No.

In the Supreme Court of the United States

LOUIS B. BULLARD, PETITIONER

v.

HYDE PARK SAVINGS BANK, RESPONDENT

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether an order denying confirmation of a bankruptcy plan is appealable.

PARTIES TO THE PROCEEDINGS

In addition to the parties named in the caption, Carolyn A. Bankowski, Chapter 13 Trustee, was a party to the proceedings in the court of appeals.

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Louis B. Bullard respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the First Circuit.

OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a-15a) is not yet reported but is available at 2014 WL 1910868. The opinion of the bankruptcy appellate panel (App., *infra*, 18a-36a) is reported at 494 B.R. 92. The orders of the bankruptcy appellate panel denying certification to the First Circuit (App., *infra*, 16a-17a) and granting petitioner's motion for leave to appeal to the panel (App., *infra*, 37a-45a) are not reported. The opinion of the bankruptcy court (App., *infra*, 46a-75a) is reported at 475 B.R. 304.

JURISDICTION

The judgment of the court of appeals was entered on May 14, 2014. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTES INVOLVED

Pertinent portions of Sections 158 and 1291 of Title 28 of the United States Code are reprinted in the appendix to this petition. App., *infra*, 68a-71a.

STATEMENT

1. Congress designed Chapter 13 bankruptcy proceedings to enable an individual debtor with a regular income to repay creditors in installments. 7 Norton Bankr. L. & Prac. 3d § 139:13. To do so, the debtor proposes a plan to repay all or part of the money owed to his creditors over not more than three or five years, depending on the debtor's income. *Id.* The plan lists all priority and secured claims against the estate, allots a portion of the debtor's income to payment of unsecured claims on a pro rata basis, and proposes a payment schedule to satisfy those claims. 11 U.S.C. § 1322. Once the debtor makes all payments required by the plan, all unsecured debts are discharged, subject to certain limited exceptions. 11 U.S.C. § 1328(a). *See Nobleman* v. *Amer. Sav. Bank*, 508 U.S. 324, 327 (1993).

2. Petitioner, Louis Bullard, owns real property at 318 Union Street in Randolph, Massachusetts ("Property"). App., *infra*, 47a. Respondent, Hyde Park Savings Bank, holds a mortgage on the Property. *Id.* The mortgage secures a promissory note in the original

principal amount of $387,000 and with a maturity date of June 1, 2035. *Id.* at 1a.

On December 14, 2010, petitioner filed a voluntary petition for Chapter 13 bankruptcy in the United States Bankruptcy Court for the District of Massachusetts. App., *infra*, 47a. On June 17, 2011, respondent filed a proof of claim in the amount of $346,006.54. *Id.* Though petitioner and respondent presented different appraisals of the Property's value, with petitioner valuing the Property at $245,000 and respondent valuing it at $285,000, both parties agree that the Property is worth substantially less than respondent's claim. *Id.*

3. Petitioner first filed his Chapter 13 plan on December 22, 2010. Pet. C.A. App. 48. He amended the plan three times to more accurately reflect the value of the Property, the claim amount, and the terms of the mortgage; the total amount owed to unsecured creditors; his intentions with respect to the bifurcation of the claim; and consequent changes in the expected payments to unsecured creditors. *See* Mots. To Amend Chapter 13 Plan (filed Mar. 14, 2011, Oct. 6, 2011, and Jan. 17, 2012). The Third Amended Plan ("Plan"), which is the subject of this case, was filed on January 17, 2012. *See* Pet. C.A. App. 1-8.

The Plan proposed a "hybrid" payment scheme, which divided petitioner's debt into a secured claim, backed by the Property, and an unsecured claim. App., *infra*, 19a n.3. The secured claim would be valued at the then-current value of the Property, under 11 U.S.C. § 506(a). *Id.* Petitioner would continue making "monthly payments, in the same amount as called for under the note, . . . directly to [respondent]

until the secured claim was fully paid" at some time after the five-year term of the Plan. *Id.* at 20a. Because the principal value was being written down, however, the loan would mature earlier than projected under the original note. *Id.* at 20a-21a. Meanwhile, the unsecured claim, representing the "underwater" portion of the mortgage, would be paid the same pro rata share as other unsecured debts (a 5.26% "dividend") over the five-year life of the Plan and would then be discharged. Pet. C.A. App. 6.

On July 24, 2012, the bankruptcy court rejected the Plan, because it viewed a hybrid plan of this type as inconsistent with certain provisions of the Bankruptcy Code. App., *infra*, 66a. The court observed that "[s]everal bankruptcy courts in [the First C]ircuit have answered the question [*i.e.*, the validity of a hybrid plan] in the affirmative, . . . while other courts, including the . . . Ninth Circuit, have answered with a resounding 'no.'" *Id.* at 56a (footnotes and citation omitted).

4. On appeal, the bankruptcy appellate panel (BAP) affirmed. App., *infra*, 18a-36a.

a. Under 28 U.S.C. § 158(a)(1), a party may appeal "final judgments, orders, and decrees" of the bankruptcy court to the district court or BAP. The BAP ruled that the bankruptcy court's order denying confirmation of the plan was not final under Section 158(a)(1), because it left petitioner "free to propose an alternate plan." App., *infra*, 42a. The court, however, granted petitioner's motion for leave to appeal under 28 U.S.C. § 158(a)(3), which authorizes appeals "with leave of the court, from other interlocutory orders and decrees." App., *infra*, 22a, 45a.

The BAP construed Section 158(a)(3) to be informed by the standards generally governing interlocutory appeal of district court decisions under 28 U.S.C. § 1292(b). App., *infra*, 22a n.5, 42a. Applying those standards, the court held that the bankruptcy court's order denying confirmation "controls the outcome of the case because the appeal will decide whether [petitioner] can confirm a plan or dismiss his case." App., *infra*, 43a. The court also determined that there was "[s]ubstantial ground for difference of opinion" on the validity of hybrid plans, *id.*, and that the appeal thus presents a "difficult and pivotal question of law," because "[m]any courts within this circuit alone have addressed the issue" with disagreement on the outcome. *Id.* at 44a.

