No. 22-1120

In the Supreme Court of the United States

PAULA PARISI, PETITIONER,
v.
PETER C. ANDERSON, UNITED STATES TRUSTEE FOR REGION 16, RESPONDENT.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. In a case originating under 11 U.S.C. chapter 11, § 1101- 1193, does a U.S. district court sitting in its capacity under 28 U.S.C. § 158 (a) have discretion to sua sponte designate the United States trustee "appellee" when the UST was not joined as a party in the court below, nor joined by motion or proceeding thereafter?

2. Is there any reason — aside from such as may constrain *any* debtor under 11 U.S.C. §§ 101-1532 — that a self-represented party cannot or should not serve as a debtor in possession in an individual chapter 11, with the responsibilities and powers imbued by 11 U.S.C.§ 1107 (a) ?

PARTIES TO THE PROCEEDING

Petitioner Paula Parisi was an individual chapter 11 debtor in the bankruptcy court proceedings and appellant in the court of appeals. Respondent Peter C. Anderson is the U.S. Trustee for Region 16.

CORPORATE DISCLOSURE STATEMENT

Petitioner is not affiliated with any corporation.

DIRECTLY RELATED PROCEEDINGS

In re Paula Parisi 1:19-10299-VK United States Bankruptcy Court for the Central District of California; Order dismissing chapter 11 entered 23 August 2019.

Paula Parisi v. Peter C. Anderson, U.S. Trustee for Region 16, 2:19-07775-SWS United States District Court for the Central District of California; Order affirming issued 28 September 2020.

Parisi v. Magnum Property Investments, LLC, U.S. Bank, Wells Fargo Bank B310086 California Court of Appeal, 2nd Appellate District, Division 7; Appeal noticed 6 January 2021.

Paula Parisi v. Peter C. Anderson, U.S. Trustee for Region 16, 20-56150-CV United States Court of Appeals for the Ninth Circuit; Order affirming entered 15 June 2022.

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Constitution, Statutes, Rules

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PETITION FOR A WRIT OF CERTIORARI

Paula Parisi respectfully petitions the Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

In re Paula Parisi, United States Bankruptcy Court for the Central District of California, Woodland Hills, 1:19-bk-10299-VK, Order entered 23 August 2019.

Paula Parisi v. Peter C. Anderson, U.S. Trustee for Region 16, 2:19-cv-07775-JVS, United States District Court for the Central District of California, Minute Order entered 28 September 2020.

Paula Parisi v. Peter C. Anderson, U.S. Trustee for Region 16, No. 20-56150, 2022 WL 2288055, United States Court of Appeals for the Ninth Circuit, Memorandum entered 24 June 2022.

JURISDICTION

The judgment of the court of appeals was entered on 24 June 2022, and a petition for rehearing and rehearing en banc entered on 3 October 2022. On 16 December 2022, this Court extended the time within

which to file a petition for a writ of certiorari by 60 days, creating a filing deadline of 2 March 2023.

Petitioner's filing of 2 March 2023 was returned for failure to comply with the Rules of this Court with instructions to comply within 60 days of notice dated 13 March 2023, extending time to 12 May 2023. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254 (1).

CONSTITUTIONAL PROVISIONS, PRINCIPAL STATUTES AND RULES

U.S. Const. Amend. I provides in relevant Part: Congress shall make no law ... abridging the freedom of speech.

U.S. Const. Art. I, § 8, Cl. 4. The Bankruptcy Clause provides in relvant part that "The Congress shall have Power * * * [t]o establish * * * uniform Laws on the subject of Bankruptcies throughout the United States."

U.S. Const. Amend. V provides in relevant Part: No person shall be ... deprived of life, liberty, or property, without due process of law.

A Due Process Clause is found in both U.S. Const. Amend. V and XIV that prohibit the deprivation of "life, liberty, or property" by the federal and state governments, respectively, without due process of law. The U.S. Supreme Court interprets these clauses broadly, concluding that they provide three protections: procedural due process (in civil and

criminal proceedings); substantive due process, a prohibition against vague laws; and as the vehicle for the incorporation of the Bill of Rights.

The Bankruptcy Reform Act of 1978 established the office of the U.S. Trustee as a pilot program in the Department of Justice. The U.S. Trustee program was permanently adopted by enactment of the Bankruptcy Judges, U.S. Trustees, & Family Farmer Bankruptcy Act of 1986 (Pub. L. 99- 554, 100 Stat.3088), reprinted in part at 28 U.S.C. § 581.

