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SUSAN M. SPRAUL, CLERK  
U.S. BKCY. APP. PANEL  
OF THE NINTH CIRCUIT

UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT

In re:	)	BAP Nos.	CC-17-1335-KuLS
	)		CC-17-1337-KuLS
YAVAUGHNIE RENEE WILKINS,	)		CC-17-1346-KuLS
	)		(Related Appeals)
Debtor.	)	Bk. No.	2:16-bk-12328-SK
_____	)		
YAVAUGHNIE RENEE WILKINS,	)		
	)		
Appellant,	)		
	)		
v.	)	<b>O P I N I O N</b>	
	)		
JOHN J. MENCHACA, Chapter 7	)		
Trustee; SCHREIBER FAMILY	)		
TRUST dated March 22, 1989,	)		
	)		
Appellees.	)		
_____	)		

Argued and Submitted on May 24, 2018 at  
Pasadena, California

Filed - June 28, 2018

Appeal from the United States Bankruptcy Court  
for the Central District of California

Honorable Sandra R. Klein, Bankruptcy Judge, Presiding

Appearances: \_\_\_\_\_  
Andrew M. Wyatt of Wyatt Law argued for appellant  
Yavaughnie Renee Wilkins; William J. Wall argued  
for appellee Schreiber Family Trust.

Before: KURTZ, LAFFERTY, and SPRAKER, Bankruptcy Judges.

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1 KURTZ, Bankruptcy Judge:  
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3 **I. PROCEDURAL HISTORY**

4 In these related appeals, chapter 7<sup>1</sup> debtor Ms. Yavaughnie  
5 Wilkins appeals from the bankruptcy court's (1) Order Granting  
6 Trustee's Motion For Conversion To Chapter 7 (Conversion Order)  
7 and from the portion of the Order Denying Ms. Wilkins' Motion  
8 for Reconsideration related to the Conversion Order (BAP No.  
9 CC-17-1335); (2) Order Granting Trustee's Motion to Sell Real  
10 Estate (Sale Order) and from the portion of the Order Denying  
11 Ms. Wilkins' Motion For Reconsideration related to Sale Order  
12 (BAP No. CC-17-1337); and (3) Order Granting Turnover Order and  
13 Writ of Possession (BAP No. CC-17-1346).

14 Ms. Wilkins filed a single notice of appeal which was  
15 untimely filed as to all of the above-referenced orders. The  
16 BAP Clerk's office issued a notice of deficiency requesting the  
17 parties to explain why these appeals should not be dismissed.  
18 Ms. Wilkins' counsel responded by requesting an extension of  
19 time to appeal under Rule 8002(d)(1)(B), claiming excusable  
20 neglect. Appellee, John J. Menchaca, the chapter 7 trustee,  
21 maintained that the standards for excusable neglect were not met  
22 and therefore the appeals should be dismissed. Appellee,  
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26 <sup>1</sup> Unless otherwise indicated, all chapter and section  
27 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532,  
28 Rule references are to the Federal Rules of Bankruptcy  
Procedure, and FRAP references are to the Federal Rules of  
Appellate Procedure.

1 Schreiber Family Trust (SFT),<sup>2</sup> responded similarly and also  
2 contended that counsel's request for an extension of time to  
3 appeal was untimely under Rule 8002(d)(1)(B). Therefore, the  
4 Panel was required to dismiss the appeals for lack of  
5 jurisdiction. SFT subsequently filed a motion to dismiss these  
6 appeals on these same grounds.

7 In light of the Supreme Court's decision in Hamer v.  
8 Neighborhood Housing Services of Chicago, 138 S.Ct. 13 (2017),  
9 the Panel sua sponte requested further briefing on whether the  
10 14-day time deadline for filing an appeal from a bankruptcy  
11 court's decision was jurisdictional, thereby requiring dismissal  
12 of these appeals, or whether the time deadline was a mandatory  
13 claim-processing rule subject to waiver or forfeiture.

14 Having reviewed the briefs from Ms. Wilkins and SFT and  
15 considered the oral arguments of counsel, we conclude that the  
16 14-day time deadline in Rule 8002(a) remains a mandatory and  
17 jurisdictional requirement in this court as the Ninth Circuit  
18 has held for decades. Accordingly, we dismiss these three  
19 appeals for lack of jurisdiction.

