1   IN THE SUPREME COURT OF THE UNITED STATES

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3   JASON M. RANSOM,   :

4   Petitioner   :

5   v.   :   No. 09-907

6   FIA CARD SERVICES, N.A., FKA MBNA :

7   AMERICA BANK, N.A.   :

8   - - - - - - - - - - - - - - - - - x

9   Washington, D.C.

10   Monday, October 4, 2010

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12   The above-entitled matter came on for oral

13   argument before the Supreme Court of the United States

14   at 10:06 a.m.

15   APPEARANCES:

16   CHRISTOPHER P. BURKE, ESQ., Las Vegas, Nevada; on behalf

17   of Petitioner.

18   DEANNE E. MAYNARD, ESQ., Washington, D.C.; on behalf

19   of Respondent.

20   NICOLE A. SAHARSKY, ESQ., Assistant to the Solicitor

21   General, Department of Justice, Washington, D.C.; on

22   behalf of the United States, as amicus curiae,

23   supporting Respondent.

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C O N T E N T S

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1   P R O C E E D I N G S

2   (10:06 a.m.)

3   CHIEF JUSTICE ROBERTS: We'll hear argument

4   first this term in Case 09-907, Ransom v. FIA Card

5   Services.

6   Mr. Burke.

7   ORAL ARGUMENT OF CHRISTOPHER P. BURKE

8   ON BEHALF OF THE PETITIONER

9   MR. BURKE: Thank you, Mr. Chief Justice,

10   and may it please the Court:

11   In 2005, Congress passed the Bankruptcy Act.

12   It made a policy decision to limit judicial discretion

13   on a case-by-case basis in the area of reasonable and

14   necessary expenses. It did so by creating a formula

15   that entailed an aggregate set amount of expenses for an

16   individual.

17   Now, Congress could have created this from

18   scratch. It could have used an arbitrary figure. But

19   instead, there were figures that the IRS already had,

20   based on Census Bureau statistics, that said nationwide,

21   in a certain area, an individual would spend this much a

22   month on average.

23   In the case of Mr. Ransom, that's

24   approximately 2500 a month. Forgetting about how it's

25   divided up, if I had 100 people come in and answer the

3

1 following five questions the same way Mr. Ransom did,

2 and that's age, location, household size, gross income,

3 and if you have a vehicle, how many, they would all get

4 a $2500 standard aggregate deduction, which works out to

5 $150,000 over a 5-year period.

6   Now, the crux of this is whether or not

7 courts are allowed to dig in and cut out pieces of the

8 standard aggregate amount.

9   JUSTICE ALITO: Why is that the crux of it?

10 Congress made reference to the local standards, right?

11   MR. BURKE: Yes.

12   JUSTICE ALITO: And were the -- was the

13 commentary in the Collection Financial Standards in

14 existence at the time when Congress enacted this

15 provision?

16   MR. BURKE: There was a Collection Financial

17 Analysis that was in place, and it was noted in 1998 as

18 a prior version of the bill that ultimately wasn't

19 passed.

20   JUSTICE ALITO: And that explains what the

21 IRS understands the local standards to mean; isn't that

22 right?

23   MR. BURKE: I would disagree with that. I

24 would say -- well, it would -- it would explain what the

25 IRS means, but that's where I would end it, because the

4

1   IRS standards are used to collect taxes. They are

2   discretionary. They --

3   JUSTICE ALITO: Well, I understand that, but

4   Congress decided to make reference to the local

5   standards in this bankruptcy provision, didn't it?

6   MR. BURKE: Standards.

7   JUSTICE ALITO: Yes.

8   MR. BURKE: It didn't go beyond that.

9   JUSTICE ALITO: And this -- and at the time

10   when it did that, there was official IRS commentary

11   regarding the meaning of those standards, correct?

12   MR. BURKE: For the IRS to use in collecting

13   taxes.

14   JUSTICE ALITO: And your argument is that

15   Congress intended to adopt the standards promulgated by

16   the IRS, but not the IRS's interpretation of the

17   standards.

18   MR. BURKE: Correct, not their methodology

19   or interpretation.

20   JUSTICE GINSBURG: Doesn't the chart say

21   "ownership costs"?

22   MR. BURKE: Yes.

23   JUSTICE GINSBURG: And you would read that

24   to mean non-costs as well? I mean, if the -- if the

25   table is called ownership costs, then why not use the

1   IRS's definition of what costs are, and that definition

2   says, what, loan payments and lease payments?

3   MR. BURKE: Because you -- we have to look

4   at it as a standard aggregate. And what I mean by that

5   is -- okay, the Bankruptcy Code doesn't define ownership

6   costs. And ownership costs could be the replacement

7   value. It could be buying a new vehicle. It could be

8   the costs associated with making payments on a vehicle.

9   What that -- that average number is, in this

10   case, $471, is a nationwide figure that somebody would

11   spend on average in a month. It doesn't mean that any

12   one individual spends that amount.

13   JUSTICE SCALIA: Mr. Burke, isn't it --

14   isn't it the case that, even on the other side's

15   interpretation of it, it doesn't come down to actual

16   costs anyway? Isn't it the case, or do I misunderstand

17   it, that so long as there is one payment, you get the

18   entire deduction?

19   MR. BURKE: That's their position, or even

20   $1.

21   JUSTICE SCALIA: Even one payment of $1, you

22   get the entire deduction. So to argue this case as

23   though it's a question of whether you actually expend

24   the money that you're getting the credit for is

25   simply -- is simply false. You don't do that under

1   either side's interpretation, right?

2   MR. BURKE: Again, I would perhaps --

3   JUSTICE SCALIA: I'm trying to help you,

4   Mr. Burke.

5   (Laughter.)

6   JUSTICE GINSBURG: Mr. Burke, before you

7   respond to that question, isn't it so that in the event

8   that Justice Scalia just proposed, the trustee could

9   propose an amendment to the plan to reflect that that

10   cost is no longer being incurred?

11   MR. BURKE: The cost has never been

12   incurred. That's the point. And --

13   JUSTICE GINSBURG: My question is: In the

14   situation that Justice Scalia proposed, it's not

15   automatic that the $471 gets deducted because there

16   could be proposed an amendment of the plan to reflect

17   that that -- there's no longer any expense for

18   ownership.

19   MR. BURKE: In the situation where there is

20   a dollar, of course, an amendment can be made. But see

21   the -- the dollar doesn't show up in the means test.

22   The means test is the aggregate --

23   JUSTICE GINSBURG: But it isn't -- it isn't

24   automatic that because there's one payment, then

25   forever, the rest of the 5 years, he gets to deduct the

1   $471.

2   MR. BURKE: That's what the lower court

3   said.

4   JUSTICE SCALIA: Excuse me. What -- what

5   happens under the tax law? Do they make an adjustment

6   under the tax law as well?

7   MR. BURKE: Of course -- under the tax law,

8   you get a standard deduction.

9   JUSTICE SCALIA: A standard --

10   MR. BURKE: No different than here. Nobody

11 goes behind the scenes and says, hey, what is that

12 standard deduction?

13   JUSTICE SCALIA: Right. So that they --

14 what is suggested is that you look at it and apply the

15 IRS's approach as to whether you get into the chart, but

16 then you don't use the IRS's approach when the trustee

17 takes you out of the chart. Is that what you think is

18 the law?

19   MR. BURKE: No, that's not what I think is

20 the law. What I'm saying is Congress has given, in this

21 case, an individual like Jason Ransom $150,000 over 5

22 years to spend. They are not saying whether he actually

23 spends it in any one category.

24   For instance, the car ownership might be --

25 equate to $28,000 over 5 years. Rent might be 1,000.

1   That's 60,000 over 5 years. Congress did not say go

2   back and make sure Mr. Ransom is spending every dollar.

3   These are averages across the nation. And when it comes

4   to a car ownership expense, we're not saying spend $471.

