No. 21-908

In the Supreme Court of the United States

KATE MARIE BARTENWERFER,
PETITIONER,

v.

KIERAN BUCKLEY,
RESPONDENT.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

REPLY BRIEF FOR PETITIONER

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Section 523(a)(2)(A) bars "individual debtor[s]" from discharging "any debt … for money … obtained by … actual fraud." Textually and contextually, the "individual debtor," not her partners, must commit that fraud. That reading vindicates the Code's design, which assesses the "individual debtor" alone and gives that individual a fresh start unless discharge exceptions clearly apply.

Buckley reads 523(a)(2)(A) to permanently saddle debtors with "any debt … obtained by [anyone's] fraud." He emphasizes "any"—but "any" modifies "debt," not "fraud," and does not mean anyone's fraud counts. He stresses 523(a)(2)(A)'s passive voice—but 523(a)(2)(A) did not need to bar discharge of "any debt for money obtained by actual fraud *of the debtor*" to limit the universe of actors. In 523(a), including 523(a)(2)(A), the debtor is the only relevant actor throughout. Likewise, across the Code, Congress omitted references to "the debtor" in provisions that can apply only to the debtor, and no one else. Federal discharge rules judge each debtor in isolation to limit the sweep of nondischargeability, which could otherwise be a financial death sentence.

Taking another tack, Buckley argues that the word "debt" defers to state-law judgments holding debtors liable for others' conduct. But liability for debts under state law does not control *nondischargeability* under federal bankruptcy law. Bankruptcy always discharges state-law liabilities unless *federal* exceptions prohibit discharge. Anyway, there is no state-law fraud judgment here. Kate and David were each directly liable for a California-law nondisclosure tort that does not require fraudulent intent. Thus, the bankruptcy court addressed for itself whether Kate committed "fraud" under 523(a)(2)(A) and answered no, she lacked fraudulent intent. Buckley also proposes a vicarious-liability presumption throughout federal civil statutes, which would be impermissible, destabilizing federal common-lawmaking.

Finally, Buckley portrays *Strang v. Bradner*, 114 U.S. 555 (1885), as forever attributing another partner's fraud to the debtor for bankruptcy purposes. But *Strang* created federal common law that *Erie* displaced, and Congress repealed the statute *Strang* involved. *Strang* is not a 19th-century zombie haunting today's Code.

Barring bankruptcy discharge based on others' fraud would be a devastating "sea-change." Fitzgerald Br. 6. Buckley's interpretations sweep Code-wide, inflicting unnecessary hardship. Actual fraudsters can never discharge fraud-tainted debt. The Code does not give creditors another bite at the apple to pursue innocent partners for that same debt forever.

I. Section 523(a)(2)(A) Does Not Saddle Individual Debtors with Others' Fraud

Section 523(a)(2)(A) "does not discharge an individual debtor from any debt … for money …, to the extent obtained by … fraud." Since Kate herself did not commit fraud, 523(a)(2)(A) is inapplicable.

A. The Text Does Not Clearly Foreclose Discharge

Consistent with the Code's design, which strongly favors a fresh start, this Court "confine[s]" discharge exceptions "to those plainly expressed." *Bullock v. BankChampaign, N.A.*, 569 U.S. 267, 275 (2013) (citation omitted). Buckley (at 32-33) calls this clear-statement rule an illegitimate makeweight. But *Bullock* invoked the rule as an important "consideration[]" in holding that section 523(a)(4) "defalcation" requires intentional wrongdoing. *Id.* at 273-76. And *Kawaauhau v. Geiger*, 523 U.S. 57, 61-62 (1998), invoked that clear-statement rule to hold that 523(a)(6)'s bar for "willful and malicious injur[ies]" excludes willful acts that cause unintended injuries.

Likewise, 523(a)(2)(A) does not clearly encompass others' fraud. Br. 16-17; *contra* Resp. Br. 32; U.S. Br. 14. Buckley's competing presumption of vicarious liability is unfounded. *Infra* pp. 20-22.

B. The Text Bars Imputation

Multiple textual elements confirm 523(a)(2)(A) bars discharge only if debts reflect the individual debtor's own fraud. "The debtor" is the only relevant actor throughout the provision; referring to "fraud of the debtor" would be superfluous.

"Individual debtor." Section 523(a)(2)(A) differentiates the "individual debtor" from "insider[s]," *e.g.*, "general partner[s]." 11 U.S.C. § 101(31)(A)(iii). Twenty-one other provisions contrast debtors with others. Br. 18-20. Misconduct by the "individual debtor" thus naturally refers to the debtor's own acts. If acts by the "debtor" included partners' acts attributable to the debtor, the Code's differentiation between "debtor[s]" and their partners would be nonsensical.