## 20 II. JURISDICTION

21 We have jurisdiction to determine our own jurisdiction and  
22 consider the issue de novo. Gugliuzza v. Fed. Trade Comm'n (In  
23 re Gugliuzza, 852 F.3d 884, 889 (9th Cir. 2017). The Panel's  
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25 <sup>2</sup> SFT held a promissory note executed by Ms. Wilkins in the  
26 original principal sum of \$200,000. The note was secured by a  
27 deed of trust on Ms. Wilkins' personal residence in San Jose,  
28 California. SFT successfully moved to convert Ms. Wilkins' case  
from chapter 13 to chapter 7. The chapter 7 trustee then sold  
the property to a third party.

1 first consideration on appeal is our jurisdiction. Id.

### 2 III. DISCUSSION

#### 3 **A. Time Deadline For Appeal: The Jurisdictional/Claim- 4 Processing Rule Dichotomy**

5 In Hamer, the Supreme Court considered whether the maximum  
6 time a court may extend an appeal deadline in FRAP(4)(a)(5)(C),  
7 in a case in which the appellant received timely notice of the  
8 judgment or order appealed from, was a jurisdictional  
9 requirement or a mandatory claim-processing rule that was  
10 subject to waiver or forfeiture.

11 Section 2107 of title 28 and FRAP (4)(a)(1) state that in a  
12 civil case, the notice of appeal must be filed within 30 days  
13 after entry of the judgment or order appealed from.

14 FRAP(4)(a)(5) addresses the time deadlines for extending the  
15 30-day period by motion:

16 (5) Motion for Extension of Time.

17 (A) The district court may extend the time to file a  
18 notice of appeal if:

19 (i) a party so moves no later than 30 days after the  
20 time prescribed by this Rule 4(a) expires; and

21 (ii) regardless of whether its motion is filed before  
22 or during the 30 days after the time prescribed by  
23 this Rule 4(a) expires, that party shows excusable  
24 neglect or good cause.

25 (B) A motion filed before the expiration of the time  
26 prescribed in Rule 4(a)(1) or (3) may be ex parte  
27 unless the court requires otherwise. If the motion is  
28 filed after the expiration of the prescribed time,  
notice must be given to the other parties in  
accordance with local rules.

(C) No extension under this Rule 4(a)(5) may exceed  
30 days after the prescribed time or 14 days after the  
date when the order granting the motion is entered,  
whichever is later.

1 In a unanimous decision, the Hamer court held that  
2 FRAP(4) (a) (5) (C), which limits the length of any extension, was  
3 a mandatory claim-processing rule because the time limit arises  
4 from a rule, in contrast to a non-waivable and non-forfeitable  
5 jurisdictional requirement arising from a statute. The court  
6 emphasized:

7 Only Congress may determine a lower federal court's  
8 subject-matter jurisdiction. Accordingly, a provision  
9 governing the time to appeal in a civil action  
10 qualifies as jurisdictional only if Congress sets the  
11 time. A time limit not prescribed by Congress ranks  
12 as a mandatory claim-processing rule, serving to  
13 promote the orderly progress of litigation by  
14 requiring that the parties take certain procedural  
15 steps at certain specified times.

16 138 S. Ct. at 17 (citations and internal quotation marks  
17 omitted).

18 The court further noted that the distinction between a  
19 jurisdictional rule and a claim-processing rule is "critical"  
20 because "[f]ailure to comply with a jurisdictional time  
21 prescription . . . deprives a court of adjudicatory authority  
22 over the case, necessitating dismissal—a 'drastic' result." Id.  
23 However, "[m]andatory claim-processing rules are less stern. If  
24 properly invoked, mandatory claim-processing rules must be  
25 enforced, but they may be waived or forfeited." Id. at 17-18  
26 (citing Manrique v. United States, 581 U.S. ----, ----, 137 S.  
27 Ct. 1266, 1271-1272 (2017)). The Hamer court reserved the issue  
28 whether mandatory claim-processing rules may be subject to  
equitable exceptions. Id. at 18 n.3 (citing Kontrick v. Ryan,  
540 U.S. 443, 457 (2004)).

