No.

In the Supreme Court of the United States

AMY L. GOLDMAN, PETITIONER

v.

TAMMY R. PHILLIPS; TAMMY R. PHILLIPS, APLC

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

This case presents an important question of federal bankruptcy law that has squarely divided the lower courts.

In the proceedings below, the en banc Ninth Circuit, siding with three circuits, held that a Chapter 7 trustee can be sued in her personal capacity for simple negligence. Unlike the Ninth Circuit (and its three companion circuits), four other circuits limit personal-capacity suits to "willful and deliberate" misconduct. And unlike both competing factions, the Fifth Circuit has staked out yet a third intermediate position—requiring a showing of "gross negligence" before a Chapter 7 trustee is personally liable.

The decision below solidifies this three-way conflict. It involves a critical question that affects thousands of bankruptcies nationwide, and this is the perfect opportunity for the Court to impose a uniform rule in an area generating needless waste, inefficiency, and confusion.

The question presented is:

Whether Chapter 7 trustees may be personally liable for their official acts, and if so, under what standard liability is permitted.

PARTIES TO THE PROCEEDING BELOW

Petitioner is Amy L. Goldman, appellee below and defendant (in her individual and official capacity as the Chapter 7 trustee) in an adversary proceeding in the bankruptcy court.

Respondents are Tammy R. Phillips and Tammy R. Phillips, APLC, appellants below and plaintiffs in the adversary proceeding.*

RELATED PROCEEDINGS

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

Tammy Phillips, et al. v. *Amy L. Goldman (In re Gilman)*, Adv. No. 1:22-ap-1014-VK (June 9, 2022)

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

Tammy Phillips, et al. v. *Amy L. Goldman (In re Gilman)*, No. 2:22-cv-4450-MWF (Jan. 25, 2024)

Tammy Phillips, et al. v. *Amy L. Goldman (In re Gilman)*, No. 2:22-cv-4450-MWF (Mar. 6, 2024) (order denying rehearing)

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

Tammy R. Phillips, et al. v. *Amy L. Goldman (In re Gilman)*, No. 24-2249 (May 7, 2026)

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* Goldman was appointed the Chapter 7 trustee in debtor Kevan Harry Gilman's bankruptcy case, and this adversary proceeding arose out of that case. Gilman is not participating in these proceedings.

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Amy L. Goldman respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a-24a) is reported at 176 F.4th 1152. The opinion of the district court (App., *infra*, 25a-43a) is reported at 656 B.R. 639. The order of the bankruptcy court (App., *infra*, 44a-47a) is unreported.

JURISDICTION

The judgment of the en banc court of appeals was entered on May 7, 2026. On July 29, 2026, Justice Kagan extended the time within which to file a petition for a writ of certiorari to and including September 4, 2026. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

INTRODUCTION

This case presents a clear and intractable conflict over an exceptionally important question of federal bankruptcy law: whether Chapter 7 trustees may be personally liable for their official activities, and if so, under what standard liability is permitted. In the proceedings below, the en banc Ninth Circuit held that a Chapter 7 trustee can be sued in her personal capacity for simple negligence. App., *infra*, 21a-24a. In so holding, the Ninth Circuit cemented a three-way circuit conflict—and sided with the wrong side of that split.

This case easily satisfies the traditional criteria for granting review. The circuit conflict is obvious, acknowledged, and entrenched. While the Ninth Circuit "squarely" holds mere "negligence" is "enough" (App., *infra*, 21a), the contrary rule is "well established" in other circuits: "a bankruptcy trustee may not be held personally liable for a breach of her fiduciary duties unless the breach was 'willful and deliberate.'" *Grochocinski* v. *Mayer Brown Rowe & Maw, LLP*, 719 F.3d 785, 799-800 (7th Cir. 2013); see also, *e.g.*, *In re Mailman Steam Carpet Cleaning Corp.*, 196 F.3d 1, 7 (1st Cir. 1999) (circuits have "split almost evenly" over "whether a bankruptcy trustee can be held personally liable for negligence (as opposed to deliberate misconduct)"). Adding to those two factions, the Fifth Circuit has staked out yet a third position, declaring itself "bound" by a "gross negligence" standard. *In re Schooler*, 725 F.3d 498, 512-513 n.10 (5th Cir. 2013) (so holding while admitting "some courts" require "willful[] and deliberate[]" misconduct, "whereas others" deem "a trustee * * * liable for mere negligence").

This deep conflict is significant. It has been acknowledged (repeatedly) by multiple courts—circuit courts[1] and lower courts[2] alike. It has been recognized by expert commentators.[3] It was even *conceded* by respondents below: "Because of the differing statements of the various circuit courts, it is *possible* the Supreme Court *could* grant a writ of certiorari." Opp. to Mot. to Stay Mandate, C.A. Doc. 109 at 8; see also 9th Cir. Order, C.A. Doc. 110 (granting motion to stay mandate).

