No. 21-599

In the Supreme Court of the United States

MARGARET L. KINNEY, PETITIONER

v.

HSBC BANK USA, N.A.

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

BRIEF IN OPPOSITION

JAMIE G. SILER *
JAMES P. ECKELS
TYLER S. GURNEE
Murr Siler & Accomazzo, P.C.
1999 Broadway, Ste. 3100
Denver, CO 80202
(303) 534-2277
jsiler@msa.legal
jeckels@msa.legal
tgurnee@msa.legal

Counsel for Respondent
** Counsel of Record*

QUESTION PRESENTED

Whether a Chapter 13 debtor is eligible for a discharge under 11 U.S.C. § 1328(a) when she failed to make all of her required plan payments within the Bankruptcy Code's mandatory five-year deadline and instead made several payments after the plan period ended.

CORPORATE DISCLOSURE STATEMENT

Respondent HSBC Bank USA, N.A. is wholly owned by HSBC USA, Inc., which is indirectly owned by HSBC North America Holdings, Inc., which, in turn, is indirectly owned by HSBC Holdings plc, a United Kingdom corporation. HSBC Holdings plc is a publicly held company, and no publicly held company owns 10% or more of its stock.

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JURISDICTION

The judgment of the court of appeals was entered on July 23, 2021. The petition for a writ of certiorari was filed on October 20, 2021. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATEMENT

Petitioner, a Chapter 13 debtor, defaulted under her bankruptcy plan by failing to make several monthly mortgage payments. She then submitted the missing plan payments a few months later, after her plan had ended. The bankruptcy court concluded petitioner was not eligible for a discharge under 11 U.S.C. § 1328(a), because she did not submit all of her required plan payments within the plan's five-year term. Pet. App. 25-34. The court of appeals affirmed. *Id.* at 1-24.

A. Statutory Background

Under Chapter 13 of the U.S. Bankruptcy Code (the Code), a debtor with regular income may propose a plan to repay certain debts, including monthly mortgage obligations. *See* 11 U.S.C. §§ 1321, 1322. Once the bankruptcy court confirms a proposed plan, the plan binds both the debtor and creditors. 11 U.S.C. § 1327. The plan's length may not exceed five years. 11 U.S.C. § 1322(d)(1) & (2). The bankruptcy court may modify a plan after confirmation, but in doing so, it may not extend the five-year deadline. 11 U.S.C. § 1329(c).

A Chapter 13 bankruptcy case ends with a discharge, conversion to Chapter 7, or dismissal. 11 U.S.C. §§ 1307(c), 1328(a). If the debtor makes all payments required under the plan, the bankruptcy court grants the debtor a discharge.[1] 11 U.S.C. § 1328(a). However, if the debtor is in "material default" under the plan, the bankruptcy court may either dismiss the case or convert it to a Chapter 7 bankruptcy (where the debtor's nonexempt assets are liquidated to pay creditors and the debtor may seek a Chapter 7 discharge). 11 U.S.C. § 1307(c)(6).

B. Factual Background

Petitioner filed a Chapter 13 bankruptcy case, and the bankruptcy court confirmed her proposed payment plan. Pet. App. 26. The confirmed plan required petitioner to make monthly mortgage payments to respondent, HSBC Bank N.A. (the Bank), as a secured mortgagee beginning in November 2013. *Id.* It also required payments to the Chapter 13 trustee for administrative expenses and for other creditors' claims. *Id.* Petitioner's final payment under the plan was due by November 24, 2018. *See id.* at 26; Pet. 6.

Petitioner did not make the last three monthly mortgage payments due to the Bank under the plan, for September, October, and November 2018. Pet. App. 26, 46.[2] Additionally, she did not make the next two monthly mortgage payments due to the Bank after the plan ended. *Id.* at 4, 26-27. Petitioner

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[1] This type of discharge, which is granted if the debtor completes all payments required under the Chapter 13 plan, is commonly referred to as a "completion" discharge.

[2] The court of appeals mistakenly stated that petitioner had missed two plan payments, *see* Pet. App. 4; petitioner acknowledges it was three payments, *see* Pet. 7.

attributes her missed payments to a car accident in March 2018. *Id.* at 46.