5   Oh, you have no payment? You didn't spend anything for

6   5 years?

7   No. What it's saying is, over 5 years, I

8   have a cost associated with owning that vehicle, whether

9   it's a loan or lease payment, whether it's replacing the

10 vehicle, whether it's major repairs, on average, across

11 the country.

12   JUSTICE BREYER: You do. You do, but the

13 difficulty that I -- I don't get the answer to

14 Justice Ginsburg's first question.

15   Of course you have all kinds of costs

16 dealing with ownership, but what the IRS says, what it

17 says in the statute, is you are supposed to take the

18 applicable costs from IRS. And what it has on page 5a

19 is it has something called "ownership costs."

20   MR. BURKE: Correct.

21   JUSTICE BREYER: And it defines those as

22 $471.

23   MR. BURKE: Correct.

24   JUSTICE BREYER: And then on 3a, where it

25 says what ownership costs are, it says the

1   transportation standards consist of nationwide figures

2   for monthly loan or lease payments, referred to as

3   ownership costs. So when I read that, I said ownership

4   costs means monthly loan or lease payments, nothing

5   else.

6   Now, you have all kinds of other things.

7   It's just these words "ownership costs" don't refer to

8   those other things, because of that definition given

9   right there. That's what I thought Justice Ginsburg was

10   initially asking.

11   JUSTICE GINSBURG: Yes, I was.

12   JUSTICE BREYER: And I -- and how -- how do

13   you get out of that what I think of as very, very clear

14   language which says what these standards refer to?

15   MR. BURKE: Because the standards refer to

16   the numbers. It's a chart.

17   JUSTICE BREYER: Yes, but it doesn't -- for

18   example, suppose you buy a dozen apples every month, and

19   they cost you $48 extra. You're not going to say the

20   ownership costs refer to the apples, even if you

21   decorate the car with them.

22   (Laughter.)

23   MR. BURKE: What -- what --

24   JUSTICE BREYER: I mean, ownership costs

25   refers to lease and loan payments. Nothing else.

1   JUSTICE SCALIA: What's the language we're

2   dealing with, Mr. Burke? Do you want to quote the

3   language to us?

4   Nobody's quoted the language. What does it

5   say is applicable?

6   MR. BURKE: What the statute says is the

7   applicable -- you shall get, mandatory, the applicable

8   amounts specified based on where a debtor resides --

9   JUSTICE SCALIA: Wait. The -- the

10   applicable amounts specified where?

11   MR. BURKE: In the national local standards.

12   JUSTICE SCALIA: Read the text of the

13   statute, would you, please, for me? I couldn't even get

14   it from your brief. You had to refer me back to the

15   petition. Why isn't in an appendix to your brief or

16   printed in the beginning of your brief, instead of

17   kicking me back to dig out your petition?

18   MR. BURKE: "The debtor's monthly expenses

19   shall be the debtor's applicable monthly expense amounts

20   specified under the national local standards."

21   JUSTICE SCALIA: "Amount specified under"

22   the standard.

23   MR. BURKE: Specific amount, "applicable"

24   modifies "amounts specified."

25   JUSTICE SCALIA: "Applicable amounts

11

1   specified," not the amounts specified if applicable.

2   MR. BURKE: Correct, based on where a debtor

3   resides.

4   Now, the only way a court can say that an

5   individual has to have a debt on a car to get this

6   deduction -- there's two ways: One --

7   JUSTICE ALITO: Look at the local standard,

8   which is on page 8 of the appendix to your brief, right?

9   And all it says is "Ownership Costs," "First Car,"

10 "$471." That's the relevant text, isn't it?

11   MR. BURKE: Yes.

12   JUSTICE ALITO: What if a person leases a

13 car? Do you think they get ownership costs?

14   MR. BURKE: Yes, because they get the cost

15 whether they owe on it or not.

16   JUSTICE ALITO: But they don't own the car,

17 so how can they get ownership costs?

18   MR. BURKE: There's a different definition.

19 "Ownership" doesn't mean -- it can mean possession.

20 But --

21   JUSTICE ALITO: Where do you get that, from

22 the --

23   MR. BURKE: Black's Law Dictionary.

24   JUSTICE ALITO: -- from the Collection

25 Financial Standards?

12

1   MR. BURKE: No. The Collection Financial

2   Standards say you get the lease -- you get the deduction

3   if you have a loan or a lease payment.

4   JUSTICE ALITO: Where do you get the

5   definition that somebody who leases something owns it?

6   MR. BURKE: I don't. I'm not sure they do

7   own it.

8   JUSTICE ALITO: Then how do they get

9   ownership costs?

10   MR. BURKE: Because you have possession of

11   it. It's based on having the item. It's costs

12   associated with having the item, whether it's paid off

13   or not.

14   JUSTICE ALITO: If somebody rents an

15   apartment, do they own the apartment?

16   MR. BURKE: Probably under ownership, their

17   possession is some type of an ownership. It may be just

18   possessory.

19   JUSTICE BREYER: Is there something wrong

20   with the IRS saying what they mean? It says ownership

21   costs means monthly loan or lease payments. Now, is

22   there something --

23   MR. BURKE: The problem --

24   JUSTICE BREYER: That's what it says it

25   means. Now, is there something illegal about it

13

1   defining ownership costs in that way?

2   MR. BURKE: No, for the collection of taxes,

3   there is not. But if you're going to use -- start

4   digging into the manual, you might as well bring it all

5   into 707(b), and, as we discussed earlier, there was

6   language that said the collection financial analysis

7   should be brought in, but that was deleted in the final

8   version.

9   JUSTICE GINSBURG: Why not just -- it says

10   you are supposed to look at the form; it says ownership

11   costs. So the only thing you'd look at the IRS for

12   is -- the manual -- is to define ownership costs. And

13   they say ownership costs means those two things.

14   MR. BURKE: Well, I don't -- there's no

15   reason to limit it. If you're going to -- the text

16   doesn't say -- it says national local standards. It

17   doesn't discriminate or give disparate treatment to that

18   one item. If you're going to give it to one item, then

19   it can be pulled in, and it should be -- the same

20   treatment should be given to all items, and we should

21   have to prove some type of a --

22   JUSTICE GINSBURG: I don't follow that. If

23   the simple thing is to just -- what does the word

24   "costs" mean? And then you look to the IRS manual, and

25   it tells you that "costs" means loan or lease payments.

1   MR. BURKE: To collect taxes, that's how

2   they defined it. But in the statute it says you get

3   "local standard amounts specified." It does not stretch

4   it and say "under the IRS's interpretation." That

5   language was taken out. And if we were to use the IRS's

6   interpretation, here's the whole problem: It's

7   discretionary. It goes up and down. It's based on an

8   IRS revenue agent. It -- let me give you a separate

9   example. Nobody --

10   JUSTICE KAGAN: Mr. Burke, if we could stay

11   with this. The $471 is derived by looking at the

12   average loan or lease payments nationwide. Then, in

13   addition to that, we know that the IRS has a separate

14   category for operating costs that is meant to reflect

15   costs of having a car that are not your loan and lease

16   payments. So, between those two things, why wouldn't we

17   say that ownership costs means your loan and lease

18   payments, but operating costs means your other costs of

19   having a car, and that you get the operating costs if

20   you have a car but don't make loan and lease payments,

21   and you get the ownership costs if you do make loan and

22   lease payments?

23   MR. BURKE: Because to reach that, you have

24   to go into the Internal Revenue Manual. It's not in the

25   statute that says you have to owe on it to get it. And

 1   if you go into the Internal Revenue Manual -- let's look

 2   at operating expenses. What it says, in collecting

 3   taxes -- and it's in the Joint Appendix at pages 83

 4   through 88. But what it says, when it comes to local

 5   national other expenses, an internal revenue agent has

 6   discretion. You only get these expenses -- this is the

 7   overall idea -- if they produce income or if it's for

 8   health and welfare.

