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 APPENDIX

William F. Kaetz, *Petitioner*
437 Abbott Road
Paramus, NJ., 07652
201-753-1063
Pro se Petitioner

Dated: 10/11/2022

CONTENTS

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

Scott S. Harris
Clerk of the Court
(202) 479-3011

October 3, 2022

Mr. William F. Kaetz
437 Abbott Road
Paramus, NJ 07652

Re: William F. Kaetz
v. Educational Credit Management Corporation, et al.
No. 21-8026

Dear Mr. Kaetz:

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is denied. Justice Alito took no part in the consideration or decision of this petition.

Sincerely,

Scott S. Harris

Scott S. Harris, Clerk

The Language of The Statute 11 U.S.C. §523 (A)(8)

The language of the statute written by legislators, 11 U.S.C. §523 (a)(8) says:

11 U.S. Code § 523 - Exceptions to discharge

(a) "A discharge under 727, 1141, 1192, 1228(a), 1228(b) or 1328(b) of this title does not discharge an individual debtor from any debt...

(8) unless excepting such debt from discharge under this paragraph would impose an undue hardship on the debtor and the debtor's dependents, for—

(A) (i) an educational benefit overpayment or loan made, insured, or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution; or

(ii) an obligation to repay funds received as an educational benefit, scholarship, or stipend; or

(B) any other educational loan that is a qualified education loan, as defined in section 221(d)(1) of the Internal Revenue Code of 1986, incurred by a debtor who is an individual;

The *Hood-Espinosa Claims*

The courts and respondents have read language into the statute that is not there and arrogated legislative power with court opinion obiter dicta, the *Hood-Espinosa claims*, this is evidenced in the lower 3rd circuit court's claims:

> "Section 523(a)(8) renders student loan debt presumptively nondischargeable 'unless' a determination of undue hardship is made." *United Student Aid Funds, Inc.* v. *Espinosa*, 559 U.S. 260, 277 n.13 (2010)
>
> "the Bankruptcy Rules require a party seeking to determine the dischargeability of a student loan debt to commence an adversary proceeding by serving a summons and complaint on affected creditors." *Espinosa*, 559 U.S. at 268–69.
>
> See Fed. R. Bankr. P. 7001(6) (providing that adversary proceedings include "a proceeding to determine the dischargeability of a debt")
>
> Fed. R. Bankr. P. 7001, Adv. Committee Notes (stating the rules govern procedural aspects of litigation involving matters referred to in Rule 7001); see also *Tennessee Student Assistance Corp.* v. *Hood,* 541 U.S. 440, 451-52 (2004) (discussing the filing of an adversary proceeding under the Bankruptcy Rules to discharge student loan debt).
>
> Even if an undue hardship determination could have been made in Kaetz's bankruptcy case outside of an adversary proceeding, a finding of indigence is not the same as an undue hardship determination under § 538(a)(8). See *In re Faish*, 72 F.3d 298, 306 (3d Cir. 1995) (holding bankruptcy courts within the Third Circuit must apply the undue hardship test in *Brunner* v. *New York State Higher Educational Services Corporation*, 831 F.2d 395 (2d Cir. 1987) (per curiam)); see also *Hood*, 541 U.S. at 450 ("Unless the debtor affirmatively secures a hardship determination, the discharge order will not include a student loan debt.").

***Nat'l Fed'n of Indep. Bus. v. Dep't of Labor*, No. 21A244, at *12-14 (Jan. 13, 2022)**

This Court has explained why the major questions doctrine matter.