Finally, the BAP determined that the appeal would "[m]aterially advance the ultimate termination of the litigation," because "it appears that the Debtor is correct in suggesting that he could not realize confirmation of a subsequent amended plan." App., *infra*, 44a. Accordingly, his only option would be "to await dismissal of the case and determine whether to pursue the appeal." *Id.* Because a stay of creditors' enforcement actions might not be available at that time, "this option could potentially result in the loss of the property," which "would not only irreparably harm the Debtor but would significantly alter his incentive to pursue an appeal." *Id.* at 44a.

b. On the merits, the BAP acknowledged that "Massachusetts bankruptcy courts are split on the issue of hybrid plans," and that "[d]ecisions elsewhere are in disarray" on the issue. App., *infra*, 23a. Ulti-

mately, the BAP affirmed the bankruptcy court's decision, *id*. at 18a-36a, although its "rationale differ[ed] somewhat" from that of the bankruptcy court. *Id*. at 20a.

c. Petitioner noticed an appeal to the First Circuit. Insofar as the appeal might be viewed as interlocutory, he also requested certification of an interlocutory appeal from the BAP under 28 U.S.C. § 158(d)(2). Under that provision, the parties jointly, or the district court, bankruptcy appellate panel, or bankruptcy court, may certify that an interlocutory order "involves a question of law as to which there is no controlling decision" from a higher court, that it "involves a matter of public importance," that it "involves a question of law requiring resolution of conflicting decisions," or that "immediate appeal . . . may materially advance the progress of the case or proceeding in which the appeal is taken." 28 U.S.C. § 158(d)(2). If the court of appeals then provides authorization, appeal is permitted. Section 158(d)(2) is broader than Section 1292(b) because the standards of Section 158(d)(2) apply disjunctively rather than conjunctively and because the parties jointly may make the certification.

The BAP declined to certify the appeal to the First Circuit. App., *infra*, 17a. The BAP did not question its earlier holdings that the appeal involves a "controlling question of law . . . as to which there is substantial ground for difference of opinion" and that immediate appeal "would materially advance the ultimate termination of the litigation." *Id*. at 22a-23a n.5. Instead, it merely stated without further explanation that "[a]s the Panel has rendered its Judgment

on the year-old appeal and [petitioner] has already filed his notice of appeal to the First Circuit, the requested certification is unnecessary." *Id.* at 17a.

5. The First Circuit dismissed petitioner's appeal for lack of jurisdiction. App., *infra*, 1a-15a. The court agreed with the other courts below that "[t]he appeal presents an important and unsettled question of bankruptcy law." *Id.* at 1a; *see id.* at 4a n.1 ("a difficult, unsettled question"). Nonetheless, the court held that it lacked jurisdiction under 28 U.S.C. § 158(d)(1), which grants courts of appeals jurisdiction over only "final decisions, judgments, orders, and decrees."

The court of appeals recognized that "[t]he finality of an order denying confirmation of a reorganization plan is the subject of a circuit split." App., *infra*, 6a. In the court's view, "[w]hen a remand leaves only ministerial proceedings, for example, computation of amounts according to established formulae, then the remand may be considered final." *Id.* at 5a. But "when an intermediate appellate court remands a matter to the bankruptcy court for significant further proceedings, there is no final order." *Id.* (internal quotation marks omitted).

Applying that standard, the court noted that on remand petitioner "remains free to propose an alternative plan," although a hybrid plan would be foreclosed. App., *infra*, 7a. Creditors could object to any alternative plan, leading to further proceedings to resolve the objections. *Id.* at 8a. Because those proceedings would not be "mechanical or ministerial," the court concluded that the BAP's denial of plan confirmation was not final in this case. *Id.*

The court of appeals recognized that its holding left petitioner with the "unappealing" options of either proposing and obtaining confirmation of an unwanted plan and then appealing that ruling, or "allow[ing] his petition to be dismissed and appeal[ing] the dismissal." App., *infra*, 9a. But the court suggested that at an earlier stage "he could have sought certification and authorization to directly appeal the bankruptcy court's ruling to [the court of appeals] under 28 U.S.C. § 158(d)(2)," or, "had he chosen to take his intermediate appeal to the district court rather than the BAP, he could have sought permission to appeal the district court's interlocutory order under 28 U.S.C. § 1292(b)." *Id.* The court did not address the BAP's refusal to certify the appeal to the First Circuit under Section 158(d)(2), nor did it explain how an appeal that failed to obtain certification from the BAP under the looser, disjunctive standards of Section 158(d)(2) could have satisfied the stricter, conjunctive standards of Section 1292(b).

REASONS FOR GRANTING THE PETITION

There has been an increasingly entrenched and acknowledged conflict in the courts of appeals on the appealability of denials of plan confirmation since at least 2000, and four circuits have weighed in on the issue in the last year alone. The issue, which is exceptionally important to bankruptcy practice nationwide, is squarely presented in this case and in *Gordon* v. *Bank of America*, No. 13-1416, and it warrants this Court's review.

Despite acknowledging that the term "final" in Section 158(d)(1) requires a "flexible interpretation," App., *infra*, 5a, the court of appeals held that an order

denying confirmation is not final and appealable because such an order leaves the debtor free to propose a new plan and therefore contemplates further substantive proceedings. But the same is true of *grants* of plan confirmation, which this Court and others have uniformly held appealable. The First Circuit's holding that orders denying plan confirmation are not appealable wastes judicial resources, and it unjustifiably burdens cash-strapped debtors, who must instead pursue time-consuming, cumbersome, and uncertain avenues to obtain appellate review.

Further review of the question presented is warranted, and this case presents a sound vehicle for such review. The pending petition in *Gordon* presents the same question as does this case. Unlike in *Gordon*, where all parties have agreed that denials of plan confirmation are appealable, respondent has argued that denials of plan confirmation are not appealable. In light of the full adversary presentation in this case and other factors, the Court may wish to grant review in this case in addition to *Gordon*. If not, the petition for certiorari in this case should be held and disposed of in accordance with the Court's resolution of *Gordon*.

I. THERE IS AN ENTRENCHED SIX-TO-THREE CONFLICT IN THE CIRCUITS ON THE APPEALABILITY OF DENIALS OF PLAN CONFIRMATION

Three circuits recognize that a denial of plan confirmation, like a grant of plan confirmation, is final and appealable under settled principles of finality that have long governed bankruptcy cases. The First Circuit in this case agreed with five other circuits that

denials of plan confirmation are not appealable. Only this Court's review can resolve the conflict.

