequate steps to identify [SCRA] protected servicemembers."[10] For the veterans involved, this ordeal was excruciating.[11] As one veteran put it, PHH "fought" the veterans "for years" rather

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[7] Compl. ¶17, *Alabama v. PHH Mortg. Corp.*, No. 1:18-cv-9 (D.D.C. filed Jan. 3, 2018) (ECF No. 1); Consent Judgment ¶¶4, 9–13, *Alabama*, No. 1:18-cv-9 (D.D.C. filed Jan. 3, 2018) (ECF No. 2); *see* Press Release, ARIZ. ATT'Y GEN., *AG Brnovich & 48 States Reach $45 Million Settlement with PHH Mortgage Corp*. (Jan 3, 2018), https://bit.ly/3jKFtgR.

[8] Compl., *supra* note 7, ¶¶17a, 17b.

[9] Press Release, U.S. DEP'T OF JUSTICE (DOJ), *Justice Department Obtains $750,000 from PHH Mortgage Corp. for Unlawfully Foreclosing on Servicemembers' Homes* (Feb. 6, 2019), https://bit.ly/337A7X4.

[10] Compl. ¶¶8, 11, *United States v. PHH Mortg. Corp.*, No. 1:19-cv-4767 (D.N.J. filed Feb. 6, 2019) (ECF No. 1).

[11] Jeff Manning, *McGreevey Wins: Veteran Who Alleged Illegal Foreclosure Gets $125,000 Settlement*, THE OREGONIAN, Feb. 13, 2019, https://bit.ly/2X1TKvQ.

than simply taking responsibility and showing PHH "care[d] about . . . veterans."[12]

PHH's track record of mortgage-servicing abuse continues to this day, with a bipartisan group of 33 state attorneys general opposing settlement of a 2020 class action suit against PHH over improper fees.[13] As the Attorney General of Minnesota explains: "[f]or years, PHH has been charging . . . close to a million homeowners nationwide . . . anywhere from $7.50 to $17.50 each time . . . their monthly mortgage payment . . . is made by phone or through the homeowner's online account."[14] PHH has done this even though "[n]owhere in these homeowners' mortgage contracts is there authorization for such fees."[15]

2. Jan M. Sensenich is the Chapter 13 trustee for the District of Vermont (Trustee). *See* App.3. His Office "handle[s] practically all problems" associated with Chapter 13 cases in Vermont, with each case taking between three to five years to complete. *In re Gorski*, 766 F.2d at 726. For example, the Trustee's Office supervised 391 active Chapter 13 cases in 2021 and became

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[12] *Id.* (quoting veteran Jacob McGreevey).

[13] Press Release, MINN. ATT'Y GEN., *Attorney General Ellison Co-Leads Bipartisan Coalition Fighting for Homeowners* (Jan. 29, 2021), https://bit.ly/3JKi8Zt.

[14] *Id.*

[15] *Id.*; Brief of *Amici Curiae* Attorneys General of Alaska, et al. at 5–10, *Morris v. PHH Mortg. Corp.*, No. 20-ccv-60633 (S.D. Fla. filed Jan. 29, 2021) (ECF No. 118-2).

responsible for 81 new Chapter 13 cases over the course of the same year.[16]

The Trustee does not have an army of attorneys to oversee all these cases.[17] Even when "fully funded"—and this is presently not so—the Trustee's Office has consisted of six persons at most (including the Trustee), many of them part-timers. *See* No. 20-1 (2d Cir.), Doc. 70 at JA.193, ¶¶4, 7–10. That includes one part-time attorney—a role that the Trustee has been unable to finance since 2017. *Id.*, ¶10.

Despite these constraints, the Trustee remains responsible for administering the home mortgage payments of most Chapter 13 debtors in Vermont.[18] Like "many [judicial] districts in the United States," Vermont has chosen "to expressly act as [a] 'conduit district[],' meaning all plan payments must be made through the . . . [C]hapter 13 trustee." *In re Coughlin*, 568 B.R. 461, 468 (Bankr. E.D.N.Y. 2017). This arrangement "produces an audit trail that minimizes debtor-creditor disputes over whether and when a [mortgage] payment has been made." *In re Breeding*, 366 B.R. 21, 27 (Bankr. E.D. Ark. 2007).

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[16] U.S. DEP'T OF JUSTICE, *FY-2020 Ch. 13 Trustee Audited Annual Reports* (June 15, 2021) (Row 21, Cols. BL, BM).

[17] The Trustee is represented here by *pro bono* counsel. *See* No. 20-1 (2d Cir.), Doc. 70 at JA.52 (noting this fact).

[18] The local rules detailed here were in effect during the relevant 2012 to 2016 timeframe. Effective December 2017, the bankruptcy court renumbered these provisions. *See* Vt. LBR 3015-6, *available at* https://bit.ly/3uCKtux.

The Trustee disburses a debtor's payments with specific instructions to the mortgage creditor on how to apply these payments. *See* No. 20-1 (2d Cir.), Doc. 71 at JA.421–22. Mortgage creditors must follow these instructions and provide the Trustee with an annual summary. *Id.* Mortgage creditors may also send monthly statements to Chapter 13 debtors so long as these monthly statements accurately convey "payments to be made" by the debtor to the creditor. *Id.* at JA.426 (Vt. LBR 3071-1(f), (f)(6)).