Further percolation is pointless: the Ninth Circuit's "longstanding" views (App., *infra*, 21a) are irreconcilable with "established" law in other circuits (*Grochocinski*, 719 F.3d at 799-800), and there is no hint any circuit will back down. See, *e.g.*, App., *infra*, 6a-8a, 19a-24a (reversing lower courts for applying "gross negligence" standard, and repudiating requirement of "intentional—as opposed to negligent—conduct"); contra, *e.g.*, *Schooler*, 725 F.3d at 512-513 n.10 ("bound" by contrary "gross negligence" standard); contra again, *e.g.*, *United States* v. *Sapp*, 641

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[1] See, *e.g.*, *Maxwell* v. *KPMG, LLP*, No. 07-2819, 2008 WL 6140730, at *4 (7th Cir. Aug. 19, 2008) (flagging "circuit split"); *In re Smyth*, 207 F.3d 758, 761 (5th Cir. 2000) ("a circuit split [has] developed on the question of the proper standard of care").

[2] See, *e.g.*, *Alonso* v. *Weiss*, 98 F. Supp. 3d 956, 967 (N.D. Ill. 2015) (recognizing "circuit split" over trustee's liability); *In re Hunter*, 553 B.R. 866, 873-874 & n.6 (Bankr. D.N.M. 2016) (same); *In re Cutright*, No. 08-70160, 2012 WL 1945703, at *12 n.13 (Bankr. E.D. Va. May 30, 2012) (same).

[3] See, *e.g.*, 1 Hon. Joan N. Feeney, et al., *Bankruptcy Law Manual* § 4:16 (5th ed. rev. 2022) (there is a "split in the circuits regarding the standard of care when a trustee is personally sued"); Nathaniel E. Arabov, *A Chapter 7 Trustee's Qualified Right of Immunity May Be No Shield for Intentional, Negligent, or Grossly Negligent Conduct: Analyzing and Applying the Three-Way Circuit Split*, 10 St. John's Bankr. Research Libr. No. 3, at 7 (2018) ("a three-way circuit split" has "emerge[d]" over "trustee personal liability").

F.2d 182, 184-185 (4th Cir. 1981) ("it is settled that the trustee may not be held liable for any mistake of judgment; that his liability personally is 'only for acts determined to be willful and deliberate in violation of his duties'"). The resulting disuniformity frustrates the proper administration of a nationwide scheme governing hundreds of thousands of cases, and the conflict will not dissipate on its own. The "tension in this area of the law" is palpable, and the "morass" will continue until this Court intervenes. *Schooler*, 725 F.3d at 512-513 n.10.

Because this case presents an ideal vehicle for resolving this important question of federal law, the petition should be granted.

STATEMENT

1. Chapter 7 of the United States Bankruptcy Code is the primary vehicle through which an individual or entity seeks relief through liquidation. This Chapter facilitates the "collection, liquidation, and distribution of the nonexempt property of a debtor and culminates * * * in the discharge of that debtor's eligible obligations." 6 Collier on Bankruptcy ¶ 700.01 (16th ed. 2026). At the center of this process stands the Chapter 7 trustee, a statutory officer whose appointment, authority, and obligations are defined by the Bankruptcy Code. The Chapter 7 trustee, often described as the "principal officer" of the Chapter 7 case, serves as the representative of the bankruptcy estate. See Douglas G. Baird, *The Elements of Bankruptcy* (Foundation Press, 7th ed. 2022). In that capacity, the trustee bears the dual responsibility of managing assets of the debtor and ensuring that creditor rights are respected and enforced throughout the proceeding. *Ibid.*

The statutory duties of the Chapter 7 trustee are set forth in Section 704 of the Bankruptcy Code. These duties require the trustee to: collect and reduce to money the property of the estate; investigate the debtor's financial affairs; examine proofs of claim filed by creditors and object to those that are improper or overstated; oppose the debtor's discharge where grounds for denial exist; and, upon completion of administration, file a final report and accounting with the court and the United States Trustee. 11 U.S.C. 704(a); see also Charles Jordan Tabb, *Law of Bankruptcy* (West Academic Publishing, 5th ed. 2020). The proceeds realized through this process are then distributed to creditors in accordance with the statutory priority scheme, generally on a pro rata basis within each creditor class. 11 U.S.C. 726. Each of the trustee's (many) functions is performed under the authority of the Code, subject to judicial oversight, and in furtherance of the bankruptcy system's core objectives: equitable treatment of creditors and a meaningful fresh start for the debtor. These duties, taken together, reflect the trustee's role as an integral officer of the federal bankruptcy process, accountable to the court, the United States Trustee, and parties in interest.

