No.21-8026

IN THE
SUPREME COURT OF THE UNITED STATES

William F. Kaetz
Petitioner

vs.

Educational Credit Management Corp
Experian
Transunion
Equifax Inc.
Respondents

On Petition for A Writ of Certiorari
To the United States Court of Appeals
for the Third Circuit Case No. 20-2592

PETITION FOR REHEARING

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201-753-1063
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Dated: 10/11/2022

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PETITION JURISDICTION

Pursuant to Rule 44.1 of this Court, the petitioner respectfully petitions for rehearing of this case before a full nine-member Court.

A Writ of Certiorari was filed on May 24, 2022, and was denied on October 3, 2022, this denial of the writ is in Petition for Rehearing Appendix (PFRA) page 3.

PETITION FOR REHEARING

The restricted grounds specified for a petition for rehearing (1) intervening circumstances of a substantial or controlling effect and (2) other substantial grounds not previously presented, are presented herein in good faith and not for delay.

This case is about student loans and bankruptcy, statute 11 U.S.C. section 523(a)(8)[1] . The intervening circumstances of a substantial and controlling effect of this case is the respondents' and the governments' use of a status quo, the alleged federal common law, the *Hood-Espinosa claims*[2] from court opinion obiter dicta, that is used to enforce section 523(a)(8). Because section 523(a)(8) is so vague the respondents and the government arrogated legislative power to seek to exploit some gap, ambiguity, or doubtful expression in Congress's statute"[3] section 523(a)(8) to assume responsibilities far beyond its initial assignment.

The other substantial grounds not previously presented is the application of the Major Questions, Vagueness, and Separation of Powers Doctrines. The use of

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[1] See Petition for Rehearing Appendix (PFRA) page 4.
[2] See PFRA 5
[3] See PFRA 6 to PFRA 7

arrogated legislative power to use the alleged federal common law as statute is a violation of the separation of powers doctrine. The evidence of the application of the vagueness doctrine upon section 523(a)(8) is the fact that the respondents and the government needed to use the *Hood-Espinosa claims,* that are not found in the statutes, to somehow "fix" the law to their pleasure. The use of the *Hood-Espinosa* claims to enforce section 523(a)(8) discriminate debtors and it does the opposite of what the statute says and causes undue hardship. It is an arrogation of legislative power, the Major Questions Doctrine applies to this case, there is no congressional authority to read words into the statute that congress left out. The Major Questions Doctrine guards against this possibility by recognizing that Congress does not usually "hide elephants in mouseholes."[4] . The mousehole is the vague statute 11 U.S.C. §523(a)(8) that states:

> "unless excepting such debt from discharge under this paragraph would impose an undue hardship on the debtor and the debtor's dependents".

The elephant assumed to live in the mousehole is the *Hood-Espinosa claims* that discriminate student loan debtors in bankruptcy by allegedly justifying continued collection activity disregarding bankruptcy court orders of discharge and depriving bankruptcy's "fresh start" and claiming student loan debtors are required to do adversary proceedings and undue-hardship tests to discharge a student loan debt. This elephant in the mousehole, the *Hood-Espinosa claims,* is a legislative act

[4] *Whitman v. American Trucking Assns., Inc.,* 531 U.S. 457, 468 (2001)

by the Judicial branch of government that imposes undue hardship and is unconstitutional.

This Case is in the Same Situation as a *Bivens Action* Claim

It is disfavored to use a *Bivens claim* because it was a legislative act by the Judicial branch of government, same situation in this case, to use the *Hood-Espinosa claims* is a legislative act by the Judicial branch of government that should be disfavored equally as the *Bivens Actions* are, because they are the same, a Judicial legislative act that is unconstitutional.[5] It is clear a *Bivens Claim* can be used if there is no alternative remedy created by Congress and the courts are not creating new law. In the bankruptcy laws there are alternative remedies created by Congress the respondents and the courts could have used other than creating new law using the Judicial legislative *Hood-Espinosa claims.*

Notice the marching orders of this Court to look for Congressional Authority in *Egbert.* Where is the Congressional Authority giving the defendants and the courts authority to add language to the bankruptcy statute 11 U.S.C. §523(a)(8)?

Why would the courts need to arrogate legislative power with the use of alleged common law claims in bankruptcy proceedings regarding student loan debt if the statute 11 U.S.C. §523(a)(8) was not vague?

It was beyond the respondents' and the Courts' jurisdiction and Constitutional Authority to legislate law and add content and viewpoint to

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[5] (See *Egbert* v. *Boule*, No. 21-147, at *8-12 (June 8, 2022) See PFRA 8 to PFRA 10

bankruptcy laws and rules concerning student loans, the *Hood-Espinosa claims,* to discriminate debtors. (I am one of them)

I claim the bankruptcy statute 11 U.S.C. §523(a)(8) is unconstitutional for being void for vagueness.

I claim the Judicial legislative *Hood-Espinosa claims* are technically unconstitutional, a usurpation of legislative power, same as a *Bivens* claim.

New Precedence, The Major Question, Vagueness, And Separation of Powers Doctrines Apply to This Case

This Court held an agency must point to "clear congressional authorization" for authority it claims.[6]

This Court has explained the major questions doctrine is applied as a service of the constitutional rule that Congress may not divest itself of its legislative power by transferring that power to an executive agency and this ties with vagueness and separation of powers.[7].