Hamer follows a line of Supreme Court cases which have  
considered anew the historical use of the term "jurisdictional"

1 in connection with time deadlines set forth in statutes versus  
2 procedural rules. The Supreme Court's precedent, including  
3 Hamer, shapes a rule of decision that is both clear and easy to  
4 apply: "If a time prescription governing the transfer of  
5 adjudicatory authority from one Article III court to another  
6 appears in a statute, the limitation is jurisdictional;  
7 otherwise the time specification fits within the claim-  
8 processing category." Hamer, 138 S. Ct. at 20 (citations  
9 omitted); cf. Kontrick, 540 U.S. 443 (finding Rule 4004 which  
10 sets the time within which an objection to a debtor's discharge  
11 must be filed, is not a jurisdictional requirement despite its  
12 "inflexible," "unalterable" nature); Eberhart v. United States,  
13 546 U.S. 12 (2005) (holding that the time limit and extension  
14 requirements set forth in Federal Rules of Criminal Procedure 33  
15 and 45 are claim-processing rules and nonjurisdictional).

16 In cases not involving the timebound transfer of  
17 adjudicatory authority from one Article III court to another,  
18 the Supreme Court has applied the clear-statement rule: "A rule  
19 is jurisdictional '[i]f the Legislature clearly states that a  
20 threshold limitation on a statute's scope shall count as  
21 jurisdictional.'" Hamer, 138 S. Ct. at 20 n.9 (citing Gonzalez  
22 v. Thaler, 565 U.S. 134, 141 (2012) (quoting Arbaugh v. Y & H  
23 Corp., 546 U.S. 500, 515 (2006)). Accordingly, we must examine  
24 whether there is any clear indication that Congress wanted the  
25 14-day time deadline to file a notice of appeal in Rule 8002(a)  
26 to be jurisdictional. Although Congress's intent must be clear,  
27 it need not be explicit. Hamer, 138 S. Ct. at 20 n.9 (citing  
28 Sebelius v. Auburn Regional Med. Ctr., 568 U.S. 145, 153 (2013)).

1 When applying the clear statement rule, the Supreme Court  
2 reminds us that “most [statutory] time bars are  
3 nonjurisdictional.” Hamer, 138 S. Ct. at 20 n.9 (alteration in  
4 original) (quoting United States v. Kwai Fun Wong, 575 U.S.  
5 ----, ----, 135 S. Ct. 1625, 1632 (2015)).

6 In Henderson v. Shinseki, the Supreme Court also observed  
7 that the statute/rule distinction is not quite that simple to  
8 apply because Congress is free to attach the conditions that go  
9 with the jurisdictional label to a deadline that the Court would  
10 normally consider a claim-processing rule. 562 U.S. 428, 435  
11 (2011) (citing Bowles v. Russell, 551 U.S. 205, 209-210 (2007)).  
12 The Court stated that in determining whether Congress intended a  
13 particular provision to be jurisdictional, “[c]ontext, including  
14 this Court’s interpretation of similar provisions in many years  
15 past, is relevant. When a long line of this Court’s decisions  
16 left undisturbed by Congress has treated a similar requirement  
17 as jurisdictional, we will presume that Congress intended to  
18 follow that course.” Henderson, 562 U.S. at 436 (citations and  
19 internal quotation marks omitted); see also Sebelius, 568 U.S.  
20 at 153-154 (quoting Reed Elsevier, Inc. v. Muchnick, 559 U.S.  
21 154, 168 (2010), for the same proposition).

## 22 **B. Analysis**

23 Mindful of these guidelines and the Supreme Court’s caution  
24 against reckless use of the term “jurisdictional,” we turn to 28  
25 U.S.C. § 158, which governs bankruptcy appeals. In that  
26 statute, Congress gave jurisdiction to the district court in  
27 subsection (a), and this Panel in subsection (b), to hear  
28 appeals from bankruptcy court decisions. Embedded within these

1 jurisdictional grants at subsection (c)(2), the statute  
2 provides:

3 An appeal under subsections (a) and (b) of this  
4 section shall be taken in the same manner as appeals  
5 in civil proceedings generally are taken to the courts  
6 of appeals from the district courts and in the time  
7 provided by Rule 8002 of the Bankruptcy Rules.