11 U.S.C. § 1107 – powers of debtor in possession

28 U.S.C. § 2072 (a)(b) – rules of procedure

28 U.S.C. § 2075 – bankruptcy rules

Fed. R. Bankr. P. Rule 8003 – docketing appeals

The relevant text can be found in Appendix I, 49a.

INTRODUCTION

We ask this Court to examine behavior by the lower courts that deviated so substantially from statue, practice and the federal rules as to beg review. Petitioner was an individual chapter 11 debtor pro se in bankruptcy court. After appealing the bankruptcy court's dismissal order, which issued sua sponte, the district court acted—also sua sponte—to name the United States Trustee for Region 16, Peter C. Anderson ("UST"), as appellee. We submit the UST

was misjoined as appellee. The designation contravenes Congressional intent behind the Bankruptcy Reform Act of 1978. It also violates the Federal Rules of Bankruptcy Procedure, Federal Rules of Appellate Procedure, and Federal Rules of Civil Procedure. The move was not only erroneous, but prejudicial. Pitting the U.S. Department of Justice against a citizen is not something that falls within the discretion of a court. Among other problems, it encroaches on the doctrine of constitutional law known as the separation of powers.

Specifically, this petition for writ of certiorari to the Ninth Circuit asks this Court to decide whether a district court in its appellate capacity has discretion to act on its own initiative in appointing as appellee a UST who was not joined a party in the court below and did not take act on its own behalf to intervene on appeal. More broadly, our secondary question asks whether a self-represented individual debtor should receive the same treatment in chapter 11 as would a debtor represented by counsel. This includes the ability of a pro se debtor to be a debtor in possession. Improper substitution of appellee by the district court was one in a series of prejudicial irregularities in the lower courts. The district court had the UST proceed as both "amicus" and "appellee." While not unprecedented, the need for this dual designation is exceedingly rare.

As a recent question—having first occurred at the appellate level with the district court sitting in its capacity under 28 U.S. Code § 158 (a) (App. 55a), then

validated by the Ninth Circuit—we first raise a technical question regarding the legal authority to sua sponte name the UST appellee, followed by a more general question about equal treatment for self-represented debtors under title 11. The standard system of checks and balance seems, in this instance, to have failed. Likely other pro ses have experienced similar problems but lack the resources to follow up, throwing added weight behind this petition. If discretionary abuses are permitted to go unchecked the result will be permanent entrenchment of a two-tier system of justice in conflict with the Congressional mandate to "establish * * * uniform Laws on the subject of Bankruptcies," U.S. Const. Art. I, § 8, Cl. 4. Uniform laws imply uniform application. Uniform law is weakened without uniform enforcement. An opinion by this Court could aid decisions on behalf of similarly situated individual chapter 11 debtors and pro se civil litigants in general, a growing class on the Ninth Circuit and nationally.

The most recent national figures as of this writing, from "Just the Facts: Trends in Pro Se Civil Litigation from 2000 to 2019"[1], say that in 2019, of 296,691 civil cases filed in district court, 25.8 percent (76,512) included one pro se party (App. 61). The percentage was up considerably on the Ninth Circuit, where "The Art of Appellate Advocacy: A View from the Ninth Circuit Bench"[2] says 42 percent of the more than 20,000 cases pending in the Ninth Circuit Court of

[1] USCourts.gov, February 2021, tinyurl.com/2f6cwvdb, Fig. 1

[2] Ninth Judicial Circuit Historical Society, tinyurl.com/mstnc7ct

Appeals as of June 2021 were filed pro se (App. 61). The 2019 district court study included a sector breakdown that saw bankruptcy rank no. 7 in 13 categories of civil litigation filed by non-prisoners in which one or both the parties were pro se; of 324,107 cases, bankruptcy accounted for 15,217, or 4.7 percent[3] (App. 62).

Bankruptcy is known as a court of equity, but even the court's equitable principles must be guided by terms of the operative statute. *SEC v. United States Realty & Improvement Co.* 310 U.S. 434, 455 (1940). "The Bankruptcy Court may not, in the exercise of its equitable powers, enforce its view of sound public policy at the expense of the interests the Code is designed to protect." *Midlantic National Bank v. New Jersey Department of Environmental Protection*, 474 U.S. 494, 514 (1986). As debtor, then appellant, petitioner has not sought special favor from the courts, but asks to have her case adjudicated within the normal parameters afforded the banks and businesses that regularly populate the bankruptcy dockets.