A. In Three Circuits, a Debtor May Immediately Appeal a Denial of Plan Confirmation

The Third, Fourth, and Fifth Circuits allow debtors to appeal an order denying confirmation of their plan, rather than requiring them "to suffer dismissal or to waste resources on an amended plan before obtaining appellate review." *Mort Ranta* v. *Gorman*, 721 F.3d 241, 250 (4th Cir. 2013).

1. In *Mort Ranta*, a divided panel of the Fourth Circuit held that an order denying confirmation of a Chapter 13 plan was "a final order for purposes of appeal even if the case has not yet been dismissed." 721 F.3d at 248. The court of appeals "conclude[d] that the bankruptcy court's denial of confirmation and the district court's affirmance are final orders" and that therefore "appellate jurisdiction [was] proper." *Id.* The court noted that it had long permitted *grants* of plan confirmation to be appealed by creditors or trustees, and "[b]y the same token, we have a long history of allowing appeals from debtors whose plans are *denied* confirmation." *Id.* at 245. Recognizing that the issue "has divided other circuits," the court concluded that "the bankruptcy court's denial of [the debtor's] proposed plan and the district court's affirmance are final orders for purposes of appeal." *Id.* at 246.

The court acknowledged that some other courts had treated denial of plan confirmation as nonfinal because "the debtor may propose an amended plan before the case is dismissed" on remand. 721 F.3d at

247. But the court noted that "the same can be said of a confirmation order," because "[e]ven after a plan is confirmed, the debtor is always free to propose a modification to the plan, which could substantially modify the terms of repayment and the rights of creditors." *Id.* at 248. Yet confirmation orders have always been held appealable. *See*, *e.g.*, *United Student Aid Funds, Inc.* v. *Espinosa,* 559 U.S. 260, 269 (2010).

The court also explained that "a contrary rule could leave some debtors 'without any real options.'" 721 F.3d at 248 (quoting *In re Bartee*, 212 F.3d 277, 283 (5th Cir. 2000)). Without the ability to appeal, the debtor would be "forced to 'choose between filing an unwanted or involuntary plan and then appealing his own plan, or dismissing his case and then appealing his own dismissal.'" *Id.* (quoting *Bartee*, 212 F.3d at 283). Filing an involuntarily amended plan "would waste 'valuable time and scarce resources,'" *id.* (quoting *McDow* v. *Dudley*, 662 F.3d 284, 287 (4th Cir. 2011)), and "the procedural oddity of allowing a debtor to appeal the confirmation of his or her own proposed plan raises questions regarding standing." *Id.* at 248 n.10. The alternative of dismissal risks losing the automatic stay that protects the debtor's estate and could "preclude[] [the debtor] from filing another bankruptcy petition for six months." *Id.* at 248. The court concluded that "as a practical matter, it makes little sense to deny debtors immediate appellate review simply because the case has not yet been dismissed and the debtor could propose an amended plan." *Id.*

2. In *Bartee*, the Fifth Circuit similarly held that a denial of confirmation of a Chapter 13 plan was appealable, because it "conclusively determined the substantive rights at issue and ended the dispute" over them. 212 F.3d at 283-84. The court explained that a bankruptcy court order is final and appealable if it is "a 'final determination of the rights of the parties to secure the relief they seek,' or a final disposition 'of a discrete dispute within the larger bankruptcy case.'" *Id*. at 282; *see also id.* at 283 ("final denial of the relief sought by the debtor"). Thus, because the record did "not contain any indication that the bankruptcy court intended to take any further action on the objection to the claim or the objection to confirmation," *id*. at 283, the court held that its order was final and appealable. *Id*. at 284; *see also In re Crager*, 691 F.3d 671, 675 (5th Cir. 2012) (holding that a denial of plan confirmation that finally resolves "a discrete dispute" is final and appealable).

The Fifth Circuit viewed its conclusion as "all but compelled by considerations of practicality," because without a right to appeal, "the debtor is left without any real options in formulating his plan." 212 F.3d at 283. The court recognized that other courts of appeals had held that denials of plan confirmation were not appealable. *Id*. at 282 n.6. But the court explained that it had "long rejected adoption of a rigid rule that a bankruptcy case can only be appealed as a single judicial unit at the end of the entire bankruptcy proceeding." *Id*. at 282 (internal quotation marks omitted). Indeed, "[s]eparate and discrete orders in many bankruptcy proceedings determine the extent of the bankruptcy estate and influence creditors to expend or not to expend effort to recover monies due them."

Id. at 282-83 (quoting *England* v. *FDIC*, 975 F.2d 1168, 1171 (5th Cir. 1992)). Reversing such orders only after the termination of the entire case "would waste exorbitant amounts of time, money, and labor." *Id.* at 283 (quoting *England*, 975 F.2d at 1171).

3. In *In re Armstrong World Indus.*, 432 F.3d 507, 511 (3d Cir. 2005), a divided panel of the Third Circuit held that a denial of confirmation of a Chapter 11 plan was appealable. The court explained that "[b]ecause bankruptcy proceedings are often protracted, and time and resources can be wasted if an appeal is delayed until after a final disposition," it had recognized the "policy . . . to quickly resolve issues central to the progress of a bankruptcy." *Id.* To determine whether the denial of confirmation was final and appealable, the court applied a four-factor test that considers "(1) the impact on the assets of the bankruptcy estate; (2) the need for further fact-finding on remand; (3) the preclusive effect of a decision on the merits; and (4) the interests of judicial economy." *Id.*

Under that test, appeal would be permitted here. Denial of confirmation will have an impact on the assets of the bankruptcy estate because, if no other plan is confirmable, petitioner will be forced to accept a dismissal as the price of appeal. *See* App., *infra*, 44a. There is no need for further fact-finding on remand, because the dispute over the validity of the hybrid plan is purely a matter of law. The appeal here, like the one in *Armstrong*, "would require [the appellate court] to address a discrete question of law that would have a preclusive effect on certain provisions of the Plan." 432 F.3d at 511. Finally, either of the alterna-

tives to permitting appeal now—appealing confirmation of a later, undesired plan or appealing a dismissal now—would be inefficient and wasteful, and would possibly still fail to bring the issue to the appellate court.

B. Six Circuits Require Debtors to Propose Plans They Do Not Want or Incur Dismissal in Order to Obtain Review

Six circuits hold that an order denying plan confirmation is not appealable.