2. a. This case involves the respondents' "long-standing efforts" to collect a pre-petition judgment against the debtor and later to sue petitioner in her personal capacity as the Chapter 7 trustee. App., *infra*, 2a.

As relevant here, among other assets, the debtor had an interest in certain properties. App., *infra*, 2a-3a. Over the course of the bankruptcy, petitioner determined those properties were heavily encumbered; petitioner accordingly moved to abandon the properties, citing their "inconsequential value" and "burden[] to the bankruptcy estate." *Id.* at 3a-4a. As petitioner explained, "the properties had no realizable equity because the amount of secured debts, estimated costs of sale, potential adverse tax consequences, and estimated administrative fees exceeded the properties' anticipated values." *Id.* at 4a. Although respondents disagreed, the bankruptcy court "overruled [their] objections and entered orders abandoning the properties at issue." *Ibid.*

Respondents, however, were not finished. In February 2022, respondents initiated this adversary proceeding against petitioner, targeting her alleged "[mis]manag[ement]" of the commercial property. App., *infra*, 4a-5a. Their complaint accused petitioner of "allowing waste and failing to collect rent," "breach[ing] her fiduciary duties to creditors[]." *Id.* at 5a.

b. The bankruptcy court dismissed the action with prejudice, ruling the complaint was time-barred and petitioner had "quasi-judicial immunity." App., *infra*, 5a-6a; *id.* at 29a-30a. In the court's view, petitioner "has immunity if her discretionary decisions to act or refrain from acting amounted only to negligence—as opposed to gross negligence." *Id.* at 5a-6a. Because the court determined respondents "allege[d] only ordinary negligence," their complaint necessarily failed. *Ibid.*

c. Respondents appealed to the district court, which issued a mixed ruling. App., *infra*, 6a-7a; *id.* at 25a-43a. The district court first reversed on limitations grounds, but it also affirmed on "quasi-judicial immunity." *Id.* at 6a-7a; *id.* at 42a-43a. It concluded that a trustee's immunity generally covers "acts of ordinary negligence," but not "'gross negligence'" or "'intentional wrongdoing.'" *Ibid.* And while it agreed that respondents "failed to allege conduct exceeding ordinary negligence," it "remanded" to give respondents an opportunity to amend their complaint and assert gross negligence. *Ibid.*

Rather than take up that opportunity, respondents instead appealed to the Ninth Circuit. A three-judge panel heard oral argument, followed by a sua sponte vote to hear the case en banc. App., *infra*, 7a, 48a.

d. The en banc Ninth Circuit reversed. App., *infra*, 1a-24a. The court initially confirmed it had jurisdiction. While the remand theoretically rendered the decision below "non-final," respondents cured that problem by affirmatively electing to "stand[] on the complaint." *Id.* at 10a-11a. They accordingly locked in their simple-negligence theory and abandoned any effort to plead gross negligence, confirming the lower court's dismissal would stand unless ordinary negligence was sufficient. *Id.* at 11a.

The court then addressed two potential categories of trustee immunity. First, the court held that "quasi-judicial immunity" grants "absolute immunity" for "'functions involving the exercise of discretionary judgment' that are 'essential to the authoritative adjudication of private rights to the bankruptcy estate.'" App., *infra*, 12a. According to the court, "the modern bankruptcy trustee" is "'a hybrid official,'" with "'many legal, adjudicative, clerical, financial, administrative, and business functions' that can loosely be categorized as either 'adjudicatory' or 'administrative.'" *Id.* at 15a. The court concluded absolute immunity covers trustees if and when "'their judgments are "functionally comparable" to those of judges.'" *Id.* at 14a-15a.

Second, the court found that so-called "'derived immunity'" provides a defense in "discrete circumstances." App., *infra*, 12a. In order to avoid liability, a trustee must show "(1) her acts were within the scope of her authority; (2) the debtor, creditors, and other interested parties had notice of the proposed acts; (3) the trustee candidly disclosed the proposed acts to the bankruptcy court; and (4) the bankruptcy court approved the acts." *Ibid.* Unless each of those specific steps were satisfied (including "the court's approval"), a trustee could be "liable for even negligent violations" of her official duties. *Id.* at 17a-21a.

