No. 09-907

In The

Supreme Court of the United States

JASON M. RANSOM,

Petitioner,

v.

MBNA, AMERICA BANK, N.A.,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether, in calculating the debtor's "projected disposable income" during the plan period, the bankruptcy court may allow an ownership cost deduction for vehicles only if the debtor is actually making payments on the vehicles.

PARTIES TO THE PROCEEDINGS

The petitioner in this case is Jason M. Ransom. The respondent is MBNA, America Bank, N.A. The United States of America, United States Trustee, appeared as Amicus Curiae in the appellate proceedings below.

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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the final judgment of the United States Court of Appeals for the Ninth Circuit.

OPINION AND JUDGMENT BELOW

The Bankruptcy Court's memorandum denying confirmation is reprinted in the Appendix ("App.") at App. 36. The Bankruptcy Court's order denying confirmation is reprinted at App. 48. The opinion of the Bankruptcy Appellate Panel of the Ninth Circuit Court of Appeals is reprinted at App. 15, and officially reported at 380 B.R. 799 (B.A.P. 9th Cir. 2007). The opinion of the Ninth Circuit Court of Appeals is reprinted at App. 1, and officially reported at 577 F.3d 1026 (9th Cir. 2009). The order of the Ninth Circuit denying the petition for rehearing is reprinted at App. 5.

STATEMENT OF JURISDICTION

The Bankruptcy Court had jurisdiction under 28 U.S.C. §§ 1334 and 157(b)(1) and (b)(2)(L). The Bankruptcy Appellate Panel of the Ninth Circuit Court of Appeals had jurisdiction under 28 U.S.C. § 158(b). The Ninth Circuit Court of Appeals had

jurisdiction under 28 U.S.C. § 158(d). This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The provisions of 11 U.S.C. §§ 707 and 1325 are reprinted at App. 50 and App. 64.

STATEMENT OF THE CASE

The facts in this matter are undisputed. The debtor, Jason Ransom, filed for bankruptcy relief under chapter 13 of Title 11 of the United States Code on July 5, 2006. One of the debtor's assets, as listed in the schedules of his bankruptcy petition, was a 2004 Toyota Camry which he owned in full. There were no liens or secured loans of any kind on his vehicle. The debtor listed $82,542.93 in unsecured claims, including the claim of MBNA America Bank in the amount of $32,896.73.

Debtor's Statement of Current Monthly Income ("Form B22C") reported monthly income of $4,248.56, and annual income of $50,982.72. As a result, his income exceeded the median income for Nevada, his state of residence. Ransom reported monthly expense deductions of $4,038.01, and a monthly disposable income of $210.55. Part of his monthly expense deductions consisted of the vehicle "ownership cost" deduction which is contested in this case.

MBNA objected to confirmation of debtor's chapter 13 plan, in which Ransom proposed paying $500.00 per month over sixty months. Specifically, MBNA argued that Ransom was not devoting all of his projected disposable income to fund the plan as required by 11 U.S.C. § 1325(b)(1)(B). MBNA contended that the debtor could not take an ownership cost deduction for his vehicle if he was not making any payments on the vehicle. MBNA argued that Ransom's projected disposable income should be $681.55, which amounted to the $210.55 that he reported in disposable income, plus the contested ownership cost deduction which MBNA claimed should be disallowed.

The crux of MBNA's objection, which was adopted by all the courts in this case below, was that an ownership cost deduction could only be taken for a vehicle if the owner was making payments on the vehicle. The objecting creditor's rationale was that the Internal Revenue Manual (the "Manual") of the Internal Revenue Service ("IRS") disallows any deduction by a taxpayer above the taxpayer's actual lease or loan payment. *See,* Memorandum Denying Confirmation of Bankruptcy Judge Bruce A. Markell, App. 36; *Ransom v. MBNA Am. Bank (In re Ransom)*, 380 B.R. 799, 806 (B.A.P. 9th Cir. 2007); *Ransom v. MBNA, Am. Bank (In re Ransom)*, 577 F.3d 1026, 1029-30 (9th Cir. 2009).

