No. 24-905

IN THE

# Supreme Court of the United States

MARTHA G. BRONITSKY, CHAPTER 13 TRUSTEE,

*Petitioner*,

v.

JORDEN MARIE SALDANA,

*Respondent*.

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

## BRIEF IN OPPOSITION

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## QUESTION PRESENTED

Whether, as every circuit to have addressed the issue has held, debtors in Chapter 13 bankruptcy may exclude their continued contributions to employer-provided retirement plans from their disposable income.

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## INTRODUCTION

Around the country, debtors who were contributing to their employer-provided retirement accounts before Chapter 13 bankruptcy can exclude continued contributions from the disposable income available to creditors. The Sixth and Ninth Circuits agree on this point. And petitioner did not dispute before the Ninth Circuit that respondent Jorden Saldana would prevail under the consensus view of the law. Petitioner's attempt to upset the status quo does not warrant this Court's review. Not only is there no split, but the petition's vehicle and importance arguments are baseless.

As to the merits, petitioner urges this Court to adopt a rule espoused by *no* court of appeals: Voluntary retirement contributions can *never* be excluded from a debtor's disposable income. This Court should reject that entreaty. The plain text of the Bankruptcy Code defeats petitioner's proposal. The Code provides that funds withheld from an employee's wages as contributions to an approved retirement plan "shall not constitute disposable income" for purposes of Chapter 13. 11 U.S.C. § 541(b)(7). Indeed, both the Sixth and Ninth Circuits have squarely rejected petitioner's interpretation of Section 541(b)(7) because it "makes no sense." Pet. App. 14a (quoting 5 Collier on Bankruptcy ¶ 541.23[1] (16th ed. 2019)); *Davis v. Helbling* (*In re Davis*), 960 F.3d 346, 355 (6th Cir. 2020) (same).

This Court should deny certiorari.

## STATEMENT OF THE CASE

### A. Legal background

1. "The principal purpose" of consumer bankruptcy law is "to grant a 'fresh start' to the 'honest but unfortunate debtor.'" *Marrama v. Citizens Bank of Mass.*, 549 U.S. 365, 367 (2007) (quoting *Grogan v. Garner*, 498 U.S. 279, 286, 287 (1991)); *see also Williams v. U.S. Fidelity & Guaranty Co.*, 236 U.S. 549, 554-55 (1915).

This case deals with bankruptcy under Chapter 13 of the Bankruptcy Code, 11 U.S.C. § 1301, *et. seq.* Debtors may also file for bankruptcy under Chapter 7 of the Code. In those cases, a trustee marshals and then distributes the non-exempt assets of the debtor's estate to creditors. *See Marrama*, 549 U.S. at 367. But that chapter is not at issue here.

Under Chapter 13, debtors usually retain possession of the property in their estate—that is, the assets they possessed prior to filing for bankruptcy. 11 U.S.C. § 1306(b). They instead enter into a confirmed payment plan that spans several years. "Payments under a Chapter 13 plan are usually made from a debtor's 'future earnings or other future income.'" *Harris v. Viegelahn*, 575 U.S. 510, 514 (2015) (quoting 11 U.S.C. § 1322(a)(1) and citing 8 Collier on Bankruptcy ¶ 1322.02[1] (16th ed. 2014)). An appointed trustee works on behalf of the debtor, creditors, and the bankruptcy court to ensure that the debtor's plan complies with the Code. *See* 11 U.S.C. § 1302. Over the period of time specified in the plan, debtors make payments to the trustee, who distributes those funds to creditors. *Id.* At the end of that period,

debtors' remaining dischargeable debt is eliminated. *Id.* § 1328.

Chapter 13 creditors recover in the order dictated by the statute, which generally puts secured and priority unsecured creditors first. 11 U.S.C. § 507 (incorporated by 11 U.S.C. § 1322(a)(2)). Towards the back of the line are unsecured creditors, *id.*, such as credit card companies and medical bill collectors, Pamela Foohey et al., *Portraits of Bankruptcy Filers*, 56 Ga. L. Rev. 573, 611 (2022). Thus, "[m]ost Chapter 13 debtors pay little or nothing to their general unsecured creditors." *In re Spinks*, 591 B.R. 113, 126 (Bankr. S.D. Ga. 2018); *see generally* U.S. Dep't of Just., U.S. Trustee Program, *Chapter 13 Standing Trustee FY2024 Audited Annual Reports* (Mar. 14, 2025), https://perma.cc/UFC5-7NUU (reporting on the relatively low recovery rate for unsecured creditors).

2. A debtor's payment obligation under a Chapter 13 plan depends on her "disposable income." 11 U.S.C. § 1325(b)(2). A debtor's disposable income is her "current monthly income," as defined by 11 U.S.C. § 101(10A), minus allowable deductions, such as business expenses, charitable contributions, and "amounts reasonably necessary" for maintenance of the debtor or her dependents, *id.* § 1325(b)(2).

In 2005, Congress amended the Bankruptcy Code to provide further "protection of retirement savings in bankruptcy." Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA), Pub. L. No. 109-8, § 224, 119 Stat. 23, 62 (2005) (section heading). In particular, BAPCPA included two provisions dealing with the definition of disposable income as it relates to retirement savings.

First, Section 224(f) of BAPCPA provides that "any amounts required to repay" a loan taken from a qualifying retirement plan "shall not constitute 'disposable income' under section 1325." 119 Stat. at 65 (codified at 11 U.S.C. § 1322(f)).

Second, Section 323 of BAPCPA provides that "any amount" that is "withheld by an employer from the wages of employees for payment as contributions" to a qualified retirement plan does not constitute property of the estate. 119 Stat. at 97-98 (codified at 11 U.S.C. § 541(b)(7)). In addition, Section 323 provides that "such amount under this subparagraph shall not constitute disposable income, as defined in section 1325(b)(2)." *Id.* This provision is known as the "hanging paragraph" because of its placement at the end of the section.

### B. Factual background and procedural history

1. Respondent Jorden Saldana is a surgical technician. Pet. App. 2a. During her employment, she has made regular contributions to an employer-provided retirement plan. *Id.* 37a.

In April 2022, faced with unsecured debt and unpaid taxes, she filed a Chapter 13 bankruptcy petition to reorganize her finances. Pet. App. 2a-3a. Petitioner is the Chapter 13 Trustee in the Northern District of California assigned to oversee Ms. Saldana's bankruptcy. *Id.* 36a.

