IN THE SUPREME COURT OF THE UNITED STATES

No. 26A___

AMY L. GOLDMAN, APPLICANT

v.

TAMMY R. PHILLIPS; TAMMY R. PHILLIPS, APLC

APPLICATION FOR AN EXTENSION OF TIME
WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

To the Honorable Elena Kagan, Circuit Justice for the United States Court of Appeals for the Ninth Circuit:

Pursuant to Rules 13.5 and 30.2 of the Rules of this Court, Amy L. Goldman respectfully applies for a 30-day extension of time, to and including September 4, 2026, within which to file a petition for a writ of certiorari to review the judgment of the Ninth Circuit in this case. The en banc Ninth Circuit entered its judgment on May 7, 2026. App., *infra*, 1a-26a.[1] Unless extended, the time for filing a petition for writ of certiorari will expire on August 5, 2026. The jurisdiction of this Court would be invoked under 28 U.S.C. 1254(1).

[1] The opinion of the court of appeals (App., *infra*, 1a-26a) is reported at 176 F.4th 1152. The opinion of the district court is reported at 656 B.R. 639. The order of the bankruptcy court is unreported.

1. 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 acts, 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*, 22a-23a. In so holding, the Ninth Circuit cemented a three-way circuit conflict -- and sided with the wrong side of that split.

a. The circuit conflict is obvious, acknowledged, and entrenched. It has produced an intractable 3-way split. While the Ninth Circuit "squarely" holds mere "negligence" is "enough" (App., *infra*, 22a), 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)"). 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 undeniable and entrenched. It has been acknowledged (repeatedly) by multiple courts -- circuit courts[2] and lower courts[3] alike. It has been recognized by expert commentators.[4] It was even *conceded* by the creditors 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*, 22a) are irreconcilable with "established" law in other circuits (*Grochocinski*, 719 F.3d at

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[2] 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").

[3] 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).

[4] 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").

799-800), and there is no hint any circuit will back down. See, *e.g.*, App., *infra*, 8a-9a, 21a-22a (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 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.[5]

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

[5] 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 standard modern practice, 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*, No. 24-856, slip op. 9 (U.S. June 23, 2026) ("the power to create causes of action belongs to Congress").

The legal and practical stakes are self-evident. 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.[6]

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 applicant won; the en banc Ninth Circuit applied a mere-negligence standard and applicant lost. 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. It is time to settle this question, and there are no conceivable obstacles to resolving it here.

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[6] 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*, 25a) -- areas where one could easily see allegations (unfounded or not) of negligence. These activities reflect a significant part of a trustee's job, and trustees are now personally exposed for any accidental missteps.

In short, this is a critical question that affects significant litigation with material stakes in many thousands of bankruptcies nationwide, and this is a perfect opportunity for the Court to impose a uniform rule in an area generating needless confusion. There is a reasonable prospect of the Court granting review, and an extension would materially assist applicant in preparing a comprehensive, responsible petition on this important question.

2. a. This case involves the creditors' "long-standing efforts" to collect a pre-petition judgment against the debtor and later to sue applicant in her personal capacity as the Chapter 7 trustee. App., *infra*, 4a.

As relevant here, among other assets, the debtor had an interest in certain properties. App., *infra*, 4a-5a. Over the course of the bankruptcy, applicant determined those properties were heavily encumbered; applicant accordingly moved to abandon the properties, citing their "inconsequential value" and "burden[] to the bankruptcy estate." *Id.* at 5a-6a. As applicant 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 6a. Although the creditors disagreed, the bankruptcy court "overruled [their] objections and entered orders abandoning the properties at issue." *Ibid.*

The creditors, however, were not finished. In February 2022, the creditors initiated this adversary proceeding against applicant, targeting her alleged "[mis]manag[ement]" of the commercial property. App., *infra*, 7a. Their complaint accused applicant of "allowing waste and failing to collect rent," "breach[ing] her fiduciary duties to creditors[]." *Ibid.*

b. The bankruptcy court dismissed the action with prejudice, ruling the complaint was time-barred and applicant had "quasi-judicial immunity." App., *infra*, 7a-8a. In the court's view, applicant "has immunity if her discretionary decisions to act or refrain from acting amounted only to negligence -- as opposed to gross negligence." *Id.* at 8a. Because the court determined the creditors "allege[d] only ordinary negligence," their complaint necessarily failed. *Ibid.*

c. The creditors appealed to the district court, which issued a mixed ruling. App., *infra*, 8a-9a. The district court first reversed on limitations grounds, but it also affirmed on "quasi-judicial immunity." *Id.* at 8a. 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 the creditors "failed to allege conduct exceeding ordinary negligence," it "remanded" to give the creditors an opportunity to amend their complaint and assert gross negligence. *Ibid.*

Rather than take up that opportunity, the creditors 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*, 9a.

d. The en banc Ninth Circuit reversed. App., *infra*, 1a-26a. The court initially confirmed it had jurisdiction. While the remand theoretically rendered the decision below "non-final," the creditors cured that problem by affirmatively electing to "stand[] on the complaint." *Id.* at 12a. 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 13a.

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*, 14a. 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 16a. The court concluded absolute immunity covers trustees if and when "'their judgments are "functionally comparable" to those of judges.'" *Id.* at 15a-16a.

Second, the court found that so-called "'derived immunity'" provides a defense in "discrete circumstances." App., *infra*, 14a. 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 19a, 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*, 21a. 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 22a. "Under principles of stare decisis," the court found, "there is no reason to upset this longstanding principle." *Id.* at 22a-23a. It accordingly upheld "subjecting trustees to liability for negligence." *Id.* at 23a.[7]

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[7] The court noted the "'business judgment rule'" provides additional protection for trustees. App., *infra*, 23a. But while

In applying those two tests, the Ninth Circuit concluded applicant was not protected against the creditors' suit. It first refused to grant applicant 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*, 25a.

The Ninth Circuit then concluded applicant, "on the current record," was "not entitled to derived immunity." App., *infra*, 25a. Because the court could not "discern" any "orders" on the docket "authorizing" applicant's conduct, it declared applicant could be personally liable for ordinary negligence. *Id.* at 21a-23a, 25a.

3. Applicant respectfully requests an extension of time, to and including September 4, 2026, within which to file a petition for a writ of certiorari. As established above, this case presents a significant question of federal bankruptcy law: whether Chapter 7 trustees may be personally liable for official acts, and if so, under what standards. The en banc Ninth Circuit solidified an acknowledged and entrenched three-way split. That split has

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the court explained that rule "accord[s] deference to the trustee's business management decisions," such protection applies only "'*absent negligence*.'" *Ibid.* (emphasis added).

persisted now for decades, producing massive confusion and disarray. The issue will have staggering effects on bankruptcy administration nationwide until this Court intervenes. The forthcoming petition, in short, will be substantial.

Applicant's new lead counsel was recently retained (after the Ninth Circuit's decision issued), and has multiple competing obligations, including proximate deadlines before this Court. Additional time is necessary for applicant's counsel to prepare a comprehensive, helpful petition on this important question. Nor would an extension prejudice anyone: the extra time falls over the Court's summer recess, and it would permit the case to be conferenced with ample time for a merits decision this Term. Unless the creditors themselves seek to manipulate the schedule, the slight delay would have no material effect on the case's disposition.

Respectfully submitted.

ROY T. ENGLERT, JR.
Counsel of Record
HERBERT SMITH FREEHILLS
KRAMER (US) LLP
2000 K Street N.W., 4th Fl.
Washington, DC 20006
(202) 775-4500
roy.englert@hsfkramer.com

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