C. Bankruptcy Court's Decision

Because petitioner had materially defaulted on her plan by not submitting payments, the Bank moved to dismiss petitioner's bankruptcy case in December 2018. Pet. App. 26-27; *see* 11 U.S.C. § 1307(c)(6). Petitioner did not dispute that she missed her payments or that the five-year period for making payments had ended. *See* Pet. App. 26-27. Instead, she argued that she had submitted the missing payments in February 2019 and should still receive a discharge. *Id.*

The bankruptcy court held that petitioner had materially defaulted under her plan and could not receive a discharge. Pet. App. 25-34. Relying on its prior decision in *In re Humes*, 579 B.R. 557 (Bankr. D. Colo. 2018), the court explained that the Code does not permit a completion discharge when a debtor fails to make all of the required plan payments before the plan period ends. Pet. App. 31-33. The court noted that the Code expressly limits the length of Chapter 13 plans to five years, *id.* at 29 (citing 11 U.S.C. § 1322(d)), and expressly forbids plan modifications that extend the length of the plan beyond five years, *id.* at 30 (citing 11 U.S.C. § 1329(c)). If petitioner had determined she could not make the required payments, the court explained, she should have sought a modification of the plan within the five-year plan period. *Id.* at 30. But because petitioner did not do that, the court concluded it could not grant her a discharge and instead offered her the option of converting her case to a Chapter 7, so she could obtain a Chapter 7 discharge. *Id.* at 32-33.

Rather than converting to Chapter 7 or seeking an alternative form of discharge,[3] petitioner sought an extension of time to appeal or seek reconsideration. The court offered petitioner more time to convert her case to Chapter 7, C.A. App. 171, but petitioner chose not to do so. Pet. App. 38. Instead, she filed a motion for reconsideration, which the bankruptcy court denied. *Id.* at 37-50. The bankruptcy court then dismissed her case. *Id.* at 51.

D. Court of Appeals' Decision

The court of appeals affirmed. Pet. App. 1-24.[4] It agreed with the bankruptcy court that petitioner could not receive a discharge when she was in material default of her plan payments when the five-year plan period ended. *Id.* at 22.

The court of appeals first explained that the statutory text supports the view that "material defaults cannot be cured after the plan has ended." Pet. App. 13. The court noted that a bankruptcy court grants a discharge upon "completion . . . of all payments *under the plan*," *id.* at 6 (quoting 11 U.S.C. § 1328(a) (emphasis added)), and that a plan may not last longer than five years, *id.* at 14 (citing 11 U.S.C. §§ 1322(d), 1329(c)). The court explained that the "natural reading" of that statutory language is that a

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[3] For example, 11 U.S.C. § 1328(b) allows debtors to obtain a "hardship discharge" under certain circumstances, even when they have not timely completed all plan payments.

[4] Since the Bank ultimately received the missing payments from petitioner, it no longer had a financial interest in the outcome of this case by the time of the appeal. *See* pp. 11-12, *infra.* The Bank therefore informed the court of appeals that it would not oppose petitioner's appeal. *See* Notice of Non-Participation 1-2, C.A. Doc. No. 010110366727 (June 25, 2020). The court of appeals nonetheless instructed the Bank to file a brief. Order 1-2, C.A. Doc. 010110446505 (Dec. 2, 2020).

debtor cannot make a payment "under" the plan if the plan has expired. *Id.* at 9-10. The court relied (*id.* at 10) on *Florida Department of Revenue v. Piccadilly Cafeterias, Inc.*, 554 U.S. 33, 39-41 (2008), where this Court held that an asset transfer could not be one "under" a confirmed plan if the plan had not yet been confirmed.

The court of appeals also noted that other provisions of the Bankruptcy Code "suggest that the late payments are not 'under the plan.'" Pet. App. 13-17. For example, the court pointed to the Code's limitation on plan modifications, noting that although the Code permits a bankruptcy court to modify plans "extending . . . the time for . . . payments," 11 U.S.C. § 1329(a)(2), it expressly forbids any modification that would make the plan last longer than five years, 11 U.S.C. § 1329(c). Pet. App. 14.