1. In *Maiorino* v. *Branford Savings Bank*, 691 F.2d 89 (2d Cir. 1982), a divided panel of the Second Circuit held that an "order denying confirmation of the proposed [Chapter 13] plan is interlocutory only and hence not appealable," because "for all we know, the bankruptcy court may very well confirm another plan" that does not include the contested provision. *Id.* at 90-91. In *In re Flor*, 79 F.3d 281, 283 (2d Cir. 1996), the Second Circuit later acknowledged that "the concept of 'finality' is more flexible in the bankruptcy context than in ordinary civil litigation." Nonetheless, *Flor* too held that the mere fact that it "cannot rule out the possibility that an alternate plan may be confirmed" precluded appeal of a denial of plan confirmation. *Id.*

2. The Sixth Circuit has also held that "a decision rejecting . . . confirmation [of a] plan is not a final order appealable under" 28 U.S.C. § 158(d)(1). *In re Lindsey*, 726 F.3d. 857, 859 (6th Cir. 2013). In *Lindsey*, the debtor's Chapter 11 plan had been denied on the ground that it violated the absolute-priority rule.

The Sixth Circuit held that the debtor could not appeal unless the remaining proceedings would be "of a ministerial character." *Id.* at 859 (quoting *Settembre* v. *Fid. & Guar. Life Ins. Co.*, 552 F.3d 438, 442 (6th Cir. 2009)). Because the debtor in *Lindsey* could propose a new plan, to which the creditors could object, the remand involved "[f]ar more than a few ministerial tasks[.]" *Id.* The Sixth Circuit noted that it "join[ed] four other circuits" that at that time did not permit appeals of denials of plan confirmation, while "[t]hree other circuits have gone the other way." *Id.* at 859-860.

3. The Eighth Circuit too has held that "a bankruptcy court order that 'neither confirms a plan nor dismisses the underlying petition, is not final.'" *In re Pleasant Woods Assocs. Ltd. P'ship*, 2 F.3d 837, 838 (8th Cir. 1993) (quoting *Lewis* v. *United States*, 992 F.2d 767, 772 (8th Cir. 1993)). The court of appeals concluded that because "the bankruptcy court has remaining tasks that are not purely mechanical or ministerial, such as considering any amended plan that may be proposed, or determining how to dispose of the case if no confirmable plan is proposed," the denial of plan confirmation was not appealable. *Id.*; *accord In re Fisette*, 695 F.3d 803, 805-06 (8th Cir. 2012).

4. In *In re Lievsay*, 118 F.3d 661, 662 (9th Cir. 1997), both parties argued that the Ninth Circuit had jurisdiction of an appeal from a denial of plan confirmation. The Ninth Circuit, however, rejected the parties' arguments, categorically holding that "a bankruptcy court's decision denying confirmation of a Chapter 11 plan is interlocutory." In reaching that

conclusion, the court cited *Flor*, *Pleasant Woods*, and the Tenth Circuit's decision in *Simons*. *Id.*

5. In *In re Gordon*, 743 F.3d 720 (10th Cir. 2014), *petition for cert. filed*, No. 13-1416 (May 21, 2014), the Tenth Circuit reaffirmed its earlier determination in *In re Simons*, 908 F.2d 643 (10th Cir. 1990), that a district court's decision "rejecting confirmation of a reorganization plan and remanding the case to the bankruptcy court in order to enable debtors to seek confirmation of a new plan . . . was not a final decision appealable under §158(d)(1)" to the court of appeals. 743 F.3d at 723. The court noted that its rule "is contrary to the law of some other circuits," explaining that while it agreed with *Lindsey*, *Pleasant Woods*, and *Maiorino*, it disagreed with *Mort Ranta*, *Armstrong*, and *Bartee*. *Id.* at 724 n.2.

6. The First Circuit in this case also held that "[a]n order of an intermediate appellate tribunal [*i.e.*, a district court or bankruptcy appellate panel] affirming the bankruptcy court's denial of confirmation of a reorganization plan is not a final order so long as the debtor remains free to propose an amended plan." App., *infra*, 7a. The court recognized that "[t]he finality of an order denying confirmation of a reorganization plan is the subject of a circuit split." *Id.* at 6a. It aligned the circuits exactly as set forth above, *id.*, and it extensively discussed the opposing views of the Sixth Circuit in *Lindsey* and the Fourth Circuit in *Mort Ranta*. *Id.* at 7a n.5, 8a, 10a, 13a-14a.

The court of appeals stated in a footnote that "[t]he analysis may differ in certain circumstances where the bankruptcy court confirmed a plan and the BAP or district court reversed," as occurred in *Gordon*.

App., *infra*, 14a n.9. But no other court has suggested that the analysis differs depending on whether the bankruptcy court initially confirmed or refused to confirm the plan, and the First Circuit appears not to have intended to make any such general distinction. Instead, in each of the cases the court cited in its discussion, *Bourne* v. *Northwood Properties*, 509 F.3d 15 (1st Cir. 2007), and *Prudential Ins. Co.* v. *SW Boston Hotel Venture*, 748 F.3d 393 (1st Cir. 2014), there was a discrete issue separate from, but crucial to, plan confirmation as to which the court held that appeal was proper. In each case, the First Circuit first decided that discrete, appealable issue. It then went on to reverse the intermediate appellate court's holding that the plan could not be confirmed, on the ground that the ruling on the separate issue "eviscerated [the] entire premise" of the intermediate court's denial of plan confirmation "and left only ministerial tasks for the bankruptcy court." App., *infra*, 14a n.9. If the only possibly appealable issue is the denial of plan confirmation, the First Circuit appears to squarely take the position that no appeal is permitted.

C. The Conflict Is Entrenched and Warrants Review

In the last year alone, four courts (the First Circuit here, the Fourth Circuit in *Mort Ranta*, the Sixth Circuit in *Lindsey*, and the Tenth Circuit in *Gordon*) have addressed the question presented and come to conflicting conclusions. The courts of appeals have repeatedly acknowledged the conflict and expressly addressed the rationales offered by sister circuits. *See Mort Ranta*, 721 F.3d at 246; *Bartee*, 212 F.3d at 282

n.6; *Lindsey*, 726 F.3d at 859-861; *Gordon*, 743 F.3d at 724 n.2; App., *infra*, 6a, 7a n.5, 10a-11a. The conflict extends to both Chapter 11 and Chapter 13 cases, and no court has distinguished between them in considering the appealability of plan denials. Only this Court's review can resolve the conflict.