The courts below disallowed Ransom's claim of a vehicle ownership cost based on the IRS collection Manual, which allows with respect to transportation

only a deduction for "the local standard or the amount actually paid, whichever is less." (Cited at *Ransom*, 380 B.R. at 806, fn. 15). Using the collection Manual as the standard, the lower courts disallowed Ransom's claimed vehicle cost deduction, despite the fact that 11 U.S.C. § 707(b)(2)(A)(ii)(I) simply states in pertinent part that, "The debtor's monthly expenses shall be the debtor's applicable expense amounts specified under the National Standards and Local Standards[.]" The statute utilizes the expense amounts specified by the IRS in its National Standards and Local Standards, but nowhere states that the expense amounts are to be construed or limited by the practices of the IRS collection Manual.

Although the Ninth Circuit rejected Ransom's claim of a vehicle cost deduction, and thus denied confirmation of his plan, the appellate court took the extraordinary step of declaring that in the final analysis, the statute setting forth the means test for expense deductions cannot be properly interpreted as it stands, and only Congress could answer the question posed by the case. The Ninth Circuit concluded:

> The "correct" answer to the question before us, which the courts have been struggling with for years – at the unnecessary cost of thousands of hours of valuable judicial time – depends ultimately not upon our interpretation of the statute, but upon what Congress wants the answer to be. We would hope, in this regard, that we the judiciary

> would be relieved of this Sisyphean adventure by legislation clearly answering a straightforward policy question: shall an above-median income debtor in chapter 13 be allowed to shelter from unsecured creditors a standardized vehicle ownership cost for a vehicle owned free and clear, or not? Because resolution of this issue rests with Congress, we have taken the unusual step of directing the Clerk of the Court to forward a copy of this opinion to the Senate and House Judiciary Committees.

Ransom, 577 F.3d at 1031-32.

REASONS FOR GRANTING THE PETITION

This Court has recently granted certiorari in the case of *In re Lanning,* 545 F.3d 1269 (10th Cir. 2008), *cert. granted,* 130 S. Ct. 487, 175 L. Ed. 2d 343 (2009). Certiorari was granted in *Lanning* limited to the question:

> Whether, in calculating the debtor's "projected disposable income" during the plan period, the bankruptcy court may consider evidence suggesting that the debtor's income or expenses during that period are likely to be different from her income or expenses during the pre-filing period.

Id.

Ransom is, in every respect, the sister case to *Lanning.* In each case, there is a wide split between

the Circuit Courts of Appeals regarding the calculation of "projected disposable income" for the means test under 11 U.S.C. § 1325(b)(1)(B). In *Lanning,* the pivotal question is whether the bankruptcy court may consider if income and expenses during the plan period are likely to be different from those during the pre-filing period. In *Ransom,* petitioner asks this Court to consider a companion issue:

> Whether, in calculating the debtor's "projected disposable income" during the plan period, the bankruptcy court may allow an ownership cost deduction for vehicles only if the debtor is actually making payments on the vehicles.

In the event that this Court chooses to resolve the issues raised by both *Ransom* and *Lanning,* the Court will be able to resolve the lack of uniformity in interpretation of 11 U.S.C. § 1325(b)(1)(B) that has resulted in split approaches to the statute across the Federal courts.

The Ninth Circuit Court of Appeals has stated its belief that, with respect to applicable expense deductions under 11 U.S.C. § 707(b)(2)(A)(ii)(I), "The 'correct' answer to the question before us . . . depends ultimately not upon our interpretation of the statute, but upon what Congress wants the answer to be. . . . We would hope . . . that we the judiciary would be relieved of this Sisyphean adventure by legislation[.]" *Ransom*, 577 F.3d at 1031-32.

In fact, Congress has already stated the correct answer to the question the courts have been struggling with, and the answer is contained in the plain language of the legislation. Apparently the task of interpretation appeared "Sisyphean" to the Ninth Circuit only because it refused to acknowledge that the words of the statute mean precisely what they appear to mean.