3. Between 2011 and 2012, the Trustee became responsible for overseeing Chapter 13 cases filed by the Gravels, the Beaulieus, and the Knisleys. *See* No. 11-10112 (*Gravel*), No. 11-10281 (*Beaulieu*), & No. 12-10512 (*Knisley*) (Bankr. D. Vt.). PHH serviced each of these debtors' mortgages. *See In re Gravel*, 556 B.R. 561, 565–68 (Bankr. D. Vt. 2016).

4. Following the May 2011 confirmation of the Gravels' Chapter 13 plan, PHH began sending the Gravels monthly statements asserting the Gravels were behind on their mortgage payments. *See* No. 20-1 (2d Cir.), Doc. 72 at JA.767–84 ("past due"). After learning of these statements, the Trustee found that PHH was misapplying the Trustee's payments on the Gravels' behalf. *Id.* at JA.746, 750. Over the next year-and-a-half, the Trustee sent letter after letter to PHH explaining where PHH had gone wrong. *Id.* at JA.747. PHH ignored these letters and threatened the Gravels with foreclosure. *Id.* at JA.760.

So, in February 2014, the Trustee moved the bankruptcy court to sanction PHH. *Id.* at JA.754–48. The Trustee explained the "distress caused by PHH's actions" because the Gravels "did everything" asked of them only to be told "they were falling further and further behind." *Id.* at JA.748. The Trustee urged the court to impose sanctions sufficient to ensure that "neither future debtors" nor the Trustee would "be forced to expend resources" like this "to obtain compliance from mortgage creditors." *Id.*

PHH admitted error and made the following promise: "[PHH] has implemented a manual process to provide quality control and oversight over its . . . processing of Vermont mortgage loans in Chapter 13." *Id.* at JA.738-39. PHH asked for "an opportunity to prove the efficiency" of its quality-control process "before the imposition of severe sanctions." *Id.* PHH also argued the Trustee should have filed his motion sooner because "a motion got PHH's attention." *Id.* at JA.725:10-11. Finally, PHH conceded the propriety of sanctions if the Gravels ever "ha[d] problems again," as PHH would "not . . . have th[e] defense" of being a first-time offender. *Id.* at JA.724:12-18.

The bankruptcy court was disturbed by PHH's contention that PHH was free to ignore the Trustee's letters and wait for a motion. *See id.* at JA.727:1-6. The Trustee and PHH then agreed that PHH should pay a $9,000 fine. *Id.* at JA.712:9-15. On March 31, 2014, the bankruptcy court issued an order to this effect. App.146–47. The order established that PHH was paying $9,000 to the Gravels as a penalty for PHH's

"misapplication of payments" and "erroneous communications" to the Gravels. *Id.*

5. From 2014 to 2016, the Gravels continued to do everything required to keep their home—as did the Beaulieus. These efforts bore fruit.

On May 5, 2016, the bankruptcy court issued a Current Order in the Beaulieus' case. App.144–45; *see* Bankr. R. 3002.1(h) (prescribing Current Orders). The Current Order established that the Beaulieus had "made all payments due" on their mortgage through May 1, 2016, including "all . . . charges or amounts due under their mortgage." App.145.

On May 20, 2016, the bankruptcy court issued a Current Order in the Gravels' case. App.142–43. The Current Order established that the Gravels had "made all payments due" on the mortgage through April 1, 2016, including "all . . . charges or amounts due under their mortgage." App.143. The Current Order also noted PHH's sworn statement that the Gravels were "current," including "all fees, charges, expenses, escrow, and costs." No. 20-1 (2d Cir.), Doc. 72 at JA.707–08 (PHH's sworn statement).

6. Five days after the bankruptcy court told the Gravels they had made all due payments, PHH told the Gravels the exact opposite. PHH sent a May 2016 mortgage statement to the Gravels that listed due "[p]roperty inspection fees" of $258.75. No. 20-1 (2d Cir.), Doc. 72 at JA.654. The fees were not new and PHH asserted them in violation of Bankruptcy Rule 3002.1's notice requirement. *See* App.65.

PHH misinformed the Beaulieus the same way: twenty days after the bankruptcy court told the Beaulieus they had made all due payments, PHH sent the Beaulieus a May 2016 mortgage statement listing due fees of $56.25 for property inspection and $30 for non-sufficient funds (NSF). No. 20-1 (2d Cir.), Doc. 72 at JA.673. Like the Gravels' case, these fees were not new and PHH asserted them in violation of Rule 3002.1's notice requirement. App.66.

7. The Trustee fortunately caught PHH's Rule 3002.1 violations before they harmed the Gravels or the Beaulieus—or the Knisleys, who also received a May 2016 mortgage statement from PHH listing the same improper fees. *See In re Gravel*, 556 B.R. at 556 n.1. So, in June 2016, the Trustee again moved for sanctions. No. 20-1 (2d Cir.), Doc. 72 at JA.651–704. The Trustee established that PHH's improper fees: (1) violated Rule 3002.1 in each case; and (2) violated the bankruptcy court's orders declaring the Gravels and Beaulieus current. *Id.* at JA.653, 671, 689.

The Trustee asked the bankruptcy court to fine PHH for these violations. The Trustee explained that he "would have first attempted to resolve the matter short of motion practice" had the improper fees "only shown up on a single statement in a single case." No. 20-1 (2d Cir.), Doc. 71 at JA.515. But PHH's repeated assertion of improper fees across three cases proved a "systemic problem" that was likely to persist unless PHH "suffer[ed] a monetary consequence for this behavior." *In re Gravel*, 556 B.R. at 566 n.1.