II. DENIALS OF PLAN CONFIRMATION ARE FINAL AND APPEALABLE

Denials of plan confirmation are final decisions subject to appeal. A long line of decisions has established that finality in bankruptcy is a broader concept than finality in ordinary civil litigation. Congress recognized that principle when it enacted 28 U.S.C. § 158(d)(1), the statute specifically addressing bankruptcy appeals, whose terms ("final decisions, judgments, orders, and decrees") are significantly broader than the terms ("final decisions") of 28 U.S.C. § 1291, which authorizes appeals from district court in *all* cases. Unlike other forms of litigation, bankruptcy proceedings in successful Chapter 13 cases ordinarily continue for three or five years before the court issues a single, final judgment that terminates the case (*i.e.*, the debtor's discharge). Yet no court has suggested that all appeals in bankruptcy cases must wait until that time.

Precluding appeals from denials of plan confirmation could insulate a host of potential legal errors from review and harm debtors. A debtor would be able to obtain review only by invoking a cumbersome and doubtful appeal-your-own-plan procedure or an equally difficult procedure in which the debtor would move for a voluntary dismissal and then appeal from the grant of the debtor's own motion. Either of those

avenues prolongs the appeals process to the detriment of cash-strapped debtors, as well as creditors who also have a vital interest in avoiding waste of the limited resources available in the bankruptcy estate. Moreover, the very rationale that would preclude appeal of *denials* of plan confirmation would require reversal of the long-settled rule that *grants* of plan confirmation are appealable, since grants of plan confirmation also contemplate further proceedings on the merits of the bankruptcy case.

A. Some Orders in Bankruptcy Cases Are Final and Appealable Long Before the Bankruptcy Proceeding is Completed

"Virtually all decisions agree that the concept of finality applied to appeals in bankruptcy is broader and more flexible than the concept applied in ordinary civil litigation." 16 Wright & Miller, Federal Practice & Procedure § 3926.2, at 270 (2d ed. 1996).[1] *Accord* App., *infra*, 5a. In ordinary civil cases, a final, appealable judgment is one that "ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." *Catlin* v. *United States*, 324 U.S. 229, 233 (1945). Orders in bankruptcy, however, are

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[1] The courts of appeals have uniformly accepted that "[b]ecause bankruptcy proceedings often continue for long periods of time, and discrete claims are often resolved at various times over the course of the proceedings, the concept of finality that has developed in bankruptcy matters is more flexible than in ordinary civil litigation." *In re Chateaugay Corp.*, 880 F.2d 1509, 1511 (2d Cir. 1989); *see, e.g.*, *Ritchie Special Credit Investments, Ltd.* v. *U.S. Trustee*, 620 F.3d 847, 852 (8th Cir. 2010); *In re Oakley*, 344 F.3d 709, 711 (7th Cir. 2003); *In re Millers Cove Energy Co., Inc.*, 128 F.3d 449, 451 (6th Cir. 1997); *Lewis*, 992 F.2d at 772; *In re Taylor*, 913 F.2d 102, 104 (3d Cir. 1990).

considered final for purposes of appeal where "they finally dispose of *discrete disputes within the larger case*," even though there may be more left for the bankruptcy court to do. *In re Saco Local Dev. Corp.*, 711 F.2d 441, 444 (1st Cir. 1983) (Breyer, J.). This broader concept of finality in bankruptcy proceedings is supported by the language of the governing statutes, as well as by this Court's holdings and the actual practice of the lower courts.

1. Sections 1291 and 158(d)(1) of Title 28 each independently authorize appeal of bankruptcy cases. *Connecticut Nat. Bank* v. *Germain*, 503 U.S. 249, 253 (1992). Section 1291 provides general authority for appeals of "final decisions of district courts" in bankruptcy and other cases. Section 158(d)(1), however, authorizes appeal in broader terms, providing for appeal from "final decisions, judgments, orders, and decrees" of district courts and of bankruptcy appellate panels. Congress's use of a broader phrase in the provision expressly addressed to bankruptcy appeals—which contains several, sometimes overlapping components ("final decisions, *judgments, orders, and decrees*")—demonstrates a broader notion of finality in bankruptcy and a broader array of judicial actions subject to appellate review.

Moreover, the term "order" in Section 158(d)(1) specifically encompasses a broader array of judicial acts than the term "decision" found in both statutes. A "decision" is "[a] judicial or agency determination after consideration of the facts and law." Black's Law Dictionary 467 (9th ed. 2009). An "order," however, "generally embraces final decrees as well as interlocutory directions or commands" and is defined more

broadly as "'the mandate or determination of the court upon some subsidiary or collateral matter arising in an action, not disposing of the merits, but adjudicating a preliminary point or directing some step in the proceedings.'" *Id.* at 1206 (quoting 1 Henry Campbell Black, A Treatise on the Law of Judgments § 1, at 5 (2d ed. 1902)). Congress's extension of appeal rights to final "orders," in addition to "decisions," in bankruptcy cases reflects its determination that appellate review should be available on a broader basis in bankruptcy than in other civil proceedings.

2. This Court's decisions confirm that the nature of bankruptcy proceedings warrants greater availability of appellate review than in other civil cases. Long before the modern Bankruptcy Code, this Court, in *Forgay* v. *Conrad*, 47 U.S. 201 (1848), allowed an appeal from an order requiring the transferee of certain fraudulently transferred assets to deliver them to the bankruptcy trustee. Further proceedings to assess the accounts and rents on the transferred assets still remained, and therefore even the narrow dispute between the trustee and the transferee that was part of the bankruptcy case had not been finally resolved. *Id.* at 203. But the Court held that appeal was nonetheless proper. *Id.* at 204.

Under the current Bankruptcy Code, this Court in *Howard Delivery Service, Inc.* v. *Zurich American Insurance Co.*, 547 U.S. 651 (2006), held that denial of priority status to a claim holder in bankruptcy was a final decision subject to appeal. While that ruling was just a step in the bankruptcy proceeding, the Court noted that it "effectively concluded the dispute between [the debtor] and [the particular creditor]" as a

practical matter. *Id.* at 657 n.3. The Court in *Howard Delivery* relied on then-Judge Breyer's opinion for the First Circuit in *Saco*, which explained that "Congress has long provided that orders in bankruptcy cases may be immediately appealed if they finally dispose of *discrete disputes within the larger case*—and in particular, it has long provided that orders finally settling creditors' claims are separately appealable." *Howard Delivery*, 547 U.S. at 657 n.3 (quoting *Saco*, 711 F.2d at 444).