As discussed below, there is a sharp split between various Courts of Appeals on the issue before us. The Fifth, Seventh and Eighth Circuits have ruled that the plain language of the statute should prevail, and the debtor should be allowed a deduction for the ownership costs of a vehicle regardless of whether the debtor is still making loan or lease payments. By contrast, the Ninth Circuit has found that an extrinsic standard, the procedures of the IRS Manual, should be introduced to determine the proper treatment of deductions under the Bankruptcy Code. Relying on the IRS Manual, the Ninth Circuit has determined that only actual loan or lease payments can be deducted as vehicle expenses. However, the statute nowhere calls for adopting the approach to deductions of the IRS collection Manual, and this approach should be rejected.

I. SECTION 707(b)(2)(A)(ii)(I) OF THE BANKRUPTCY CODE PROVIDES FOR THE DEDUCTION OF VEHICLE OWNERSHIP COSTS REGARDLESS OF WHETHER THE DEBTOR OWNS A VEHICLE FREE AND CLEAR OF DEBT

In 2005, Congress added 11 U.S.C. § 707(b)(2)(A)(ii)(I) of the Bankruptcy Code as part of an objective and mechanical "means test," which established a threshold beyond which abuse would be presumed. The means test ensures that a debtor's total expenses are reasonable. The threshold for presuming abuse no longer requires an individual inquiry into a debtor's most common expenses such as food, housing and transportation costs. For these types of expenses, the means test looks to the National and Local Standards used by the IRS. Specifically, § 707(b)(2)(A)(ii)(I) provides that the debtor's monthly expenses "shall be the debtor's applicable monthly expense amounts specified under the National Standards and Local Standards . . . issued by the Internal Revenue Service . . .". Transportation allowances fall under the Local Standards and are divided into two components: operating costs and ownership costs. The IRS specifies amounts to be used for each component.[1]

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[1] The IRS publishes the ownership cost component of the Local Transportation Standard on a national basis, by number of cars. The operating cost component is published by number of cars and by Metropolitan Statistical Area and Census Bureau region. The Local Transportation Expense Standards may

(Continued on following page)

Unlike the Bankruptcy Code, however, the IRS treats Local Standard expenses as caps on actual expenses rather than as an allowance.

The question presented on appeal is whether a debtor who owns vehicles but does not have loan or lease payments on those vehicles is entitled to the "car ownership" allowance under § 707(b)(2)(A)(ii)(I) of the Bankruptcy Code. In contrast to all other Courts of Appeals to consider the question, the Ninth Circuit held that cart owners with no loan or lease payments could not take an ownership deduction.

II. REVIEW IS WARRANTED TO RESOLVE THE CONFLICT BETWEEN CIRCUITS AS TO THE INTERPRETATION OF 11 U.S.C. § 707(b)(2)(A)(ii)(I)

This Court has consistently employed a strict plain meaning rule for cases involving the Bankruptcy Code. Under the rule the plain language of the Code controls absent an absurd result. *See*, *Lamie v. U.S. Trustee*, 540 U.S. 526, 534, 124 S. Ct. 1023 (2004); *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 6, 120 S. Ct. 1942 (2000); *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 241, 109 S. Ct. 1026 (1989). A plain reading of the statutory language in this case would entitle all car owners, not just those with loan or

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be found at http://www.irs.gov/businesses/small/article/0,,id=104623,00.html.

lease payments, to take the ownership deduction under § 707(b)(2)(A)(ii)(I).

In *Ross-Tousey v. Neary*, 549 F.3d 1148, 1158 (7th Cir. 2008), the Seventh Circuit Court of Appeals noted that under *Ransom*, 380 B.R. at 807, the IRS collection Manual approach would be applied, and a debtor could not take any ownership deduction if he had no debt or lease payments with respect to his vehicle. However, the Seventh Circuit found that the "plain language of section 707(b)(2)(A)(ii)(I) is more strongly supported by the language and logic of the statute." The Seventh Circuit reversed a decision of the district court, which had disallowed a vehicle ownership deduction where the debtors were not making car payments. *United States v. Ross-Tousey*, 368 B.R. 762 (E.D. Wis. 2007).