To drive home this point, the Trustee disclaimed "attorney's fees in this case," emphasizing that he instead wanted "a monetary sanction . . . sufficient" to make PHH's violations "an unprofitable business practice." No. 20-1 (2d Cir.), Doc. 71 at JA.513. The Trustee suggested "any monetary sanction be paid directly to a non-profit legal services organization." No. 20-1 (2d Cir.), Doc. 72 at JA.651–52.

PHH admitted that it "did not file" the notices that Rule 3002.1 required of the fees listed on PHH's May 2016 statements to the Gravels, Beaulieus, and Knisleys. *Id.* at JA.602, ¶4; JA.618, ¶5; JA.635, ¶4. PHH nevertheless opposed being penalized because: (1) PHH's misstatements caused no harm; (2) PHH would have "removed the fees" if the Trustee asked (the "exact reverse" of PHH's file-a-motion stance); and (3) the fees appeared "**on only one occasion**," making this a "one-time error." *Id.* at JA.605, ¶¶20, 32; JA.607, ¶¶27–28 (bold added); App.32.

PHH had in fact sent multiple statements to each debtor that listed the improper fees. *See* App.65. Also, another bankruptcy court had criticized PHH for similar Rule 3002.1 violations. *Id.*; *see In re Owens*, No. 12-40716, 2014 Bankr. LEXIS 163, at *7–8 (Bankr. W.D.N.C. Jan. 15, 2014). Finally, PHH had promised to make effective systematic reforms after being fined $9,000 for sending erroneous statements to the Gravels. App.65. PHH's view of its misconduct as "just 'one mortgage statement'" then showed that PHH did not "appreciate the extent of its violations." No. 20-1 (2d Cir.), Doc. 71 at JA.517.

After a hearing, on September 12, 2016, the bankruptcy court fined PHH. *In re Gravel*, 556 B.R. at 580–81. In this original (or initial) sanctions order, the court determined that between the $9,000 fine in March 2014 and the Trustee's June 2016 sanctions motion, "PHH sent 25 monthly mortgage statements in each case (for a total of 75 statements)." *Id.* at 573 & n.5. Each statement included the same improper fees that PHH "admit[ted] were mistakenly included in the May [2016] Statements." *Id.* at 573. "PHH also admitted [that] it did not file any Rule 3002.1(c) notices with respect to those fees." *Id.*

PHH thus violated Rule 3002.1 an undisputed 75 times. *Id.* at 580–81. PHH also acted in "direct contradiction" of orders declaring the Beaulieus and the Gravels current on their mortgages. *Id.* at 574. Citing Rule 3002.1's allowance of "appropriate relief," the bankruptcy court imposed a $75,000 fine for PHH's 75 rule violations ($1,000-per-violation). *Id.* at 571, 573. The court then relied on its statutory and inherent power to impose a $300,000 fine for PHH's violation of the court's Current Orders. *Id.* at 578–79. The court ordered PHH to pay these fines to Legal Services Law Line of Vermont because while PHH caused no direct financial harm to the debtors (due to the Trustee's diligence), PHH's misconduct hurt "the bankruptcy system as a whole." *Id.* at 581.

8. PHH appealed to the district court. App.8. On December 18, 2017, the district court vacated the sanctions and remanded for further proceedings. *PHH Mortg. Corp. v. Sensenich*, Nos. 5:16-cv-257, et al., 2017

U.S. Dist. LEXIS 207801, at *25 (D. Vt. Dec. 18, 2017). Acknowledging PHH's "admitted violation of Bankruptcy Rule 3002.1," the district court held that bankruptcy courts cannot impose substantial fines. *Id.* at *2-3. 14–25. The district court remanded to the bankruptcy court to contemplate sanctions "short . . . of the scope and type imposed" or to refer the matter for criminal contempt. *Id.* at *24–25.

9. The Trustee appealed to the Second Circuit. Nos. 18-147, 18-154, 18-156 (2d Cir.). On July 10, 2018, the Second Circuit dismissed the appeal for lack of an appealable final decision because the district court had ordered "significant further proceedings." No. 20-1 (2d Cir.), Doc. 70 at JA.227–28.

10. On remand, the bankruptcy court ordered supplemental briefing on what sanctions (if any) the court could impose consistent with the limits set by the district court. *Id.* at JA.172–75 (order); JA.125–71 (PHH brief); JA.83–107 (Trustee brief).

On June 27, 2019, the bankruptcy court issued its order-on-remand (or final sanctions order). The court reaffirmed that PHH committed 25 violations of Rule 3002.1 in each debtor's case, and violated the court's Current Orders. App.64–69. The court also reaffirmed that "appropriate relief" for Rule 3002.1 violations included punitive fines. App.70–82. The court then determined that under the district court's analysis, bankruptcy courts remained able to impose non-serious fines against corporations for violations of court rules and orders. App.89–116.

On this basis, the bankruptcy court invoked Rule 3002.1's sanctions provision and the court's inherent power to again fine PHH $75,000 for PHH's 75 violations of Rule 3002.1 ($1,000-per-violation). App.139–41. For PHH's court-order violations, the court imposed a new $225,000 total fine, reflecting a $75,000 reduction. *Id.* The court ordered PHH to pay the $75,000 fine to the Trustee and the $225,000 fine to Legal Services Vermont. App.140–41.

11. PHH again appealed to the district court. No. 20-1 (2d Cir.), Doc. 70 at JA.55–56. In response, the Trustee asked the bankruptcy court to certify its final sanctions order for direct Second Circuit review as allowed under 28 U.S.C. §158(d)(2). *Id.* at JA.33. The court agreed in light of the "state of uncertainty" pervading "the scope and type of punitive sanctions" that bankruptcy judges may impose. *Id.* at JA.39. The Second Circuit thereafter granted the Trustee's petition for discretionary review. App.9.