3. The very nature of bankruptcy cases supports a broader rule of appealability than in other civil cases. Ordinary civil litigation usually ends with a single, final judgment that is relatively easy to identify and that terminates the proceedings on the merits. *Cf.* Fed. R. Civ. P. 58(a) (requiring that "[e]very judgment . . . must be set out in a separate document"). By contrast, the "merits" of a bankruptcy case are not finally decided until the court conclusively determines what property belongs to the estate, how that property will be distributed among the debtor and various claimants and interest holders, and whether the debtor is, in the end, entitled to a discharge. In a successful Chapter 13 case, the court does not grant such a discharge until the debtor has made all required payments, usually for a period of three or five years. 11 U.S.C. § 1328(a); *see United Student Aid Funds*, 559 U.S. at 264. By that time, the debtor's payments have been distributed to creditors in a process that would be difficult to undo, and a host of other disputes among a variety of parties has been resolved. It would be absurd to contend that all appeals in Chapter 13 cases must wait until the end of that three- or five-year period, and no court has so held.

B. Orders Denying Plan Confirmation Are Appealable

Orders finally denying confirmation of a given plan, like orders finally granting plan confirmation, are appealable. They finally resolve a discrete dispute that frequently is decisive for the balance of the bankruptcy case. The debtor should not have to engage in a cumbersome and doubtful procedural maneuver to obtain appellate review of a plan denial. Such a requirement places an unjustifiable hurdle in the paths of debtors and may effectively preclude their ability to obtain *any* review of meritorious claims.

1. As a practical matter, precluding appeals of denials of plan confirmation would likely foreclose review of some legal errors altogether. Under the First Circuit's rule, a debtor would have only two ways to obtain appellate review as of right of the denial of plan confirmation. The debtor could move for confirmation of an amended plan that does not include the supposedly offending provision (if such a plan is available) and then appeal the bankruptcy court's grant of the debtor's own motion to confirm. Alternatively, the debtor could dismiss the case and appeal his own voluntary dismissal. As the Fifth Circuit recognized in *Bartee*, however, both choices are "fraught with unintended inefficienc[y] . . . and other appellate pitfalls." 212 F.3d at 282 n.6; *see also* 13-1416 Br. Amici Curiae of Public Citizen and the Nat'l Ass'n of Consumer Bankruptcy Attys. 7-9.

Requiring the debtor to move for confirmation of an alternative plan (if one is available) and then seek to appeal the court's grant of the debtor's own motion

poses particular obstacles. Functionally, it may take months for a new, less attractive plan to be confirmed and then appealed; even if successful, the appeal could vindicate the debtor's legal position only "long after the [denied] plan c[ould] be revived." *Maiorino*, 691 F.2d at 95 (Lumbard, J., dissenting).[2] Moreover, the extra costs of filing a new plan and appealing confirmation of that plan would preclude many debtors from bringing meritorious challenges to faulty decisions; after all, debtors by definition are likely to be short of funds and therefore reluctant or unable to appeal. Finally, allowing the debtor to appeal a plan adopted on the debtor's own motion is in tension with the underlying principle that "a party may not appeal from a judgment or decree in his favor, for the purpose of obtaining a review of findings he deems erroneous which are not necessary to support the decree." *Elec. Fittings Corp.* v. *Thomas & Betts Co.*, 307 U.S. 241, 242 (1939); *see Deposit Guar. Nat'l Bank, Jackson,*

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[2] In the Chapter 11 context, there is a risk that the appeal-your-own-plan stratagem would be completely unavailable under the doctrine of "equitable mootness." As the Fifth Circuit has explained, equitable mootness is based on "a recognition by the appellate courts that there is a point beyond which they cannot order fundamental changes in reorganization actions." *In re Manges*, 29 F.3d 1034, 1039 (5th Cir. 1994). Accordingly, "a reviewing court may decline to consider the merits of a confirmation order when there has been substantial consummation of the plan such that effective judicial relief is no longer available—even though there may still be a viable dispute between the parties on appeal." *Id.* Under any of the various standards by which courts of appeals have applied equitable mootness, the execution of a confirmed plan could operate to preclude appeal by a debtor seeking to change or revoke a plan on the ground that an earlier plan should have been confirmed.

Miss. v. *Roper*, 445 U.S. 326, 333 (1980); *Mort Ranta*, 721 F.3d at 248 n.10.

Similarly, voluntary dismissal, which would be necessary if no other confirmable plan were available or acceptable to the debtor, could cause the debtor to lose the benefit of the automatic stay, which prohibits creditors from acting to collect debts owed from the property held by the debtor or the estate. *See* 11 U.S.C. § 362(c)(2)(B). Loss of that protection could in turn change the debtor's financial circumstances substantially, favor certain creditors over others, and undermine the very purpose of filing for bankruptcy. *See* 1 Collier on Bankruptcy ¶ 1.05[1], p. 1-19 (16th ed. 2013). The dismissal could also jeopardize the debtor's ability to file a subsequent petition. *See* 11 U.S.C. § 109(g)(2) (providing that no person may be a debtor within 180 days of voluntary dismissal of his petition following a creditor's request for relief from the automatic stay).

2. This Court held in *United Student Aid Funds*, 559 U.S. at 269, that a *grant* of plan confirmation is appealable as of right. There is no basis to treat a *denial* of plan confirmation—which may raise precisely the same issue at the same stage of litigation—any differently.

a. The court of appeals rested its conclusion that a denial of plan confirmation is not final on the principle that when an intermediate appellate court (district court or BAP) "remands a matter to the bankruptcy court for significant further proceedings, there is no final order for purposes of § 158(d)," while "[w]hen a remand leaves only ministerial proceedings, for example, computation of amounts according

to established formulae, then the remand may be considered final." App., *infra*, 5a. In this case, petitioner remained free after remand to file a new plan, which could be subject to further objections whose validity the bankruptcy court would then have to determine. *Id*. at 8a. The First Circuit believed that, because the remand thus contemplated future litigation and judicial determinations that are not "mechanical or ministerial," the BAP's decision was not final. *Id.*