Because the court of appeals found the statutory text somewhat "ambiguous," it also reviewed the legislative history. Pet. App. 17. The court concluded that Congress did not want a Chapter 13 bankruptcy plan to last longer than five years, *id.* at 17-22, and explained that Congress enacted the five-year limit because it was concerned about "indefinite extensions of payment plans," *id.* at 18 (citing H.R. Rep. No. 95-595, at 117 (1977)). The court also noted that when Congress wanted to provide exceptions to the five-year deadline, it did so expressly, most recently through a provision that permitted relief for certain debtors who missed mortgage payments due to the COVID-19 pandemic. *Id.* at 21 (citing 11 U.S.C. § 1328(i)(2)). All of this, the court concluded, showed that Congress "intended to strictly limit the time for payments under Chapter 13 plans." *Id.* at 22.

Judge Eid concurred, explaining that in her view, the Code's text is clear, and so there was no need to resort to legislative history. Pet. App. 22-24.

ARGUMENT

Petitioner contends (Pet. 14) this Court should grant review to decide whether a Chapter 13 debtor may obtain a discharge if she defaults on her plan but then makes up the missed payments after the plan period has ended. That issue does not warrant this Court's review. Only one other court of appeals (the Third Circuit) has addressed the issue, in a case that concerned materially different circumstances. Further, this case would be an exceedingly poor vehicle for considering the issue, both because petitioner would not prevail even under the Third Circuit's approach, and because the Bank has no remaining financial stake in this case. In any event, the court of appeals' decision is correct: under the Bankruptcy Code, a Chapter 13 debtor cannot obtain a completion discharge unless she completes all required payments under the plan, and a plan cannot last longer than five years. A further review of the bankruptcy court's dismissal is therefore unwarranted.

A. There Is No Disagreement in the Circuits Warranting this Court's Review

Only one other court of appeals has addressed whether a Chapter 13 debtor may obtain a discharge by submitting payments after the expiration of the plan term—the Third Circuit in *In re Klaas*, 858 F.3d 820 (3rd Cir. 2017). In that case, the debtors made all of the payments required under their confirmed Chapter 13 plan within the plan period, but still owed $1,123 due to an unanticipated increase in the Trustee's fees. *Id.* at 824 & n.1. The debtors paid this

amount within 16 days of learning of it, and the bankruptcy court granted their discharge. *Id.* at 824-25.

The Third Circuit affirmed, believing the Code gives a bankruptcy court discretion "to grant a reasonable grace period for debtors to cure an arrearage." *Klaas*, 858 F.3d at 828-31 (discussing 11 U.S.C. §§ 1307 and 1328). The court then set out a "non-exhaustive list of factors a bankruptcy court should consider" in deciding whether to allow a debtor to obtain a discharge despite not fully paying all fees until after the five-year plan period had expired. *Id.* at 832.[5] Applying those factors, the court held that in the particular circumstances of that case, the bankruptcy court had not abused its discretion by granting the discharge. *Id.* at 832.

The *Klaas* opinion is in some tension with the decision below, because the Third Circuit allowed a bankruptcy court to grant a Chapter 13 discharge where the debtors paid certain Chapter 13 fees after the five-year plan had ended, while the Tenth Circuit affirmed the dismissal of a Chapter 13 case without discharge when the debtor submitted her plan payments after the plan had ended. For the reasons that follow, however, this Court's review of the question presented is not warranted.

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[5] Those factors include: (1) "whether the debtor substantially complied with the plan, including the debtor's diligence in making prior payments"; (2) "the feasibility of completing the plan if permitted, including the length of time needed and amount of arrearage due"; (3) "whether allowing a cure would prejudice any creditors"; (4) "whether the debtor's conduct is excusable or culpable, taking into account the cause of the shortfall and the timeliness of notice to the debtor"; and (5) "the availability and relative equities of other remedies, including conversion and hardship discharge." *Klaas*, 858 F.3d at 832.