 9   And so, when we look at the Joint Appendix

10   page 88, section B, under the local standard

11   transportation expenses, when it talks about operating

12   costs, which is something you just mentioned, it says

13   you only get transportation expenses that are used to

14   produce income or the health and welfare of an

15   individual and their family.

16   Plus, the fact that you own a car, the IRS

17   under its discretion can take away the operating costs

18   if it's on four cinder blocks in your backyard. You're

19   not incurring fuel costs, mileage costs; you are not

20   probably paying registration or any of those other

21   operating costs. The IRS agent, under their manual, can

22   take away that expense.

23   So, why stop and say, well, we're just going

24   to look at the ownership costs? And all they're saying

25   here is if you owe on it, you get it; if you don't owe,

1   you don't get it. Let's not look at anything else in

2   the Internal Revenue Manual, which is a 39-part,

3   500-page document that in some ways is almost

4   incomprehensible, and direct the --

5   JUSTICE GINSBURG: Mr. Burke, the -- it's

6   unusual to allow a deduction for the purpose of

7   calculating disposable income although you don't have

8   any expense. I understand how you get to that

9   conclusion with respect to car ownership. Is there any

10   other provision that in -- in calculating disposable

11   income, you are allowed a deduction for an expense that

12   you don't incur?

13   MR. BURKE: If the Court understands my view

14   that Congress gave --

15   JUSTICE GINSBURG: No. The question -- is

16   there anything else that works like this? You don't

17   have the expense, nonetheless you have the deduction?

18   Any -- I mean, there are a whole list of deductions,

19   expenses. Is there any other one that works this way?

20   It doesn't matter whether you have the expense, in fact.

21   JUSTICE KAGAN: For example, Mr. Burke, what

22   would happen if you didn't actually have any

23   out-of-pocket medical costs? Could you still claim a

24   deduction for out-of-pocket medical costs?

25   MR. BURKE: I'm saying you get all the

1   deductions, whether you owe on it or not. Is there a

2   specific one besides the car ownership that says you

3   have to owe on it? No. But my point is --

4   JUSTICE KENNEDY: Is that the general view

5   of the courts? Is the answer that you just gave

6   supported uniformly by the courts that have looked at

7   this?

8   MR. BURKE: There's about 60 published

9   cases. They are split almost 50-50, actually more --

10   JUSTICE KENNEDY: Even -- in other words,

11 even on this point, they are split?

12   MR. BURKE: This is one line that they have

13 looked at in the cases. Basically --

14   JUSTICE SCALIA: I don't understand what

15 you're saying. He asked, are they split 50-50 on the

16 point that is before us here? Yes or no?

17   MR. BURKE: Yes, they're about 50-50.

18   JUSTICE SOTOMAYOR: Do they apply -- do the

19 courts apply the housing and utilities listed amount

20 whether or not you pay for a house or not, whether or

21 not you rent?

22   MR. BURKE: There's two published cases I'm

23 aware of, and both allowed it. One, somebody had

24 military housing; one, the house was paid off. Both

25 courts said you get it under the local standards. But

1   the IRS manual would not give that to you, because under

2   the local standards the IRS manual says you get the

3   specific amount or your actual payment, whatever is

4   less.

5   JUSTICE SCALIA: Of course, once again, Mr.

6   Burke, this is -- I don't know why you don't point this

7   out. This is not the difference between your position

8   and the position of the other side. You get the

9   deduction for the other side as well, whether or not you

10 are making the payment. Now, maybe it can be adjusted

11 by the trustee, but as far as the statute is concerned,

12 so long as you make one payment of $1, under their

13 theory you're entitled to claim the deduction; isn't

14 that right?

15   MR. BURKE: That's correct.

16   JUSTICE SCALIA: So.

17   JUSTICE KENNEDY: My question, incidentally,

18 about courts was not with reference to the car expense.

19 It was with reference to the hypothetical or to the

20 issue proposed by one of my colleagues, that said, what

21 if you don't -- Justice Kagan -- suppose you don't have

22 the medical expense. And the answer -- and your -- and

23 I wanted to know if your answer is supported uniformly

24 by the courts that have looked at this, or if there is

25 also a split on that point?

1   MR. BURKE: I apologize for not

2   understanding it. No, every other expense deduction

3   that I have seen besides the car ownership, somebody

4   gets it.

5   CHIEF JUSTICE ROBERTS: And they get it

6   whether or not they incur that expense or not?

7   MR. BURKE: Correct.

8   CHIEF JUSTICE ROBERTS: In other words,

9   food -- you don't have to say, well, he did spend this

10   much money on food, so he gets the standard deduction.

11   MR. BURKE: Correct.

12   CHIEF JUSTICE ROBERTS: If he doesn't eat as

13   much as somebody else, he gets the same deduction,

14   right?

15   MR. BURKE: Correct. Or if he lives at home

16   and mom cooks for him.

17   JUSTICE KAGAN: But, Mr. Burke, even you

18   would say -- is this correct -- that if you don't own a

19   car at all, you can't claim the car costs?

20   MR. BURKE: Yes.

21   JUSTICE SCALIA: Is that -- is that by

22   reason of the Internal Revenue Service --

23   MR. BURKE: No.

24   JUSTICE SCALIA: -- manual, or is it by

25   reason of the Bankruptcy Code itself?

1   MR. BURKE: It's by reason of the Bankruptcy

2   Code that refers to the standards, and the standards

3   specifically say you have one car, no cars, and you get

4   a public transportation, or two cars; pick the one.

5   JUSTICE SCALIA: So it's in the chart --

6   MR. BURKE: It's in the chart.

7   JUSTICE SCALIA: -- that you claim -- okay.

8   JUSTICE ALITO: What if you own a car, but

9   it's completely inoperable and it has no value? You buy

10   it for a dollar. It's a junk car, and you're planning

11   possibly to restore it at some point. Do you get the

12   deduction then?

13   MR. BURKE: Based on a strict reading of the

14   code, you get it.

15   Now, would the IRS allow it? Again, that's

16   a discretionary standard, but any time you have an

17   objective test, there's going to be line-drawing and

18   perceived unfairness on the outskirts.

19   JUSTICE KENNEDY: And would your answer be

20   the same if the allowance was set, the decree was made,

21   and -- and the debtor then went out and bought the

22   junker to put in his driveway just in order to get the

23   400-plus dollars a month, or would that be deemed an

24   evasion of the law that could be addressed by the

25   Bankruptcy Court?

1   MR. BURKE: It can addressed by the

2   Bankruptcy Court, and that's the beauty of the statute.

3   We don't need to go into the Internal Revenue Manual.

4   We just need their tables, because there's a provision,

5   1325(a)(3), that deals with good faith. So if it

6   appears somebody is not acting in good faith, then --

7   JUSTICE BREYER: What is -- we've got about

8   half the courts in the country agreeing with you. And

9   so you've read all those arguments, and what in your

10   opinion is the best one on the point, again, where I am

11   stuck, which is Justice Ginsburg's original point? I

12   mean, I can think of millions of examples. You have a

13   form that says -- the employer says entertainment

14   expenses. Then it defines entertainment expenses as

15   food and transport, and they leave out movies, you know.

16   Or you could have vacation expenses, and vacation

17   expenses are defined as transport and hotel, and they

18   leave out meals. And here we have a definition of

19   ownership expenses, and they say leasing and loaning,

20   and they leave out other forms of ownership.

21   MR. BURKE: Because --

22   JUSTICE BREYER: Now, the argument is, well,

23   that's what they mean by it, so that's what applicable.

24   Now, what's the best argument against that in those

25   50 cases? Why is it trying -- why to try to get an

1 expense which isn't loan or lease? Have you any more

2 right to it than if you tried to get an expense to my

3 totally irrelevant apples? I mean, it doesn't fit

4 within the applicable definition. What's the answer?