The court of appeals' reasoning, however, applies equally to *grants* of plan confirmation, which also are usually followed by "significant further proceedings" that are neither "mechanical" nor "ministerial." "[T]he confirmation of the plan is often just the first step toward finalization of the case. There are always issues to be resolved through additional litigation, such as avoidance actions, claims allowance, compliance with or consummation of the plan, and interpretation and enforcement of the rights created under the plan." Rhett G. Campbell, *Issues in Litigation*, 1 J. Bankr. L. & Prac. 94, 94 (1991). All of those issues can lead to "significant further proceedings" after confirmation whose resolution is in no sense "mechanical or ministerial." App., *infra*, 8a.[3] The conclusion is inescapable that, under the court of appeals' reasoning,

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[3] Under 11 U.S.C. § 1329(a), debtors, creditors, or the trustee in a Chapter 13 case may seek to modify a confirmed plan. Additionally, the debtor receives no discharge of debts until all plan payments have been made, which will ordinarily occur three to five years after plan confirmation. *See* pp. 22-23, *supra*. Even after plan confirmation, if the debtor fails to make payments, a court may dismiss or convert a case and reinstate creditors' claims to their original amounts. Charles Tabb, The Law of Bankruptcy 1274-75 (2d ed. 2009); 11 U.S.C. § 1307(c)(6).

a *grant* of plan confirmation is nonfinal and nonappealable. That conclusion is directly contrary to this Court's holding in *United Student Aid Funds* (and the uniform view of the lower courts) that grants of plan confirmation *are* appealable.

b. The claims process in typical Chapter 13 cases illustrates that point, since it usually occurs *after* plan confirmation. Unsecured creditors in all bankruptcy cases must file proofs of claim in order to receive payments from the estate. Fed. R. Bankr. P. 3002(a). A debtor who disagrees with the creditor's submission must object, and the bankruptcy court must resolve the dispute, often in an adversary proceeding. 11 U.S.C. § 502. Such claims-related proceedings can be heavily contested and in no sense mechanical or ministerial, but the preceding plan confirmation is nonetheless appealable.

Claims proceedings in a Chapter 13 case ordinarily take place *after* plan confirmation. Within fourteen days of filing a Chapter 13 petition, the debtor must propose a plan. Fed. R. Bankr. P. 3015(b). The United States Trustee then schedules a meeting of creditors, between 21 and 50 days after the petition is filed. Fed. R. Bankr. P. 2003(a). But while the court has 45 days after that meeting to hold a confirmation hearing on the debtor's proposed plan, 11 U.S.C. § 1324, creditors have 90 days after the meeting to file their proofs of claim against the debtor's estate. Fed. R. Bankr. P. 3002(c).

In this case, the confirmation process was extended by the need to file amended plans, so it occurred after the claims process had been completed. But "because of the expedited confirmation process in

Chapter 13 cases, claims litigation almost always postdates confirmation." *In re Duggins*, 263 B.R. 233, 236 (Bankr. C.D. Ill. 2001); *see In re Gordon*, 471 B.R. 614, 619 (D. Colo. 2012), *vacated on other grounds*, 743 F.3d 720 (10th Cir. 2014), *petition for cert. filed*, No. 13-1416. The fact that the claims process (and other further substantive proceedings) will usually occur after plan confirmation does not preclude appeal of an order confirming a plan, and it should not preclude appeal of an order denying plan confirmation either.

c. Treating denials of plan confirmation as nonfinal also has significant and unfortunate consequences for the development of bankruptcy law. In Chapter 13 cases, only debtors may propose plans. *See* 11 U.S.C. § 1321.[4] A rule that debtors are precluded from appealing denials of plan confirmation, while grants of plan confirmation are appealable as of right, *see United Student Aid Funds*, 559 U.S. at 269, creates an unfair asymmetry. In addition, such disparate treatment may ultimately lead to the development of bankruptcy precedents only through creditors' appeals, which may predictably result in a pro-creditor bias in bankruptcy law.

3. Finally, the existence of a mechanism for certified interlocutory appeals in 28 U.S.C. § 158(d)(2) (or in the narrower 28 U.S.C. § 1292) does not affect the

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[4] While the Bankruptcy Code provides that in Chapter 11, parties other than the debtor—namely "[a]ny party in interest"—"may file a plan" under certain circumstances, 11 U.S.C. § 1121(c), in fact the Chapter 11 plan is "typically proposed by the debtor." *RadLAX Gateway Hotel, LLC* v. *Amalgamated Bank*, 132 S. Ct. 2065, 2069 (2012).

availability of an appeal as of right from the denial of plan confirmation. See pp. 6-7, *supra*. Although the certified-appeal mechanism of Section 158(d)(2) provides a useful safety valve to permit appeals in appropriate cases, it is highly restricted as compared to appeals as a matter of right. This Court has recognized that certified interlocutory appeals were generally designed to be "exceptional." *Caterpillar Inc.* v. *Lewis*, 519 U.S. 61, 74 (1996) (quoting *Coopers & Lybrand* v. *Livesay*, 437 U.S. 463, 475 (1978)). When, as here, appeal of a bankruptcy court decision goes to a bankruptcy appellate panel rather than a district court, it is uncertain whether Section 158(d)(2) even provides authorization for a subsequent interlocutory appeal to the court of appeals. *See* App., *infra*, 4a n.3. Moreover, Section 158(d)(2) provides no help in cases that do not satisfy its standards, nor does it substitute for appeal of right in cases in which the debtor is simply unable to convince his adversaries or the courts involved that the case satisfies Section 158(d)(2)'s standards.

Indeed, in this case, the BAP certified the appeal from the bankruptcy court on the ground that "the Debtor has established the criteria for interlocutory review under 28 U.S.C. § 158(a)(3)" for appeal to it. App., *infra*, 45a. In making that determination, the court agreed with petitioner that the appeal here "controls the outcome of the case," *id.* at 43a, and that it "presents a difficult and pivotal question of law," *id.* at 44a. The BAP noted that "[m]any courts within this circuit alone have addressed the issue," and that "their conclusions are not unanimous and . . . this issue continues to be raised." *Id.* at 44a. As the BAP

explained, petitioner may not be able to obtain confirmation of another plan, and requiring petitioner to await a dismissal and then appeal "could potentially result in the loss of [his] property" if he cannot obtain a stay. *Id.* That "would not only irreparably harm [petitioner] but would significantly alter his incentive to pursue an appeal." *Id.* Yet, although those findings would be ample to support interlocutory appeal under Section 158(d)(2), the BAP inexplicably declined to certify such an appeal. *See id.* at 16a-17a.