12. On August 2, 2021, the Second Circuit reversed in a precedential decision. App.3. The panel majority held that "Rule 3002.1 does not authorize punitive monetary sanctions, and that PHH did not, as a matter of law, violate [the Current Orders]." *Id.* The panel majority also held that it could not affirm the $75,000 fine on the alternate correct ground of inherent judicial power because: (1) the bankruptcy court only "alluded to its inherent power"; and (2) the bankruptcy court made no finding that PHH acted in bad faith insofar as PHH violated Rule 3002.1 on 75 occasions across three cases. App.23.

Judge Bianco dissented from the panel's reversal of the $75,000 fine. App.26–58. Undertaking a careful analysis of Rule 3002.1's text, structure, history, and purpose, Judge Bianco found "the plain meaning of 'other appropriate relief' . . . authorizes a bankruptcy court . . . to impose punitive monetary sanctions." App.47. Judge Bianco also concluded that inherent power justified the fine because: (1) the bankruptcy court "explicitly invoked" this power; and (2) the record was "replete with findings" that PHH's conduct "was 'tantamount to bad faith.'" App.48, 53.

13. The Trustee timely sought rehearing. The Second Circuit denied the petition. App.148–49.

14. This certiorari petition follows.

REASONS TO GRANT THE PETITION

I. Federal courts are divided.

The Second Circuit's decision here cements two major circuit splits—one regarding appellate review of bankruptcy sanctions, and the other regarding the limits that govern the inherent power of all federal courts to penalize violations of their lawful authority. The Second Circuit's decision also divides federal courts on whether Bankruptcy Rule 3002.1 enables bankruptcy courts to impose punitive fines.

1. The federal courts of appeals are intractably split on their ability to affirm a bankruptcy sanctions order on an alternate correct ground.

a. Seven circuits hold that they may affirm a bankruptcy sanctions order on an alternate correct ground regardless of order's reasoning:

First Circuit—*In re Hann*, 711 F.3d 235 (1st Cir. 2013). A bankruptcy court imposed "a remedial sanction" (costs/fees) for a creditor's "violation" of the "discharge injunction" under 11 U.S.C. §524(a). *Id.* at 238. On appeal, the bankruptcy appellate panel affirmed "on a different basis": "power[] under 11 U.S.C. §105(a)" to penalize bankruptcy abuses. *Id.* at 238, 242. The First Circuit agreed. *Id.* Even if the creditor "did not violate the discharge injunction," the creditor's conduct "was an abuse" that merited First Circuit affirmance of the sanction "on different [correct] grounds." *Id.* at 243 (citation omitted).

Third Circuit—*Fellheimer, Eichen & Braverman, PC v. Charter Techs., Inc.*, 57 F.3d 1215 (3d Cir. 1995). A bankruptcy court imposed a monetary sanction (denial of fees) based on "[Civil Procedure] Rule 11 . . . and Bankruptcy Rule 9011." *Id.* at 1222. On appeal, the district court held these rules did not apply and "substitute[d] its own justifications." *Id.* at 1218. The Third Circuit affirmed, finding the district court's treatment of the sanction "as an exercise of . . . inherent power to be the most appropriate." *Id.* at 1224. The Third Circuit observed the "settled" rule that when "the decision below is correct, it must be affirmed, although the lower court relied upon a wrong ground or gave a wrong reason." *Id.*

The Third Circuit reaffirmed this view in *In re Miller*, 730 F.3d 198 (3d Cir. 2013). The bankruptcy court imposed a $20,000 sanction under Bankruptcy Rule 9011. *Id.* at 200. On appeal, the district court found the sanction "violated" Rule 9011's safe-harbor requirement. *Id.* The district court "refused to consider . . . [any] alternative options in light of the [b]ankruptcy [c]ourt's sole reliance on Rule 9011." *Id.* at 202. The Third Circuit reversed, explaining that "[s]anctions may be upheld, notwithstanding a safe harbor violation, if they are 'clearly valid' under a different sanctioning mechanism." *Id.* at 206.

Seventh Circuit—*In re Volpert*, 110 F.3d 494 (7th Cir. 1996). Relying solely on 28 U.S.C. §1927, a bankruptcy court "fined" counsel $1,000 for repeated improper filings. *Id.* at 495. On appeal, the district court affirmed over counsel's objection that §1927 did not give sanctioning power to bankruptcy courts. *Id.* at 496. The Seventh Circuit also affirmed, but on the ground that 11 U.S.C. §105 applied. *Id.* at 500. The Seventh Circuit explained that: "[a]lthough the bankruptcy court . . . relied upon §1927 . . . we may affirm . . . on a different basis if that basis is supported by the record and [the] law." *Id.*

Eighth Circuit—*Isaacson v. Manty*, 721 F.3d 533 (8th Cir. 2013). A bankruptcy court imposed a $5,000 fine under Bankruptcy Rule 9011. *Id.* at 537. On appeal, the district court affirmed. *Id.* The Eighth Circuit found Rule 9011 to be "inapplicable" but the $5,000 fine was "well within the bankruptcy court's inherent sanctioning power." *Id.* at 538. The Eighth Circuit

explained that it could "consider alternative grounds" if "another source of authority" existed; the bankruptcy court made factual findings "adequate" to the alternate ground; and "the contemnor's due process rights [were] protected." *Id.* at 539.