In so holding, the Ninth Circuit directly repudiated the lower courts' position that "'ordinary negligence'" was insufficient and "'gross negligence or willful misconduct'" was required. App., *infra*, 20a. In the Ninth Circuit's view, the Supreme Court has "suggested" that "negligent conduct is enough to impose liability on a trustee," and "we have squarely so held." *Id.* at 21a. "Under principles of stare decisis," the court found, "there is no reason to upset this longstanding principle." *Ibid.* It accordingly upheld "subjecting trustees to liability for negligence." *Ibid.*[4]

In applying those two tests, the Ninth Circuit concluded petitioner was not protected against respondents' suit. It first refused to grant petitioner absolute immunity: the complaint "relate[s] to a bankruptcy trustee's functions of gathering estate property, investigating the debtor's finances, and operating the debtor's business on a short-term basis," functions the court deemed "not analogous to or intertwined with 'the authoritative adjudication of private rights to the bankruptcy estate.'" App., *infra*, 23a.

The Ninth Circuit then concluded petitioner, "on the current record," was "not entitled to derived immunity." App., *infra*, 24a. Because the court could not "discern" any "orders" on the docket "authorizing" petitioner's conduct, it declared petitioner could be personally liable for ordinary negligence. *Id.* at 20a-23a, 24a. It accordingly reversed the decisions below, and remanded for further proceedings under a negligence standard.

[4] The court noted the "'business judgment rule'" provides additional protection for trustees. App., *infra*, 21a-22a. But while the court explained that rule "accord[s] deference to the trustee's business management decisions," such protection applies only "'*absent negligence*.'" *Ibid.* (emphasis added).

REASONS FOR GRANTING THE PETITION

A. There Is A Square And Intolerable Conflict Over A Significant Question Of Federal Bankruptcy Law—Whether And When Trustees Can Be Personally Liable For Their Official Acts Under The Code

The Ninth Circuit's decision further cements a preexisting three-way conflict over an important question of federal bankruptcy law: whether Chapter 7 trustees may be personally liable for their official acts, and if so, under what standard of liability.

As widely acknowledged, the circuits have "split almost evenly" over the question. *In re Mailman Steam Carpet Cleaning Corp.*, 196 F.3d 1, 7 (1st Cir. 1999). Four circuits (the Ninth, First, Second, and Eleventh) hold trustees can be sued in their personal capacity for simple negligence.[5] Taking the opposite position, four other circuits (the Fourth, Sixth, Seventh, and Tenth) reject negligence and restrict personal liability to willful and deliberate violations.[6] And the Fifth Circuit alone has declared

[5] See, *e.g.*, App., *infra*, 21a ("subjecting trustees to liability for negligence" and declaring standard entrenched as "stare decisis"); *In re Cochise College Park, Inc.,* 703 F.2d 1339, 1357 (9th Cir. 1983); *In re Mailman Steam Carpet Cleaning Corp.*, 196 F.3d 1, 7 (1st Cir. 1999) ("a bankruptcy trustee can be personally liable for negligent breach of fiduciary duty"); *Lebovits* v. *Scheffel (In re Lehal Realty Assocs.)*, 101 F.3d 272, 277 (2d Cir. 1996) (same); *In re Gorski*, 766 F.2d 723, 727 (2d Cir. 1985) (same); *Red Carpet Corp. of Panama City Beach* v. *Miller*, 708 F.2d 1576, 1578-1579 (11th Cir. 1983) (same).

[6] See, *e.g.*, *McGahren* v. *First Citizens Bank & Trust Co. (In re Weiss)*, 111 F.3d 1159, 1168 (4th Cir. 1997) ("a trustee may be held personally liable only for willful or intentional misconduct"); *Yadkin Valley Bank & Trust Co.* v. *McGee (In re Hutchinson)*, 5 F.3d 750, 752-753 (4th Cir. 1993) (same and disclosing "[t]he circuits have divided on this question"); *United States ex rel. Julien P. Benjamin*

itself "bound" by yet a third standard ("gross negligence")—while admitting "some courts" require "willful[] and deliberate[]" misconduct, "whereas others" deem "a trustee * * * liable for mere negligence." *In re Schooler*, 725 F.3d 498, 512-513 n.10 (5th Cir. 2013); see also 1 Hon. Joan N. Feeney, et al., *Bankruptcy Law Manual* 4:16 (5th ed. rev. 2022) (there is a "split in the circuits regarding the standard of care when a trustee is personally sued").