In calculating her disposable income for her Chapter 13 petition, Ms. Saldana sought to exclude her continued (albeit reduced) contributions to her retirement account. Pet. App. 37a. On the relevant form, she listed her retirement contributions as "TSA Fidelity EE–6%." C.A. E.R. 162. Further confirming

that she had previously contributed to her retirement plan, Ms. Saldana also deducted from her monthly disposable income payments she was making to repay loans she had earlier taken from the plan. Pet. App. 3a-4a.

Seeking certiorari, petitioner for the first time attempts to create uncertainty about these contributions. *See* Pet. 13 n.6. Specifically, the petition claims that Ms. Saldana "did not include *in the record* any evidence quantifying her voluntary contributions in the six-month period before her bankruptcy filing." *Id.* (emphasis added). That claim is quite misleading. *See* S. Ct. R. 15.2. A brief review of the factual and procedural history of this case shows why.

The local rules for bankruptcy courts in the Northern District of California direct debtors to provide relevant documentation "**directly to the trustee**." Amended General Order 32, *In re* Payment Advices (Bankr. N.D. Cal. Mar. 2, 2017), https://perma.cc/T8S7-VJ5D; *see also* 11 U.S.C. § 521(a)(1)(B)(iv) (governing a debtor's duty to provide specified information about payments received in the period preceding her filing for bankruptcy). At the same time, the local rules expressly tell debtors "[d]o not file payment advices with the Court." *Id.* Thus, to substantiate the retirement contributions she proposed to continue, Ms. Saldana uploaded her pay stubs to petitioner's secure portal rather than filing them with the court. These pay stubs show that, prior to her petition, Ms. Saldana regularly contributed

several hundred dollars each month to her employer's retirement plan. *See* Pet. App. 37a.[1]

2. After some back and forth with the Trustee, Ms. Saldana filed amended forms seeking a combined exclusion of $747 per month to account for both continued contributions to her retirement account and amortized repayment of the two loans from her retirement account. C.A. E.R. 173; Pet. App. 38a. Petitioner did not contest that Ms. Saldana had been making pre-petition retirement contributions, nor that her pay stubs substantiated the amounts. *See* C.A. E.R. 160. Instead, petitioner objected categorically to Ms. Saldana's exclusion of retirement contributions from her disposable income. *Id.* at 159.

3. The Bankruptcy Court for the Northern District of California sustained petitioner's objection. Pet. App. 4a. It rejected Ms. Saldana's argument that it should follow the Sixth Circuit's decision in *Davis v. Helbling* (*In re Davis*), 960 F. 3d 346 (6th Cir. 2020). There, the Sixth Circuit had held that "the hanging paragraph is best read to exclude from disposable income a debtor's post-petition monthly 401(k) contributions so long as those contributions were regularly withheld from the

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[1] The appendix to this brief in opposition provides two redacted examples of the pay stubs that Ms. Saldana supplied to the Trustee. *See* BIO App. 1a-2a. Her retirement contributions are labeled "TSA Fidelity EE" under "Pre Tax Deductions."

The petition makes much of the fact that Ms. Saldana initially left blank the amount of her pre-petition retirement contributions. Pet. 8. But the Ninth Circuit clarified that the initial omission of the dollar amount was a "mistake[]." Pet. App. 4a. Ms. Saldana corrected that mistake in an "amended means test." *Id.*

debtor's wages prior to her bankruptcy." 960 F.3d at 357.

But in the absence of binding Ninth Circuit precedent, the court decided to "go the other way." Pet. App. 58a. The court instead followed a bankruptcy appellate panel's holding in *Parks v. Drummond* (*In re Parks*), 475 B.R. 703 (9th Cir. B.A.P. 2012), that a debtor's contributions to her retirement account are never excluded from a disposable income calculation. Pet. App. 4a.[2]

To obtain an order she could appeal to the district court, Ms. Saldana removed her continued retirement contributions from her plan but preserved her objection. Pet. App. 5a. The bankruptcy court confirmed this plan. *Id.* 39a.

4. On appeal from the bankruptcy court, the district court recognized that Ms. Saldana had been making an "ongoing voluntary retirement contribution of $484 as a payroll deduction" prior to filing for bankruptcy. Pet. App. 37a. But it nonetheless affirmed the bankruptcy court, also following *Parks*'s reasoning and rejecting Ms. Saldana's request to adopt the approach taken by the Sixth Circuit. *Id.* 37a, 46a.

5. Ms. Saldana appealed to the Ninth Circuit. She reiterated that "she had been making a regular voluntary contribution to her retirement plan and

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[2] Bankruptcy appellate panels (BAPs) are composed of three Article I bankruptcy judges. Their interpretations of bankruptcy statutes are not precedential for Article III courts, *Bank of Maui v. Estate Analysis, Inc.*, 904 F.2d 470, 472 (9th Cir. 1990), and are subject to *de novo* review by courts of appeals, *Vibe Micro Inc. v. Sig Cap., LLC* (*In re 8Speed8, Inc.*), 921 F.3d 1193, 1195 (9th Cir. 2019).

reduced it for her chapter 13 budget." Resp. C.A. Br. 11. She explained that this fact was "not disputed." *Id.* at 12. Indeed, "at no time did the trustee dispute the debtor's assertions regarding her retirement plan contributions." *Id.* at 15. In light of this fact, Ms. Saldana urged the Ninth Circuit to adopt the Sixth Circuit's rule. *Id.* at 16-17. Because she had a history of retirement contributions, Ms. Saldana did not address whether debtors who lacked that history could also exclude future retirement contributions from their disposable income.

The petition makes much of the fact that Ms. Saldana pointed to the "unsettled" nature of the law. Pet. 7 (containing a paragraph of quotations from the record excerpts before the court of appeals). But the petition's use of those quotations is deeply misleading. Ms. Saldana was lamenting the lack of clarity that then existed among lower courts in the absence of a Ninth Circuit rule.

As she had in the courts below, petitioner argued for the *Parks* rule. Petr. C.A. Br. 14-15. Petitioner's statement of the case nowhere denied that Ms. Saldana had been regularly making retirement contributions prior to filing her Chapter 13 petition. It denied only that she was entitled to deduct those payments from her disposable income. *See id.* at 14. Nowhere in petitioner's briefing nor at oral argument to the Ninth Circuit did petitioner ever contest that Ms. Saldana would win under the Sixth Circuit's rule.