Ninth Circuit—*In re DeVille*, 361 F.3d 539 (9th Cir. 2013). The Ninth Circuit "subscribe[s] to the Third Circuit's observations in *Fellheimer*." *Id.* at 550 n.4. Specifically, the Ninth Circuit embraces the idea that federal appellate courts should not "overturn" a bankruptcy court's sanctions order "merely because that court applied the wrong label to the righteous use of its inherent sanction power." *Id.*

Tenth Circuit—*In re Courtesy Inns, Ltd.*, 40 F.3d 1084 (10th Cir. 1994). A bankruptcy court imposed a fee-award sanction under 28 U.S.C. §1927 for a "bad-faith filing." *Id.* at 1085. On appeal, the district court affirmed. *Id.* The Tenth Circuit held "bankruptcy court[s] may not impose sanctions under §1927." *Id.* at 1086. But the Tenth Circuit found "there is another basis upon which we may affirm": "inherent power," which was "surely broad enough" to support the sanction. *Id.* at 1089–90. And on this basis, the Tenth Circuit affirmed. *Id.* at 1090.

Eleventh Circuit—*In re Mroz*, 65 F.3d 1567, 1571 (11th Cir. 1995). The bankruptcy court imposed a fee-award sanction under Bankruptcy Rule 9011. *Id.* at 1571. On appeal, the district court affirmed. *Id.* The Eleventh Circuit held that Rule 9011 "did not" apply, but "inherent power" might. *Id.* at 1574. Citing the

"settled" rule that when "the decision below is correct, it must be affirmed," the Eleventh Circuit remanded for a hearing on bad faith to gauge whether inherent-power sanctions "may be properly imposed." *Id.* at 1576; *see In re Herman*, No. 14-cv-60239, 2015 U.S. Dist. LEXIS 178600, at *16 (S.D. Fla. Mar. 5, 2015) ("omission" of correct ground from bankruptcy sanctions order is "not fatal").

b. By contrast, the Second Circuit has decided it "cannot" affirm a bankruptcy sanctions order on an alternate correct ground unless the order analyzes the ground. App.23. The genesis of this rule traces to *In re Kalikow*, 602 F.3d 82 (2d Cir. 2010). *Kalikow* generally requires a bankruptcy court to "explain its sanctions order with care, specificity, and attention to the sources of its power." *Id.* at 96.

Based on *Kalikow*, the Second Circuit has ruled that when a "bankruptcy court relie[s] exclusively" on a single ground "to support its sanctions order," appellate review is "confine[d]" to that ground. *In re Sanchez*, 941 F.3d 625 (2d Cir. 2019). The court may "**not consider** [any] potential alternative sources of authority." *Id.* at 626–27 (bold added).

The ironclad nature of this no-consideration rule is then reinforced by the panel decision here. Even if a bankruptcy sanctions order invokes an alternate correct ground for a sanction, the Second Circuit still "cannot reach" this ground unless the order actually "assess[es]" the ground—"a perfunctory mention" will "not do." App.23–24. As the panel decision declares:

"[o]ur role is to review what the bankruptcy court did, not to survey options." App.23 n.2.

2. There is a long-established "split among the circuits and even within some circuits" on whether sanctions based on a court's inherent power "may be justified absent a finding of bad faith." *United States v. Seltzer*, 227 F.3d 36, 41–42 (2d Cir. 2000).

a. Four circuits recognize that inherent-power sanctions ***do not always require*** bad faith.

First Circuit: "[When] an inherent-power sanction does not take the form of an award of attorneys' fees (and thus does not involve a departure from the American Rule), a finding of bad faith is not ordinarily required." *In re Charbono*, 790 F.3d 80, 88 (1st Cir. 2015) (collecting cases).

Third Circuit: "[A] court need not always find bad faith before sanctioning under its inherent powers . . . ." *Republic of Philippines v. Westinghouse Elec. Corp.*, 43 F.3d 65, 74 n.11 (3d Cir. 1994).

Eighth Circuit: "[A] finding of bad faith is not always necessary to the court's exercise of its inherent power to impose sanctions." *Stevenson v. Union Pac. R.R.*, 354 F.3d 739, 745 (8th Cir. 2004).

Ninth Circuit: "[A] district court has the inherent power to sanction for: (1) willful violation of a court order; or (2) bad faith. A determination that a party was willfully disobedient is different from a finding that a party acted in bad faith. Either supports . . .

sanctions." *Evon v. Law Offices of Sidney Mickell*, 688 F.3d 1015, 1035 (9th Cir. 2012).

b. Four circuits maintain that inherent-power sanctions ***always require*** bad faith.

Fifth Circuit: "[A] federal court, acting under its inherent authority, may impose sanctions against litigants or lawyers appearing before the court **so long as** the court makes a specific finding that they engaged in bad faith conduct." *In re Yorkshire LLC*, 540 F.3d 328, 332 (5th Cir. 2008) (bold added).

Sixth Circuit: "In this Circuit, 'bad faith' is a requirement for the use of the district court's inherent authority . . . ." *First Bank of Marietta v. Hartford Underwriters Ins. Co.*, 307 F.3d 501, 519 (6th Cir. 2002) (citation omitted).

Eleventh Circuit: "[T]he key to unlocking a court's inherent power is a finding of bad faith." *Higgs v. Costa Crociere S.P.A. Co.*, 969 F.3d 1295, 1304 (11th Cir. 2020) (citations omitted).