1. Any disagreement in the circuits is nascent and underdeveloped

Other than the Third Circuit and Tenth Circuit, no other court of appeals has squarely addressed petitioner's question. Petitioner cites decisions of the Seventh and Eleventh Circuits but admits that both only mentioned the issue in "*dicta*." Pet. 10; *see also Klaas*, 858 F.3d at 829 n.7, 831 (recognizing that the Seventh Circuit's statement was *dicta*).

For example, the Seventh Circuit case cited by petitioner—*Germeraad v. Powers*, 826 F.3d 962 (7th Cir. 2016)—did not concern payments made after the five-year period had ended. Rather, the trustee had sought to modify the plan to increase payments *during* the five-year period. *Id.* at 964. When the bankruptcy court denied the request and the trustee appealed, the debtor argued the issue had become moot because by that time, the five-year plan period had ended. *Id.* at 964-65, 967. The Seventh Circuit held that the dispute was not moot, because if it reversed the bankruptcy court's order, the effect would be to require increased plan payments during the plan period, not to require payments after the plan. *Id.* at 968. The court, in *dicta*, suggested the bankruptcy court might be able to allow a debtor to make payments after the five-year period. *Id.* But the court did not decide the issue, because "even if the bankruptcy court could not allow the debtors to cure their default because of the five-year restriction," it still could "deem the debtors in default, deny them a discharge, and dismiss or convert their Chapter 13 case"—so the dispute was not moot. *Id.*

The Eleventh Circuit likewise did not decide whether a bankruptcy court can grant a completion discharge when a debtor makes payments *after* the plan's term. Rather, the issue in *In re Hoggle*, 12 F.3d

1008 (11th Cir. 1994), was whether a particular type of modification was barred by a Code provision related to the rights of home mortgage lenders, 11 U.S.C. § 1322(b)(2). 12 F.3d at 1009. The Eleventh Circuit held that the plan modification was allowed. *See id.* at 1009-10. However the court recognized that a modification is only allowed if "the plan, as modified, conforms to the requirements of § 1322," which in turn, include the five-year limit on plan terms. *Id.* at 1009.

Given that there is only one other circuit that has addressed the question presented in this case, review would be premature at this time. The Court should permit other circuits to weigh in, to sharpen the issues, and see whether a clear circuit split develops.

It is not clear whether the Third and Tenth Circuits' approaches will differ much in practice. As discussed below, the Third Circuit considered materially different circumstances than those in this case. Indeed, the bankruptcy court below believed its holding was reconcilable with the holding in *Klaas*. Pet. App. 45. And if the Tenth Circuit had been faced with the facts of *Klaas*, it too may have permitted the bankruptcy court to grant a discharge. One of the Tenth Circuit's rationales was that the petitioner in this case was seeking to extend the time for making *known* plan payments beyond five years, which is impermissible under Section 1329. *Id.* at 14. The debtors in *Klaas,* by contrast, were required to pay an unforeseen, undisclosed increase in a trustee's fee. *See* 858 F.3d at 831.

Further, the Third Circuit did not hold that a debtor has an "absolute right" to obtain a completion discharge after making late payments. *Klaas*, 858 F.3d at 830 n.9. Instead, it held that bankruptcy courts have discretion to grant such a discharge under

appropriate circumstances and set out five non-exclusive factors that could bear on whether a bankruptcy court abused its discretion. *Id.* at 832. This Court should wait to see how those factors actually apply in practice, and if any other circuits embrace that approach, before granting review. *See, e.g.*, *Maslenjak v. United States*, 137 S. Ct. 1918, 1931-32 (2017) (Gorsuch, J., concurring in part); *McCray v. New York*, 461 U.S. 961, 963 (1983) (Stevens, J., respecting the denial of certiorari). If, as petitioner argues (Pet. 27-29), the issue recurs with some frequency, then the Court will have plenty of other opportunities to address the issue if it becomes further developed.

2. Petitioner would not prevail under the Third Circuit's approach

This case would be a poor vehicle for addressing the question presented because petitioner here would not prevail, even under the Third Circuit's approach.