8 Rule 8002(a), in turn, says that the notice of appeal must  
9 be filed within 14 days after entry of the judgment, order, or  
10 decree being appealed.

11 "To determine whether Congress has made the necessary clear  
12 statement, we examine the text, context, and relevant historical  
13 treatment of the provision at issue." Duggan v. Comm'r of  
14 Internal Revenue, 879 F.3d 1029, 1032 (9th Cir. 2018) (citing  
15 Musacchio v. United States, --- U.S. ----, 136 S. Ct. 709, 717  
16 (2016)). Here, examination of these factors shows that the 14-  
17 day time deadline in Rule 8002(a) which is incorporated into 28  
18 U.S.C. § 158(c)(2) is a jurisdictional requirement.

19 First, the historical treatment of the taking of an appeal  
20 indicates that the 14-day time limit is jurisdictional. The  
21 Supreme Court has always said without exception that procedural  
22 conditions for appealing a case from one Article III court to  
23 another are jurisdictional. "When an appeal is 'not taken  
24 within the time prescribed by law,' the 'Court of Appeals [is]  
25 without jurisdiction.'" Gonzalez, 565 U.S. at 159 (Scalia, J.,  
26 dissenting) (citing George v. Victor Talking Machine Co., 293  
27 U.S. 377, 379 (1934); United States v. Robinson, 361 U.S. 220,  
28 229-230 (1960)).

For decades, the Ninth Circuit has consistently construed  
the time deadline in Rule 8002(a) for appeals from a

1 non-Article III court in accordance with this precedent. The  
2 district court in In re Melcher, No. 3:16-cv-05982-WHA, 2017 WL  
3 1175590, at \*2-3 (N.D. Cal. Mar. 29, 2017), briefly summarized  
4 the history of the Ninth Circuit's application of the time  
5 deadline in Rule 8002(a):

6 As our court of appeals explained in [Gough v. Wells  
7 Fargo Bank (In re Best Distribution Co.)], 576 F.2d  
8 1360 (9th Cir. 1978), prior to 1938, petitions for  
9 review from bankruptcy orders had to be filed within a  
10 "reasonable time" unless local rules provided a  
11 specific period. In 1938, however, Section 39(c) of  
12 the Bankruptcy Act set forth a 10-day time limit for  
13 the filing of such petitions "to provide a uniform  
14 degree of finality to orders of bankruptcy judges."  
15 Id. at 1362. In interpreting the 10-day time limit,  
16 "the circuits divided on whether the limitation merely  
17 restricted the right to file petitions for review, or  
18 whether it also restricted the district courts'  
19 discretionary power to entertain late petitions." Id.  
20 at 1362-63. In 1942, the Supreme Court held that  
21 Congress had expressed no intention, by enacting  
22 Section 39(c), to limit the traditional discretion of  
23 district courts in this area. Id. at 1363 (citing  
24 Pfister v. N. Ill. Fin. Corp., 317 U.S. 144, 152-53  
25 (1942)). "Dissatisfied with the lack of finality that  
26 accompanied the discretionary power to entertain late  
27 petitions, Congress amended [Section 39(c)] in 1960  
28 for the specific purpose of legislatively overruling  
Pfister." Ibid. (citing [Shannon v. Benefiel (In re  
Benefiel)], 500 F.2d 1219, 1220-21 (9th Cir. 1974)).  
Subsequent decisions by our court of appeals therefore  
"strictly construed and compulsorily applied" the  
10-day limitation "to negate the discretion afforded  
the reviewing court" under Pfister, holding that  
untimely notice of appeal from the bankruptcy court  
deprived the reviewing district court of jurisdiction.  
Id. at 1363-64.