6. The Ninth Circuit agreed with Ms. Saldana. Pet. App. 10a. It held that "the statutory text unambiguously excludes voluntary contributions from a debtor's disposable income in a Chapter 13 case." *Id.* The Ninth Circuit squarely rejected *Parks*'s

categorical treatment of retirement contributions as disposable income available to creditors because that interpretation "r[a]n afoul of the express language of the statute." *Id.* 17a. The court found the *Parks* approach "unpersuasive because it does not give the hanging paragraph *any* meaning." *Id.* 13a. And the court rejected *Parks*'s attempt to rebalance the interests of creditors and debtors, noting that "Congress already balanced" those interests "in the text of BAPCPA." *Id.* 16a.

The Ninth Circuit did not limit its holding only to debtors like Ms. Saldana who had been making regular retirement contributions prior to filing for Chapter 13. In this sense, it disagreed with the Sixth Circuit that only debtors who had been making pre-petition contributions were eligible for the hanging paragraph's exclusion. *See* Pet. App. 17a-18a. That being said, the Ninth Circuit emphasized that debtors could exclude contributions only if they satisfy the Code's "good faith requirement." *Id.* 16a; *see* 11 U.S.C. § 1325(a)(3).

Judge Callahan wrote separately. She nowhere questioned that Ms. Saldana had been making pre-petition contributions that would allow her to reduce her disposable income under the Sixth Circuit's rule. So Judge Callahan did not disagree with the majority's judgment on the facts here. But she "dissent[ed] from the majority conclusion" that contributions to retirement plans generally do not "constitute disposable income in a Chapter 13 bankruptcy." Pet. App. 20a, 35a. Instead, she endorsed the Sixth Circuit's decision to "exclud[e] from a debtor's disposable post-petition income contributions to a retirement plan consistent with the debtor's

contributions for six months prior to bankruptcy." *Id.* 32a-33a (citing *Penfound v. Ruskin* (*In re Penfound*), 7 F.4th 527, 532-33 (6th Cir. 2021)).

## REASONS FOR DENYING THE WRIT

### I. Petitioner cannot show a split, let alone one meriting this Court's attention.

Petitioner claims that this case implicates a "clear, entrenched conflict." Pet. 18. Not so. Only two courts of appeals have issued precedential opinions addressing the meaning of the hanging paragraph. And they agree that debtors who were making retirement contributions prior to filing for bankruptcy can exclude their future contributions from their disposable income. If there is any disagreement at all, it would involve only an issue irrelevant to this case: whether debtors who were *not* making such pre-petition contributions can benefit from 11 U.S.C. § 541(b)(7). Petitioner's split argument is just a Trojan horse to smuggle in a merits argument in favor of a rule endorsed by precisely zero circuits.

#### A. The courts of appeals agree that debtors like Ms. Saldana may exclude continued retirement contributions from their disposable income.

1. When a debtor has been contributing to her retirement account prior to a Chapter 13 petition, the Ninth and Sixth Circuits agree that the debtor can exclude the continued contributions from her disposable income.

The Ninth Circuit squarely reached that conclusion below. Pet. App. 12a. And petitioner has

acknowledged that the Sixth Circuit is the "only" other court of appeals to have addressed in a precedential opinion whether retirement contributions can be excluded from disposable income. Petr. C.A. Br. 25. That court squarely held that "so long as those contributions [to retirement accounts] were regularly withheld from the debtor's wages prior to her bankruptcy," post-petition contributions are not disposable income. *Davis v. Helbling* (*In re Davis*), 960 F.3d 346, 357 (6th Cir. 2020). In accord with the Ninth Circuit, the Sixth Circuit would allow Ms. Saldana to exclude continued retirement contributions from her disposable income.

Underscoring the consensus among the courts of appeals, the Fourth Circuit in an unpublished, non-precedential opinion assumed that debtors who had been contributing to their retirement accounts in good faith prior to filing for bankruptcy could exclude their continued contributions from disposable income. *Gorman v. Cantu*, 713 Fed. Appx. 200, 203 (4th Cir. 2017). Ms. Saldana's case would therefore come out the same in the Fourth Circuit.

2. Petitioner tries to escape this consensus by suggesting that Ms. Saldana has acknowledged a "deep conflict among the lower courts." Pet. 7. But that conflict did not involve a disagreement among the *courts of appeals*; it involved only bankruptcy courts that disagreed with the Sixth Circuit. Even before the Ninth Circuit ruled here, "[m]ost courts ha[d] properly held that chapter 13 debtors may contribute to a retirement plan." 5 Collier on Bankruptcy ¶ 541.23[1] (16th ed. 2019). And the Ninth Circuit's decision here further cemented that consensus because it rejected the contrary decisions of bankruptcy courts within its

jurisdiction. *See infra* at 14. A declining disagreement among bankruptcy courts is hardly a basis for granting certiorari.

### B. Even in cases where a debtor has not previously contributed to a retirement plan, there may be no actual conflict between the Sixth and Ninth Circuits.

Any difference in how the Sixth and Ninth Circuits articulated their holdings may wind up having little practical effect. It is true that the Sixth Circuit excludes retirement contributions only for those Chapter 13 debtors who were contributing to their plans prior to their bankruptcy petitions, while the Ninth Circuit has not imposed an identical limitation. But the Ninth Circuit expressly held that its exclusion is limited by the statutory requirement that debtors must propose payment plans in good faith. Pet. App. 16a; 11 U.S.C. § 1325(a)(3).

This limitation may well preclude Chapter 13 debtors who were not previously making retirement contributions from excluding new contributions from their disposable income going forward.

While the Ninth Circuit has not yet applied the good-faith requirement to this specific issue, it has defined good faith in other Chapter 13 cases as requiring courts to undertake a "fact-intensive examination of the 'totality of the circumstances,'" including "the debtor's motivation and forthrightness" when "seeking relief." Pet. App. 16a-17a (quoting *Drummond v. Welsh* (*In re Welsh*), 711 F.3d 1120, 1132 (9th Cir. 2013)).