Similarly, the Fifth Circuit Court of Appeals in *Tate v. Bolen*, 571 F.3d 423 (5th Cir. 2009), reversed the order of the district court upholding the bankruptcy court's dismissal of the chapter 7 case for abuse because the debtors claimed a vehicle ownership expense for a vehicle that was not encumbered by a debt or a lease. The Fifth Circuit concluded that "the plain language approach as set forth by the Seventh Circuit [in *Ross-Tousey v. Neary*] provides the best reading of § 707(b)(2)(A)(ii)(I)." *Tate v. Bolen*, 571 F.3d at 428. Under the means test, the debtor should be allowed to deduct a transportation ownership deduction regardless of whether the debtor has a loan or lease payment on his cars.

The Sixth Circuit Bankruptcy Appellate Panel also applied the plain language of the statute to conclude that all debtors who own vehicles may take the ownership deduction regardless of whether the debtors make loan or lease payments on those vehicles. *See, Hildrebrand v. Kimbro*, 389 B.R. 518 (B.A.P. 6th Cir. 2008). In *Kimbro,* the Sixth Circuit B.A.P. affirmed that statutory interpretation should rely on the plain language of the legislation:

> The plain language of 11 U.S.C. § 707(b)(2)(A)(ii)(I) states that a debtor's means test deductions "shall be" the amounts specified in the local standards and there is nothing explicit in that statutory language that requires a debtor to have a debt or lease payment to deduct a vehicle ownership expense in the bankruptcy means test.

Id. at 523. The Sixth Circuit Panel relied on the straightforward approach to interpretation set forth in *Lamie*:

> The starting point in discerning congressional intent is the existing statutory text, and not the predecessor statutes. It is well established that when the statute's language is plain, the sole function of the court – at least where the disposition required by the text is not absurd – is to enforce it according to its terms. *Lamie v. U.S. Trustee, supra,* 540 U.S. at 534 (citations omitted).

Id. at 522-23.

The Eighth Circuit Court of Appeals, in *eCast Settlement Corporation v. Washburn*, 579 F.3d 934 (8th Cir. 2009), abrogated an Eighth Circuit Bankruptcy Appellate Panel decision relied by the Ninth Circuit in its opinion.[2] The Eighth Circuit held that "a debtor need not in fact owe a vehicle loan or lease payment to claim a vehicle-ownership expense in accordance with § 707(b)(2)(A)(ii)(I)." *Id.* at 940. The Eighth Circuit adopted the analyses of the Fifth and Seventh Circuit Courts of Appeals on this issue, and held that "the plain language approach adopted by the Fifth and Seventh Circuits results in the proper interpretation of 11 U.S.C. § 707(b)(2)(A)(ii)(I)." *Id.* at 937.

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[2] The Eighth Circuit Bankruptcy Appellate Panel decision abrogated by the Eighth Circuit Court of Appeals was *Babin v. Wilson*, 383 B.R. 729 (B.A.P. 8th Cir. 2008). The Ninth Circuit, in *Ransom*, 577 F.3d at 1029, adopting the approach of the Eighth Circuit B.A.P. set forth in *Wilson,* stated that "roughly half of the courts to address the issue, including our BAP and the Eighth Circuit BAP, have found a debtor is entitled to the ownership cost deduction only if the debtor actually has loan or lease payments on a vehicle."

A. The Ninth Circuit Incorrectly Rejected the Plain Language of the Statute to the Effect that Applicable Monthly Expenses Are Pegged to National and Local Standards, Not Determined by Actual Expenditures.

The language of 11 U.S.C. § 707(b)(2)(A)(ii)(I) is clear. It provides that the debtor's monthly expenses "**shall be** the debtor's applicable monthly expense **amounts specified** under the National Standards and Local Standards . . . issued by the Internal Revenue Service[.] (emphasis added)." The statutory language of § 707(b)(2)(A)(ii)(I) allows no discretion. *See, In re Phillips,* 382 B.R. 153 (Bankr. D. Mass. 2008). By stating that the debtor "shall" use as his or her expenses the "amounts specified under the National Standards and Local Standards," Congress created a fixed allowance for debtors in the amounts specified, not merely a cap of the debtor's actual expenses. *See,* Eugene R. Wedoff, *Means Testing in the New 707(b),* 79 Am. Bankr. L.J. 231, 257-58 (2005) ("the statute makes no provision for reducing the specified amounts to the debtor's actual expenses – a plain reading of the statute would allow a deduction of the amounts listed in the Local Standards even where the debtor's actual expenses are less"). *See also,* 6 *Collier on Bankruptcy* ¶ 707.05(2)(c)(i) (A. Resnick and H. Sommer, eds., 15th ed. Rev. 2005) ("The better view is that, because the language refers to deducting the 'amount specified' in the standards, and not actual expenses, the ownership allowance

specified in the standards is the minimum amount to be deducted").