In 1973, Federal Rule of Bankruptcy Procedure 802  
superseded Section 39(c). Id. at 1364; [Headlee v.  
Ferrous Fin. Servs. (In re Butler's Tire & Battery  
Co., Inc.)], 592 F.2d 1028, 1030 (9th Cir. 1979).  
Although [Rule] 802 carried forward the 10-day time  
limit from Section 39(c), it otherwise paralleled  
[FRAP] 4(a).<sup>3</sup> Butler's Tire & Battery, 592 F.2d at

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<sup>3</sup> The Advisory Committee Note to Rule 8002(a) states that  
(continued...)

1 1031. Our court of appeals thus declined in Butler's  
2 Tire & Battery to rely on decisions construing Section  
3 39(c), including [In re] Best Distribution, in  
4 construing [Rule] 802. Id. at 1030-31. Nonetheless,  
5 after applying [Rule] 802 with the guidance of case  
6 law concerning FRAP 4(a) and its predecessor, Federal  
7 Rule of Civil Procedure 73(a), our court of appeals  
8 again concluded that untimely notice of appeal from  
9 the bankruptcy court deprived the district court of  
10 jurisdiction. Id. at 1034. This conclusion comported  
11 with well-established precedent holding that FRAP  
12 4(a)'s time period for filing a notice of appeal is  
13 also "mandatory and jurisdictional." See, e.g.,  
14 Pettibone v. Cupp, 666 F.2d 333, 334 (9th Cir. 1981)  
15 (citing Browder v. Dir., Dept. of Corr. of Ill., 434  
16 U.S. 257, 264 (1978), superseded in part by statute on  
17 other grounds as recognized in Ukawabutu v. Morton,  
18 997 F. Supp. 605, 608 (D.N.J. 1998)).

19 Although Butler's Tire & Battery recognized the  
20 limited scope of past decisions construing Section  
21 39(c), the underlying principle of those  
22 decisions—that untimely filing of a notice of appeal  
23 from the bankruptcy court is jurisdictional—remained  
24 instructive to subsequent decisions applying [Rule]  
25 802 and its successors. For example, [Ramsey v.  
26 Ramsey (In re Ramsey)], 612 F.2d 1220 (9th Cir. 1980),  
27 which cited Butler's Tire & Battery for the principle  
28 that "untimely notice deprives the district court of  
jurisdiction to review the bankruptcy court's order or  
judgment," also cited Butler's Tire & Battery, [In re]  
Best Distribution, and other decisions dealing with  
Section 39(c) for the proposition that our court of  
appeals "has strictly construed and compulsorily  
applied the ten-day requirement." Id. at 1222. And  
[Greene v. United States (In re Souza)], 795 F.2d 855  
(9th Cir. 1986)—applying FRBP 8002, the "virtually  
identical" successor to FRBP 802—in turn cited Ramsey  
for the principle that "untimely filing of the notice

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21 <sup>3</sup>(...continued)

22 the rule is an "adaptation of Rule 4(a) of the Federal Rules of  
23 Appellate Procedure." This Note is admittedly the product of  
24 the Advisory Committee and not Congress and thus would not meet  
25 the clear statement requirement. Nonetheless, it helps explain  
26 the historical treatment of the time deadline in Rule 8002(a) as  
27 a mandatory and jurisdictional requirement in this Circuit. The  
28 30-day time limit for taking an appeal contained in 28 U.S.C.  
§ 2107 and FRAP 4(a) has always been held to be mandatory and  
jurisdictional. Browder v. Dir., Dep't of Corrs. of Ill., 434  
U.S. 257, 264 (1978); U.S. v. Sadler, 480 F.3d 932, 937 (9th  
Cir. 2007).

1 of appeal is jurisdictional.” Id. at 857. In both  
2 Ramsey and Souza, our court of appeals concluded that  
3 untimely notice of appeal from the bankruptcy court  
4 deprived the district court of jurisdiction.