Outside the Ninth Circuit, bankruptcy courts have applied the good-faith requirement to prevent

debtors from increasing retirement contributions after filing for bankruptcy. *See, e.g.*, *In re Smith*, 2010 WL 2400065, at *3 (Bankr. N.D. Ohio June 15, 2010) (concluding that a debtor who increased retirement contributions "by *five times* on the eve of filing bankruptcy" did so in "bad faith"); *In re Huston*, 635 B.R. 164, 166, 178, 181 (N.D. Ill. 2021) (denying the debtor's "more than fivefold" increase in retirement contributions post-petition, in part because "the motivating factor [was] the diversion of plan payments from creditors rather than a legitimate need for retirement savings"). If good faith prevents debtors from increasing contributions, the same analysis may well prevent an increase from zero dollars to some other amount. The good-faith requirement thus may align the Sixth and Ninth Circuits' rules as a practical matter.

### C. No court of appeals has adopted petitioner's proposed rule.

Unable to demonstrate that Ms. Saldana would lose under any standard adopted by a court of appeals, petitioner asks this Court to adopt a new rule. She argues that debtors should never be able to "contribute to their own retirement accounts rather than pay back unsecured creditors." *See* Pet. I; *see also id.* 23-24. But both the Ninth and Sixth Circuits have squarely rejected that position. The Ninth Circuit characterized petitioner's interpretation of the Bankruptcy Code as "unpersuasive." Pet. App. 13a. It explained that petitioner's attempt (*see* Pet. 24-25) to "[l]imit[] the hanging paragraph to protect only those funds an employee contributed prepetition 'makes no sense.'" Pet. App. 14a (quoting 5 Collier on Bankruptcy

¶ 541.23[1]). Quoting the same language from *Collier*, the Sixth Circuit also rejected treating the hanging paragraph as directed at protecting funds already in a retirement account. *In re Davis*, 960 F.3d at 355.

Petitioner's sole authority for her rule is a handful of now-repudiated decisions from bankruptcy courts within the Ninth Circuit. *See Parks v. Drummond* (*In re Parks*), 475 B.R. 703, 709 (B.A.P. 9th Cir. 2012) (holding that contributions are always disposable income), *abrogated by Saldana v. Bronitsky* (*In re Saldana*), 122 F.4th 333 (9th Cir. 2024); *In re McCullers*, 451 B.R. 498, 499 (Bankr. N.D. Cal. 2011), *abrogated by Saldana*, 122 F.4th 333; *In re Prigge*, 441 B.R. 667, 677-78 (Bankr. D. Mont. 2010), *abrogated by Saldana*, 122 F.4th 333. But superseded decisions from non-precedential Article I courts do not give rise to the kind of "conflict" this Court reviews. *See* S. Ct. R. 10a.

## II. There is no reason for this Court to intervene now.

1. This case is the wrong vehicle for resolving any divergence between the Sixth and Ninth Circuits. Because Ms. Saldana made pre-petition contributions, she would prevail in both the Sixth and Ninth Circuits. *See supra* at 10-13. The arguments to the Ninth Circuit reflect this fact. Ms. Saldana argued there and in the district court that she would win under the Sixth Circuit's approach. Resp. C.A. Br. 17; Pet. App. 46a. Petitioner did not contest that point. Instead, petitioner argued for the Ninth Circuit to reject the Sixth Circuit's approach and adopt *Parks*'s rule—the only rule under which petitioner can win. Petr. C.A. Br. 14-15.

Resolving any split between the Sixth and Ninth Circuits thus will not change the outcome of this case. If a meaningful disparity between the Sixth and Ninth Circuits emerges over how to handle a debtor who proposes to begin making retirement contributions only after she has filed for bankruptcy, this Court can consider whether to grant review in a case where resolving that disagreement would be outcome-determinative.

2. Nor is there any other reason for this Court to intervene now.

a. Petitioner's own brief before the Ninth Circuit rebuts her claim that the decision below has "dramatically upend[ed] the dynamic of Chapter 13" bankruptcy. Pet. 5. As she acknowledged before the court of appeals, excluding retirement contributions from disposable income was already "the approach adopted by a majority of bankruptcy courts." Petr. C.A. Br. 22.

b. Petitioner exaggerates when she claims that the Ninth Circuit's rule leaves "billions in the aggregate at stake." Pet. 27. The only statistic that petitioner cites for this claim is that debtors annually file more than 180,000 Chapter 13 petitions nationwide (with 15,000 filed in the Ninth Circuit). *Id.* 19. But the Ninth Circuit's holding here implicates only a small fraction of those cases.

To begin, petitioner ignores that only one-third of Chapter 13 debtors even have retirement accounts. Pamela Foohey et al., *Portraits of Bankruptcy Filers*, 56 Ga. L. Rev. 573, 604 (2022). Most of those accounts are quite small, holding on average only $9,523. *Id.*

The amount at stake is further reduced by the fact that Section 541(b)(7) covers only qualified employer-provided plans. And even for those debtors who have qualified plans, the good-faith requirement might well preclude them from beginning contributions post-petition. *See supra* at 12-13.

Moreover, as a practical matter, many Chapter 13 filers will forgo making retirement contributions to focus on paying their mortgages, catching up on missed mortgage payments, and avoiding foreclosure. *See* Katherine Porter, *The Pretend Solution: An Empirical Study of Bankruptcy Outcomes*, 90 Tex. L. Rev. 103, 136-37 (2011).

Thus, the number of debtors and the amount of money at stake is far less than petitioner suggests. *Contra* Pet. 27. The fact that non-priority unsecured creditors recover little or nothing does not hinge on retirement contributions. Non-priority unsecured creditors obtain little or no recovery in the majority of Chapter 13 cases because the Code places them near the back of the line and there is not enough money to go around. *See supra* at 3.

c. Petitioner has gotten exactly backwards the reason why this issue has not previously come to the Court. *See* Pet. 21-22. If this issue really had "dramatic consequences" (Pet. 26) for trustees or creditors, then this Court would have encountered the question long ago.