> "Why does the major questions doctrine matter? It ensures that the national government's power to make the laws that govern us remains where Article I of the Constitution says it belongs-with the people's elected representatives. If administrative agencies seek to regulate the daily lives and liberties of millions of Americans, the doctrine says, they must at least be able to trace that power to a clear grant of authority from Congress.
>
> In this respect, the major questions doctrine is closely related to what is sometimes called the nondelegation doctrine. Indeed, for decades courts have cited the nondelegation doctrine as a reason to apply the major questions doctrine. *E.g., Industrial Union Dept., AFL-CIO v. American Petroleum Institute,* 448 U.S. 607, 645 (1980) (plurality opinion). Both are designed to protect the separation of powers and ensure that any new laws governing the lives of Americans are subject to the robust democratic processes the Constitution demands.
>
> The nondelegation doctrine ensures democratic accountability by preventing Congress from intentionally delegating its legislative powers to unelected officials. Sometimes lawmakers may be tempted to delegate power to agencies to "redue[e] the degree to which they will be held accountable for unpopular actions." R. Cass, Delegation Reconsidered: A Delegation Doctrine for the Modern Administrative State, 40 Harv. J. L. Pub. Pol'y 147, 154 (2017). But the Constitution imposes some boundaries here. *Gundy,* 588 U.S., at ___ (GORSUCH, J., dissenting) (slip op., at 1). If Congress could hand off all its legislative powers to unelected agency officials, it "would dash the whole scheme" of our Constitution and enable intrusions into the private lives and freedoms of Americans by bare edict rather than only with the consent of their elected representatives. *Department of Transportation v. Association of American Railroads,* 575 U.S. 43, 61 (2015) (Alito, J., concurring); see also M. McConnell, The President Who Would Not Be King 326-335 (2020); I. Wurman, Nondelegation at the Founding, 130 Yale L. J. 1490, 1502 (2021).
>
> The major questions doctrine serves a similar function by guarding against unintentional, oblique, or otherwise unlikely delegations of the legislative power. Sometimes, Congress passes broadly worded statutes

seeking to resolve important policy questions in a field while leaving an agency to work out the details of implementation. *E.g., King v. Burwell,* 576 U.S. 473, 485-486 (2015). Later, the agency may seek to exploit some gap, ambiguity, or doubtful expression in Congress's statutes to assume responsibilities far beyond its initial assignment. The major questions doctrine guards against this possibility by recognizing that Congress does not usually "hide elephants in mouseholes." *Whitman v. American Trucking Assns., Inc.,* 531 U.S. 457, 468 (2001). In this way, the doctrine is "a vital check on expansive and aggressive assertions of executive authority." *United States Telecom Assn. v. FCC,* 855 F.3d 381, 417 (CADC 2017) (Kavanaugh, J., dissenting from denial of rehearing en banc); see also N. Richardson, Keeping Big Cases From Making Bad Law: The Resurgent Major Questions Doctrine , 49 Conn. L. Rev. 355, 359 (2016).

Whichever the doctrine, the point is the same. Both serve to prevent "government by bureaucracy supplanting government by the people." A. Scalia, A Note on the Benzene Case, American Enterprise Institute, J. on Govt. & Soc, July-Aug. 1980, p. 27."

Nat'l Fed'n of Indep. Bus. v. Dep't of Labor, No. 21A244, at *12-14 (Jan. 13, 2022)

In *Bivens,* the Court held that it had authority to create "a cause of action under the Fourth Amendment" against federal agents who allegedly manacled the plaintiff and threatened his family while arresting him for narcotics violations. 403 U.S., at 397. Although "the Fourth Amendment does not in so many words provide for its enforcement by an award of money damages," *id.,* at 396, the Court "held that it could authorize a remedy under general principles of federal jurisdiction," *Ziglar,* 582 U.S., at(slip op., at 7) (citing *Bivens,* 403 U.S., at 392). Over the following decade, the Court twice again fashioned new causes of action under the Constitution-first, for a former congressional staffer's Fifth Amendment sex-discrimination claim, see *Davis v. Passman,* 442 U.S. 228 (1979); and second, for a federal prisoner's inadequate-care claim under the Eighth Amendment, see *Carlson v. Green,* 446 U.S. 14 (1980).

Since these cases, the Court has not implied additional causes of action under the Constitution. Now long past "the heady days in which this Court assumed common-law powers to create causes of action," *Malesko,* 534 U.S., at 75 (Scalia, J., concurring), we have come "to appreciate more fully the tension between" judicially created causes of action and "the Constitution's separation of legislative and judicial power," *Hernandez,* 589 U.S., at___(slip op., at 5). At bottom, creating a cause of action is a legislative endeavor. Courts engaged in that unenviable task must evaluate a "range of policy considerations ... at least as broad as the range ... a legislature would consider." *Bivens,* 403 U.S., at 407 (Harlan, J., concurring in judgment); see also *post,* at 2 (GORSUCH, J., concurring in judgment). Those factors include "economic and governmental concerns," "administrative costs," and the "impact on governmental operations systemwide." *Ziglar,* 582 U.S., at___, ___(slip op., at 10, 13). Unsurprisingly, Congress is "far more competent than the Judiciary" to weigh such policy considerations. *Schweiker,* 487 U.S., at 423. And the Judiciary's authority to do so at all is, at best, uncertain. See, *e.g., Hernandez,* 589 U.S., at___(slip op., at 6).