5   MR. BURKE: The means test is a form, and if

6 you look at the form -- the means test is a form.

7   JUSTICE BREYER: I've looked at the form.

8   MR. BURKE: If you look at the form --

9   JUSTICE BREYER: Yes.

10   MR. BURKE: It just says --

11   JUSTICE BREYER: Ownership.

12   MR. BURKE: That's it. There's no

13 definition in the form.

14   JUSTICE BREYER: But they -- two pages

15 earlier they say what they mean by the word "ownership."

16   MR. BURKE: Not the -- the IRM does.

17   JUSTICE BREYER: Yes.

18   MR. BURKE: Not the statute and not the B22

19 form that's filled out by debtors.

20   JUSTICE BREYER: You say half the courts

21 say, oh, you just sort of imagine what ownership

22 expenses are, and anything that they can fall within

23 that general English language word is what they can

24 deduct; is that their approach? Because we -- you say

25 cut off the definition, cut off the definition from the

1   word "ownership"; don't use it. So what do we use to

2   define what ownership is?

3   MR. BURKE: We don't have to. Congress gave

4   standard amounts for --

5   JUSTICE BREYER: No, I know, but it's for

6   ownership; it's not for, for example, whistling. It's

7   for ownership. So -- so how do we define what that $471

8   attaches to? Do we use a State common law definition or

9   something? How have they done it?

10   MR. BURKE: Because you can take it as a

11   bunch of variables. It's not in the Bankruptcy Code.

12   If -- so it could be replacement costs; it could be

13   major repairs; it could be --

14   JUSTICE SCALIA: Is this a problem

15   distinctive to your case? Doesn't the other side have

16   the same problem with ownership? Don't they acknowledge

17   that even if you are leasing the car you get the

18   deduction?

19   MR. BURKE: Yes.

20   JUSTICE SCALIA: I don't see why this is

21   distinctive to your case. It's a problem both sides

22   face. And we don't avoid it by coming out against you,

23   do we?

24   MR. BURKE: No, we don't.

25   JUSTICE BREYER: Why?

1   JUSTICE ALITO: What if -- what if the

2   definition of --

3   JUSTICE BREYER: Why don't we?

4   JUSTICE ALITO: -- ownership costs was moved

5   into the local standards themselves? Would the outcome

6   be different then?

7   MR. BURKE: Are you saying in 707(b)?

8   JUSTICE ALITO: No. It's moved from the CFS

9   to the local standards, which are referred to in the --

10   in the code provision.

11   MR. BURKE: My answer would still be the

12   same because that's not a congressional formula. That's

13   a form that comes off the Department of Justice Website

14   which administers the U.S. Trustee's program and that's

15   their litigation position.

16   JUSTICE KAGAN: But, Mr. Burke, if the table

17   said loan and lease costs, you wouldn't have a case? If

18   it said -- instead of ownership costs, if it said loan

19   and lease costs, then you would sit down and you would

20   say I'm not entitled to that deduction?

21   MR. BURKE: No. I would say an individual

22   who owns a car, whether they owe or not, gets the

23   deduction because it's part of this aggregate standard.

24   JUSTICE KAGAN: Even if it's called loan and

25   lease costs?

1   MR. BURKE: Correct. It's not a breakdown

2   on what any one individual has. It's an aggregate.

3   JUSTICE GINSBURG: You may want to save the

4   rest of your time for rebuttal.

5   MR. BURKE: Thank you. I will.

6   CHIEF JUSTICE ROBERTS: Thank you, counsel.

7   Ms. Maynard.

8   ORAL ARGUMENT OF DEANNE E. MAYNARD

9   ON BEHALF OF THE RESPONDENT

10   MS. MAYNARD: Mr. Chief Justice, and may it

11 please the Court:

12   The Bankruptcy Code precludes an above-

13 median-income debtor like Petitioner from shielding from

14 his creditors $471 a month for a car payment that he

15 does not have. A debtor with --

16   JUSTICE SOTOMAYOR: -- food costs, housing

17 costs, utility costs, by getting his parents to pay for

18 those things and still take this deduction?

19   MS. MAYNARD: The statute allows a debtor to

20 take an applicable monthly expense amount. So if the

21 debtor truly has no food costs, then the food standard

22 would be not applicable to the debtor, so --

23   JUSTICE SOTOMAYOR: Your adversary said that

24 only two courts have addressed this issue and have

25 permitted those deductions. So under what reasoning

1 would we apply a different standard to the car costs as

2 opposed to those other costs?

3   MS. MAYNARD: Well, I think, with respect --

4 I think the cases he was talking about were housing.

5   JUSTICE SOTOMAYOR: Housing.

6   MS. MAYNARD: Right. So housing and car

7 costs are part of the local standards. Food, clothing,

8 house cleaning supplies, those are part of the national

9 standards. The -- in our view, the text that goes along

10 with -- accompanies the tables, which is not the

11 Internal Revenue Manual -- it's just the pages reprinted

12 at 1a to 3a of our brief. The Collection Financial

13 Standards, the prefatory explanation for what the tables

14 mean. In our view, that is -- goes along with --

15 incorporated into the national local standards.

16   The national standards, Justice Sotomayor,

17 are allowed, as long as you have under the calculations

18 -- as explained in the standards, under the national

19 standards, a debtor would receive the allowance in the

20 table as long as they have any such expense, so

21 regardless of amount. However, if they have no such

22 expense, then they are taken out by the statutory

23 language in the means test, which says that the standard

24 must be applicable to the debtor. And --

25   CHIEF JUSTICE ROBERTS: So if they have

1   pre-purchased their food expenses, so long as they have

2   $1 of food expense they get the entire expense even

3   though they're not incurring it?

4   MS. MAYNARD: If they are --

5   CHIEF JUSTICE ROBERTS: And there are things

6   like, you can pay up, you know, have the grocery deliver

7   your food every month and you can pay in advance, and if

8   you're paid up, you still get the full food expense that

9   is allowed?

10   MS. MAYNARD: No, Your Honor. I think if,

11 over the 60-month period looking forward, you know, that

12 you're going to -- you've already paid up for your food

13 for the next 60 months and you're not going to incur any

14 additional food expenses, no, then in that situation the

15 standard would be inapplicable to you. You would be

16 having no -- in that hypothetical --

17   CHIEF JUSTICE ROBERTS: But if you paid $1

18 for food, you'd get the full amount for 60 months?

19   MS. MAYNARD: Under the standard. That's

20 the way the standards operate, Your Honor.

21   I haven't seen any cases litigated over food

22 expense --

23   CHIEF JUSTICE ROBERTS: So your argument

24 leads to a result that's just as absurd as your

25 colleague's result on the other side.

1   MS. MAYNARD: I don't believe so, Your

2   Honor --

3   CHIEF JUSTICE ROBERTS: I mean, that was a

4   big part of your argument. You said his position leads

5   to an absurd result, and yours is just as absurd.

6   MS. MAYNARD: I don't think so, Your Honor,

7   for this reason, which is that the national standards

8   are food, clothing, house cleaning supplies, things that

9   you expect every debtor to have. You don't see much

10   litigation about those expenses. The local standards,

11   however, operate differently. In our view -- and our

12   view's different from the government's, Justice Scalia.

13   In our view, under the local standards and the way that

14   they apply as explained in the Collection Financial

15   Standards, is that the debtor is allowed their actual

16   expense for the local standard or the amount in the

17   table, whichever is less. So in the hypothetical --

18   JUSTICE SOTOMAYOR: Where does it say that?

19   MS. MAYNARD: In our --

20   JUSTICE SOTOMAYOR: The debtor's monthly

21   expenses shall be the debtor's applicable monthly

22   expense amounts specified under the national and local

23   standards. So the national and local standards have

24   amounts listed. Where does it say you take only the

25   actual, not the national or local standard?