The existing conflict is deep and mature, and there is no chance it will resolve itself. Further percolation is pointless: courts on each side have squarely rejected each other's positions, and the few remaining circuits are simply left to pick sides. The result is a "morass," and the "tension in this area of the law" is palpable. *Schooler*, 725 F.3d at 511 n.10; *Dodson* v. *Huff (In re Smyth)*, 207 F.3d 758, 761 (5th Cir. 2000) (repeating the National Bankruptcy Review Committee's description of "the state of the law on the trustee standard of care question as a 'crazy quilt' of decisions"). As it now stands, a trustee's personal exposure turns entirely on the jurisdiction in which a dispute happens to arise. This profound "confus[ion]" will

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Equip. Co. v. *Sapp*, 641 F.2d 182, 184-185 (4th Cir. 1981); *Grant, Konvalinka & Harrison, PC* v. *Banks (In re McKenzie)*, 716 F.3d 404, 413 (6th Cir. 2013) ("Although there is disagreement among the circuits concerning the applicable standard of proof, this court has held that: 'A bankruptcy trustee is liable personally only for acts willfully and deliberately in violation of his fiduciary duties.'") (citing *Ford Motor Credit Co.* v. *Weaver*, 680 F.2d 451, 461-62 (6th Cir. 1982)); *Maxwell* v. *KPMG LLP*, No. 07-2819, 2008 WL 6140730, at *4 (7th Cir. Aug. 19, 2008) (flagging "circuit split" on "the proper standard" for holding "a trustee * * * personally liable"; "in this circuit [a trustee] is personally liable only if he willfully and deliberately violated his fiduciary duties") (citing *In re Chicago Pacific Corp.*, 773 F.2d 909, 915 (7th Cir. 1985)); *Sherr* v. *Winkler*, 552 F.2d 1367, 1375 (10th Cir. 1977) ("a trustee" is "liable personally only for acts determined to be willful and deliberate in violation of his duties").

persist until this Court intervenes. *Mckenzie*, 716 F.3d at 412 (recounting complaints by "several courts"). Immediate review is warranted.

1. The decision below directly conflicts with established law in multiple circuits. Unlike the Ninth Circuit, these circuits have squarely held that "willful and deliberate" misconduct is necessary before holding a trustee personally liable for official acts.

a. The Tenth Circuit established the foundational "willful-and-deliberate" standard in *Sherr* v. *Winkler*, 552 F.2d 1367 (10th Cir. 1977). The Tenth Circuit looked to this Court's decision in *Mosser* v. *Darrow*, 341 U.S. 267 (1951), and read this Court's analysis as establishing a tripartite framework: (i) a trustee is not liable for a mistake in judgment where discretion is allowed; (ii) a trustee is personally liable only for "willful and deliberate" violations of fiduciary duties; and (iii) a trustee is liable only in an official capacity for negligent conduct. 552 F.2d at 1375. The Tenth Circuit accordingly held "a trustee in bankruptcy is not to be held personally liable unless he acts willfully and deliberately in violation of his fiduciary duties." *Ibid.*

Although lower courts in the Tenth Circuit have acknowledged the circuit conflict, they have consistently adhered to the Tenth Circuit's binding standard. See, *e.g.*, *In re Hunter*, 553 B.R. 866, 873-874 (Bankr. D.N.M. 2016); *In re Herrera*, 472 B.R. 839, 849-850 (Bankr. D.N.M. 2012); *In re Ebel*, 338 B.R. 862, 875 (Bankr. D. Colo. 2005).

b. Like the Tenth Circuit, the Sixth Circuit has also long applied the "willful-and-deliberate" standard. In *Ford Motor Credit Co.* v. *Weaver*, 680 F.2d 451 (6th Cir. 1982), the court squarely held that "bankruptcy trustee[s]" are "liable personally only for acts willfully and deliberately in violation of [their] fiduciary duties." 680 F.2d at 462 (citing *Sherr*, 552 F.2d at 1375). The Sixth Circuit has since recognized the "confusing" and "contradictory" standards "governing personal liability for trustees," including the obvious "disagreement among the circuits." *McKenzie*, 716 F.3d at 413 (flagging authority "describing the split over whether trustee may incur personal liability for negligent or only willful breach of fiduciary duty"). But the court has considered its position settled: notwithstanding the circuit conflict, "this court has held" that trustees are "'liable personally only for'" "willful[] and deliberate[]" misconduct. *Ibid.* (citing *Ford Motor Credit*, *supra*).

Despite the overall confusion, given the clarity of the Sixth Circuit's own position, it is little surprise lower courts in that circuit have faithfully applied the willful-and-deliberate standard. See, *e.g.*, *In re J & J Video, LLC*, No. 08-56835-SWR, 2011 WL 3319864, at *1-*2 (E.D. Mich. Aug. 1, 2011).

c. Also drawing on *Mosser* and *Sherr*, the Fourth Circuit has repeatedly applied the willful-and-deliberate standard to trustee personal liability. In *United States ex rel. Julien P. Benjamin Equip. Co.* v. *Sapp*, 641 F.2d 182, 183 (4th Cir. 1981), for example, the Fourth Circuit concluded personal liability is reserved for acts deemed "willful and deliberate in violation of [the trustee's] duties"; negligence, by contrast, only permits liability in the trustee's *official* capacity. 641 F.2d at 184-85.