D.C. Circuit: "[I]t is settled that a finding of bad faith is required for sanctions under the court's inherent powers . . . ." *United States v. Wallace*, 964 F.2d 1214, 1219 (D.C. Cir. 1992).

c. The **Second Circuit** is divided on a bad-faith requirement for inherent-power sanctions. The panel decision here deems inherent-power sanctions unavailable because the bankruptcy court made "no finding of bad faith." App.23. But the Second Circuit has previously held that a "court need not find bad faith"

when imposing an inherent-power sanction to vindicate the "orderly and expeditious disposition of cases." *United States v. Seltzer*, 277 F.3d 36, 41 (2d Cir. 2000). Penalizing repeated violations of a major court rule like Bankruptcy Rule 3002.1 fits this bill—a point that the Trustee made twice and the panel did not answer. *See* No. 20-1 (2d Cir.), Doc. 90 at 70 (Appellee Br.) & Doc. 148 at 12 (Reh'g Pet.).

3. Federal courts are divided on whether Bankruptcy Rule 3002.1 allows bankruptcy courts to impose punitive fines as "appropriate relief."

a. Four bankruptcy courts have found that Rule 3002.1 allows (or may allow) punitive fines:

- *In re Legare-Doctor*, 634 B.R. 453, 463 (Bankr. S.C. 2021) ("Rule 3002.1(i)(2) grants . . . expansive authority to frame a remedy—including . . . punitive damages—for a lender's non-compliance . . . .");
- *Blanco v. Bayview Loan Servs., LLC*, 633 B.R. 714, 755 (Bankr. S.D. Tex. 2021) ("[P]unitive damages may be assessed under Rule 3002.1(i)(2).");
- *In re Bivens*, 625 B.R. 843, 850–51 (Bankr. M.D.N.C. 2021) (allowing claim for punitive sanctions under Rule 3002.l to survive motion-to-dismiss); and
- *In re Owens*, 2014 Bankr. LEXIS 163, at *9–10 (expressing willingness to

"consider . . . relief" and "fines" upon any "future" PHH violations of Rule 3002.1).

Blanco and *Legare-Doctor* merit close attention. *Blanco* expressly rejects the Second Circuit's reading of Rule 3002.1. *See* 633 B.R. at 754 ("This Court respectfully disagrees with the [*Gravel*] majority and agrees with the dissent."). *Legare-Doctor* then fully embraces *Blanco's* interpretation of Rule 3002.1. *See* 634 B.R. at 463 (adopting *Blanco*'s explanation of "why an award of . . . punitive damages [is] required to enforce the provisions of Rule 3002.1").

b. Two federal courts have found Rule 3002.1 does not allow punitive fines: the Second Circuit here (App.3) and the bankruptcy court in *In re Tollstrup*, No. 15-33924, 2018 Bankr. LEXIS 767, at *11–14 (Bankr. D. Or. Mar. 16, 2018) ("Rule 3002.1 does not permit me to impose punitive [fines] . . . .").

II. The questions are especially important.

Viewed apart or together, the questions raised by the Trustee are especially important for three key reasons: integrity, uniformity, and inequality.

1. *Integrity.* The questions presented bear upon "the integrity of both the bankruptcy process and the judicial process." *Krystal Cadillac-Oldsmobile GMC Truck, Inc. v. Gen. Motors Corp.*, 337 F.3d 314, 325 (3d Cir. 2003). To "administer public justice and enforce the rights of private litigants," bankruptcy courts—and the trustees who serve them—must be secure in

their authority to enforce court rules and penalize "acts of disobedience." *Gompers v. Bucks Stove & Range Co.*, 221 U.S. 418, 450 (1911).

Such authority is essential in Chapter 13 cases. "[I]n their rush to foreclose," lenders routinely "fail to comply with even the most basic legal requirements of the bankruptcy system." *In re Maisel*, 378 B.R. 19, 20-21 (Bankr. D. Mass. 2007). This is despite the fact that compliance "is not difficult." *Id.* at 22. Against this tide of rule violations, bankruptcy courts have a "responsibility to ensure compliance." *Id.* at 21.

The realities of Rule 3002.1 bolster this point. While the Court adopted the rule over a decade ago, bankruptcy courts continue to see mortgage creditors violate the rule again and again, leaving debtors "at risk of a default that triggers foreclosure" at the close of their cases. *In re Legare-Doctor*, 634 B.R. at 463; *see*, *e.g.*, *Blanco*, 633 B.R. at 755; *In re Bivens*, 625 B.R. at 850–51; *In re Lescinskas*, 628 B.R. at 381–85; *In re Figueroa*, 2021 Bankr. LEXIS 3337, at *10–14; *In re Roe*, No. 18-50046, 2021 Bankr. LEXIS 1849, at *4–16 (Bankr. W.D. Mo. July 13, 2021); *In re Rayford*, No. 16-29914, 2020 Bankr. LEXIS 3635, at *6–13 (Bankr. W.D. Tenn. Dec. 17, 2020).

The Second Circuit's decision here threatens the integrity of bankruptcy courts and trustees in these cases and more. As Judge Bianco details, the Second Circuit's decision "does not allow the bankruptcy court to punish the misconduct of one of the largest sub-servicers of residential mortgages in the United States,

even where a prior sanction was ineffective at achieving compliance." App.27. And going forward, the decision "will undoubtedly hamper" the ability of bankruptcy courts to deter "predatory practices" that assail Chapter 13's "fundamental purpose": enabling debtors to achieve a "fresh start." App.27–28.