1   MS. MAYNARD: I read that text, Your

2   Honor -- again, the Court doesn't need to decide this

3   maximum cap issue to decide this case, because the

4   Petitioner has no expense whatsoever, and so it's not

5   applicable to him.

6   But in our view, Justice Sotomayor -- in our

7   view, you get it from the language of the statute that

8   says the debtor's applicable monthly expense amounts

9   specified under the national standards and local

10   standards. And the way that we understand the national

11   and local standards to work is, if you look at page --

12   it's explained on page 1a of the petition to our brief,

13   the red brief. Maximum allowance -- it's the third

14   paragraph down: "Maximum allowances for housing and

15   utilities and transportation, known as the Local

16   Standards, vary by location. Unlike the National

17   Standards, the taxpayer is allowed the amount actually

18   spent or the standard, whichever is less."

19   JUSTICE SOTOMAYOR: But that's -- but that's

20   not what the provision at issue here says. It says you

21   use the amount specified under the national standards,

22   and you use actual for everything else. That's what the

23   statute said. So now you're trying to move the actual

24   into the first half of the text?

25   MS. MAYNARD: No, Your Honor, that's not how

1   I understand the text. The text provides --

2   JUSTICE SOTOMAYOR: Why would you even

3   bother? Why don't you -- if -- if what you're arguing

4   is that only actual expenses are -- are what you can

5   claim, you wouldn't need the first half.

6   MS. MAYNARD: Yes, you would, Your Honor,

7   because what the -- what the statute's purpose here is

8   -- I mean, I think it's helpful to step back.

9   Chapter 13 sends one to chapter 7's means

10   test for the purpose of calculating the amounts

11   reasonably necessary for the maintenance and support of

12   the debtor. And Congress chose to import the -- the

13   methodology of the national standards and local

14   standards as a way both to set the categories of

15   expenses that debtors could receive payments for, and,

16   with the case of the national and local standards, to

17   set the amounts. They were worried about capping upper

18   discretion because Congress -- it's quite clear from the

19   text and the legislative history -- was concerned about

20   above-median-income debtors taking luxurious expense

21   amounts.

22   JUSTICE SOTOMAYOR: So what you would have

23   the statute read is: The debtor's monthly expenses

24   shall be the debtor's applicable monthly expense amounts

25   specified, as a -- as a maximum. You would have to add

1   "maximum" somewhere there.

2   MS. MAYNARD: No, Your Honor, because the

3   amount under the national standards, as the national

4   standards operate, is the -- is an allowance, not an

5   actual, and the amount under the local standards, as

6   they operate, is the amount actually spent or the amount

7   in the table, whichever is less. And, again --

8   CHIEF JUSTICE ROBERTS: Your -- your

9   position penalizes debtors who pay their expenses in

10   advance, who don't incur additional debt to pay for

11   things like their car. I would have thought the

12   Bankruptcy Code would think that's a good thing, that

13   they're not incurring debt that they can't afford to pay

14   off, but instead, to the extent they can, they're paying

15   expenses in advance. Why should somebody who does that

16   be in a worse position than somebody -- than somebody

17   who takes out a loan they can't afford to pay back?

18   MS. MAYNARD: Money is fungible, Your Honor,

19   so to the extent the debtor has incurred expenses before

20   going into bankruptcy instead of, as here, paying off

21   this more than $85,000 in credit card debt, shouldn't be

22   able to --

23   CHIEF JUSTICE ROBERTS: Well, he hasn't

24   incurred -- he hasn't incurred expenses. It's the whole

25   point, I guess, that he's paid for something.

32

1   MS. MAYNARD: He used his money, perhaps, to

2   purchase his car outright, instead of to pay down his

3   credit card debt, and so he has a salary of $50,000, and

4   he has a credit card debt of $85,000, and he owns a

5   2-year car -- 2-year-old car outright. He should not be

6   able to deduct, as a measure of his reasonably necessary

7   expenses for his maintenance and support over the next

8   50 months, $28,000 that he doesn't need for a car

9   payment that he doesn't make.

10   JUSTICE BREYER: You're --

11   CHIEF JUSTICE ROBERTS: Even though he can

12   do it -- even though he can do it for everything else --

13   he can do it for food, he can do it for housekeeping

14   expenses, he can do it for personal care expenses, he

15   can even do it -- the other, the final category is

16   miscellaneous, so he can do it for anything.

17   MS. MAYNARD: Well, the miscellaneous, all

18   those numbers are capped, and the legislative history

19   makes clear Congress thought all those numbers would

20   actually effectively act as caps. In other words, to

21   the extent there was debate in the Congress, Congress

22   was concerned that these numbers were actually too low,

23   not that they were going to give anybody a windfall.

24   But to the extent --

25   JUSTICE SOTOMAYOR: So what you're proposing

1   is that every debtor has to go to the Bankruptcy Court

2   and show what their monthly food bills have been over

3   what period of time, how much their personal supplies

4   have been over what period of time? How can you

5   calculate forward what they are going to spend on a

6   monthly basis for each of those items? Isn't that the

7   reason the tables are used, so that you don't have to do

8   that?

9   MS. MAYNARD: Yes, Your Honor, and in the

10 national standards, which all the items you just list

11 are national standards, under the national standards you

12 don't do the actuals. On page 1a, it explains:

13 "Allowances for food, clothing and other items, known as

14 the National Standards, apply nationwide except for

15 Alaska and Hawaii.... Taxpayers are allowed the total

16 National Standards amount for their family size and

17 income level, without questioning amounts actually

18 spent."

19   For -- yes, for those hard-to-calculate

20 items, you do -- our position is you do get the amounts

21 in the chart. For local standards -- the local

22 standards, however, which include home, mortgage, lease

23 expenses, utilities, and transportation, which include

24 both ownership costs and operating costs, you get the

25 actual or whichever is less.

1   JUSTICE SCALIA: I must say your position is

2   more logical than the position that you read in some of

3   the instructions applicable to the -- to the chart

4   that's referred to in the Bankruptcy Code, but not

5   others. I mean, it seems to me, if you're going to read

6   in the requirement that have to have made a lease

7   payment, you should also read in the requirement that

8   you're referring to now, which would mean your deduction

9   is limited by the -- by the amount of your lease

10   payment.

11   I don't see why -- is there any reason why

12   one would read in the other one and not read in yours?

13   MS. MAYNARD: Not in our view, Your Honor,

14   because in our view the chart is -- is ambiguous about

15   what the number stands for. And so in the national

16   standards, the text, the prefatory text, explains that

17   the amount is an allowance if you have the expense. In

18   the local standards, the prefatory text explains that

19   the amount operates as a cap.

20   But the important point for this case, Your

21   Honor, is that you don't have to decide anything about

22   the national standards because Petitioner is left at the

23   statutory door. He has no applicable monthly expense

24   amount for operating --

25   JUSTICE KAGAN: Ms. Maynard, what would

1   happen if the debtor had a car that was 200,000 miles

2   old -- 200,000 miles, and it was going to break down,

3   you know, within the next 5 years? Would the debtor

4   then be able to take the deduction?

5   MS. MAYNARD: If the debtor owns the car

6   outright at the time they file for bankruptcy, they

7   would not get the deduction.

8   JUSTICE KAGAN: Even though if you look

9   ahead, if you project forward, it's pretty clear that

10   the debtor is going to have to incur those expenses?

11   MS. MAYNARD: They would not get the

12   deduction under this calculation. However, under this

13   Court's decision in Lanning, when one goes to project

14   the disposable income, it's conceivable that the debtor

15   could prove that it's known or virtually certain that

16   they will need a new car and that that could be

17   accounted for.