In a society in which *Citizens United v. FEC* affords corporations the constitutional free speech

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[3] Fig. 7. "Other" is number 1, with 66,268 cases, followed by: 2. contracts (50,550); 3. personal injury (43,784); 4. real property (41,006); 5. social security (25,791); 6. labor (17,768); 7. bankruptcy (15,217); 8. intellectual property (12,615); 9. Civil rights (12,353); 10. personal property (11,889); 11. tax (6,534);12. forfeiture (3,717); 13. immigration (1,398).

protections created for individuals (*Id.* 558 U.S. 310, 342 (2010)), so too should self-represented individuals be able to avail themselves of the appropriate provisions of 11 U.S.C. chapter 11 as the law proscribes, without man-made obstacles. This despite the fact that chapter 11 is most often associated with corporate
law. As *Citizens United* gives the many the power of one, the equitable tenets of Title 11, Chapter 11 can be a force multiplier for the individual, creating equal footing with opponents many times their size.

STATEMENT

A. Statutory Background

With the Bankruptcy Reform Act of 1978 (92 Stat. 2549), Congress piloted the United States Trustee Program (Trustee Program) to address what were perceived as systemic problems in bankruptcy case administration and adjudication. See H.R. Rep. No. 764, 99th Cong., 2d Sess. 17-18 (1986). The goal was twofold: to reduce the workload of bankruptcy judges previously responsible for oversight of administrative as well as judicial duties, and to create a more defined separation between the bankruptcy judges and the trustees regularly practicing before them. With the U.S. trustee pilot program Congress addressed concerns that "these dual roles were overloading bankruptcy judges and creating an appearance of bias, particularly because judges were responsible for supervising trustees that they themselves had

appointed." *Siegel v. Fitzgerald*, 142 S. Ct. 1770, 1776 (2022).

The Trustee Program "transferred the administrative functions previously handled by the bankruptcy courts to newly created U. S. Trustees, housed within the Department of Justice rather than the Administrative Office of the U. S. Courts." H. R. Rep. No. 95-595, p. 115 (1977). As Congress explained, this placement in the Executive Branch promoted "the separation of administrative from judicial functions" and "the independence of the U.S. Trustees." H.R. Rep. 764, *supra* at 18. According to *Collier on Bankruptcy*, the U.S. trustee system "provided for a nonjudicial neutral party to oversee bankruptcy administration." *Id.* § 6.01 (16th 2020) (App.64). Prior to the Trustee Program, the dual role of bankruptcy judges suggested "an untenable position of conflict and seriously compromised their impartiality as arbiters of disputes." U.S. General Accounting Office, Bankruptcy Administration: Justification Lacking for Continuing Two Parallel Programs, No. GAO/GGD-92-133, at 15 (Sept. 1992) (GAO Report, https://tinyurl.com/GAO-92-133). For instance, it was not uncommon for Bankruptcy courts to appoint private trustees to administer "the very same" cases before them—resulting in trustees who were "reluctant to take positions contrary to the judges" who were responsible for their livelihoods, "even though a trustee was supposed to be an impartial administrator of the estate." H.R. Rep. No. 764, *supra*, at 18.

Congress determined "[t]his awkward relationship between trustees and judges created an improper appearance of favoritism, cronyism, and bias," and "eroded the public confidence in the bankruptcy system." *Id.* at 17-18. *Collier* puts a sharper point on it, writing that the old system "fostered the development of 'bankruptcy rings,' closed bankruptcy practices heavily favoring the appointment of insiders, who were obliged to one another, to trustee positions." (*Ibid.* App.63-64) Today, should conditions exist requiring the court to order appointment of a private chapter 11 trustee, it is the U.S. trustee who appoints, and the court's prerogative to approve the selection. The courts have rigorous standards, and the result is a small pool of attorneys familiar to both the bench and the USTs that are awarded regular work. This is particularly true in chapter 11, and the new system has some of the same problems as its predecessor.