Nonetheless, rather than dispense with *Bivens* altogether, we have emphasized that recognizing a cause of action under *Bivens* is "a disfavored judicial activity." *Ziglar,* 582 U.S., at___(slip op., at 11) (internal quotation marks omitted); *Hernandez,* 589 U.S., at___(slip

op., at 7) (internal quotation marks omitted). When asked to imply a *Bivens* action, "our watchword is caution." *Id.*, at___(slip op., at 6). "[I]f there are sound reasons to think Congress might doubt the efficacy or necessity of a damages remedy [,] the courts must refrain from creating [it]." *Ziglar,* 582 U.S., at___(slip op., at 13). "[E]ven a single sound reason to defer to Congress" is enough to require a court to refrain from creating such a remedy. *Nestle USA, Inc. v. Doe,* 593 U.S.___, ___(2021) (plurality opinion) (slip op., at 6). Put another way, "the most important question is who should decide whether to provide for a damages remedy, Congress or the courts?" *Hernandez,* 589 U.S., at ___-___(slip op., at 19-20) (internal quotation marks omitted). If there is a rational reason to think that the answer is "Congress"-as it will be in most every case, see *Ziglar,* 582 U.S., at___(slip op., at 12)-no *Bivens* action may lie. Our cases instruct that, absent utmost deference to Congress' preeminent authority in this area, the courts "arrogat[e] legislative power." *Hernandez,* 589 U.S., at___(slip op., at 5).

To inform a court's analysis of a proposed *Bivens* claim, our cases have framed the inquiry as proceeding in two steps. See *Hernandez,* 589 U.S., at ___(slip op., at 7). First, we ask whether the case presents "a new *Bivens* context"-*i.e.,* is it "meaningfully]" different from the three cases in which the Court has implied a damages action. *Ziglar,* 582 U.S., at___(slip op., at 16). Second, if a claim arises in a new context, a *Bivens* remedy is unavailable if there are "special factors" indicating that the Judiciary is at least arguably less equipped than Congress to "weigh the costs and benefits of allowing a damages action to proceed." *Ziglar,* 582 U.S., at___(slip op., at 12) (internal quotation marks omitted). If there is even a single "reason to pause before applying *Bivens* in a new context," a court may not recognize a *Bivens* remedy. *Hernandez,* 589 U.S., at___(slip op., at 7).

While our cases describe two steps, those steps often resolve to a single question: whether there is any reason to think that Congress might be better equipped to create a damages remedy. For example, we have explained that a new context arises when there are "potential special factors that previous *Bivens* cases did not consider." *Ziglar,* 582 U.S., at___(slip op., at 16). And we have identified several examples of new contexts-*e.g.,* a case that involves a "new category of defendants," *Malesko,* 534 U.S., at 68; see also *Ziglar,* 582 U.S., at___(slip op., at 11)-largely because they represent situations in which a court is not undoubtedly better positioned than Congress to create a damages action. We have never offered an "exhaustive" accounting of such scenarios, however, because no court could forecast every factor

that might "counse[l] hesitation." *Id.*, at___(slip op., at 16). Even in a particular case, a court likely cannot predict the "systemwide" consequences of recognizing a cause of action under *Bivens*. *Ziglar,* 582 U.S., at___(slip op., at 13). That uncertainty alone is a special factor that forecloses relief. See *Hernandez v. Mesa,* 885 F.3d 811, 818 (CA5 2018) (en banc) ("The newness of this 'new context' should alone require dismissal").

Finally, our cases hold that a court may not fashion a *Bivens* remedy if Congress already has provided, or has authorized the Executive to provide, "an alternative remedial structure." *Ziglar,* 582 U.S., at___(slip op., at 14); see also *Schweicker,* 487 U.S., at 425. If there are alternative remedial structures in place, "that alone," like any special factor, is reason enough to "limit the power of the Judiciary to infer a new *Bivens* cause of action." *Ziglar,* 582 U.S., at___(slip op., at 14). Importantly, the relevant question is not whether a *Bivens* action would "disrup[t]" a remedial scheme, *Schweicker,* 487 U.S., at 426, or whether the court "should provide for a wrong that would otherwise go unredressed," *Bush,* 462 U.S., at 388. Nor does it matter that "existing remedies do not provide complete relief." *Ibid.* Rather, the court must ask only whether it, rather than the political branches, is better equipped to decide whether existing remedies "should be augmented by the creation of a new judicial remedy." *Ibid;* see also *id.*, at 380 ("the question [is] who should decide").