18   But -- but also the Bankruptcy Code in 1329

19   allows for modification of a plan, and so when the time

20   arises that their car conks out and they need a new car,

21   they can move to modify their plan. I think it's --

22   JUSTICE KAGAN: Well, the modification works

23   for chapter 13, but it doesn't work for chapter 7; is

24   that right?

25   MS. MAYNARD: Well, they make that statement

1   in their reply brief, Your Honor, but I'm not sure

2   exactly what they mean by that, because in chapter 7

3   this test is being used for a very different purpose.

4   It's the gateway; it's a presumptive test for abuse.

5   And so, again, our reading makes perfect sense in that

6   context because what you want to know is, does this

7   debtor actually have moneys it can prepay its creditors,

8   should it be --

9   JUSTICE BREYER: The -- sorry. Are you

10 finished?

11   MS. MAYNARD: I was -- I actually haven't

12 answered her question.

13   JUSTICE BREYER: Go ahead.

14   CHIEF JUSTICE ROBERTS: Why don't you finish

15 answering the question?

16   JUSTICE BREYER: Finish, yes.

17   MS. MAYNARD: So, in chapter 7, once you --

18 if you decide it's presumptively --- not presumptively

19 abusive, and you stay in chapter 7, then chapter 7 is a

20 liquidation. There's no ongoing plan. So I -- all of

21 your nonexempt assets are liquidated, your creditors are

22 paid off, and then you are discharged. If 3 years from

23 now your car conks out, you're just like you and me; you

24 are not in bankruptcy, you just -- you try to make do.

25   JUSTICE BREYER: I think it is -- well, I'm

 1   trying to work out what was his point. And I don't

 2   blame him for this. But trying to figure it out, he

 3   says look: This whole thing was written for a different

 4   purpose than the IRS, and if we start reading all those

 5   things from the beginning into the tables, we're really

 6   going to get into a mess. For example, we are going to

 7   give people deductions when they have lease payments,

 8   even though they're not owners when they have lease

 9   payments. The company owns -- not even an ownership

10   expense, but it does say use the lease payment. And

11   then it has all these other things.

12   So forget it; do a simple thing. It says

13   ownership expense. You go to the registry of motor

14   vehicles and you say, is Smith the owner? And they'll

15   tell you, yes or no. And if the answer is yes, he

16   deducts $471. Sometimes that's too little; sometimes

17   that's too much. But once we depart from that, we're

18   really in a nightmare of trying to figure out what all

19   these things mean that were written for other purposes.

20   So, what do you say to that?

21   MS. MAYNARD: I say, Justice Breyer, that

22   there's nothing in the statute or the legislative

23   history that suggests this was meant to be an overall

24   budget for above-median-income debtors. This was about

25   capping upper discretion and limiting the expenses

1   available as reasonably necessary expenses for

2   above-median-income debtors.

3   And I think that point is made perfectly

4   clear by the fact that if you can compare it to what

5   happens now to a below-median-income debtor, a

6   below-median-income debtor in the same situation as

7   Petitioner, who owns his car outright, would be allowed

8   no amount as an expense for his vehicle, because he

9   doesn't have an actual expense that's reasonably

10   necessary.

11   And I think that the 2005 Congress would

12   think it was a senseless result, as they argue here,

13   that Petitioner gets $471, above-median-income debtor,

14   the very class of debtors with whom Congress was

15   concerned in the 2005 amendments, to shield from his

16   creditors over the life of the plan when he has no

17   comparable expense.

18   CHIEF JUSTICE ROBERTS: Do you think that --

19   JUSTICE KENNEDY: What we are talking about

20   is a paradigm of someone -- we're comparing someone who

21   has a $470-a-month car payment and he gets -- and he

22   gets the deduction. Why is that, in light of the second

23   sentence -- let's see, the third sentence of the

24   statute, which says, "Notwithstanding any other

25   provision of this clause, the monthly expenses of the

1   debtor shall not include any payments for debts." I

2   mean, that would be the car company.

3   And has -- has that point been litigated?

4   MS. MAYNARD: That -- that sentence is

5   somewhat of a conundrum, Your Honor, and I think that

6   the Court doesn't need to decide the meaning here,

7   because whatever it does, it doesn't get Petitioner

8   within the Romanette ii calculation --

9   JUSTICE KENNEDY: No -- no, but it would --

10   MS. MAYNARD: -- because he has no payment.

11   JUSTICE KENNEDY: It would eliminate the

12   anomaly that -- one of the principal anomalies. There

13   are many anomalies in each position. It would eliminate

14   one of the principal asymmetries that seems to concern

15   the counsel and the Court.

16   MS. MAYNARD: Well, my understanding of that

17   provision is that it serves two purposes.

18   JUSTICE KENNEDY: That it?

19   MS. MAYNARD: Serves two purposes. The

20   first is that it makes clear -- in the back of our

21   brief, we have the other necessary expenses from the

22   IRM. And on -- near the back, page 25a, two of the

23   categories of other necessary expenses are secured or

24   legally perfected debts and unsecured debts.

25   So I think the -- the otherwise -- the

40

1 "notwithstanding" sentence makes clear that Romanette ii

2 should not capture those other unsecured debts and

3 secured debts, that it's the very purpose of this whole

4 calculation to figure out how much money you have to pay

5 those things.

6   The second purpose the sentence serves is to

7 make sure that there is no double-counting, because

8 Romanette iii, the very next provision in the means

9 test, allows the debtor to claim monthly payments for

10 secured debts. Now, many car loans are probably secured

11 debts, and in our view if you actually have a car loan

12 -- now, remember again, he neither has a car loan, nor a

13 car lease payment, nor any kind of ownership payment.

14   But if -- if one actually did have a car

15 loan that was secured by the car, which I think is the

16 vast majority of car loans, in our view the debtor

17 expenses nothing for that under Romanette ii, and only

18 the actual amount of that debt under Romanette iii.

19   JUSTICE GINSBURG: I thought the -- the

20 general position was you get either the actual payment

21 or the 471, of whichever is higher.

22   MS. MAYNARD: Whichever is less.

23   I think that -- that's my understanding of

24 how the local standards work, Your Honor. I think,

25 then, as a practical matter, that really will end up

1   only applying to car leases with respect to

2   transportation ownership costs, because I think that the

3   "notwithstanding" sentence removes secured car loans

4   from Romanette ii and has them calculated under

5   Romanette iii, where there is no comparable cap.

6   And the -- but -- but the point at issue in

7   this case doesn't involve the interaction between

8   Romanette ii and Romanette iii, because no matter how

9   those two things interact, when the debtor has no

10   payment whatsoever, he ought not to be able to claim any

11   car ownership costs, because what we're trying to figure

12   out is what amounts does he reasonably need for his

13   maintenance and support? And this question is a very

14   important question. This scenario happens a lot.

15   In the 2007 study that U.S. Trustees did is

16   -- at Congress's request to which Petitioner cites in

17   his reply brief, the average overpayment of a debtor in

18   claiming this transportation ownership expense was $335,

19   which is a lot when you're talking about the standard in

20   the chart being 471. There are many debtors who are

21   getting this expense either above their amount or when

22   they have no such expense at all, and so even if the

23   Court doesn't resolve these other issues that are

24   implicated by this case, the decision here is a simple

25   one, which is: This debtor has no applicable monthly

1   expense amount for transportation ownership costs, and

2   he shouldn't be allowed to expense any amount for that.

3   If there are no further questions, the

4   Respondent requests the Court would affirm the judgment

5   below.

6   CHIEF JUSTICE ROBERTS: Thank you, counsel.

7   Ms. Saharsky.

8   ORAL ARGUMENT OF NICOLE A. SAHARSKY,

9   ON BEHALF OF THE UNITED STATES, AS AMICUS CURIAE,

10   SUPPORTING RESPONDENT

11   MS. SAHARSKY: Mr. Chief Justice, and may it

12   please the Court:

13   The only question this Court needs to

14   resolve in this case is whether the vehicle ownership

15   expense is applicable to Petitioner. The answer is no.