5 In [Anderson v. Mouradick (In re Mouradick)], our  
6 court of appeals cited both Ramsey and Souza, among  
7 other decisions, for the same core principle that  
8 “[t]he provisions of Bankruptcy Rule 8002 are  
9 jurisdictional; the untimely filing of a notice of  
10 appeal deprives the appellate court of jurisdiction to  
11 review the bankruptcy court’s order.” 13 F.3d [326,  
12 327 (9th Cir. 1994)]. But Mouradick also noted that  
13 “[s]upport for this admittedly harsh result is found  
14 in the cases interpreting [FRAP 4(a)], the analog to  
15 [Rule 8002],” and reiterated that the provisions of  
16 the former are “mandatory and jurisdictional.” Id. at  
17 328. **In short, whether by carrying forward the  
18 approach of strict construction and compulsory  
19 application from the days of Section 39(c) or by  
20 analogy to FRAP 4(a), our court of appeals has  
21 consistently held that the time limit for filing a  
22 notice of appeal from the bankruptcy court is  
23 mandatory and jurisdictional.**

24 This strict construction, which had persevered through  
25 the evolution from Section 39(c) to [Rule] 802 to  
26 [Rule] 8002, also survived a 2009 amendment to [Rule]  
27 8002 that changed the 10-day period to a 14-day  
28 period. See Advisory Committee Notes to [Rule] 8002.  
Thus, in 2016, our court of appeals in Ozenne [v.  
Chase Manhattan Bank (In re Ozenne)] cited Mouradick  
for the proposition that the “mandatory and  
jurisdictional” deadline to file an appeal “also  
applies to federal bankruptcy appeals.” 841 F.3d  
[810, 814 (9th Cir. 2016)].

20 In re Melcher, No. 3:16-cv-05982-WHA, 2017 WL 1175590, at \*2-3  
21 (N.D. Cal. Mar. 29, 2017) (emphasis added).

22 We are bound to follow the Ninth Circuit’s strict  
23 construction and compulsory application of the time limit for  
24 filing notices of bankruptcy appeals under Rule 8002(a) unless  
25 and until its rulings are overruled by statute, the Ninth  
26 Circuit sitting en banc, or by the Supreme Court. See United  
27 States v. Gonzalez-Zotelo, 556 F.3d 736, 740-41 (9th Cir. 2009)  
28 (“The district court, like this panel, was bound to follow the

1 reasoning of [prior Ninth Circuit precedent] unless it had been  
2 effectively overruled or was clearly irreconcilable with a case  
3 from the relevant court of last resort.”). Further, the Supreme  
4 Court has noted that “[c]onsiderations of stare decisis have  
5 special force in the area of statutory interpretation, for here,  
6 . . . , the legislative power is implicated, and Congress  
7 remains free to alter what we have done.” Hilton v. S. Carolina  
8 Pub. Rys. Comm’n, 502 U.S. 197, 202 (1991). Congress has had  
9 decades to change the Ninth Circuit’s treatment of the time  
10 deadline in 28 U.S.C. § 158(c)(2) and Rule 8002(a) as  
11 jurisdictional and has not done so.<sup>4</sup>

12 In the end, there is nothing in Hamer that gives us a  
13 reason to reexamine the Ninth Circuit’s longstanding  
14 construction of the time deadline in Rule 8002(a). The Hamer  
15 decision did not refer to 28 U.S.C. § 158(c)(2) or Rule 8002(a).  
16 At issue in Hamer was FRAP 4(a)(5)(C), which involved the  
17 district court’s extension of the deadline to file a notice of  
18 appeal beyond the extension limitation set forth in the rule.  
19 In contrast, 28 U.S.C. § 158(c)(2) involves the timing of the  
20 filing of a notice of appeal traditionally viewed as an event of  
21 jurisdictional significance. See Griggs v. Provident Consumer  
22 Discount Co., 459 U.S. 56, 58 (1982) (“The filing of a notice of  
23 appeal is an event of jurisdictional significance—it confers

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24  
25 <sup>4</sup> Our circuit is aligned with the holdings of the other  
26 circuits which have also held that the 14-day time limit in 28  
27 U.S.C. § 158(c)(2) and Rule 8002(a) is jurisdictional. In re  
28 Jackson, \_\_ B.R. \_\_, 2018 WL 2172693, at \*3 n.7 (6th Cir. BAP  
May 11, 2018) (citing cases from the 1st, 2nd, 3rd, 4th, 5th,  
7th, 10th, and 11th circuits which have found the time deadline  
in Rule 8002(a) jurisdictional).

