

No. \_\_\_\_\_

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**In the Supreme Court of the United States**

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ADAM M. GOODMAN, CHAPTER 13 TRUSTEE,

*Applicant,*

v.

DANIEL RICHARD DOLL,

*Respondent.*

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

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**APPLICATION FOR A 60-DAY EXTENSION OF TIME WITHIN WHICH  
TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT**

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**To: The Honorable Neil M. Gorsuch, Associate Justice of the  
United States Supreme Court and Circuit Justice for the United  
States Court of Appeals for the Tenth Circuit**

Applicant Adam M. Goodman (“Goodman” or “Trustee”) respectfully seeks a 60-day extension from July 26, 2023, to and including September 24, 2023, within which to file a petition for a writ of certiorari to review the judgment of the U.S. Court of Appeals for the Tenth Circuit in the above-captioned matter.

Goodman’s present deadline to file a certiorari petition is July 26, 2023.<sup>1</sup> The Tenth Circuit issued its precedential opinion and judgment in this matter on January 18, 2023. Then, on April 27, 2023, the Tenth Circuit denied Goodman’s

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<sup>1</sup> Ninety days after the Tenth Circuit’s April 27, 2023 order denying Goodman’s timely rehearing petition is July 26, 2023.

timely rehearing petition. Goodman is filing this time-extension application with the Court on July 15, 2023—11 days before Goodman’s certiorari petition is due. *See* S. Ct. R. 13.5. The Court’s jurisdiction would be invoked under 28 U.S.C. §1254(1). Copies of the Tenth Circuit’s precedential opinion and later denial of rehearing are included with this application. *See* Appendix (cited as “App.”).

The following grounds support this time-extension application:

1. Chapter 13 of the Bankruptcy Code allows debtors to discharge their debts after “successful completion of a payment plan approved by the bankruptcy court.” *Marrama v. Citizens Bank*, 549 U.S. 365, 367 (2007).

2. Impartial administration of Chapter 13 cases falls to standing trustees: “private individual[s] appointed by the Executive Branch to perform a public office.” *In re Brookover*, 352 F.3d 1083, 1089–90 (6th Cir. 2003). This public office includes “functions previously performed by bankruptcy judges.” *In re Castillo*, 297 F.3d 940, 951 (9th Cir. 2002). One such function is that Chapter 13 trustees must “appear and be heard” on plan confirmation, 11 U.S.C. §1302(b)(2), “either recommend[ing] confirmation or object[ing]”—guidance that a bankruptcy court depends on “to do its job.” *In re Escarcega*, 573 B.R. 219, 234 (B.A.P. 9th Cir 2017).

3. The Bankruptcy Code finances Chapter 13 trustee offices by requiring trustees to collect a percentage “user’s fee” from Chapter 13 debtors. *In re Turner*, 168 B.R. 882, 887 (Bankr. W.D. Tex. 1994). This arrangement “spread[s] the costs of trusteeship *pro rata* over all Chapter 13 debtors within the [bankruptcy] court’s jurisdiction.” *In re Savage*, 67 B.R. 700, 707 (D.R.I. 1986).

4. In this case, the Tenth Circuit issued a precedential decision holding that the Bankruptcy Code prohibits trustee collection of user fees in a Chapter 13 case unless the bankruptcy court confirms a debtor's plan. App.26-27. The panel decision justifies this holding on grounds that divide the courts and that abridge the Bankruptcy Code's plain text. The panel decision now renders the Code's user-fee system unconstitutional; unravels the Code's systematic effort to guarantee trustee impartiality; and cripples the U.S. Trustee Program as a whole.

5. Under 28 U.S.C. §586(e)(2), the Bankruptcy Code establishes that any individual serving as a Chapter 13 standing trustee “**shall collect**” a “percentage fee from **all payments received** by such individual **under plans** in the cases . . . for which such individual **serves as standing trustee.**” The statute also dictates that if the trustee ends up collecting excess fees, the trustee “shall pay” the excess to the U.S. Trustee for deposit in the U.S. Trustee System Fund. *Id.*

6. Within 30 days of filing a plan, Chapter 13 debtors must “commence making payments” to the Chapter 13 trustee, forwarding “the amount proposed by the plan to the trustee.” 11 U.S.C. §1326(a)(1). At this point, 11 U.S.C. §1326(a)(2) requires the trustee to “retain[]” the debtor's payments “until confirmation or denial of confirmation.” *Id.* If the court denies confirmation, “the trustee shall return any such payments not previously paid and not yet due and owing to creditors . . . after deducting any unpaid claim allowed under section 503(b).” *Id.* The Bankruptcy Code also establishes that “[b]efore or at the time of each payment to creditors under the plan, there shall be paid . . . the percentage fee.” 11 U.S.C. §1326(b).