The Third Circuit addressed very different facts than the facts here. In *Klaas*, the debtors made all of the payments required under their plan, but there was a shortfall due to "an increase in the Trustee's fee during the term of the plan." 858 F.3d at 824 & n.1. It was not until after the plan ended that the Trustee discovered the shortfall, and the debtors promptly paid the missing fees. *Id.* at 824, 833. "Under these circumstances," the Third Circuit decided, "the Bankruptcy Court was well within its discretion to decline to dismiss." *Id.* at 833.

This case is very different. As the bankruptcy court found in this case, the facts that led the court in *Klaas* to permit the debtors' cure payment simply "are not present here." Pet. App. 50. For example, the bankruptcy court explained that in *Klaas*, "there was

no new payment arrangement"; "[a]ll of the known payments had been made by the end of five years"; the amount due was "insubstantial"; and the debtors "bore no responsibility for its tardiness." *Id.* at 45.

Here, by contrast, petitioner knew her regular plan payments were due but did not make the final three payments during the plan term. Rather, she waited until several months after the plan ended to make her required payments, after the Bank had already moved to dismiss her case. Pet. App. 46. Further, although petitioner now characterizes her default as "minor," Pet. 17, both courts below held it was a "material default," Pet. App. 4, 32.

The bankruptcy court in this case thus made clear that even if it had applied the approach in *Klaas*, it still would not have granted petitioner a discharge. Pet. App. 45, 50 ("agree[ing]" with the outcome in *Klaas* but explaining that this case was not "akin to the situation described in *Klaas*"). Thus, even if this Court granted certiorari and adopted the Third Circuit's approach, it would not change the outcome.

3. The Bank has no remaining financial interest in this case

Finally, this case would also provide a poor vehicle for further review because the Bank has no remaining financial interest in the outcome. The Bank here is a fully secured creditor, and it received the missing mortgage payments due from petitioner (albeit late, after filing its motion to dismiss). Pet. App. 27. It was for this reason that the Bank informed the Tenth Circuit it would not oppose petitioner's appeal. *See* Notice of Non-Participation 1-2, C.A. Doc. No. 010110366727 (June 25, 2020). The Tenth Circuit nonetheless ordered the Bank to file a brief, Order 1-2, C.A. Doc. 010110446505 (Dec. 2, 2020), and so the

Bank filed a brief explaining why it believed the bankruptcy court correctly interpreted the Code, Resp. C.A. Br. 10.

Because this Court similarly ordered the Bank to file a response to the certiorari petition, the Bank respectfully files this brief, stating its view that the Tenth Circuit's ruling is correct. However the Bank still does not have a financial interest in the outcome, and as a result, this case lacks the "concrete adverseness" necessary to "sharpen[] the presentation of issues." *Camreta v. Green*, 563 U.S. 692, 701 (2011) (quoting *Los Angeles v. Lyons*, 461 U.S. 95, 101 (1983) (noting that for such concrete adverseness to exist, "the opposing party also must have an ongoing interest in the dispute")).

For each of these reasons, the Court should deny certiorari and wait for a more suitable case to address the issue presented.

B. The Court of Appeals' Decision Is Correct

1. The decision is consistent with the statutory text and this Court's precedent

Although the Bank has no remaining financial stake in this case, it believes the correct view of the law is the one embraced by the Tenth Circuit. As that court explained (Pet. App. 2-6), a Chapter 13 debtor may only obtain a completion discharge if she "complet[es] . . . all payments under the plan." 11 U.S.C. § 1328(a). The Code expressly limits a Chapter 13 plan to five years. *See* 11 U.S.C. § 1322(d)(1) (for an above-median-income debtor, like petitioner, "the plan may not provide for payments over a period that is longer than 5 years"); 11 U.S.C.

§ 1322(d)(2) (five-year outer limit applies to below-median-income debtors as well).

A payment made months after the plan must end is not one made "under" the plan. In this context, "under" means "subject to," "under the authority of," or "authorized by." Pet. App. 9, 11. As both the court of appeals and the bankruptcy court explained, a payment cannot be made "under" the plan when the plan is no longer in force, and a plan cannot remain in force for more than five years. *Id.* at 9-11, 23, 27-31; *see id.* at 23 (Eid, J., concurring) ("[A] payment cannot be made subject to a plan if the plan no longer exists—that is, if the five-year period has passed.").