Incorporating all the above, the respondents and the government must point to "clear congressional authorization" for authority it claims. A statute, in this case the statute 11 U.S.C. §523(a)(8) does not contain sufficiently definite and precise standards to enable Congress, the courts, and the public to ascertain whether Congress's guidance has been followed at once presents a delegation problem and provides impermissibly vague guidance to affected citizens, I am one of them. The change on implementing 11 U.S.C. §523(a)(8) from what is written and the

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[6] *West Virginia* v. *EPA*, No. 20-1530, at *3 (June 30, 2022) See PFRA 11

[7] *Gundy* v. *United States*, 139 S. Ct. 2116, 2141-43 (2019) See PFRA 12 to PFRA 13

misrepresentation of the interpretation of what is written in 11 U.S.C. §523(a)(8), and conflicting implementation of 11 U.S.C. §523(a)(8) brings upon this case the Major Questions Doctrine and the Void of Vagueness Doctrine and the Separation of Powers Doctrine.

The respondents and the judicial branch of government are making law, the *Hood-Espinosa claims*, a legislative act, a violation of the Separation of Powers Doctrine, with misrepresentation of the interpretation of 11 U.S.C. §523(a)(8). The statute becomes more vague turning the respondents' and the government's misrepresentation of the interpretation of what is written in 11 U.S.C. §523(a)(8), and conflicting implementation of 11 U.S.C. §523(a)(8) into a vortex of authority that was constitutionally reserved for the people's representatives in order to protect their liberties, the respondents and the courts do not have authority to make or change law without congress authority and there is not any.

Lest any doubt remains, *Lamie* v. *United States Trustee* should settle the matter. There, this Court refused to "read an absent word into [a] statute" despite "an apparent legislative drafting error" that rendered the statute "awkward, and even ungrammatical.".[8] This Court said "with a plain, nonabsurd meaning in view, we need not proceed in this way," this Court said, noting their "longstanding" "unwillingness to soften the import of Congress' chosen words even if we believe the words lead to a harsh outcome."[9]

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[8] *Lamie* v. *United States Trustee* 540 U.S. 526, 530-38, 124 S.Ct. 1023, 157 L.Ed.2d 1024 (2004)

[9] Id. at 538, 124 S. Ct. 1023.

So too here. Even if we thought Congress inadvertently omitted requirements from 11 U.S.C. §523(a)(8) and even if the courts thought there are requirements in 11 U.S.C. §523(a)(8) in its plain meaning. "If Congress enacted into law something different from what it intended, then it should amend the statute .... 'It is beyond our province to rescue Congress from its drafting errors, and to provide for what we might think ... is the preferred result.' "[10] Simply put, "Congress did not write the statute that way."[11] "We would not presume to ascribe this difference to a simple mistake in draftsmanship."[12] This Court engaged in statutory interpretation with statements like, "[a]bsent a clearly expressed legislative intention to the contrary, th[e statutory] language must ordinarily be regarded as conclusive."[13]. This Court has instructed "that [the] legislature says ... what it means and means ... what it says."[14] In other words, "[a]s Justice Kagan recently stated, 'we're all textualists now.' "[15]

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[10] Id. at 542, 124 S. Ct. 1023 (second omission in original) (quoting *United States* v. *Granderson*, 511 U.S. 39, 68, 114 S. Ct. 1259, 127 L.Ed.2d 611 (1994) (Kennedy, J., concurring in the judgment))

[11] *United States* v. *Naftalin*, 441 U.S. 768, 773, 99 S. Ct. 2077, 60 L.Ed.2d 624 (1979)

[12] *Russello*, 464 U.S. at 23, 104 S. Ct. 296.

[13] *Consumer Prod. Safety Comm'n* v. *GTE Sylvania, Inc.*, 447 U.S. 102, 108, 100 S. Ct. 2051, 64 L.Ed.2d 766 (1980) (emphasis added)

[14] *Henson* v. *Santander Consumer USA Inc.*, —— U.S. ——, 137 S. Ct. 1718, 1725, 198 L.Ed.2d 177 (2017) (alteration and omissions in original) (quoting *Dodd* v. *United States*, 545 U.S. 353, 357, 125 S. Ct. 2478, 162 L.Ed.2d 343 (2005).

[15] Brett M. Kavanaugh, Fixing Statutory Interpretation, 129 Harv. L. Rev. 2118, 2118 (2016) (reviewing Robert A. Katzmann, Judging Statutes (2014)) (quoting Justice Elena Kagan, The Scalia Lecture: A Dialogue with Justice Kagan on the Reading of Statutes at 8:28 (Nov. 17, 2015), http://perma.cc/BCF-FEFR).

Incorporating all the above, it is very clear it is not the Courts job to rescue Congress from statutory errors and legislate laws, the statute 11 U.S.C. §523(a)(8) is unconstitutional for being void for vagueness and the *Hood-Espinosa claims* are an Arrogation of Legislative Power and should be disfavored the same as a *Bivens Claim*, the Constitution's equal protection clauses apply.

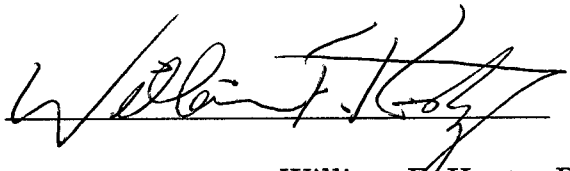
CONCLUSION

For the reasons set forth in this Petition, William F. Kaetz respectfully requests this Honorable Court grant rehearing and his Petition for a Writ of Certiorari.

CERTIFICATION

I, William F. Kaetz, petitioner, with my signature below, swear under penalty of perjury all statements herein are true. I hereby certify that this petition for rehearing is presented in good faith and not for delay, and that it is restricted to the grounds specified in Supreme Court Rule 44.2.

Respectfully Submitted...

Date: 10/11/2022 By: 

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