That makes it even more imperative that this Court reinforce the demarcation between the office of the UST and the courts. Granting this petition for writ of certiorari would provide an opportunity to clarify the boundaries that Congress established in circumscribing these two powers. The district court's sua sponte assignment of the UST to the role of appellee is an egregious distortion of Title 11 law, applying practices seemingly invented from whole cloth to disadvantage the pro se chapter 11 debtor.

Among the relevant code sections and rules:

Title 28 U.S.C. § 2072 (a) (App.56) says the Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States district courts (including proceedings before magistrate judges thereof) and courts of appeals. Presumably this means the lower courts are bound by these rules, regardless of whether the party is an individual or a corporation, self- represented or speaks through an attorney.

Fed. R. of Bankr. P. 8003 (d)(2) (App. 57) states: "the district or BAP clerk must docket the appeal under the title of the bankruptcy case and the title of any adversary proceeding, and must identify the appellant, adding the appellant's name if necessary."

Title 11 U.S.C. § 101 defines the U.S. trustee as an "entity" (App. 49), which neutrality is supported in 11 U.S.C. generally, which references "a party in interest *or* the United States trustee..." (examples may be found in §§ 1104 (a), 1105, and 1112 (b)). (Emphasis added. App. 65-66.)

Title 11 U.S.C. § 307 states the "United States trustees may raise, appear and be heard on any issue in any case or proceeding under title 11" (App. 50), which plain reading does not suggest automatic joinder as a party. Duties of the U.S. trustee are specified in 28 U.S.C. § 586 (App. 54).

Fed. R. Bankr. P. 8013 (g) says: "Unless a statute provides otherwise, an entity that seeks to intervene

in an appeal pending in the district court or BAP must move for leave to intervene and serve a copy of the motion on the parties to the appeal" (App. 58). Fed. R. Bankr. P. Rule 8013 (g) (*Ibid.*) has a timeframe: "The motion or other notice of intervention authorized by statute must be filed within 30 days after the appeal is docketed."

Additionally, there are pleading requirements. The intervenor motion "must concisely state the movant's interest, the grounds for intervention, whether intervention was sought in the bankruptcy court, why intervention is sought at this stage of the proceeding, and why participating as an amicus curiae would not be adequate." (*Ibid.*)

Fed. R. App. P. Rule 29 (a) provides "[T]he United States or its officer or agency or a state may file an amicus brief without the consent of the parties or leave of court." (App. 56). The Rules are silent on the subject of adding a party on appeal, with the exception of Rule 43, which deals with substitution in the event of death during a proceeding.

Fed. R. Civ. P. Rule 19 (App. 58) requiring joinder of parties is made applicable to bankruptcy cases viz Fed. R. Bankr. P. Rule 7019 in cases that involve an adversary proceeding, which this case did not.

Fed. R. Civ. P. Rule 24 covers intervenor procedures, all of which rely "on timely motion," including those asserting (a)(1) "an unconditional right to intervene by a federal statute" or (b)

"permissive intervention" for: one who (1)(A) "is given a conditional right to intervene by a federal statute;" or (2) by: "a federal or state governmental officer or agency ... if a party's claim or defense is based on: (A) a statute or executive order administered by the officer or agency; or (B) any regulation, order, requirement, or agreement issued or made under the statute or executive order." Section (3) stipulates that "in exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." The entry closes with: "(c) Notice and Pleading Required. A motion to intervene must be served on the parties as provided in Rule 5. The motion must state the grounds for intervention and be accompanied by a pleading that sets out the claim or defense for which intervention is sought." (App. 59.)

B. Facts and Procedural History

1.Petitioner was a debtor pro se in an individual chapter 11 filed February 7, 2019. Schedules filed March 1, 2019, to the bankruptcy court docket (hereafter "BK.dkt") list a real property asset minimally valued at $1,275,000, "nearly $600,000 of it equity." (BK.dkt.27, page 1 of 45, Form 106Sum.) Two creditors filed claims for secured debt, totaling $672,870.09, and unsecured claims were documented at $96,242.26. (*Ibid.*) Due to the proximity of a chapter 13 filed with counsel December 27, 2017, debtor was subject to presumption of bad faith under 11 U.S.C. § 362 (c)(3)(C). (App. 50-51)

This created a vulnerability: the automatic stay of 11 U.S.C. § 362 (a) would expire after 30 days unless the debtor could rebut the presumption, per § 362 (c)(3)(B). (*Ibid.*) Debtor scheduled and attended a March 6, 2019, hearing to continue the automatic stay. Having not been served an opposition, she sallied forth assuming the motion was unopposed and was shocked to learn, while the proceeding was underway, that U.S. Bank filed a 179-page opposition (BK.dkt.28-29) that did not comply with the court's order for service by overnight mail, personal delivery or electronically (BK.dkt.17). (App. 44-45.)