16   The ownership cost is for loan and lease

17   payments, the cost to acquiring the vehicle, and he just

18   doesn't have any payments of that type. To allow him to

19   pretend that he does would create absurd results. He'd

20   be able to shield approximately $28,000 from his

21   unsecured creditors, and he'd be better off than lower

22   income chapter 13 debtors. And we just don't think that

23   that's a result that Congress intended. We don't think

24   it --

25   CHIEF JUSTICE ROBERTS: And if he paid --

1   JUSTICE KENNEDY: Well, I -- excuse me,

2   Chief Justice.

3   CHIEF JUSTICE ROBERTS: If he paid a dollar,

4   he would be able to shield $27,999, and you're

5   comfortable with that result?

6   MS. SAHARSKY: Well, that goes to the

7   question of whether the amount in the table is the

8   amount to be used or a cap on actual expenses. In our

9   view, it is --

10   CHIEF JUSTICE ROBERTS: And I understood

11   your brief to say it was the amount -- you get the whole

12   amount, not simply as a cap.

13   MS. SAHARSKY: That's right. Now, of

14   course, we haven't seen -- the executive office for

15   U.S. Trustees has not seen any $1 payments. It doesn't

16   know of any such commercially available payments. It

17   suspects the payments would be --

18   CHIEF JUSTICE ROBERTS: If the point of the

19     $1, counsel, is to lead to the extreme hypothetical that

20   would flesh out your position, what if it were $10,000

21   and the amount would give him $30,000? The trustees

22   have probably seen loans like that.

23   MS. SAHARSKY: What I'm saying, Your Honor,

24   is that there are many circumstances in which an expense

25   amount is a standard amount, but you still need to make

1   a threshold showing that it's applicable to you.

2   And if I could give the Court one example:

3   When an individual does his Federal income tax forms,

4   you can take a deduction for your dependents, but you

5   can't just take a deduction for any child you have. You

6   have to take a deduction -- you can take a deduction if

7   the person lives at home with you for more than 1 year

8   and have you a certain amount of expenses to support

9   them, and that is a standard deduction that you get on

10   your tax forms. The IRS doesn't ask everyone to figure

11   out their actual costs.

12   It is the case in real life that there are

13   allowance amounts that are average amounts that are

14   given to people once they meet the criteria. And that's

15   what we are saying happens here.

16   Now, that is, again, only a disagreement as

17   to what you do with people who actually have vehicle

18   ownership expenses.

19   JUSTICE SCALIA: Why aren't -- why isn't one

20   of the criteria the -- the provision that says maximum

21   allowances for housing and utilities and transportation,

22   known as the local standards, vary by location, and

23   unlike the national standards, the taxpayer is allowed

24   the amount actually spent or the standard, whichever is

25   less? Why doesn't that apply?

1   MS. SAHARSKY: Well, because, Your Honor, in

2   that case it's the IRS commentary we are referring to

3   that's on page 1a of the red brief appendix.

4   JUSTICE SCALIA: Right.

5   MS. SAHARSKY: And that -- what that's

6   referring to is -- it says the amount actually spent or

7   the standard. And that's distinguishing between the

8   amount that's actually spent or the standard, which is

9   the standard --

10   JUSTICE SCALIA: Right.

11   MS. SAHARSKY: -- amount in the table.

12   Right.

13   And of course, we look to what -- the text

14   that Congress enacted in the Bankruptcy Code, and that

15   says that the debtor's monthly expenses shall be the

16   debtor's applicable monthly expense amounts specified

17   under the national standards and local standards.

18   JUSTICE SCALIA: It's not applicable. It's

19   not applicable if, in fact, you haven't spent that much.

20   Just as you claim it's not applicable if you have no

21   payment at all.

22   MS. SAHARSKY: I think that it is -- it

23   would further Congress's purposes to say that you

24   have to -- that you look to the actual costs that the

25   debtor has. But we just don't think the text goes that

1 far, because it says that if the expense amounts -- the

2 category is applicable to the debtor, that then you use

3 the expense amounts specified under the table. But --

4   JUSTICE KENNEDY: No, but the -- but the

5 gravamen of Justice Scalia's question is: Why are you

6 running away from 1a, which is what Respondent's counsel

7 relied on? And if that were clearly relevant to this

8 statute, it would seem to me to answer the question.

9   Are you saying we -- we don't look at this

10 because it's just simply an interpretation; it's not a

11 regulation? What is -- what is -- in your view, what

12 effect do we give to this language that Justice Scalia

13 quoted? Nothing at all?

14   MS. SAHARSKY: It would not be relevant in

15 the bankruptcy context, in our view, and the reason is

16 because the -- the statutory text refers to the

17 standards. And in our view, you can look to the IRS

18 commentary to see what the standards mean, what their

19 scope is, as Justice Breyer was discussing with his

20 apples hypothetical.

21   But this additional language is guidance to

22 IRS agents in tax delinquency cases about how to collect

23 taxes. As Petitioners --

24   JUSTICE KENNEDY: Suppose we -- suppose we

25 think the word "applicable" is ambiguous and difficult

1   to construe. Do we then look at this language at 1a, or

2   do you say it's irrelevant in all instance -- in all

3   respects?

4   MS. SAHARSKY: You -- Your Honor, you could

5   look at this language, but we think that it reflects not

6   the standards, but what -- how the IRS uses the

7   standards in individual cases of tax delinquency.

8   To the extent that the IRS is defining what

9   the standards are, what the scope of the standards are

10   -- for example, that ownership costs are loan and lease

11   payments -- of course, we would think that you would

12   look to that, but this additional guidance to IRS agents

13   we don't think is what Congress meant when it said

14   "expense amounts specified under the standards."

15   But we do think that the text could be read

16   the way you suggest.

17   JUSTICE SOTOMAYOR: So then you would be

18   comfortable with a person who owns a house outright, who

19   only pays $100 in utilities, taking the full amount of

20   the housing and utilities allowable living expenses

21   because that's the amount specified?

22   MS. SAHARSKY: Well, the housing and

23   utilities expenses have been broken out into a mortgage

24   and rent component and a utilities component. So in

25   that circumstance, we would say the individual only is

1 allowed the utilities component, but it would be the

2 allowance amount that is specified. It would not be his

3 actual amount.

4   But, again, this is a question that was not

5 considered by the courts below. In fact, the bankruptcy

6 appellate panel said it is -- in footnote 20 of its

7 brief, said this question is not in this case; it's not

8 before us whether you use the amounts in the table or

9 whether you use the actual amounts. And we don't think

10 --

11   CHIEF JUSTICE ROBERTS: Ms. Saharsky, I

12 should -- I should probably know this, but if you do

13 have amounts that are excluded from the disposable

14 income because of car ownership, in other words, you

15 actually have, from -- in your point of view, expenses,

16 do they have to go to the -- pay off the car loan or are

17 they available for everybody? All the creditors?

18   MS. SAHARSKY: They're not available for the

19 creditors. The idea behind this calculation is that

20 there, of course, are secured debts that have priority,

21 and then this calculation is used to figure out how much

22 money is left to pay unsecured creditors. And the idea

23 is that the debtor has certain expenses, that he needs

24 to keep money for himself so he can continue with the

25 everyday business of life. For example, the car

1   ownership payment is designed to ensure that a vehicle

2   can still use and have access to a car, and if someone

3   has a loan or lease payment, they need to be able to

4   continue making that payment in bankruptcy, but if they

5   don't have any such payment, then they don't have this

6   need for this additional fund because --

7   CHIEF JUSTICE ROBERTS: But can he decide --

8   let's say he has more food expense than is allowed. Can

9   he decide of the amount that would otherwise go for the

10 car payment that he's going to pay some of that for the

11 food expenses?