This reasoning is consistent with and supported by this Court's decision in *Florida Department of Revenue v. Piccadilly Cafeterias, Inc.*, 554 U.S. 33 (2008). That case concerned whether an asset transfer could be considered "under a plan" confirmed under 11 U.S.C. § 1146(c) (2000), if the transfer occurred before the plan had been confirmed. 554 U.S. at 35. The Court concluded that the transfer was not one "under" the plan, because the "more natural" reading of "under" is "subject to" or "under the authority of," and "a transfer … cannot be subject to, or under the authority of, something that did not exist at the time of the transfer." *Id.* at 39-41. The same analysis applies to this case, where the Code mandates when a plan must end. In short, payments "fall 'under' a plan only if the plan remained in existence." Pet. App. 10.

Further, the court of appeals' decision is supported by other provisions of the Code. The Code addresses circumstances where a debtor falls behind on plan payments, and authorizes a bankruptcy court to modify a plan, including to "extend or reduce the time for such payments." 11 U.S.C. § 1329(a)(2). But the

Code specifies that a bankruptcy court "may not approve" a modification that would extend the payment period beyond five years from "the time that the first payment under the original confirmed plan was due." 11 U.S.C. § 1329(c); *see also* Pet. App. 41-42.

Moreover, when Congress has wanted to create an exception to the five-year time limit, it has done so expressly. Pet. App. 21. Congress, for example, recently enacted two short-term provisions to assist debtors facing hardships due to the COVID-19 pandemic—one extending such debtors' Chapter 13 plans to seven years, 11 U.S.C. § 1329(d), and the other allowing discharges to debtors who default on no more than three mortgage payments "caused by a material financial hardship due, directly or indirectly, by the coronavirus disease 2019 (COVID-19) pandemic," 11 U.S.C. § 1328(i).[6]

These specific and narrow exceptions confirm that Congress expects adherence to the five-year plan limit, unless Congress provides otherwise. However, petitioner in effect seeks a new, extra-statutory exception to the five-year time limit in her case—one that Congress has not allowed.

2. Petitioner's statutory arguments lack merit

Petitioner argues (Pet. 4, 9, 24) that the Code does not specify when a Chapter 13 plan ends. That is incorrect. For a plan to be initially confirmable, the Code specifies it may not provide for payments that extend longer than five years, 11 U.S.C. § 1322(d), and

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[6] Petitioner never sought relief under this provision, and it could not apply to her, because her failure to make mortgage payments was not due to COVID-19.

after confirmation, a bankruptcy court similarly "may not" modify the plan to extend beyond five years, 11 U.S.C. § 1329(c).

Petitioner also relies (Pet. 15, 24) on the mandatory language providing that a bankruptcy court "shall" grant the debtor a discharge "as soon as practicable after completion by the debtor of all payments under the plan." 11 U.S.C. § 1328(a). She argues that because she eventually made all of the payments, the bankruptcy court was required to grant a completion discharge. Pet. 24. But that is only true if all payments were made "under" the plan, meaning within the time limit authorized by the plan. Pet. App. 16.

Petitioner's reliance (Pet. 15, 17) on the permissive language in other Code sections allowing for dismissal or conversion of the case is equally misplaced. According to petitioner (Pet. 17), because the Code provides that a bankruptcy court "may" dismiss a case after a material default, 11 U.S.C. § 1307(c)(6), the court can grant exceptions to the five-year limit and allow a debtor to make payments after the plan period has ended. The Code, however, uses the term "may" because a bankruptcy court has multiple options in the event of a material default—*e.g.*, it may dismiss the case or convert it to one under Chapter 7, depending on what the court determines "is in the best interests of creditors and the estate." 11 U.S.C. § 1307(c); *see* Pet. 12. But there is no statutory support for modifying or extending the time to receive payments or cure defaults beyond five years, in this section or elsewhere.

Petitioner also cites 11 U.S.C. § 1325, which addresses initial plan confirmation. Pet. 23; *see also* Pet'r C.A. Br. 13. That provision states that a plan should be confirmed if "the debtor will be able to make

all payments under the plan." 11 U.S.C. § 1325(a)(6). This language only addresses plan confirmation requirements; it does not address what happens after confirmation or in a situation where a debtor materially defaults and the plan period ends. Pet. App. 15-16.