After asking debtor "did you want to look at it now?" (App. 45) the court turned its attention to the tentative ruling, which stated: "If the debtor will agree to the appointment of a chapter 11 trustee or to the Court converting this case to one under chapter 7, the Court will grant the motion. Otherwise, the Court will deny the motion." (App.47.) Factors typically considered on motion to continue the stay include adequate protection, value of assets and the likelihood of a confirmable plan within a reasonable amount of time, not willingness to "agree" to surrender valuable rights. The conditional offer was repeated in four subsequent rulings and at three hearings (including App. 42).

The bankruptcy court—whose tentative primarily duplicated U.S. Bank's opposition, filed March 4, 2019, continued the hearing to March 20, 2019 "as a result of the insufficient service of the Opposition,"

(BK.dkt.34). This violated § 362(c)(3)(B), which says the hearing is to be completed within 30 days of filing the case (which was March 8, 2019) and the stay not to be extended beyond that time unless the debtor is found to have filed her petition in good faith. (App. 51.) When debtor's reply to the opposition was filed late, the court did not inquire at the March 20 hearing whether it might be appropriate to "look at it now." The points made in the reply—including painstaking analysis of the real property value and monies paid into a chapter 13 in the very same courtroom—were not reflected in any of the bankruptcy court's subsequent rulings. (App. 40.)

2. The bankruptcy court continued to condition the stay on debtor's willingness to "agree" to conversion to chapter 7 or appointment of a chapter 11 trustee. (App. 42, 47.) An ultimatum of sorts, it was unjust. Title 11 U.S.C. offers a court broad powers to *order* the appointment of a chapter 11 trustee, § 1104 (App. 52) or conversion to chapter 7 in § 1112 (App. 53), should cause exist. Why should an individual of free will be forced to "agree" against her wishes? It ran counter to the U.S. law and tradition of free speech. Although the district court disallowed petitioner's free speech claim on grounds it was not raised in the lower court, though uncommon, there are many examples of courts permitting late-raised claims. (See DC.dkt.31 and this Court's own four-part test in *Pioneer Investment Services v. Brunswick Associates* 507 U.S. 380, 395, 113 S. Ct. 1489, 123 L.Ed.2d 74 (1993).) Here it was a matter of being confused by the irregularities of the moment; it took reflection and

research to figure out what had transpired. But we also argue that a pro se petitioner is entitled to justifiable reliance that a court will uphold the law. When it does not, that should be open for discussion at any point (assuming justice is the goal).

We do not expect this Court to relitigate the chapter 11 proceedings but want to convey that there was significant deviation from due process in the bankruptcy court. (App.44-46.) Such that we feel the matter should have merited greater curiosity during the previous stages of appeal. (Appx. 67-68.) With the debtor refusing to "agree," the bankruptcy court in March ordered relief from the automatic stay, surrendering federal jurisdiction over an asset crucial to the success of any plan—one whose value it had not bothered to determine. Heedless of the fate of the unsecured creditors, much less the debtor it refused to acknowledge as "in possession," the bankruptcy court cancelled appearances and continued the April 25, 2019 initial status conference (BK.doc.78), an important event in the life of a chapter 11 case, as it is the first significant opportunity to discuss a plan with the court.

3. In an individual chapter 11 the debtor has a 120-day window wherein it has exclusive rights to propose a plan. 11 U.S.C. § 1121 (b). (Appx. 55.) On May 23, 2019, 105 days after the chapter 11's February 7 filing date, the bankruptcy court announced a plan deadline of August 1, 2019 (BK.doc.96). That deadline was 175 days after the plan was filed, and after having surrendered

jurisdiction over the estate's most valuable asset (BK.doc.60; related BK.doc.23). The Bankruptcy Code provides estate assets should be monetized to the benefit of all creditors, not just to advantage creditors claiming to be secured. The "breathing spell" provided by the automatic stay is intended not just for the debtor but for the benefit of the estate and creditor body. *Shepard v. Patel (In re Patel)*, 291 B.R. 169, 173 (Bankr. D. Ariz. 2003).