The Fourth Circuit later tracked the source of the extant confusion. As the court explained, "[a]lthough the Bankruptcy Code imposes specific duties on bankruptcy trustees," "the Code does not explicitly make trustees liable for breach of those duties." *Hutchinson*, 5 F.3d at 752. On the contrary, the "source of trustee liability" is a judge-made implied right of action—which it found originated with this Court's *Mosser* decision "and its progeny." *Ibid.* And because "*Mosser* did not directly address to what extent, if any, bankruptcy trustees are liable for negligent breaches of their duties," "[t]he circuits have divided on this question." *Id.* at 752-753 (outlining split between "willful and deliberate" circuits and "negligence" circuits). The *Hutchinson* court then reaffirmed it had adopted a modified version of the Sixth and Tenth Circuits' approach: as relevant here, it imposes the identical requirement of "willful and deliberate" misconduct, but it adds that trustees are "completely immune" when acting "pursuant to explicit instructions of the bankruptcy court." *Id.* at 753.

Again, lower courts within the Fourth Circuit have consistently required a showing of willful-and-deliberate misconduct. See, *e.g.*, *Banerjee* v. *Branigan*, No. CV TDC-24-0077, 2024 WL 863714, at *1-*2 (D. Md. Feb. 8, 2024); *In re Cutright*, No. 08-70160-SCS, 2012 WL 1945703, at *1 (Bankr. E.D. Va. May 30, 2012).

d. Finally, the Seventh Circuit has likewise adopted the willful-and-deliberate standard. The circuit recognized that standard in *Chicago Pacific Corp.*, 773 F.2d at 915, and it has reapplied it ever since—even in the face of the recognized circuit conflict. See, *e.g.*, *Maxwell*, 2008 WL 6149730, at *4. As *Maxwell* explained, "[a] circuit split has developed on the question" (flagging competing camps for "willful and deliberate," "negligence," and "gross negligence"), but "in *this* circuit [a trustee] is personally liable only if he willfully and deliberately violated his fiduciary duties." *Ibid.* (emphasis added).

As in the other jurisdictions, lower courts in the Seventh Circuit acknowledge the circuit conflict and continue to apply the governing Seventh Circuit standard. See, *e.g.*, *Grochocinski* v. *Mayer Brown Rowe & Maw LLP*, 452 B.R. 676, 683-84 (N.D. Ill. 2011); *Alonso v. Weiss*, 301 F.Supp.3d 885, 893-94 (N.D. Ill. 2018).

2. Like the Ninth Circuit, however, multiple circuits have expressly rejected any heightened showing and instead determined negligence alone suffices.

a. In the proceedings below, the en banc Ninth Circuit confirmed that court's longstanding approach. App., *infra*, 21a. The Ninth Circuit earlier adopted a negligence standard in *Hall* v. *Perry* (*In re Cochise Coll. Park, Inc.*), 703 F.2d 1339 (9th Cir. 1983). Like other circuits, the Ninth Circuit looked to *Mosser* for guidance—but it read that decision the opposite way. In the Ninth Circuit's view, "[p]roperly construed," *Mosser* "does not 'hold' in any sense that personal liability does not obtain if * * * a showing of negligence is made." 703 F.2d at 1357 n.26. On the contrary, the Ninth Circuit found *Mosser* endorsed a negligence standard, and it accordingly "reject[ed]" the competing views "of the Tenth and Sixth Circuits." *Ibid.* (labeling the contrary circuit position as "an apparent misreading").

b. The First Circuit reached the same conclusion in *In re Mailman Steam Carpet Cleaning Corp.*, 196 F.3d 1 (1st Cir. 1999). Like the Ninth Circuit, the First Circuit grounded its position directly in *Mosser*, acknowledged the "split," and rejected the reasoning of other circuits: "there is simply no principled way after *Mosser* to avoid the conclusion that a bankruptcy trustee can be personally liable for negligent breach of fiduciary duty." 196 F.3d at 7-8. Lower courts in the First Circuit have since followed suit. See, *e.g.*, *In re Feeley,* 393 B.R. 43 (Bankr. D. Mass. 2008); *In re Jefferson Dev. Partners, LLC,* 575 B.R. 4 (Bankr. D. Mass. 2017).

c. The Second Circuit also adopted the negligence standard in *In re Gorski*, 766 F.2d 723 (2d Cir. 1985). Relying on the Ninth Circuit's decision in *Cochise*, the Second Circuit determined that bankruptcy trustees may be personally liable for both "negligent" and "knowing or intentional" breaches. 766 F.2d at 727 (citing *Cochise*, *supra*). And lower courts in the Second Circuit continue to reaffirm and apply that negligence standard. See, *e.g.*, *In re Ngan Gung Rest.*, 254 B.R. 566, 570 (Bankr. S.D.N.Y. 2000) (acknowledging circuit split in footnote); *In re Ajax Integrated, LLC*, 554 B.R. 568 (Bankr. N.D.N.Y. 2016).