Congress drew a distinction in the statute between "applicable" expenses on one hand and "actual" expenses on the other. As the Eighth Circuit Court of Appeals states in *Ross-Tousey,* 549 F.3d at 1157, "In order to give effect to all the words of the statute, the term 'applicable monthly expense amounts' cannot mean the same thing as 'actual monthly expenses.'"

The bankruptcy court in *In re Farrar-Johnson,* 353 B.R. 224 (Bankr. N.D. Ill. 2006) drew an analogous distinction between "applicable" and "actual" expenses in interpreting 11 U.S.C. § 707(b)(2)(A)(ii)(I). There, the debtors claim a monthly housing expense, even though the debtors were provided housing on a military base. The court reasoned that, "By reference to section 707(b)(2)(A), section 1325(b)(3) also lets an above-median debtor claim a housing expense on Form B22C even if he has no housing expense." *Id.* at 227. The court held that the debtors could properly claim a housing expense as the "reasonably necessary" amount on Form B22C, and denied the trustee's motion to dismiss.

The *Farrar-Johnson* court clarified that an "applicable" expense can be claimed on Form B22C even if no "actual" expense was incurred:

> The debtors were entitled to claim that expense whether they had it or not. Section 707(b)(2)(A)(ii)(I) permits a debtor to claim

> "the applicable monthly expense amount" under the Local Standards. Read in isolation, "applicable" is ambiguous, meaning simply: "That can be applied; appropriate." *American Heritage Dictionary* 89 (3rd ed. 1996); *see also Webster's Third New Int'l Dictionary* 105 (1981) (defining "applicable" as "capable of being applied: having relevance"). An expense could be "appropriate" for a debtor to claim because he actually incurs that expense. It could also be "appropriate" to claim because he lives in a certain state and county and has a household of a certain size, putting him in the right box on the Local Standards chart.

Id. at 230. The court pointed out that "applicable" expenses refer to a standard published by the government, and do not entail an analysis of "appropriate" expense or "actual" expense:

> Statutory terms . . . are never read in isolation; they are read in the context in which they appear (citation omitted). Section 707(b)(2)(A)(ii)(I) defines monthly expenses not only as a debtor's "*applicable* monthly expense amounts" under the "National and Local Standards" but also as the debtor's "*actual* monthly expenses" for the categories the IRS specifies as "Other Necessary Expenses." 11 U.S.C. § 707(b)(2)(A)(ii)(I) (emphasis added). Congress drew a distinction in the statute between "applicable" expenses on the one hand and "actual" expenses on the other. "Other Necessary Expenses" must be the debtor's "actual" expenses. Expenses under the "Local Standards," in contrast,

> need only be those "applicable" to the debtor – because of where he lives and how large his household is. It makes no difference whether he "actually" has them. *See* Wedoff, *supra,* at 256 (noting that "a plain reading of the statute would allow a deduction of the amounts listed in the Local Standards even where the debtor's actual expenses are less").

Id. at 230-31.

In *Ross-Tousey,* the Court of the Appeals for the Seventh Circuit distinguished between cases adopting the Internal Revenue Service Manual as the standard for reading the statute, such as *Ransom,* 380 B.R. at 808, and those holding that a debtor who owns his car outright may take the deduction, such as *Kimbro, supra,* 389 B.R. at 532. The Seventh Circuit found that courts allowing the deduction were adhering strictly to the statutory language, which calls for defining applicable expenses as those set forth in the IRS Local Standards:

> [C]ourts in the plain language camp argue that "applicable" refers to the selection of an expense amount corresponding to the appropriate geographic region and number of vehicles owned by the debtor. *See, e.g., In re Grunert*, 353 B.R. 591, 592 (Bankr. E.D. Wis. 2007); *In re McIvor*, No. 06-42566, 2006 Bankr. LEXIS 3861, 2006 WL 3949172, *4 (Bankr. E.D. Mich. Nov. 15, 2006) ("the word 'applicable,' in the context of 707(b)(2)(A)(ii)(I) means the applicable Local Standards as it pertains to the area in which the debtor

> resides"); *In re Smith*, No. 06-30261, 2007 Bankr. LEXIS 2173, 2007 WL 1836874, *8 (Bankr. N.D. Ohio June 22, 2007) ("If the debtor has only one car, the 'applicable' expense is the one found in the first column [of the Standard for Ownership Costs], and if a debtor has a second vehicle, the amount in the second column is also 'applicable.'"). In other words, under the plain language approach, the Local Standard vehicle ownership deduction "applies" to the debtor by virtue of his geographic region and number of cars, regardless of whether that deduction is an actual expenses.

Ross-Tousey, 549 F.3d at 1157-58. The Seventh Circuit sided with the courts interpreting "applicable" expenses in § 707(b)(2)(A)(ii)(I) according to the plain language of the statute:

> We are persuaded that the plain language view of section 707(b)(2)(A)(ii)(I) is more strongly supported by the language and logic of the statute. In order to give effect to all the words of the statute, the term "applicable monthly expense amounts" cannot mean the same thing as "actual monthly expenses." Under the statute, a debtor's "actual monthly expenses" are only relevant with regard to the IRS's "Other Necessary Expenses;" they are not relevant to deductions taken under the Local Standards, including the transportation ownership deduction. Since "applicable" cannot be synonymous with "actual," applicable cannot reference what the debtor's actual expense is

> for a category, as courts favoring the IRM [Internal Revenue Manual] approach would interpret the word. We conclude that the better interpretation of "applicable" is that it references the selection of the debtor's geographic region and number of cars.

Id. at 1158.

Put another way, the *Ransom* line of decisions is distinguished by the fact that the Ninth Circuit has chosen *not* to make the plain language of the statute the determining factor in its interpretation.

B. The Court of Appeals for the Ninth Circuit Has Erroneously Imported the IRS Methodology Into the Bankruptcy Code.

Congress did not incorporate the language of the Internal Revenue Manual ("Manual" or "IRM") into 11 U.S.C. § 707(b)(2)(A)(ii)(I), although it could easily have done so if it sought to incorporate IRS collection methodology into the interpretation of the means test.

Nonetheless, the *Ransom* court adopts the "IRM approach," which relies on the IRS's interpretation of which transportation expenses are deductible:

> The IRS Collection Financial Standards, which are used in calculating repayment of delinquent taxes, provide: "If a taxpayer has a car, but no car payment, only the operating costs portion of the transportation standard

> is used to figure the allowable transportation expense." *See* Collection Financial Standards (March 1, 2009) (footnote omitted). The IRM similarly requires a taxpayer to have a loan or lease payment to qualify for the ownership cost deduction. *See* Internal Revenue Service Manual, Financial Analysis Handbook, Pt. 5, ch. 15, § 5.15.1.9 (I.B) (May 29, 2008) (footnote omitted).

Ransom, 577 F.3d at 1030. The Ninth Circuit follows the IRM approach because of a belief that the IRS collection methodology best implements Congress's intent:

> This approach also is arguably supported by Congress's intent in implementing the means testing as part of BAPCPA [the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005] – "to ensure that debtors repay creditors the maximum they can afford." H.R. Rep. 109-31(I), at 1, *reprinted in* 2005 U.S.C.C.A.N. 88, 89.

Id.

As the Court of Appeals for the Seventh Circuit pointed out in *Ross-Tousey,* the language of § 707(b)(2)(A)(ii)(I) contains no reference to using an IRS method for determining whether deductions are allowable:

> [W]hile the IRM provides a useful methodology to IRS agents for determining a taxpayer's ability to pay the IRS, we agree with other plain language courts that there

> is no indication that Congress intended that methodology to be used in conducting the means test. As an initial matter, section 707(b)(2)(A)(ii)(I) makes reference only to the "amounts specified" in the Local Standards; the statute does not incorporate the IRM or the Financial Analysis Handbook, or even refer to them. *See* § 707(b)(2)(A)(ii)(I) (making no reference to the IRM, the Financial Analysis Handbook or their methodologies).