1 jurisdiction on the court of appeals and divests the district  
2 court of its control over those aspects of the case involved in  
3 the appeal.”). Context thus confirms that the 14-day time  
4 deadline imposes a jurisdictional limit.

5 Moreover, here, unlike Hamer, there is a statutory basis  
6 for applying the 14-day time deadline in Rule 8002(a) to appeals  
7 from a bankruptcy court’s decision to this Panel. The statutory  
8 language in 28 U.S.C. § 158(c)(2) directs us towards a  
9 jurisdictional conclusion in a couple of ways.

10 First, a fair interpretation of 28 U.S.C. § 158(c)(2)’s  
11 language “in the time provided by Rule 8002(a)” is that Rule  
12 8002(a) implements a congressionally mandated “built-in time  
13 constraint” even though there is no specified time period in the  
14 statute. In Kontrick, the Supreme Court placed significant  
15 emphasis on the fact that certain statutory provisions governing  
16 bankruptcy courts contain built-in time constraints, while  
17 others do not. 540 U.S. at 453. As an example of a statute  
18 with a built-in time constraint, the Supreme Court cited 28  
19 U.S.C. § 157(c)(1) which addresses de novo district court review  
20 of bankruptcy court findings and conclusions in noncore  
21 proceedings. That provision confines review to “matters to  
22 which any party has timely and specifically objected.” 540 U.S.  
23 at 453. Although the statute did not spell out what was a  
24 timely objection, the Supreme Court found this “timeliness  
25 condition” was the sort of “built-in time constraint” that was  
26 jurisdictional. Id.

27 Like 28 U.S.C. § 157(c)(1), 28 U.S.C. § 158(c)(2) does not  
28 specify a time limit for appealing to the district court or this

1 Panel. Yet it does contain a timeliness condition by the  
2 language "in the time provided by Rule 8002(a)." This is the  
3 sort of "built-in time constraint" that makes the time deadline  
4 contained in the rule jurisdictional. See Smith v. Gartley (In  
5 re Berman-Smith), 737 F.3d 997, 1003 (5th Cir. 2013) (28 U.S.C.  
6 § 158 "expressly requires that the notice of appeal be filed  
7 under the time limit provided in Rule 8002, [and] we conclude  
8 that the time limit is jurisdictional"); In re Caterbone, 640  
9 F.3d 108, 112 (3d Cir. 2011) ("[E]ven though it is a bankruptcy  
10 rule that specifies the time within which an appeal must be  
11 filed, the statutory incorporation of that rule renders its  
12 requirement statutory and, hence, jurisdictional and  
13 non-waivable."); Emann v. Latture (In re Latture), 605 F.3d 830,  
14 837 (10th Cir. 2010) ("Congress did explicitly include a  
15 timeliness condition in 28 U.S.C. § 158(c)(2)—the requirement  
16 that a notice of appeal be filed within the time provided by  
17 Rule 8002(a)"); see also Hatch Jacobs, LLC v. Kingsley Capital,  
18 Inc. (In re Kingsley Capital, Inc.), 423 B.R. 344, 351 (10th  
19 Cir. BAP 2010) ("[A]bsent controlling precedent indicating that  
20 the statute must specifically set the time parameters, this  
21 [c]ourt will continue to treat the timely filing of a notice of  
22 appeal pursuant to [28 U.S.C.] § 158(c)(2) and Rule 8002 to be a  
23 jurisdictional requirement that cannot be waived."); but see In  
24 re Shah, 546 B.R. 398 (Bankr. E.D. Wis. 2016) (Congress's  
25 reference to Rule 8002(a) shows that it implicitly delegated the  
26 authority to set the appeal deadline in bankruptcy cases to the  
27 Supreme Court, suggesting that the time deadline is a claim-  
28 processing rule). Although many of the foregoing cases cited

1 were issued before 2017, they apply the cases and rules of  
2 interpretation used in Hamer.