d. Finally, the Eleventh Circuit has applied the negligence standard in *Red Carpet Corp. of Panama City Beach* v. *Miller*, 708 F.2d 1576 (11th Cir. 1983). The court candidly acknowledged the implied nature of the right of action: "The law regarding surcharge of bankruptcy trustees and receivers already extends well beyond the language of the bankruptcy statutes." 708 F.2d at 1578. And the court reproduced analysis from a commentator underscoring the same point: "'The [Bankruptcy] Act, while enumerating many of the specific duties, rights, and powers of trustees and receivers in bankruptcy, was not designed to be nor has it proven to be the final world in all questions concerning the personal liability of bankruptcy officers. Rather, courts have found it necessary to go beyond the Bankruptcy Act to general non-bankruptcy principles,'" creating "'a distinct bankruptcy "common law" covering the personal liability of bankruptcy trustees.'" *Ibid.* And in looking to that common law, the Eleventh Circuit concluded that mere negligence was sufficient. *Id.* at 1578-1579.

Unlike other circuits, however, lower courts in the Eleventh Circuit have since diverged, with some courts nonetheless applying a willful-and-deliberate standard. See, *e.g.*, *In re Cruz*, 562 B.R. 812 (Bankr. M.D. Fla. 2016) (declining to follow *Red Carpet* on the ground that its commentary was dicta); *In re PSN USA, Inc.*, 426 B.R. 916 (Bankr. S.D. Fla. 2010).

3. Rejecting the views of all other circuits, the Fifth Circuit has charted its own intermediate path. In *Dodson v. Huff* (*In re Smyth*), 207 F.3d 758 (5th Cir. 2000), the court expressly acknowledged the split on the standard of liability ("a 'crazy quilt' of decisions"), declared the issue driven by "policy," and balanced the competing interests: "we conclude that trustees should not be subjected to personal liability unless they are found to have acted with gross negligence." 207 F.3d at 761-762. The Fifth Circuit has since declared that position entrenched and refused to reconsider its position. *Schooler*, 725 F.3d at 511-512 & n.10. Lower courts in the Fifth Circuit have likewise consistently applied the gross-negligence standard since its adoption. See, *e.g.*, *In re Sanchez Energy Corp.*, 661 B.R. 522, 538 (Bankr. S.D. Tex. 2024).

* * *

The conflict over this fundamental bankruptcy question is deep, obvious, and entrenched. The circuits are in complete disarray. Eight circuits have sharply split down the middle, and the Fifth Circuit has struck its own path. The debate has been fully exhausted at the circuit level, and additional percolation is pointless—each side is fully aware of the competing viewpoints but maintained their own circuit's position. There is no realistic prospect that *multiple* courts of appeals will suddenly abandon their own precedent, especially when most circuits have adhered to their own views for decades. See, *e.g.*, App., *infra*, 21a ("stare decisis"); *Schooler*, 725 F.3d at 511-512 n.10 (not budging); *McKenzie*, 716 F.3d at 413 (same); *Maxwell*, 2008 WL 6140730, at *4 (same).

To make matters worse, the disagreement largely stems from disparate readings of this Court's decision in *Mosser*. Some circuits read the case as endorsing a negligence standard; others read the same passages to require willful-and-deliberate misconduct. This Court alone can resolve that dispute and say what the case definitively means. Until that happens, this critical bankruptcy question will vary by geography, and the widespread confusion will continue wasting significant time and resources in bankruptcy cases nationwide. It is past time to settle the debate. Review is plainly warranted.

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

The question presented is of obvious legal and practical importance, and it warrants review in this case.

1. The legal and practical stakes are self-evident. The sheer number of reported cases confirms the need for review, and the numbers are unsurprising. *E.g.*, *Lehal*, 101 F.3d at 275-276 ("there is a long history of cases dealing with attempts to hold a bankruptcy trustee personally liable"). Last year, over 1,100 Chapter 7 trustees were assigned more than 330,000 cases. See U.S. Tr. Program, U.S. Dep't of Justice, *Chapter 7 Trustee Final Reports* <https://www.justice.gov/ust/bankruptcy-data-statistics/chapter-7-trustee-final-reports>; U.S. Courts, *Bankruptcy Filings Rise 11.5 Percent Over Previous Year* <https://www.uscourts.gov/data-news/judiciary-news/2025/07/31/bankruptcy-filings-rise-115-percent-over-previous-year>. In the Central District of California alone, approximately 27 panel trustees were assigned nearly 25,000 cases. See U.S. Bankr. Ct. for the Cent. Dist. of Cal., *2025 Filings For Central District* <https://www.cacb.uscourts.gov/statistics/2025-filings-central-district>; U.S. Tr. Program, U.S. Dep't of Justice, *List of Chapter 7 Panel Trustees* <https://www.justice.gov/ust/list-chapter-7-panel-trustees>. It is untenable to subject Chapter 7 trustees (operating at this scale and magnitude) to different liability standards based on geography alone. And it is especially untenable to expose