The record shows the bankruptcy court had no interest in a plan from the pro se debtor. That disregard manifested itself in an abrogation of its duty to uphold the spirit and the letter of Title 11. The confirmation of a plan of reorganization that will be fully performed is the statutory goal of every chapter 11 case. *Bank of Am. Nat'l Tr. & Sav. Ass'n v. 203 N. Lasalle St. P'ship*, 526 U.S. 434, 465 n.4, 119 S. Ct.1411, 1427 (1999). The bankruptcy court actively obstructed that result, refusing to timely set a plan deadline for the debtor in possession until much later than statutory norms. (App. 24).

4. On August 25, 2019, the bankruptcy court entered a sua sponte dismissal of the petitioner's chapter 11, citing late-filed monthly operating reports and failure to file a plan. App.38.) At the time of the dismissal all outstanding monthly operating reports had been submitted to the UST and filed with the court. BK.dkt.108, 112, 114. The dismissal order incorrectly states the July 2019 report remained unfiled. It is worth noting that the monthly operating reports are administrative in nature. While copies

must be filed with the bankruptcy court, the reports themselves are administered and supervised by the office of the UST, with which the debtor coordinated for permission to late-file some reports. See court of appeals docket (hereafter "9COA.dkt") entry 13.

That the bankruptcy court would cite late-filed monthly operating reports as cause for sua sponte dismissal where the UST had not taken adversarial action with regard to dilatory reports is unusual. (App. 55-56.) In fact, the UST took no adverse action against petitioner whatsoever prior to the district court naming him appellee, at which point attacks began in respondent documents labeled "amicus brief." The UST's most notable filing at the bankruptcy court level was a continuance of the 11 U.S.C. § 341 (a) creditors meeting. BK.dkt.66. We say this not to minimize the role of the UST. Debtors, pro se or otherwise, would be remiss not to recognize the professionalism and competence of the Office of the U.S. trustee. Bankruptcy is almost unilaterally a stressful, chaotic undertaking to which the procedural aspects of the creditor meetings and monthly reports impose some order. Unlike most private chapter 11 attorneys, petitioner found the UST fees affordable, even for a financially challenged individual debtor. Given that the UST office had the high-functioning bustle of a busy CFO suite, the fees seemed well-earned.

Given that the petitioner had a generally good experience with the Office of the UST, it was particularly inappropriate—a suppression of speech,

bordering on harassment—to find the UST arbitrarily designated the "opposition." Like an attorney for hire paid for from public coffers, the UST was assigned to argue on behalf of the bankruptcy court. The experience evoked the feel of a medieval jousting match—the king ordering the knights to suit up and take sides. While it is not always possible to choose one's opponents, human dignity demands a say.

5. The bankruptcy appeal was noticed September 5, 2019. BK.dkt.127. On April 30, 2020, the UST filed a Notice of Non-Participation. DC.dkt.26. Minutes later, filing a response to the notice, petitioner became aware of the UST designated "appellee." Previously, she had only been aware of the "amicus" appellation. In her motion to have the UST continue participation appellant pointed out that "[i]t does, however, seem they are misclassified on the docket as 'Appellee.'" DC.dkt.27. Assuming this to be a clerical error easily fixed, it wasn't given much thought. When the mistake remained unchanged in September 2020, appellant filed a formal request for correction. DC.dkt.34.

On September 28, 2020, in civil minutes, the district court affirmed the bankruptcy court's dismissal and denied the request for correction seeking removal of the UST as appellee. (App. 17.)

On October 26, 2020, in civil minutes, the district court denied a request for rehearing and a motion to reconsider its ruling on the request to correct the record viz the UST as appellee. (App. 5, 11)

6. Petitioner's appeal, noticed October 30, 2020, was docketed by the Ninth Circuit Court of Appeal on November 2, 2020.

On December 23, 2020, petitioner filed a Motion to Sever U.S. Trustee, Region 16, Peter C. Anderson as Appellee for Misjoinder and Substitute the U.S. Bankruptcy Court for the Central District of California. (See docket entry 3, Ninth Circuit Court of Appeals, hereafter Ninth.dkt.)