Nationwide, most bankruptcy courts have taken the position the Ninth Circuit adopted here. Pet. App. 12a. Bankruptcy courts in the First, Second, Fourth, Fifth, Tenth, and Eleventh Circuits (as well as even some bankruptcy courts within the Ninth Circuit)

have had such a rule, some of them for nearly two decades.[3]

Trustees are repeat players, paid in part from debtors' plans, 11 U.S.C. § 1326(b)(2), which gives them an incentive to appeal unfavorable rules. Unsecured creditors can also be repeat players—for example, credit card companies. They too can object to Chapter 13 payment plans, *id.* § 1325(b)(1), and if their objections are rejected, they too can appeal, *see* 28 U.S.C. § 158(d)(1).

Yet trustees and unsecured creditors have not appealed rulings like the one here. Indeed, even when trustees appeal *other* aspects of a payment plan, they have declined to appeal the question presented here. Consider the trustee in *Gorman v. Cantu*, 713 Fed. Appx. 200 (4th Cir. 2017). That trustee appealed the bankruptcy court's determination that the debtor had acted in good faith when he proposed excluding a $268

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[3] For bankruptcy courts in the First Circuit, *see, e.g.*, *In re Mati*, 390 B.R. 11, 15-17 (Bankr. D. Mass. 2008); *In re Njuguna*, 357 B.R. 689, 690 (Bankr. D.N.H. 2006). For bankruptcy courts in the Second Circuit, *see, e.g.*, *In re Leahy*, 370 B.R. 620, 623-24 (Bankr. D. Vt. 2007). For bankruptcy courts in the Fourth Circuit, *see, e.g.*, *In re Cantu*, 533 B.R. 565, 575-76 (Bankr. E.D. Va. 2016). For bankruptcy courts in the Fifth Circuit, *see, e.g.*, *In re Perkins*, 2023 WL 2816687, at *5-6 (Bankr. S.D. Tex. Apr. 6, 2023); *In re Devilliers*, 358 B.R. 849, 864-65 (Bankr. E.D. La. 2007). For bankruptcy courts in the Ninth Circuit antedating this case, *see, e.g.*, *In re Anh-Thu Thi Vu*, 2015 WL 6684227, at *3-4 (Bankr. W.D. Wash. June 16, 2015). For bankruptcy courts in the Tenth Circuit, *see, e.g.*, *In re Vanlandingham*, 516 B.R. 628, 635-38 (Bankr. D. Kan. 2014). For bankruptcy courts in the Eleventh Circuit, *see, e.g.*, *In re Johnson*, 346 B.R. 256, 263 (Bankr. S.D. Ga. 2006); *see also RESFL Five, LLC v. Ulysse*, 2017 WL 4348897, at *7 (S.D. Fl. Sept. 29, 2017).

per month contribution to his government-sponsored retirement account. *See id.* at 201-02. But the trustee did *not* "seek reversal" of the bankruptcy court's adoption of the "majority approach" under which debtors can "exclude post-petition retirement contributions . . . subject to a showing of good faith." *Id.* at 203, 202.

Three possible conclusions emerge from this dearth of cases: Either (i) trustees and unsecured creditors (other than the petitioner here) have been convinced that excluding retirement contributions from disposable income is the correct legal outcome; (ii) they do not appeal this issue because it implicates immaterial amounts of money; or (iii) they decline to appeal because the issue does not implicate many people. Each conclusion belies petitioner's argument that this Court's review is "desperately warranted." Pet. 20.

But if "this situation" is truly "as urgent as it gets," Pet. 20, this Court will no doubt have ample opportunity to resolve it. Because most circuits have not yet addressed this question, this is a textbook case for further percolation.[4]

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[4] Petitioner is wrong to claim that Chapter 13 issues rarely reach the courts of appeals. *Contra* Pet. 21-22. Courts of appeals regularly decide appeals involving Chapter 13. For just a few examples from the last twelve months, see *Buscone v. Botelho* (*In re Buscone*), 133 F.4th 196 (1st Cir. 2025) (regarding the treatment of a state-court default judgment in a Chapter 13 case); *Soussis v. Macco* (*In re Soussis*), 2025 WL 1350028 (2d Cir. May 9, 2025) (addressing the fee paid to a standing trustee in a Chapter 13 bankruptcy proceeding); *In re Bravo*, 2025 WL 1135714 (3d Cir. Apr. 17, 2025) (challenging a proof of claim in a

## III. The Bankruptcy Code excludes retirement contributions like Ms. Saldana's from a debtor's disposable income.

The Ninth Circuit correctly held that Ms. Saldana is entitled to exclude her retirement contributions from her disposable income.

1. We "start, as always, with the language of the statute." *Williams v. Taylor*, 529 U.S. 420, 431 (2000) (citing *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 241 (1989)). Section 541(b)(7) identifies a category of payments whose amount "shall not constitute disposable income as defined in section 1325(b)(2)." 11 U.S.C. § 541(b)(7). That category is defined as "any amount" that is "withheld by an employer from the wages of employees for payment as contributions" to a qualified retirement plan. *Id.* As the Ninth Circuit explained, "[t]he words are plain enough. Congress declared that the referenced funds 'shall not constitute disposable income as defined in section 1325(b)(2).'" Pet. App. 10a.

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Chapter 13 proceeding); *Feyijinmi v. Md. Cent. Collection Unit*, 105 F.4th 662 (4th Cir. 2024) (deciding whether a restitution debt could be discharged in a Chapter 13 bankruptcy); *Trantham v. Tate*, 112 F.4th 223 (4th Cir. 2024) (discussing application of a local vesting rule to a Chapter 13 plan); *Bassel v. Durand-Day* (*In re Durand-Day*), 134 F.4th 846 (5th Cir. 2025) (addressing the treatment of student debt under Chapter 13 plans); *Powell v. Van Meter* (*In re Powell*), 119 F.4th 597 (9th Cir. 2024) (discussing the authority of a bankruptcy court to grant voluntary dismissal of a Chapter 13 case); *Parrott v. Neway* (*In re Parrott*), 118 F.4th 1357 (11th Cir. 2024) (discussing when a district court can dismiss a Chapter 13 appeal as a sanction for noncompliance with court rules).

Petitioner argues that the hanging paragraph's placement in Chapter 5 of the Bankruptcy Code, rather than Chapter 13, proves it can't possibly mean what it says. Pet. 25. But the hanging paragraph in Chapter 5 explicitly cross-references Chapter 13, referring to "disposable income as defined in Section 1325(b)(2)." 11 U.S.C. § 541(b)(7).