3 Second, 28 U.S.C. § 158(c)(2) plainly states that appeals  
4 to the district court and this Panel "shall be taken in the same  
5 manner as appeals in civil proceedings generally are taken to  
6 the courts of appeals from the district courts." The time for  
7 taking an appeal in a civil case to the court of appeal from the  
8 district court has long been understood to be jurisdictional.  
9 See Henderson, 562 U.S. at 438-39; see also In re Jackson,  
10 \_\_\_ B.R. \_\_\_, 2018 WL 2172693, at \*6-7. Therefore, a natural  
11 reading of this language is consistent with the jurisdictional  
12 conclusion embraced by the Ninth Circuit.

13 Finally, although public policy considerations do not hold  
14 much weight in statutory construction endeavors, public policy  
15 guides us toward a result which is consistent with what the  
16 statutory construction of 28 U.S.C. § 158(c)(2) dictates. A  
17 strict construction of the 14-day time deadline for appeals from  
18 a bankruptcy court is consistent with the broader policies  
19 underlying the Bankruptcy Code. Time deadlines in bankruptcy  
20 are abundant and require all parties in interest to move swiftly  
21 so that estates can be administered and distributions can be  
22 made within a reasonable time. A strict time deadline for  
23 filing an appeal from a bankruptcy court's decision advances the  
24 interests of the parties by wrapping up the bankruptcy case in a  
25 timely manner and giving finality to the entire process.  
26 Accordingly, there is a legitimate policy interest embodied in a  
27 strict time deadline for appeals from a bankruptcy court's  
28 decision. See generally In re Jackson, \_\_\_ B.R. \_\_\_, 2018 WL

1 2172693, at \*7-8 (noting that the time-value of money and the  
2 depreciation of assets are benefitted by the quick appeals  
3 deadlines and the ability to make future financial decisions  
4 based on the finality of court determinations).

5 In sum, applying the bright line rule for transfer of  
6 adjudicatory authority between Article III courts articulated by  
7 the Supreme Court in Hamer—statutory deadlines are  
8 jurisdictional, non-statutory deadlines are not—suggests that  
9 the 14-day time deadline specified in Rule 8002(a) is a  
10 mandatory claim-processing rule subject to waiver. However, at  
11 the end of the day, the time deadline is incorporated in 28  
12 U.S.C. § 158(c)(2) by reference to “in the time provided by Rule  
13 8002” and has been consistently construed by the Ninth Circuit  
14 as a jurisdictional requirement. We thus conclude that the 14-  
15 day time deadline in Rule 8002(a) is a jurisdictional  
16 requirement that acts as an immutable constraint on our  
17 authority to consider and hear appeals. See Bowles, 551 U.S. at  
18 214 (noting that a court has no authority to create equitable  
19 exceptions to jurisdictional requirements). Although  
20 enforcement of the time deadline leads to a harsh result, we are  
21 still obliged to enforce it.

### 22 **C. Excusable Neglect**

23 In her December 4, 2017, response to the Panel’s notice  
24 regarding the timeliness of this appeal, Ms. Wilkins sought an  
25 extension of time to appeal pursuant to Rule 8002(d)(1)(B).  
26 Rule 8002(d)(1) permits the bankruptcy court to extend the time  
27 to file a notice of appeal upon a motion filed within 21 days  
28 after the 14-day appeal deadline expired (or 35 days after the

1 entry of the order being appealed) if the party shows excusable  
2 neglect.

3 Ms. Wilkins' request was made 42 days after entry of the  
4 last orders she is seeking to appeal, beyond the deadline  
5 established by Rule 8002(d)(1). Appellees promptly objected to  
6 appellant's excusable neglect request, the chapter 7 trustee  
7 within two days and SFT within nine days. Regardless whether  
8 the deadline to seek an extension for excusable neglect is a  
9 jurisdictional time bar or a claim-processing rule, Ms. Wilkins  
10 failed to comply with the requirements to seek such an extension  
11 and SFT promptly objected to her attempt. Therefore, the  
12 request for an extension of the deadline to appeal fails.

#### 13 **IV. CONCLUSION**

14 For the reasons discussed above, we DISMISS Ms. Wilkins'  
15 untimely filed appeals in BAP Nos. CC-17-1335, CC-17-1337, and  
16 CC-17-1346 for lack of jurisdiction.