On June 24, 2022, the Ninth Circuit denied the Motion to Sever and entered judgment affirming the district court. (App. 1.)

A Petition for Panel Rehearing and Rehearing en Banc was filed August 8, 2022, with denials entered October 3, 2022. (App. 36.)

REASONS FOR GRANTING THE PETITION

A. Sua Sponte Designation of the U.S. Trustee Appellee Is Direct, Intractable Conflict with the Bankruptcy Reform Act of 1978

Congress piloted the United States Trustee Program within the U.S. Department of Justice as part of the 1978 Bankruptcy Reform Act, which "provided for a nonjudicial neutral party to oversee bankruptcy administration." 1 Collier on Bankruptcy P 6.01 (16th 2020) (App. 63.) This as correction to a perceived problem of inappropriate closeness

between the bankruptcy courts and the attorneys appointed as trustees. *Ibid.* In this case, the district court's sua sponte assignment of the UST to the role of appellee destroys the neutrality of the role as designed by Congress. It is a manipulation, creating contention where there was none in the lower court. In a situation designed as a quorum, it engineers a majority.

The primary role of the U.S. Trustee Program is to serve as the "watchdog over the bankruptcy process." House Report No. 989, 95th Cong., 2d Sess. at 88 (reprinted in 1978 U.S. Code Congressional & Admin. News at 5787, 5963, 6049). Ordering the watchdog to bark at the petitioner is not the same as a sentinel responding to genuine malfeasance or threat. The mission statement of the United States Trustee Program proclaims its goal "to promote the integrity and efficiency of the bankruptcy system for the benefit of all stakeholders—debtors, creditors, and the public." That the UST *did not* take action against the petitioner mitigates in her favor. Therefore, sua sponte naming of the UST appellant is prejudicial.

From an appellee, response briefs are the norm. The UST filed amicus briefs captioning himself appellee. In a Ninth Circuit brief titled "Amicus Brief In Support Of Affirmance Of United States Trustee For Region 16" (Ninth.dkt.27) the UST writes:

> Here, although denominated "appellee" in the case caption, the United States Trustee was not an appellee in the

> district court and is not in this Court. The United States Trustee did not request the dismissal that is the subject of this appeal; rather the bankruptcy court dismissed the bankruptcy case sua sponte. However, the district court requested that the United States Trustee file an amicus brief, recognizing that the government's participation in this appeal—which involves a pro se debtor and no other adverse party to inform the court's decision-making—would be helpful.

Ignoring the Fed. R. of Bankr. P. 8003 (d)(2) directive that "the district or BAP clerk must docket the appeal under the title of the bankruptcy case and the title of any adversary proceeding" (App. 57) is prejudicial. It subjects the pro se appellant to arbitrary "rules" and creates an unequal playing field. That the Ninth Circuit would allow such an error to go unchecked is something that cries for redress by this Court. There are a number of other rules that address adding and substituting parties, none of which rationalize naming the UST appellee. The fact that the Fed. R. App. P. are silent on adding parties on appeal speaks volumes as to the judiciary's disinclination to do so.

B. Misjoinder Conflicts with Federal Rules Promulgated by this Court

The UST on April 30, 2020 filed a "Notice of Non-Participation." DC.dkt.26. The same day, petitioner

filed a motion to compel UST participation. DC.dkt.26. The district court granted appellant's motion, in a minute order that does not mention the word "amicus" or "appellee"; it says: "the U.S. Trustee states that he stands ready to file a brief if it would be helpful to the Court ... The Court finds that it would be helpful." DC.dkt.29. We respectfully reject the district court's position that "who is named the appellee has no bearing" (App.11) as naming the UST appellee implies the U.S. Department of Justice has taken issue with petitioner's behavior, which it did not prior to the district court's incentivizing it to do so by placing it in an adversarial role.[4]

The UST's dual roles as amicus and appellee are nearly unprecedented. We found only one example in the district of the Ninth Circuit. It involves a U.S. trustee where an Arizona Bankruptcy Court general order impacted state regulations. *Brown v. State Bar*, 307 B.R. 134, 136 (B.A.P. 9th Cir. 2004). While extenuating circum-stances may warrant appearance of a U.S. trustee in dual roles of appellee and amicus, we see no parallel in adjudicating a case involving a self-represented party to review of a case that could potentially impact state regulation.