Petitioner herself recognizes that provisions need not appear in Section 1325(b)(2)—the provision defining "disposable income"—to affect that calculation. After all, the provision excluding a debtor's repayment of loans taken from a retirement account appears in Section 1322(f), which governs the "contents of [a] plan." But petitioner concedes that Section 1322(f) is "a clear exemption." Pet. 24. If that exemption is "clear," so too is the exemption in the hanging paragraph: The language in Section 1322(f) parallels almost verbatim the language in Section 541(b)(7).

Moreover, the two exemptions function identically. Repaying a retirement plan loan has the same effect as contributing to that plan. Both sorts of payments increase the net value of the participant's retirement savings and both decrease the income available to creditors in Chapter 13. Petitioner concedes that loan repayments are excluded from disposable income and offers no rationale for treating contributions differently.

Nor is the hanging paragraph unique in its placement. The Bankruptcy Code is marbled with these sorts of cross-references. For example, courts have interpreted disposable income to exclude Social Security benefits even though the relevant provision is located outside of Chapter 13. *See, e.g.*, *Mort Ranta v.*

*Gorman*, 721 F.3d 241, 250-51 (4th Cir. 2013); *Beaulieu v. Ragos* (*In re Ragos*), 700 F.3d 220, 221 (5th Cir. 2012); *Baud v. Carroll*, 634 F.3d 327, 331 (6th Cir. 2011); *Anderson v. Cranmer* (*In re Cranmer*), 697 F.3d 1314, 1315 (10th Cir. 2012). Section 1325 defines disposable income as current monthly income minus "reasonably necessary" expenses. 11 U.S.C. § 1325. Section 101(10A)(B), located in Chapter 1, in turn defines current monthly income to "exclude[]" Social Security benefits. *Id.* § 101(10A)(B)(ii)(I). Courts have thus excluded Social Security benefits from the calculation of disposable income.

To be sure, Congress's use of the conjunction "except that" at the beginning of the hanging paragraph might be "awkward, and even ungrammatical," a flaw this Court has previously recognized in the Bankruptcy Code. *See Lamie v. U.S. Trustee*, 540 U.S. 526, 534 (2004). But even so, the hanging paragraph does "not make [the statute] ambiguous on the point at issue." *Id.* As the Sixth and Ninth Circuits have explained, the Bankruptcy Code sometimes uses the conjunction "except that" to mean "moreover" or "and also." Pet. App. 15a; *Davis v. Helbling* (*In re Davis*), 960 F.3d 346, 356 (6th Cir. 2020). It makes sense to read the phrase that way here. The "except that" is designed to signify that the Code is now no longer addressing the definition of a debtor's estate but is turning instead to the definition of a debtor's disposable income.

Indeed, in explaining the amendments to Section 541, Congress treated the hanging paragraph as a straightforward addition:

> Section 323 of the Act amends section 541(b) of the Bankruptcy Code to exclude as property

> of the estate funds withheld or received by an employer from its employees' wages for payment as contributions to specified employee retirement plans, deferred compensation plans, and tax-deferred annuities. Such contributions do not constitute disposable income as defined in section 1325(b)(2) of the Bankruptcy Code.

H.R. Rep. No. 109-31 at 82 (2005).

2. Excluding retirement contributions from disposable income is also necessary to give effect to Congress's amendments to the Bankruptcy Code. Prior to BAPCPA, there was an "overwhelming consensus" among courts that retirement contributions *did* constitute disposable income because the statute was silent on the subject. Pet. App. 11a (quoting *In re Davis*, 960 F.3d at 350). Congress then substantially amended Section 541, adding Section 541(b)(7) and the hanging paragraph. *Compare* 11 U.S.C. § 541 (1990), *with* 11 U.S.C. § 541 (2018).

"When Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect." *Stone v. INS*, 514 U.S. 386, 397 (1995); *see also* Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 256-60 (2012). The most logical conclusion here is that the new language means what it says: Contributions to retirement accounts are excluded from a debtor's disposable income.

3. The preceding discussion supplies a clear meaning for the hanging paragraph. To escape that meaning without violating the rule against

surplusage, petitioner has to offer a different reading. She tries to evade the plain text and common sense by claiming that Section 541(b)(7) excludes from a debtor's disposable income only her past contributions. Pet. 25. But petitioner's various attempts to give content to that interpretation are unpersuasive.

a. Petitioner first argues that the hanging paragraph shields "amounts *withdrawn* from the existing retirement account." Pet. 26. This cannot be right. Amounts withdrawn from a retirement plan are in no sense equivalent to "such amount[s]" that were "withheld by an employer from the wages of employees." 11 U.S.C. § 541(b)(7). The amount in a retirement account consists of several different streams of funds. One stream involves money "withheld" from wages that would otherwise be paid immediately to the employee. Another includes funds contributed by the employer: Many employers match their employees' contributions with funds that are never "withheld" from wages that would otherwise go to the employee. *See* Internal Revenue Service, *Matching Contributions Help You Save More for Retirement*, https://perma.cc/WFE4-WWCP. These commingled contributions then earn interest over time. Petitioner would require debtors, trustees, and courts to trace whether a given withdrawal was originally money "withheld by an employer from the wages of an employee" and could thus be excluded from disposable income. This theory is unworkable and would do violence to the text, which says nothing about withdrawals.

b. Petitioner then claims that the hanging paragraph protects contributions that were "in transition" from the employer to the plan at the

moment the debtor filed her bankruptcy petition. Pet. 26. Notably, petitioner gives no example of what "in transition"—a phrase that appears nowhere in the text—would mean. Moreover, any amount in transition at the time a debtor files for bankruptcy would have been earned *prior* to the filing, and thus would not be disposable income in any event. So the idea that Congress included an entire provision in the Bankruptcy Code to deal with the freakishly unlikely situation in which contributions are traveling from the employer to the retirement plan at the moment of bankruptcy beggars belief. What are the chances, even in 2005, that any "amount" would find itself in this circumstance?

c. Believing the third time's the charm, petitioner finally claims that the hanging paragraph "negates any inference that amounts excluded [from the property of the estate] somehow give rise to disposable income." Pet. 26. But no one would have made that inference in the first place. Even absent the hanging paragraph, no reasonable observer would infer that amounts excluded from an estate somehow automatically become disposable income. Property of the estate is an entirely separate category from future "disposable income, which only includes income received by the debtor after the petition is filed." Pet. App. 14a (quoting 5 Collier on Bankruptcy ¶ 541.23[1] (16th ed. 2019)); *see also In re Davis*, 960 F.3d at 355. Contributions withheld from a person's wages prior to her filing for bankruptcy cannot constitute *future* disposable income. They were earned and withheld in the past. The only logical inference depends on reading "such amount" as referring to future retirement contributions—Ms. Saldana's reading.