Ross-Tousey, 549 F.3d at 1159.

The *Ross-Tousey* court found no support for the contention, in *Ransom,* that using the IRM approach is called for by Congressional intent. As the Seventh Circuit Court of Appeals put it:

> The legislative history of section 707(b)(2)(A)(ii)(I) confirms that the provision's silence with regard to the IRM and IRS methodology was deliberate . . . A prior version of the BAPCPA which was never passed defined "projected monthly net income" under the means test to require a calculation of expenses as follows:
>
> > (A) the expense allowances under the applicable National Standards, Local Standards, and Other Necessary Expenses allowance (excluding pay-ments for debts) for the debtor . . . in the area in which the debtor resides *as determined under the Internal Revenue financial analysis* for expenses in effect as of the date of the order for relief.

> H.R. 3150, 105th Congress (1998) (emphasis added). The phrase "as determined under the Internal Revenue Service financial analysis" was later removed and replaced by the current language, which states that the debtor should deduct the "applicable monthly expense amounts specified under the National and Local Standards (citations omitted). Because the statute incorporates only the "amounts" of the Local Standards and does not incorporate IRM procedures or methodology, and because the legislative history of the statute indicates that Congress intentionally omitted any reference to IRM financial analysis, we believe that using the IRM methodology in conducting the means test is misguided (citations omitted).

Id. at 1159-60.

The Seventh Circuit also found it inconsistent to utilize IRM methods, which allow the revenue officer substantial discretion, with respect to a means test that aims for a "uniform, bright-line test" that eliminates judicial discretion. *Id.* at 1160.

C. The Ninth Circuit Has Wrongly Concluded that There Are No Ownership Costs Associated with a Vehicle aside from Loan and Lease Payments.

In *Ransom,* the Court of the Appeals for the Ninth Circuit has dismissed as "ironic" and "fictitious" the concept of ownership expenses other than debt payments:

> An "ownership cost" is not an "expense" – either actual or applicable – if it does not exist, period. Ironic it would be indeed to diminish payments to unsecured creditors in this context on the basis of a fictitious expense not incurred by a debtor.

Ransom, 577 F.3d at 1030. As the Ninth Circuit Bankruptcy Appellate Panel put it, "we believe the statute can only be interpreted to 'apply' expense standards in cases where debtors in fact pay such expenses." *Ransom,* 380 B.R. at 808.

However, the *Ransom* court failed to acknowledge that there are vehicle ownership costs in addition to debt payments. As the Court of Appeals for the Seventh Circuit stated in *Ross-Tousey,* 549 F.3d at 1160, there are costs of vehicle ownership aside from loan payments: "These non-debt costs include depreciation, insurance, licensing fees and taxes." Replacement costs are another ownership expense, and the ownership cost deduction takes into account the expenses incurred by debtors to replace their vehicles. *See* Wedoff, 79 Am. Bankr. L.J. at 258.

The Ninth Circuit chose to interpret the statute to achieve "one of the main objectives of BAPCPA: to ensure that debtors repay as much of their debt as reasonably possible." *Ransom,* 577 F.3d at 1031, citing the opinion of the Ninth Circuit Bankruptcy Appellate Panel, *Ransom,* 380 B.R. at 808. However, the Ninth Circuit's strategy appears to be ineffectual. Debtors can make up for the lack of a car ownership deduction by taking on new secured debt and purchasing additional vehicles. In this way, unsecured creditors would still be denied repayment. In the alternative, debtors can time their bankruptcy filing to take place while they still have a few car payments left, thus retaining an ownership deduction which they would lose if they filed just after making their last payment. *See* Wedoff, 79 Am. Bankr. L.J. at 258.

Rather than stretching 11 U.S.C. § 707(b)(2)(A)(ii)(I) to maximize debt collection, courts should adhere to the statute's plain meaning. The debtor's monthly transportation expenses for vehicles are properly calculated as the expense amounts specified under the National Standards and Local Standards as the transportation ownership deduction.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted to review the judgment below.

Respectfully submitted,

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