12   MS. SAHARSKY: Well, certainly the

13 Bankruptcy Court doesn't scrutinize, you know, what

14 happens to that regard. What it's just trying to do is

15 figure out the disposable income that is available to

16 pay unsecured creditors, that the debtor doesn't need.

17   And I should just note with respect to this

18 question of whether there is an overall budget that the

19 debtor is allowed, you know, that's certainly not the

20 case in any of the other provisions that follow this

21 applicable monthly standards and local standards. You

22 have the actual other necessary expenses, actual

23 continuation of taking care of chronically ill family

24 members. And Petitioner himself acknowledges that he

25 has to show that he has a car. So it's not the case

1   that every debtor is just getting some set amount of

2   money to do what they will with. Congress has

3   referenced the standards. The standards break this out

4   into certain expenses. It says just take the applicable

5   ones. And we just don't think it makes sense to

6   interpret "applicable" in that circumstance to --

7   JUSTICE KAGAN: Ms. Saharsky, could you

8   explain to me the government's position on when a debtor

9   with loan and lease payments gets to deduct them under

10   Romanette ii? In other words, this goes back to Justice

11   Kennedy's question, the notwithstanding clause and

12   whether the notwithstanding clause effectively excludes

13   all loan and lease payments from Romanette ii?

14   MS. SAHARSKY: It does not have that effect,

15   Your Honor. What it does is to take out the actual debt

16   payments that are part of the other necessary

17   expenses -- these are on page 25a of the red brief --

18   that counsel on our side mentioned. These are other

19   necessary expenses that are actual debt payments, and

20   the local and national standards are expense amounts.

21   We don't think that Congress defined those to be debt

22   payments.

23   So the function of the payments for debts

24   language, we agree with Respondent's counsel, would be

25   twofold. First, it would excise the other necessary

1 expenses that actually are debt payments, which makes

2 complete sense. You know, one of them is an unsecured

3 debt payment, and you wouldn't want to consider that one

4 of your expenses because the whole point of the

5 calculation is to figure out how much money you have

6 left to pay unsecured debts. And then the other

7 function that it serves is in Romanette iii because you

8 were getting secured debt payments there to not

9 double-count them in Romanette ii.

10   JUSTICE KAGAN: But, in other words, the

11 loan and lease payments don't count as debt for purposes

12 of the notwithstanding clause; they count as expense

13 amounts?

14   MS. SAHARSKY: We say that those are expense

15 amounts that are specified. They're not payments for

16 debts. I should note, because Justice Kennedy asked

17 this question, that this was not something that was

18 relied upon by the courts below. I don't believe that

19 there's any definitive court of appeals opinion that

20 goes through in detail what that provision is designed

21 to do. So I would urge this Court that it need not

22 resolve it in this case and instead do what the court of

23 appeals did, which is to say that, just looking at the

24 plain text, the word "applicable" means not everybody

25 can get these amounts in the national and local

1 standards, and it needs to be someone who actually has

2 those payment amounts. The whole point of this part of

3 this statute is to figure out what money is available to

4 pay unsecured creditors, and it's payments that need to

5 be made for expenses that matter. It's not whether the

6 individual debtor has a car.

7   I also note, just because it came up earlier

8 and is a very important point, that to the extent that

9 the Court only wants to look at the tables to figure out

10 what are ownership costs, are they loan and lease

11 payments, just looking at the title of the table,

12 Ownership Costs, you need to have costs. Looking at the

13 fact that there are two different ones -- there's

14 ownership costs as opposed to operating costs -- makes

15 clear that some of the things that Petitioner suggests

16 might be ownership costs are, in fact, operating costs.

17   CHIEF JUSTICE ROBERTS: Thank you, counsel.

18   Mr. Burke, have you 4 minutes remaining.

19   REBUTTAL ARGUMENT OF CHRISTOPHER P. BURKE

20   ON BEHALF OF THE PETITIONER

21   MR. BURKE: Thank you.

22   The means test knows when to say "actual"

23 when it wants to say "actual." It didn't say "actual"

24 in this case; it said "applicable."

25   JUSTICE GINSBURG: Mr. Burke, would you

1   explain one facet of this case to me? Given the

2   deduction, the $471 deduction, disposable -- projected

3   disposable income comes down to $210?

4   MR. BURKE: Correct.

5   JUSTICE GINSBURG: As opposed to -- it would

6   be 600 some dollars if you didn't count the $471?

7   MR. BURKE: Correct.

8   JUSTICE GINSBURG: Even though the

9   disposable income figure was $210, the debtor was

10 willing -- the debtor proposed paying $500. Why did the

11 debtor come up with a $500 figure when projected

12 disposable income without the car ownership would be --

13 if he gets the car ownership, would only be $210?

14   MR. BURKE: This is exactly why our view of

15 the law works. The means test is a minimum amount.

16 It's a bottom-line quick figure based on standard

17 deductions. It was $200 based on our calculation if

18 he's given his deductions based on age, location, et

19 cetera.

20   We then go back to I and J, and J, which is

21 on page 44 of the Joint Appendix, is his current

22 expenses. And if we look at line 13A, there is no

23 vehicle payment. He's not taking $471. He took his

24 income and expense. The bottom line was 500. He knew

25 he had to pay at least 200. He's willing to pay the

1   500. He's not getting a $471 deduction because there is

2   no car payment on his Schedule J.

3   And if we look at the formula that way, the

4   means test is a general form to give standard

5   deductions, to give us a quick bottom line, and the

6   debtor is either going to pay that amount or more based

7   on his income and expense, and he would pay more if he

8   really didn't have that expense. So if he didn't have a

9   rent expense of $1,000 a month, it would show up on

10 Schedule J that he didn't have 1,000, so his payment

11 would go to $1,500 a month. That's the good faith

12 that's involved in this case.

13   JUSTICE SCALIA: It would have to go to

14 1,500 a month, or he, out of the goodness of his heart,

15 would decide to pay that amount?

16   MR. BURKE: He's going to have to pay an

17 amount of at least $200.

18   JUSTICE SCALIA: Right.

19   MR. BURKE: It would be hard to confirm a

20 case if he doesn't pay somewhere in that range.

21   JUSTICE SCALIA: Fine. So why -- why would

22 we assume that he -- I don't know -- your client is an

23 extraordinarily generous fellow. I don't think most

24 people, when they go through bankruptcy, are going to

25 cough up any more than they have to.

1   MR. BURKE: It's the only way for the form

2   and the law to work. The means test is a bottom-line

3   number. If you don't have one of those expenses, it

4   shows up on Schedule J, and it gives you a number. If

5   it's higher, we think you should probably pay it or in

6   that range. If it's lower, Congress isn't saying you

7   get away with it; it says you get out of chapter 13 if

8   you're not going to pay this amount. So the formula is

9   just to come up with a bottom line. Nobody is shielding

10   anything. It's all black and white on his current

11   expenses. If he doesn't have it --

12   JUSTICE ALITO: Do you think that the -- do

13   you --

14   MR. BURKE: -- he's not getting it.

15   JUSTICE ALITO: Do you think that the

16   Bankruptcy Code provision freezes the -- the national

17   and local standards to some degree or completely as they

18   existed at the time when the statute was enacted?

19   MR. BURKE: At the time the debtor files,

20   those numbers are frozen.

21   JUSTICE ALITO: But the IRS can change --

22   otherwise, they can -- going forward, they can

23   completely change the national and local standards?

24   MR. BURKE: The numbers, but not the

25   structure. They can do anything they want when they're

1 collecting taxes, but the numbers -- and I think the

2 numbers change on an annual basis.

3   CHIEF JUSTICE ROBERTS: Thank you, counsel.

4   The case is submitted.

5   (Whereupon, at 11:04 a.m., the case in the

6 above-entitled matter was submitted.)

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