Finally, petitioner argues that she is seeking only a "cure" and not a "modification," and that "[t]he Code permits the curing of any default." Pet. 16. That is incorrect. The Code sections she cites provide only that a plan may permit a debtor to cure (or a creditor to waive) a default of *preexisting* debt. 11 U.S.C. § 1322(b)(3), (5); *see also Nobleman v. Am. Sav. Bank*, 508 U.S. 324, 330 (1993).[7] They do not address a debtor's failure to comply with or modify the plan. *See In re Maike*, 179 F. Supp. 3d 750, 757 (E.D. Mich. 2016). The Code separately refers to any changes to confirmed plans (including extension of the time to make payments) as a "modification" of the plan (not a "cure") and allows modifications only if they do not extend the plan period beyond five years. 11 U.S.C. § 1329(a)(2), (c). Petitioner's position "would nullify the code's restrictions on modifications." Pet. App. 14. Because the Code expressly prohibits modifications of a plan that would allow a debtor to make plan payments beyond five years, a bankruptcy court cannot "forgive a late payment as an informal cure." *Id.* at 14-15.

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[7] All of the cases petitioner cites (Pet. 16-17) involved prepetition defaults. *See In re Litton*, 330 F.3d 636, 640 (4th Cir. 2003); *In re Metz*, 820 F.2d 1495, 1496 (9th Cir. 1987); *In re Clark*, 738 F.2d 869, 870 (7th Cir. 1984); *In re Taddeo*, 685 F.2d 24, 25 (2d Cir. 1982).

3. The legislative history supports the court of appeals' decision

The legislative record confirms that Congress wanted to strictly limit Chapter 13 plans to five years. Congress enacted the five-year limit because previously the courts were too loose in extending Chapter 13 plans. *See* H.R. Rep. No. 95-595, at 117 (1977). Congress noted that some plans were lasting seven to ten years and lacked adequate supervision. *Id.* Congress thus decided to limit plan terms to five years, to ensure that debtors can finish their payment and receive the "fresh start . . . that is the essence of modern bankruptcy law." *Id.* Congress no doubt recognized that some individual debtors might benefit from additional time, but it decided that a five-year deadline was "best for debtors as a whole." Pet. App. 20, 48.

Petitioner argues (Pet. 18-21, 26-27) that enforcing the five-year limit is "contrary to the policy underlying" the Code, because Congress intended the Code to be "flexible." While there are ways in which the Code permits flexibility, extending the plan period beyond five years is not one of them. When Congress has wanted to provide exceptions to this strict time limit, it has done so expressly—like the special provisions related to COVID-19 hardships in 11 U.S.C. § 1328(i), and the provision allowing a "hardship discharge" when the debtor fails to make all plan payments "due to circumstances for which the debtor should not justly be held accountable" in 11 U.S.C. § 1328(b)(1).

Congress also provided for flexibility by allowing a debtor who has materially defaulted under a Chapter 13 plan to seek conversion to Chapter 7 rather than face dismissal of her case. 11 U.S.C. § 1307(c). Petitioner here was offered that option on numerous

occasions, but she did not take it. Pet. App. 38. Nor did she seek a hardship discharge under 11 U.S.C. § 1328(b)(1).

The five-year plan limit provides predictability and stability, for both debtors and creditors. It ensures that debtors will know exactly how long they have to complete payments and that creditors whose rights are affected by the plan will receive their payments within a set time. If debtors could make payments months later by calling them "cure" payments made "under the plan," it would erode the statutory text, relegating the strict five-year time limit to "no more than a guideline." Pet. App. 45. For that reason as well, further review is unwarranted.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

JAMIE G. SILER*
JAMES P. ECKELS
TYLER S. GURNEE
Murr Siler & Accomazzo, P.C.
1999 Broadway, Ste. 3100
Denver, CO 80202
(303) 534-2277
jsiler@msa.legal
jeckels@msa.legal
tgurnee@msa.legal

Counsel for Respondent
** Counsel of Record*

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