trustees to aggressive creditors armed with a mere negligence standard: "no trustee in his right mind would regularly subject himself to personal liability for negligence or even to having to defend a lawsuit for such alleged behavior." *In re Cont'l Coin Corp.*, 380 B.R. 1, 7 (Bankr. C.D. Cal. 2007).

A "negligence" threshold is a recipe for burdening busy courts, wasting scarce resources, and introducing friction in a process that requires efficiency. "The role of the chapter 7 bankruptcy trustee is an integral part to the proceeding," and that role is impaired by personal liability—especially when endlessly pursued by "disgruntled creditors." Arabov, *supra*, at 12. Proper bankruptcy administration requires reasonable protections for those acting to discharge key duties under the Code. It is critical to restore a proper balance to the equation. See, *e.g.*, *Smyth*, 207 F.3d at 761-762.

Just to give a sense of the breadth of the problem: by its own account, the Ninth Circuit would apply a negligence standard to a trustee's routine '"activities such as collecting, liquidating, and distributing the debtor's property to creditors"' (App., *infra*, 23a-24a)—areas where one could easily see allegations (unfounded or not) of negligence. National Bankruptcy Review Commission, *Bankruptcy: The Next Twenty Years* 858 n.2182 (Oct. 20, 1997) (Commission Report) ("Chapter 7 trustees are the most prone to suit due to the broad nature of their duties."). These activities reflect a significant part of a trustee's job, and trustees are now personally exposed for any accidental missteps. The opportunities for mischief are palpable. *E.g.*, *Smyth*, 207 F.3d at 762 ("the trustee must make enormously complex decisions within tight time constraints and without the assistance of—in fact, in the face of opposition or hostility from—both secured and unsecured creditors"). And it does not matter whether a suit attacking the trustee has merit or not; the mere *threat* of a suit can influence the trustee's conduct, distorting the proper administration of her or her important statutory duties. See, *e.g.*, *McKenzie*, 716 F.3d at 424 (granting leave to sue trustee "could distract from the ongoing bankruptcy case"); Commission Report, *supra*, at 862 ("Even the threat of a suit against the trustee during negotiations in order to gain leverage may have equally pernicious effects.").

Trustees play a critical role in the bankruptcy process. The en banc Ninth Circuit solidified an acknowledged and entrenched three-way split. That split has now persisted for decades, producing massive confusion and disarray. *In re Heinsohn*, 231 B.R. 48, 64 (Bankr. E.D. Tenn. 1999) ("It is difficult from the caselaw alone to formulate guidelines specifying when a trustee is immune from personal liability and when he is not."). This Court alone can resolve the problem, and it is time for a uniform answer to this pressing question.[7]

2. The issue is accordingly important, and this is the ideal vehicle for (finally) resolving the split. The question presented is a pure question of law. It was outcome-determinative below, and it was squarely resolved at each level. The lower courts applied a gross-negligence standard and

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[7] The Bankruptcy Code exhaustively enumerates a Chapter 7 trustee's duties (11 U.S.C. 704(a)), yet provides no textual authority for personal-capacity suits—despite authorizing a trustee's removal for cause (11 U.S.C. 324) and codifying express causes of action against other parties (see, *e.g.*, 11 U.S.C. 362(k)). See also, *e.g.*, 18 U.S.C. 153-157 (criminalizing certain willful conduct including embezzling from a bankruptcy estate). Unlike this Court's modern jurisprudential approach, claims against a trustee and her personal assets are judge-made implied rights, and they are mentioned nowhere in the Bankruptcy Code. Cf., *e.g.*, *Cisco Sys., Inc.* v. *Doe*, 146 S. Ct. 1882, 1890 (2026) ("the power to create causes of action belongs to Congress").

petitioner won (App., *infra*, 5a-7a); the en banc Ninth Circuit applied a mere-negligence standard and petitioner lost (*id.* at 20a-23a). Courts outside the Ninth Circuit (applying a "willful-and-deliberate" standard or "gross-negligence" standard) would have reached the opposite result. "As it stands now, trustee liability depends upon the jurisdiction in which the trustee is appointed." Arabov, *supra*, at 12. This issue is critical to the proper administration of bankruptcy cases, and there are no conceivable obstacles to resolving it here.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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