7. Applicant Adam M. Goodman is a Chapter 13 standing trustee for the Districts of Colorado and Wyoming. In FY-2018, he processed 1,251 new Chapter 13 cases.<sup>2</sup> Respondent Daniel Doll filed one of these cases, which included Doll's business. App.10-11. Over the next two years, Doll tried four times to achieve plan confirmation, consuming an inordinate amount of the Trustee's limited time and resources. App.11-12. The Trustee received \$29,900 in pre-confirmation payments from Doll, enabling the Trustee to collect \$2,596.70 in user fees. *Id.*

8. After his fourth confirmation attempt, Doll abandoned his Chapter 13 case and demanded a refund of his user fee. App.11-12. The bankruptcy court denied Doll's motion. *See id.* On Doll's appeal and the Trustee's election of district court jurisdiction for the appeal, the district court held that 11 U.S.C. §1326(a)(2)'s payment-return directive applied to Doll's user fee. App.12 & n.6.

9. The Trustee timely appealed to the Tenth Circuit. App.12.

10. On January 18, 2023, a Tenth Circuit panel issued a precedential decision affirming the district court's judgment. App.1-27.

11. The panel held that: “[r]ead together, 28 U.S.C. §586(e)(2) and 11 U.S.C. §1326(a) unambiguously provide that a Chapter 13 standing trustee must return pre-confirmation payments to the debtor without deducting the [user] fee, when a proposed Chapter 13 plan is not confirmed.” App.26-27. But the panel conceded district and bankruptcy courts are “divided on . . . whether a Chapter 13 standing trustee can keep [the user] fee if no plan is confirmed.” App.12 n.7.

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<sup>2</sup> *FY-2018 Ch. 13 Tr. Annual Reps.*, DOJ, <https://bit.ly/3kECR9X> (Row 156, Col. BM) (FY-2018 includes Doll's Nov. 2017 filing).

12. The panel decision clashes with decisions like *In re Soussis*, 624 B.R. 559 (Bankr. E.D.N.Y. 2020), which holds that user fees are “the [t]rustee’s to keep, regardless of whether the debtor’s plan is confirmed.” *Id.* at 564.

13. The panel decision abridges the Bankruptcy Code’s text. As *Soussis* notes: “§586 clearly states that upon collection of each plan payment, the [t]rustee is entitled to take [the user fee],” at which point the fee is “severed from the portion allotted for distribution to creditors upon confirmation” or for return to the debtor upon a denial-of-confirmation. 624 B.R. at 564; *see also In re Baum*, 650 B.R. 852, 860 (Bankr. E.D. Mich. 2023) (siding with *Soussis* over *Doll*); *but see In re Evans*, 69 F.4th 1101 (9th Cir. 2023) (siding with *Doll* over *Soussis*).

14. The panel decision renders the Bankruptcy Code’s user-fee system unconstitutional. Chapter 13 trustees are quasi-judicial officers, performing actions that are “an integral part of the judicial process”—like advising the court on plan confirmation. *In re Castillo*, 297 F.3d 940, 950-51 (9th Cir. 2002). “[D]ue process demands impartiality on the part of those who function in judicial or quasi-judicial capacities.” *Schweiker v. McClure*, 456 U.S. 188, 196 (1982). This mandate forbids the “pecuniary interest of any officer, judicial or quasi-judicial, in the resolving of the subject matter which he [is] to decide.” *Tumey v. Ohio*, 273 U.S. 510, 524 (1927). Yet, the panel decision reads the Bankruptcy Code to afford Chapter 13 trustees (quasi-judicial officials) a direct pecuniary interest in plan confirmation, with the Code allowing trustees to collect fees only when a plan is confirmed. This conclusion invalidates the Code’s user-fee system as a matter of due process.