If the court wanted objective insight and assistance in formulating its opinion, surely an amicus brief alone, without appointing the UST appellee, would have sufficed. The fact that the district court of its own volition put the UST in an attack posture regarding the pro se appellant is

[4] There is little-to-no judicial opinion from which to draw on the naming of parties.

evidence of bias. Fed. R. Bankr. P. 8013 (g) specifies "Unless a statute provides otherwise, an entity that seeks to intervene in an appeal pending in the district court or BAP must move for leave to intervene and serve a copy of the motion on the parties to the appeal." (App. 57.) Fed. R. Bankr. P. 8013 (g) has a timeframe: "The motion or other notice of intervention authorized by statute must be filed within 30 days after the appeal is docketed." No such motion was filed or served. Significantly, 8013 (g) ends by stipulating the movant must state "why intervention is sought at this stage of the proceeding, and why participating as an amicus curiae would not be adequate."

Since there was no intervenor motion, the UST did not address why participating as an amicus curiae would be insufficient. There is no question the courts are overworked, but due process shortcuts are not the answer. The district court acted for convenience by overlooking the requirement of a noticed motion to add a party that did not move to join. Likewise, the bankruptcy court eschewed an order and hearing on the appointment of a chapter 11 trustee or conversion to chapter 7, opting instead to exhort the debtor to "agree" to its proposal, either of which would have resulted in a licensed attorney for the court to deal with in lieu of allowing a pro se to speak for herself.

C. Ninth Circuit Confusion re 11 U.S.C. § 307

Title 11 U.S.C. § 307 says that the "United States trustees may raise, appear and be heard on any issue

in any case or proceeding under title 11." (App. 49.) The district court appears to interpret the ability to "appear and be heard" as synonymous with being designated a party. (App. 21.) The district court also states that "As a general practice, the Court names as the appellee in a bankruptcy appeal the party that would benefit from affirming the bankruptcy court's ruling." (App. 21). No examples of this "general practice" were cited, nor could appellant find precedent. The Ninth Circuit affirmed the district court's reasoning, so if this Court has any reservations, certiorari should be granted and the interpretation clarified.

In evaluating whether to allow the appellant to file a first amended opening brief, the district court said "the consideration of prejudice to the opposing party 'carries the greatest weight'" in evaluating such a request, citing *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003). (App. 32.) If the UST had been limited to its role as amicus this arguably would not have been as determinative a factor. The district court offers alternate reasons, including that appellant took too long to file the amended brief, had several extensions and a final deadline. If her allegations were incidental, those factors would have more weight. But even the original brief (DC.dkt.20) contained specific charges that we believe should, in the interest of justice, have prompted greater curiosity as to what took place in the bankruptcy court.

D. Extreme Deviation From Legal Norms

Conditioning continuation of the automatic stay on the debtor's willingness to "agree" to the proposal to convert or appoint was, we contend, beyond abuse of discretion. For a bankruptcy court to exert economic pressure on a debtor to manipulate behavior contrary to the individual's wishes fits the Black' s Law Dictionary Eleventh definition of coercion: "Coercion intended to restrict another's freedom of action by: (4) taking or withholding official action or causing an official to take or withhold action." Coercion is illegal in California. State Civil Code § 52.1 says in relevant part that "if a person or persons, whether or not acting under color of law, interferes by threat, intimidation, or coercion" with an individual's rights as enumerated in the U.S. Constitution or laws of California, the person harmed:

> may institute and prosecute in their own name and on their own behalf a civil action for damages ... including appropriate equitable and declaratory relief to eliminate a pattern or practice of conduct (App. 59)

Discretion of bankruptcy judges under the code has evolved and changed. 11 U.S.C. § 1107 (a) states:

> Subject to any limitations on a trustee serving in a case under this chapter, and to such limitations or conditions as the court prescribes, a debtor in possession

> shall have all the rights, other than the right to compensation ... and shall perform all the functions and duties ... of a trustee serving in a case under this chapter. (App. 52.)

There have been various interpretations as to whether "subject ... to such limitations or conditions as the court prescribes" means an unfettered ability to impose restrictions. But what if a restriction infringes on a codified protection? Such liberal interpretation would seem to put courts above the law. The history of the change that resulted in the addition of that clause with the Bankruptcy Amendments and Federal Judgeship Act of 1984 is interesting.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

MAY 2023

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