There lies the vital importance of the questions presented here. Bankruptcy courts and trustees—not to mention injured debtors—need to know in advance what sanctions are available to them and what is required for a sanction to survive on appeal (e.g., a finding of bad faith). Otherwise, an appeal may wash away years of effort to redress undisputed creditor violations (as occurred here), inclining bankruptcy judges, trustees, and debtors against the endeavor in the first place (given their limited resources).

The government also needs definitive answers to these questions. The Department of Justice has negotiated "multimillion dollar penalties" with banks over Rule 3002.1 violations—something the Second Circuit's decision may now preclude for violations occurring in New York, Vermont, and Connecticut. *In re Lescinskas*, 628 B.R. at 382 n.8. The Court should thus invite the Solicitor General to file a brief in this case expressing the views of the United States.

2. *Uniformity*. The Constitution's prescription of "uniform" bankruptcy laws makes "uniformity among the circuits . . . important in the bankruptcy context." *In re Frushour*, 433 F.3d 393, 400 (4th Cir. 2005). This value then highlights the importance of the questions

presented here. In concrete terms: one debtor in the Southern District of Texas may seek punitive fines for a mortgage creditor's Rule 3002.1 violations in his case—and without proving bad faith—while a Chapter 13 trustee overseeing the cases of hundreds (or thousands) of debtors in Vermont, New York, or Connecticut cannot do the same. *Compare* App.17–26, *with Blanco*, 633 B.R. at 750–57.

3. *Inequality*. The Court has extolled both the necessity and "distinguished service" of bankruptcy judges. *Wellness*, 575 U.S. at 669. These observations compel review of the questions raised here, which implicate the equal treatment of bankruptcy judges. In the Second Circuit, if a district judge commits the grave error of imposing sanctions "without reference to any statute, rule, decision, or authority," this "warrant[s] a remand." *Satcorp Int'l v. China Nat'l Silk Import & Export Corp.*, 101 F.3d 3, 5 (2d Cir. 1996). But if a bankruptcy judge commits the minor error of imposing sanctions on a wrong ground while citing (but not discussing) a correct ground, this requires a straight reversal without the courtesy of a remand. *See* App.22–24 & n.2. No other circuit treats bankruptcy judges in this cavalier manner—one that allows undisputed serial violations of court rules to prevail and invites the same in future cases.

III. This case is the right vehicle.

For three reasons, this case is the right vehicle for the Court to settle the questions presented:

1. *Pure issues.* This case allows for resolution of the questions presented without any difficulty. It is undisputed that bankruptcy courts have inherent power to enforce court rules, including Bankruptcy Rule 3002.1. App.22–23, 48; *see In re Sanchez*, 941 F.3d at 628. It is also undisputed that PHH received notice and was heard multiple times on the $75,000 fine. App.61–63; *see* No. 20-1 (2d Cir.), Doc. 70 at JA.125–175; Doc. 71 at JA.427–496; and Doc. 72 at JA.602–650. Finally, as Judge Bianco confirms, the $75,000 fine was an "appropriate amount" for PHH's 75 violations of Rule 3002.1. *See* App.54–57.

2. *Undisputed facts.* The "facts . . . were not in dispute before the Bankruptcy Court and [were] not challenged on appeal." *PHH Mortg. Corp.*, 2017 U.S. Dist. LEXIS 207801, at *3. And it is PHH's "admitted violation of Bankruptcy Rule 3002.1" that gives rise to all the questions presented here. *Id.* at *2.

3. *Full ventilation*. For eight years—since the Trustee filed his June 2016 sanctions motion—this case has undergone exhaustive briefing, argument, and judicial review at every level. *See* No. 20-1 (2d Cir.), Docs. 70, 71, 72. This case reflects analysis of every issue relevant to the questions presented here, as demonstrated by the bankruptcy court's two detailed opinions (App.59–138; *In re Gravel*, 556 B.R. at 565–80); the district court's opinion (2017 U.S. Dist. LEXIS 207801); the panel opinion (App.1–26); and Judge Bianco's panel dissent (App.26–58). And even more percolation of the issues may be found in the following bankruptcy decision, which affords a comprehensive

analysis of the Second Circuit's decision: *Blanco*, 633 B.R. at 750–55 (discussing *Gravel*).

In short, it is difficult to imagine another case with the same questions presented as this case but an even more developed record. Waiting for a better case also is not realistic as most Chapter 13 debtors and trustees lack the time and resources necessary to litigate a mortgage creditor's rule violations for eight years across three courts. What made such litigation possible here is the Trustee's retention of special counsel, who is also the Trustee's counsel-of-record on this petition. As the bankruptcy court explains, special counsel has "vigorously and very competently represented the Trustee in this matter . . . pro-bono . . . with no charge for his services to the [T]rustee or the [bankruptcy] estates of these cases." No. 20-1 (2d Cir.), Doc. 70 at JA.52. Needless to say, this factor is not likely to be a recurring phenomenon.

IV. The decision below is wrong.

The Second Circuit's position on each question presented either conflicts with this Court's relevant precedents or fails to represent the better rule of law in light of all relevant considerations:

1. The Second Circuit erred in concluding that it could not affirm a bankruptcy sanctions order on an alternate correct ground (i.e., inherent power) because the order did not analyze the ground. App.23. Under this Court's longstanding precedent, "the rule is settled that if the decision below is correct, it must be

affirmed, although the lower court relied upon a wrong ground or gave a wrong reason." *Helvering v. Gowran*. 302 U.S. 238, 245 (1937).