In short, none of petitioner's interpretations give reasonable meaning to the hanging paragraph. Her theory thus runs afoul of the rule against surplusage because it "render[s] an entire subparagraph meaningless." Pet. App. 13a (quoting *Pulsifer v. United States*, 144 S. Ct. 718, 732 (2024)).

4. The exclusion of retirement contributions from disposable income correctly reflects the balance between creditors and debtors that Congress struck when it amended the Bankruptcy Code. *See In re Davis*, 960 F.3d at 356-57; Pet. App. 16a. "Protection of [r]etirement [s]avings" was a central focus of the consumer protection provisions enacted in BAPCPA. H.R. Rep. No. 109-31 at 63-64 (2005). Congress sought to "expand" the protections that had already been provided under Section 541(c)(2) as interpreted by this Court in *Patterson v. Shumate*, 504 U.S. 753 (1992). H.R. Rep. No. 109-31 at 63-64 (2005). Petitioner is "puzzl[ed]" that Congress would have amended the Bankruptcy Code to "grant a license to shield vast income from unsecured creditors." Pet. 25. However, BAPCPA is replete with provisions that safeguard retirement savings, some of which shield amounts far greater than the hanging paragraph does. Provisions in BAPCPA that safeguard retirement savings include:

- 11 U.S.C. § 101(10A)(B)(ii)(I) (excluding Social Security benefits from current monthly income).
- 11 U.S.C. §§ 522(b)(3)(C), 522(d)(12) (exempting retirement funds from the property of the estate).

- 11 U.S.C. § 522(b)(4)(A) (establishing a presumption in favor of exemption for retirement funds that have received a favorable determination from the IRS).
- 11 U.S.C. § 1322(f) (prohibiting the material alteration of the terms of a retirement plan loan and excluding loan payments from the calculation of disposable income under Section 1325).

Furthermore, reading the hanging paragraph to exclude retirement contributions withheld from a debtor's wages fully respects Congress's purpose to protect retirement savings, regardless of what type of retirement plan a debtor's employer provides.

Some types of retirement plans don't involve an employer "withholding" any money from "the wages of an employee"—think defined benefit plans (where workers don't contribute wages but instead receive a pension based on a formula). *See* U.S. Dep't of Labor, *Types of Retirement Plans*, https://perma.cc/55ZU-DXAR. A debtor whose employer provides such a plan will continue to accrue retirement savings during Chapter 13.

Other types of retirement plans don't allow an employee to stop contributing to her retirement account—think defined contribution plans pursuant to a collective bargaining agreement. *See generally* J. Mark Iwry et al., *Collective Defined Contribution Plans*, Brookings Institution (Dec. 2021), https://perma.cc/3AES-4G2Z. Those kinds of retirement contributions *can't* constitute disposable income—the employee doesn't have the option of diverting those funds to creditors. Petitioner seems to

concede as much by repeatedly qualifying the contributions that she seeks to include in disposable income as "voluntary" or "voluntarily" contributed. *See* Pet. I, 4, 5, 8-16, 19, 20, 23, 24, 26. So these debtors will also continue to accrue retirement savings while in Chapter 13.

But on petitioner's telling, Congress singled out one type of retirement plan—the type involving voluntary contributions withheld from employee wages—to be part of disposable income. And it did so by providing that "such amount," when it is withheld from an employee's wages, "shall not constitute disposable income, as defined in section 1325(b)(2)." 11 U.S.C. § 541(b)(7). That just can't be right.

Like Ms. Saldana, most workers today have this third type of plan—a defined contribution plan in which the employee voluntarily contributes a portion of her wages (often matched in some form by the employer). *See* John J. Topoleski et al., *Worker Participation in Employer-Sponsored Pensions: Data in Brief and Recent Trends*, Congressional Research Service 1, 4 (2024), https://perma.cc/S967-66WZ. Petitioner has identified no reason why Congress would have treated these debtors worse than debtors in the other two categories.

What's more, adopting petitioner's reading would not only deprive these workers of the ability to contribute to their retirement plans from their own wages. It would also mean that they would lose their employer's match throughout the duration of their Chapter 13 cases. And the employee's loss would not be the creditors' gain: The employer would simply keep the money for itself.

5. Permitting debtors to exclude continued retirement contributions from their disposable income also accords with BAPCPA's goal of reducing bankruptcy filings. Congress amended the Bankruptcy Code in response to "the increase in consumer bankruptcy filings." H.R. Rep. No. 109-31 at 2 (2005). The exclusion of retirement savings from disposable income addresses this concern. By allowing debtors to continue saving for retirement, the rule reduces the risk that debtors, once retired, will need to file a second bankruptcy petition. Social Security alone does not "guarantee economic security." Tara Twomey & Todd F. Maynes, *Protecting Nest Eggs and Other Retirement Benefits in Bankruptcy*, 90 Am. Bankr. L.J. 235, 237 (2016). Indeed, people aged sixty-five and over are the fastest growing demographic group in bankruptcy, with cases involving seniors increasing fourfold in the last two decades. Pamela Foohey et al., *Debt on the Ground: The Scholarly Discourse of Bankruptcy and Financial Precarity*, 20 Ann. Rev. L. Soc. Sci. 219, 225 (2024). Retirement savings provide seniors with an essential cushion against bankruptcy. If a debtor must postpone saving for retirement during the years of a Chapter 13 payment plan, she may find herself in retirement needing to seek relief from creditors once again.

* * *

The exclusion of retirement contributions from disposable income accords with the text of BAPCPA and Congress's express purpose in enacting the hanging paragraph. If petitioner wants to re-balance the scales between debtors and non-priority unsecured creditors, she needs to go to Congress, not this Court.

## CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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May 16, 2025

# APPENDIX

## TABLE OF CONTENTS

**APPENDIX A**

Jorden Saldana

| Name | Company | Employee ID | Pay Period Begin | Pay Period End | Check Date | Check Number |
|---|---|---|---|---|---|---|
| Jorden Saldana | | | 12/19/2021 | 01/01/2022 | 01/07/2022 | |

| | Gross Pay | Pre Tax Deductions | Employee Taxes | Post Tax Deductions | Net Pay |
|---|---|---|---|---|---|
| Current | | | | | |
| YTD | | | | | |

**Earnings**

| Description | Dates | Hours | Rate | Amount | YTD Hours | YTD Amount |
|---|---|---|---|---|---|---|
| Total Worked Hours | 12/19/2021 - 01/01/2022 | | | | | |
| Call Back FLSA | 12/19/2021 - 01/01/2022 | | | | | |
| Call Back | 12/19/2021 - 01/01/2022 | | | | | |
| Group Term Life | 12/19/2021 - 01/01/2022 | | | | | |
| On_Call | 12/19/2021 - 01/01/2022 | | | | | |
| PM_Diff Non Produ | 12/19/2021 - 01/01/2022 | | | | | |
| PM_Diff | 12/19/2021 - 01/01/2022 | | | | | |
| PTO | 12/19/2021 - 01/01/2022 | | | | | |
| Regular Work | 12/19/2021 - 01/01/2022 | | | | | |
| Voluntary Time Off | 12/19/2021 - 01/01/2022 | | | | | |
| Earnings | | | | | | |

**Employee Taxes**

| Description | Amount | YTD |
|---|---|---|
| OASDI | | |
| Medicare | | |
| Federal Withholding | | |
| State Tax - CA | | |
| CA SDI - CASDI | | |
| Employee Taxes | | |

**Pre Tax Deductions**

| Description | Amount | YTD |
|---|---|---|
| TSA Fidelity EE | 332.82 | 332.82 |
| Pre Tax Deductions | 332.82 | 332.82 |

**Post Tax Deductions**

| Description | Amount | YTD |
|---|---|---|
| Local 250 Dues (UHW) | | |
| Post Tax Deductions | | |

**Employer Paid Benefits**

| Description | Amount | YTD |
|---|---|---|
| Dental ER | | |
| LTD ER | | |
| Life ER | | |
| Medical-ER | | |
| Employer Paid Benefits | | |

**Taxable Wages**

| Description | Amount | YTD |
|---|---|---|
| OASDI - Taxable Wages | | |
| Medicare - Taxable Wages | | |
| Federal Withholding - Taxable Wages | | |

| | Federal | State |
|---|---|---|
| Marital Status | Single or Married filing separately | Single or Married (with two or more incomes) |
| Allowances | | |
| Additional Withholding | | |

**Absence Plans**

| Description | Accrued | Reduced | Available |
|---|---|---|---|
| Kronos ESL Hours | | | |
| Kronos PTO Hours | | | |

**Payment Information**

| Bank | Account Name | Account Number | USD Amount | Amount |
|---|---|---|---|---|
| | | | | |

2a

[redacted]

Jorden Saldana

| Name | Company | Employee ID | Pay Period Begin | Pay Period End | Check Date | Check Number |
|---|---|---|---|---|---|---|
| Jorden Saldana | [redacted] | [redacted] | 01/02/2022 | 01/15/2022 | 01/21/2022 | |

| | Gross Pay | Pre Tax Deductions | Employee Taxes | Post Tax Deductions | Net Pay |
|---|---|---|---|---|---|
| Current | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] |
| YTD | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] |

**Earnings**

| Description | Dates | Hours | Rate | Amount | YTD Hours | YTD Amount |
|---|---|---|---|---|---|---|
| Total Worked Hours | 01/02/2022 - 01/15/2022 | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] |
| Call Back FLSA | 01/02/2022 - 01/15/2022 | | | | | |
| Call Back | 01/02/2022 - 01/15/2022 | | | | | |
| Group Term Life | 01/02/2022 - 01/15/2022 | | | | | |
| On_Call | 01/02/2022 - 01/15/2022 | | | | | |
| PM_Diff Non Produ | 01/02/2022 - 01/15/2022 | | | | | |
| PM_Diff | 01/02/2022 - 01/15/2022 | | | | | |
| PTO | 01/02/2022 - 01/15/2022 | | | | | |
| Regular Work | 01/02/2022 - 01/15/2022 | | | | | |
| Voluntary Time Off | 01/02/2022 - 01/15/2022 | | | | | |
| Earnings | | | | [redacted] | | [redacted] |

**Employee Taxes**

| Description | Amount | YTD |
|---|---|---|
| OASDI | [redacted] | [redacted] |
| Medicare | | |
| Federal Withholding | | |
| State Tax - CA | | |
| CA SDI - CASDI | | |
| Employee Taxes | [redacted] | [redacted] |

**Pre Tax Deductions**

| Description | Amount | YTD |
|---|---|---|
| TSA Fidelity EE | 499.23 | 832.05 |
| Pre Tax Deductions | 499.23 | 832.05 |

**Post Tax Deductions**

| Description | Amount | YTD |
|---|---|---|
| Local 250 Dues (UHW) | [redacted] | [redacted] |
| Post Tax Deductions | [redacted] | [redacted] |

**Employer Paid Benefits**

| Description | Amount | YTD |
|---|---|---|
| Dental ER | [redacted] | [redacted] |
| LTD ER | | |
| Life ER | | |
| Medical-ER | | |
| Employer Paid Benefits | [redacted] | [redacted] |

**Taxable Wages**

| Description | Amount | YTD |
|---|---|---|
| OASDI - Taxable Wages | [redacted] | [redacted] |
| Medicare - Taxable Wages | | |
| Federal Withholding - Taxable Wages | | |

| | Federal | State |
|---|---|---|
| Marital Status | Single or Married filing separately | Single or Married (with two or more incomes) |
| Allowances | [redacted] | [redacted] |
| Additional Withholding | | |

**Absence Plans**

| Description | Accrued | Reduced | Available |
|---|---|---|---|
| Kronos ESL Hours | [redacted] | [redacted] | [redacted] |
| Kronos PTO Hours | | | |

**Payment Information**

| Bank | Account Name | Account Number | USD Amount | Amount |
|---|---|---|---|---|
| [redacted] | [redacted] | [redacted] | | [redacted] |