Chapter 13 of the Bankruptcy Code allows debtors to repay their creditors by turning a portion of their monthly income over to a trustee for distribution to those creditors. At any time, however, a debtor may convert a Chapter 13 case to one under Chapter 7. Congress has provided that except where the conversion is made in bad faith, the resulting Chapter 7 estate is limited to the debtor's property "as of the date" that the original Chapter 13 petition was filed. 11 U.S.C. § 348(f). In *Harris v. Viegelahn*, 14-400, the Supreme Court granted certiorari to decide whether, when a debtor in good faith converts a bankruptcy to Chapter 7 after confirmation of a Chapter 13 plan, undistributed funds held by the Chapter 13 trustee are refunded to the debtor (as the Third Circuit held in *In re Michael*, 699 F.3d 305 (3d Cir. 2012)), or distributed to creditors (as the Fifth Circuit held below).

In the decision below, the debtor (Harris) defaulted on his mortgage and then filed for relief under Chapter 13. The bankruptcy court confirmed a payment plan under which Harris would resume paying his mortgage, and his mortgage arrears and other debts would be repaid out of money garnished from his wages by the trustee. Harris failed to make his mortgage payments, however, so the lender foreclosed and Harris converted his case to Chapter 7. At the time of the conversion, the trustee held nearly $4,300 of Harris's post-petition garnished wages. The trustee distributed those funds to Harris's creditors, but the bankruptcy court ordered the trustee to refund the money to Harris.

The Fifth Circuit reversed. Acknowledging that the question "has divided courts for thirty years," the court rejected the Third Circuit's conclusion in *Michael* in holding that the trustee correctly distributed Harris's post-petition wages to Harris's creditors. Unlike the Third Circuit and some other lower courts, the Fifth Circuit found "little guidance in the Bankruptcy Code." The Fifth Circuit therefore turned to "considerations of equity and policy" in holding that creditors were entitled to the funds. The court explained that it would be "'patently unfair'" to allow debtors to use secured property during the Chapter 13 proceedings and then "'snatch away the monies which the trustee is holding to make the payments'" by converting to Chapter 7, rejecting the Third Circuit's view that distributing post-petition income to creditors would create a disincentive to borrowers attempting to repay their debts under Chapter 13.

The Supreme Court's decision in this case will resolve a recurring issue in bankruptcy practice that has deeply divided the lower courts. Absent extensions, amicus briefs in support of the petitioner will be due on February 2, 2015, and amicus briefs in support of the respondent will be due on March 4, 2015. Any questions about this case should be directed to Brian Trust (+1 212 506 2570) in our New York office, Thomas S. Kiriakos (+1 312 701 7275) in our Chicago office or Charles Rothfeld (+1 202 263 3233) in our Washington DC office.