15. The panel decision unravels the Bankruptcy Code’s systematic effort to guarantee trustee impartiality. The Code sets up trustees as fiduciaries; adopts a broad definition of disinterestedness; and allows trustees to hire only disinterested assistants. *See* 11 U.S.C. §§101(14), 323(a), 326(d), 327(a), 328(c). In doing so, the Code incorporates ancient common-law rules requiring “[trustee] forbearance of all opportunities . . . that might bring the [financial] disinterestedness of [a trustee’s] administration into question.” *Mosser v. Darrow*, 341 U.S. 267, 271 (1951); *see also*, *e.g.*, *In re Quick*, 43 F. Supp. 489, 490 (E.D. Ill. 1942) (emphasizing “trustee[s] must be disinterested” and “have no affiliation with the bankrupt”).

16. Finally, the panel decision cripples the U.S. Trustee Program as a whole. By prohibiting trustee collection of user fees in all Chapter 13 cases in which a plan is not confirmed, the panel: (1) destroys the U.S. Trustee’s ability to create new self-sufficient trusteeships; (2) exposes current Chapter 13 trustees to broad new liability for user-fee refunds; and (3) penalizes debtors who achieve plan confirmation with higher user fees (because debtors who fail to achieve confirmation no longer have to pay their fair share of user fees). *See In re Savage*, 67 B.R. 700, 707 (D.R.I. 1986) (explaining the Bankruptcy Code’s spread-the-cost system).

17. The Tenth Circuit’s decision thus raises a question of substantial importance that merits Supreme Court review: whether the Bankruptcy Code requires Chapter 13 standing trustees to collect user fees in all Chapter 13 cases, including those cases in which a debtor’s plan is not confirmed.

18. Given the importance of this question, the Trustee respectfully seeks a 60-day extension of his deadline to file a certiorari petition.

19. Good cause exists to grant this request. The Trustee's counsel-of-record, Mr. Mahesha P. Subbaraman, has been subject to many competing obligations since the Tenth Circuit's April 27, 2023 order denying the Trustee's rehearing petition.

These obligations have included:

- Preparation of an opening brief in *Seago v. Kijakazi*, No. 23-40001 (5th Cir.) (brief filed May 2, 2023);
- Preparation of an amicus brief for a grassroots nonprofit in *State v. McDonnell*, No. 36 (Md.) (brief filed May 5, 2023);
- Presentation of oral argument in *Shoops v. Comm'r of Soc. Sec.* and *Fortin v. Comm'r of Soc. Sec.*, Nos. 4:22-cv-11735, 2:22-cv-12593 (E.D. Mich.) (argument delivered May 16, 2023);
- Preparation of a cert.-stage amicus brief for a grassroots nonprofit in *Verdun v. City of San Diego*, No. 22-943 (U.S.) (brief filed May 22, 2023);
- Presentation of oral argument in *Farani v. Evanston Ins. Co.*, No. 22-60450 (5th Cir.) (argument delivered June 8, 2023)
- Presentation of a Minnesota continuing legal education (CLE) course on Fourth Amendment law (delivered June 23, 2023);
- Preparation of an amicus brief for a grassroots nonprofit in *Culley v. Marshall*, No. 22-585 (U.S.) (brief filed June 29, 2023); and
- Preparation of a reply brief in *Seago v. Kijakazi*, No. 23-40001 (5th Cir.) (brief filed July 13, 2023).

20. Competing obligations on Mr. Subbaraman's time going forward include: (1) preparation of a rehearing petition in *In re Evans*, No. 22-35216 (9th Cir.) (reh'g petition due July 26, 2023); (2) preparation of a certiorari petition seeking review of *Dahle v. Kijakazi*, 62 F.4th 424 (8th Cir. 2023) (petition due Aug. 22, 2023); and (3)

preparation of a certiorari petition seeking review of *Rush v. Kijakazi*, 65 F.4th 114 (4th Cir. 2023) (extension granted; petition due Sept. 8, 2023).

21. Based on the above obligations, Mr. Subbaraman is unable to prepare an adequate certiorari petition in this case absent the requested time extension. Mr. Subbaraman is a solo practitioner with no partners, associates, or legal support staff. Mr. Subbaraman is further representing the Trustee *pro bono*.

Trustee Goodman thus respectfully asks the Court to extend his time within which to file a certiorari petition to and including September 24, 2023.

Respectfully submitted,

Dated: July 15, 2023

**SUBBARAMAN PLLC**

By: /s/Mahesha P. Subbaraman

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