Based on this rule—and leaving aside the issue of bad faith—the Second Circuit was bound to affirm the bankruptcy court's $75,000 fine for PHH's Rule 3002.1 violations on the alternate correct ground of inherent power. *See Chambers v. NASCO, Inc.*, 501 U.S. 32, 49 (1991) (explaining that "inherent power . . . can be invoked even if procedural rules exist which sanction the same conduct"); *see also* App.26 (panel opinion) (conceding "a bankruptcy court's inherent power to sanction offenders").

The Second Circuit stresses that the bankruptcy court only "alluded to its inherent power." App.23. But that is no basis to disregard the *Helvering* rule. The rule embodies the central principle that appellate courts review judgments—not opinions. *See Jennings v. Stephens*, 574 U.S. 271, 277 (2015). As a result, appellees may, without a cross-appeal, urge affirmance of a decision on grounds that attack a lower court's reasoning. *See id.* at 276. By contrast, under the Second Circuit's view, if a party seeks a bankruptcy sanction on two grounds—one right, one wrong—and the court grants the sanction on the wrong ground without discussing the correct ground, the sanctions order is dead on appeal. A reviewing court cannot affirm on the correct ground and the party cannot defend the order on the correct ground.

The Third Circuit (joined by six other circuits) has it right: federal courts of appeals are not in the business of "overturn[ing]" sanctions orders "merely because" the bankruptcy court "applied the wrong label" to an otherwise "righteous use" of inherent power. *Fellheimer*, 57 F.3d at 1227. Reversal is also particularly nonsensical in the Trustee's case, where the "factual basis for invoking . . . inherent power" is "exactly the same" as the factual basis "for imposing sanctions under Rule 3002.1." App.49.

The Second Circuit opines "[i]t is surely of some matter" that PHH's Rule 3002.1 violations caused "no damage or harm here." App.25. But the reason *why* no harm occurred here is because the Trustee caught PHH's violations in time. "Without the Trustee's vigilance and his filing of the Sanctions Motions, the Debtors' fresh start might have been jeopardized—just as the drafters of Rule 3002.1 had warned." *In re Gravel*, 556 B.R. at 579.

2. The Second Circuit erred in concluding that sanctions based on inherent judicial power always require a finding of bad faith. Justice Scalia's dissent in *Chambers v. NASCO* lights the way. When a court grants a fee award as an inherent-power sanction, a finding of bad faith is required to "prevent[ ] erosion . . . of the American Rule." 501 U.S. 32 at 59 (Scalia, J., dissenting). But this "in no way means that *all* sanctions imposed under the courts' inherent authority require a finding of bad faith." *Id.*

Inherent-power sanctions can be exercised only when "necessary to preserve the authority of the court." *Id.* at 64. "[N]ecessity does not depend upon a litigant's state of mind . . . ." *Id.* at 59. The "inherent sanctioning power" must then "extend to situations involving less than bad faith." *Id.* Otherwise, "every possible disciplinary exercise of the court's inherent power" would require a determination of bad faith, including "the most routine exercises"—e.g., a $100 fine against an attorney who negligently arrived late to a court hearing. *Harlan v. Lewis*, 982 F.2d 1255, 1260 (8th Cir. 1993).

3. The Second Circuit erred in concluding that Bankruptcy Rule 3002.1 does not authorize punitive fines as a form of "appropriate relief." As both Judge Bianco and the bankruptcy court demonstrate, the Second Circuit's analysis defies Rule 3002.1's text, structure, history, and purpose. App.32–47, 70–82. The panel also disregards *Tanzin v. Tanvir*, 141 S. Ct. 486 (2020), which identifies five guiding factors for construing the phrase "appropriate relief."

First, punitive fines "have long been awarded as appropriate relief" for court-rule violations. *Id.* at 491. The common law allowed courts to "correct . . . by fine" those who "disobey[ed] . . . the rules . . . of the court." 4 WM. BLACKSTONE, COMMENTARIES 282, 284 (1770). Early federal statutes enshrined this power. See 1 Stat. 83, §17 (1789) (courts may "punish by fine . . . all contempts"); 4 Stat. 488, §1 (1831) ("contempts" included "disobedience . . . to any . . . rule").

Second, punitive fines for court-rule violations "remain an appropriate form of relief." *Tanzin*, 141 S. Ct. at 491. "Many of the court's most effective enforcement weapons involve financial penalties." *Hutto v. Finney*, 437 U.S. 678, 690 (1978). And bankruptcy courts are no exception. *See* 11 U.S.C. §105(a) (empowering bankruptcy courts to enforce court rules through "any" appropriate determination).

Third, punitive fines for court-rule violations have been "commonly available" under state law. *Tanzin*, 141 S. Ct. at 491; *see* 2 WHITEHOUSE, EQUITY PRACTICE 1208, 1509 (1915) (collecting laws).

Fourth, Rule 3002.1's "origins" support fines as "appropriate relief." *Tanzin*, 141 S. Ct. at 492. The rule arose from abuses like unwarranted fees. The rule's drafters therefore required timely notice of all mortgage fees and allowed "sanctions" for violations. Bankr. R. 3002.1—2011 Adv. Cmte. Note.

Fifth and finally, punitive fines are not just "appropriate relief" for court-rule violations; they are also "the only form of relief that can remedy some [Rule 3002.1] violations." *Tanzin*, 141 S. Ct. at 492. This case proves the point: PHH's 75 violations of Rule 3002.1's notice rule "did not result in any actual economic harm" due to the Trustee's "diligence . . . in identifying and rectifying the violations." App.27. The only effective relief is punitive fines. *Id.*

CONCLUSION

The Court should grant Sensenich's petition.

Respectfully submitted,

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