Applying the foregoing principles, the Court of Appeals plainly erred when it created causes of action for Boule's Fourth Amendment excessive-force claim and First Amendment retaliation claim.

The Court of Appeals conceded that Boule's Fourth Amendment claim presented a new context for *Bivens* purposes, yet it concluded there was no reason to hesitate before recognizing a cause of action against Agent Egbert. See 998 F.3d, at 387. That conclusion was incorrect for two independent reasons: Congress is better positioned to create remedies in the border-security context, and the Government already has provided alternative remedies that protect plaintiffs like Boule.

Egbert v. Boule, No. 21-147, at *8-12 (June 8, 2022)

***West Virginia v. EPA*, No. 20-1530, at *3 (June 30, 2022)**

"Precedent teaches that there are "extraordinary cases" in which the "history and the breadth of the authority that [the agency] has asserted," and the "economic and political significance" of that assertion, provide a "reason to hesitate before concluding that Congress" meant to confer such authority. *FDA v. Brown & Williamson Tobacco Corp.*,529 U.S. 120, 159-160. See, *e.g., Alabama Assn. of Realtors v. Department of Health and Human Servs.*, 594 U.S.__,__; *Utility Air Regulatory Group v. EPA*,573 U.S. 302, 324; *Gonzales v. Oregon*,546 U.S. 243, 267; *National Federation of Independent Business v. OSHA*, 595 U.S.__,__. Under this body of law, known as the major questions doctrine, given both separation of powers principles and a practical understanding of legislative intent, the agency must point to "clear congressional authorization" for the authority it claims. *Utility Air*, 573 U.S., at 324. Pp. 16-20."

West Virginia v. EPA, No. 20-1530, at *3 (June 30, 2022)

Consider, for example, the "major questions " doctrine. Under our precedents, an agency can fill in statutory gaps where "statutory circumstances" indicate that Congress meant to grant it such powers. But we don't follow that rule when the "statutory gap" concerns "a question of deep 'economic and political significance' that is central to the statutory scheme." So we've rejected agency demands that we defer to their attempts to rewrite rules for billions of dollars in healthcare tax credits, to assume control over millions of small greenhouse gas sources, and to ban cigarettes. Although it is nominally a canon of statutory construction, we apply the major questions doctrine in service of the constitutional rule that Congress may not divest itself of its legislative power by transferring that power to an executive agency.

Consider, too, this Court's cases addressing vagueness. "A vague law," this Court has observed, "impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an *ad hoc* and subjective basis." And we have explained that our doctrine prohibiting vague laws is an outgrowth and "corollary of the separation of powers." It's easy to see, too, how most any challenge to a legislative delegation can be reframed as a vagueness complaint: A statute that 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. And it seems little coincidence that our void-for-vagueness cases became much more common soon after the Court began relaxing its approach to legislative delegations. Before 1940, the Court decided only a handful of vagueness challenges to federal statutes. Since then, the phrase "void for vagueness" has appeared in our cases well over 100 times.

Nor have we abandoned enforcing other sides of the separation-of-powers triangle between the legislative, executive, and judiciary. We have not hesitated to prevent Congress from "confer[ring] the Government's 'judicial Power' on entities outside Article III." We've forbidden the executive from encroaching on legislative functions by wielding a line-item veto. We've prevented Congress from delegating its collective legislative power to a single House. And we've policed

legislative efforts to control executive branch officials. These cases show that, when the separation of powers is at stake, we don't just throw up our hands. In all these areas, we recognize that abdication is "not part of the constitutional design." And abdication here would be no more appropriate. To leave this aspect of the constitutional structure alone undefended would serve only to accelerate the flight of power from the legislative to the executive branch, turning the latter into a vortex of authority that was constitutionally reserved for the people's representatives in order to protect their liberties. III

Gundy v. United States, 139 S. Ct. 2116, 2141-43 (2019)