III. THE ISSUE IS IMPORTANT AND SQUARELY PRESENTED

The question whether a debtor can appeal the denial of a proposed bankruptcy plan is vitally important to debtors and creditors. That issue, which is also presented in *Gordon* v. *Bank of America*, No. 13-1416, was the sole basis for the First Circuit's decision in this case. In their amicus brief in *Gordon*, Public Citizen and the National Association of Consumer Bankruptcy Attorneys note (at Br. 3 n.2) that both cases present appropriate vehicles to resolve this important issue. This case arises in a context in which the Court would have the benefit of a full adversarial presentation.

1. For at least a century, this Court has noted the role of the bankruptcy system in getting people back on their feet promptly and fairly. *See Williams* v. *U.S. Fid. & Guar. Co.*, 236 U.S. 549, 554-55 (1915). More recently, this Court has emphasized the need to "facilitate the expeditious and final disposition of assets, and thus enable the debtor (and the debtor's creditors) to achieve a fresh start." *Schwab* v. *Reilly*, 560 U.S. 770, 793-94 (2010).

The rule embraced by the First Circuit will impede resolution of bankruptcy proceedings by barring immediate appeal when a plan is rejected. That rule forces cash-poor debtors to pursue a complicated, lengthy, and expensive litigation strategy if they want to obtain review of the legal rulings leading to the denial.

2. Barring appeals at the time a bankruptcy plan is rejected can lead to ongoing uncertainty in the law. This case is a prime example. The First Circuit began its opinion by noting that "[t]his appeal presents an important and unsettled question of bankruptcy law" regarding the validity of hybrid plans. App., *infra*, 1a; *see id.* at 4a n.1 ("a difficult unsettled question that [the court] ha[s] not previously addressed."). The BAP agreed, as did the bankruptcy court. *See* pp. 4, 5, *supra*. Yet the First Circuit was unable to resolve that important question (and may have difficulty resolving the issue in future cases) because of its holding that denials of plan confirmation are not appealable.

Indeed, many of the cases in the courts of appeals cited above similarly involved pure issues of law on which authority is split. In circuits permitting appeal of denials of plan confirmation, the appellate courts were able to resolve the issue, to the benefit of the parties to the case and other future cases. For example, on review of denial of plan confirmation in *Mort Ranta*, the Fourth Circuit reversed a bankruptcy court decision on whether social security payments could be included in income. It thereby set the case on proper footing on an issue of law that has arisen

elsewhere, with conflicting results.[5] *Mort Ranta*, 721 F.3d at 253-54. Similarly, the Fifth Circuit in *Bartee* noted the "magnitude and evenness of the split in authority, . . . extend[ing] to the leading bankruptcy treatises," on the "cramdown" issue before it, but it was able to resolve the issue on appeal of the denial of plan confirmation. 212 F.3d at 289. Those decisions each facilitated resolution of the case, while providing guidance on the issue for the district and bankruptcy courts in the circuit.

On the other hand, *Flor* involved "a disputed issue that [wa]s a question of first impression" and that was left unresolved by the Second Circuit's refusal to review the denial of plan confirmation. 79 F.3d at 284. The Sixth Circuit in *Lindsey* rejected an appeal of denial of plan confirmation on an issue regarding the absolute priority rule, 726 F.3d at 858—an issue on which courts had expressed opposing views that had been canvassed by the bankruptcy court in that case. *In re Lindsey*, 453 B.R. 886, 903 (Bankr. E.D. Tenn.). The Tenth Circuit in *Gordon* similarly was unable to resolve an issue that the bankruptcy court in that case had noted had split courts around the country, was "very important for very, very many plans," and was an issue on which "we really need some guidance" from the court of appeals. 13-1416 Pet. 6 (quoting 13-

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[5] *See*, *e.g.*, *In re Worthington*, 507 B.R. 276, 278 (Bankr. S.D. Ind. 2014) ("The majority of circuits which have addressed this issue have likewise ruled social security benefits are not includable."); *In re Melander*, 506 B.R. 855, 860 (Bankr. D. Minn. 2014) ("Debtors are essentially in control of the amount of Social Security that they are voluntarily willing to contribute to their plan.").

1416 Resp. C.A. Mem. Br. 7). This Court's review is essential to enable the courts of appeals to resolve important issues of bankruptcy law, to the benefit of debtors, creditors, and the judicial system itself.

3. Uniformity in this area is particularly important in light of the Constitution's grant to Congress of authority to establish "*uniform* Laws on the subject of Bankruptcies throughout the United States." U.S. Const. art. I, § 8, cl. 4 (emphasis added). At present, debtors in the Third, Fourth, and Fifth Circuits may appeal an order denying confirmation, while their peers in the First, Second, Sixth, Eighth, Ninth, and Tenth Circuits may not. The law in the remaining circuits leaves both debtors and creditors uncertain. Review of this important question of federal law is warranted.

4. The petition for certiorari in *Gordon* v. *Bank of America*, No. 13-1416, is currently pending. This case presents an additional opportunity for the Court to address the question presented, with two differences from *Gordon*.

First, petitioners and respondents in *Gordon* agreed that the denial of plan confirmation was appealable, but the Tenth Circuit nonetheless held that it was not. *See* 743 F.3d at 724 & n.2. In this case, by contrast, petitioner argued that the denial of plan confirmation was appealable, but respondent argued that it was not. Accordingly, the Court would have the benefit of a full adversarial presentation from the parties on the merits in this case.

Second, petitioner in this case sought interlocutory appeal from the BAP. That court had previously determined that this case satisfied the standards for interlocutory appeal to the BAP, on grounds that certainly satisfy the standards of Section 158(d)(2) for appeal to the court of appeals as well. But, although all courts below agreed that the appeal presented a dispositive, important, and recurring issue on which courts have been divided, the BAP declined to certify the appeal to the First Circuit, without giving any substantial reason. App., *infra*, 16a-17a. Accordingly, this case illustrates particularly clearly that the potential availability of interlocutory appeal is inadequate to ensure that important issues crucial to bankruptcy cases reach the courts of appeals for resolution.

CONCLUSION

The petition for a writ of certiorari should be granted. Alternatively, this case should be held pending this Court's disposition of *Gordon* v. *Bank of America*, No. 13-1416, and then disposed of accordingly.

Respectfully submitted.

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