Buckley (at 34-35) argues that an "individual debtor" just means natural persons, not corporations. But "individual debtor" also distinguishes that debtor from other natural persons (like partners) who might commit fraud. Take section 524(e)'s rule that "discharge of a debt of the debtor" in bankruptcy does not affect others' state-law liability. That provision would not work if "debt of the debtor" included partners' debts. The debtor's discharge would automatically release others.

Buckley (at 35) invokes section 1141(d)(6)(A), which cross-references 523(a)(2)(A) when barring corporations from discharging fraud debts. He reasons that because corporations can act only via agents, 1141(d)(6)(A) holds corporate debtors responsible for others' fraud, so 523(a)(2)(A) must do so for individual debtors. But individual debtors, unlike corporate ones, can act through others *or* themselves. That apples-to-oranges comparison does not resolve whether 523(a)(2)(A) refers to an individual debtor alone. Asking whether a corporate debtor has "debt … obtained by … fraud" asks whether the natural persons who operate the corporation—not related companies—committed fraud on the corporation's behalf. Likewise, 523(a)(2)(A) asks whether the individual debtor, not others, committed fraud.

The government (at 24-25) agrees "Congress kn[ew] how to distinguish debtors from their business partners," but says Congress omitted that distinction from 523(a)(2)(A). The government ignores 523(a)(2)(A)'s express contrast between "debtor[s]" and "insider[s]" (*e.g.*, general partners). Further, "equivalent words" presumptively "have equivalent meanings" across the Code. *Cohen v. de la Cruz*, 523 U.S. 213, 220 (1998). Congress did not differentiate "the debtor" from others elsewhere, yet lump them *sub silentio* in 523(a)(2)(A).

"Obtained by … actual fraud." Section 523(a)(2)(A) limits nondischargeability "to the extent" money underlying debt was "obtained by … actual fraud." As the government (at 16 n.4) concedes, passive voice is ambiguous—"context … may limit the universe of relevant actors."

Here, Congress did not need to say "obtained by actual fraud of the debtor" to limit 523(a)(2)(A) to the debtor. The "individual debtor" is always the relevant actor. The "individual debtor" obtains "discharge," not others. The "individual debtor" owes a "debt … for money," not others. Whether money was "obtained by … fraud" thus refers to the debtor's fraud; Congress did not tacitly mix in others mid-sentence. Br. 20-22, 30.

Buckley (at 36) observes that passive voice "focus[es] on an event that occurs without respect to a specific actor, and therefore without respect to any actor's intent." (citation omitted). Plainly, that is not how 523(a)(2)(A) uses passive voice. Intent is always at issue, because "actual fraud" requires fraudulent intent. *Husky Int'l Elecs., Inc.*

v. Ritz, 578 U.S. 356, 360 (2016). The passive-voice "obtained by" begs the question: whose intent? The rest of 523(a)(2)(A) answers: the "individual debtor."

Buckley (at 36-37) claims Kate "obtained" assets underlying the debt, by receiving money from selling the house. But 523(a)(2)(A) does not just require "obtaining" assets. Assets must be "obtained *by … fraud*."

Buckley (at 37-38) claims passive voice supports imputation by positing a hypothetical: "Jane has a 'clerkship obtained by fraud,'" Buckley says, covers Jane's agent doctoring her transcript. But the most natural reading of that sentence is Jane committed fraud. If Jane induced her agent to doctor transcripts, Jane is directly liable. *Restatement (Second) of Torts* § 877(a) (1979). Anyway, context matters. Buckley's reading would be far-fetched if, say, 21 surrounding passages distinguished Jane's actions from her agent's.

C. Context Rules Out Imputation

"[S]tatutory context" illuminates bankruptcy provisions' meaning. *Milavetz, Gallop & Milavetz, P.A. v. United States*, 559 U.S. 229, 239 (2010). Other 523(a) discharge exceptions parallel 523(a)(2)(A) and target only the debtor's conduct, even without stating that "the debtor" committed relevant acts. Br. 24-26. Code-wide, Congress alternated between including and omitting "the debtor" in provisions that can only refer to the debtor. Br. 33-34. When Congress was indifferent to whose conduct underlies a debt, Congress directed deference to "judgment[s]," "order[s]," etc. Br. 26-27.

1. Buckley (at 23) dismisses context. *But see* Br. in Opp. 9-11 (finding other discharge provisions dispositive). Yet this Court often uses other provisions to interpret

523(a)(2)(A). *E.g.*, *Husky*, 578 U.S. at 363-34; *Cohen*, 523 U.S. at 219-20. *Field v. Mans* deemed related 523(a) provisions "helpful," just no "interpretive trump card." 516 U.S. 59, 67 (1995).

Section 523(a) must be read as a unitary whole because the same prefatory clause links all 523(a) discharge exceptions: "A discharge … does not discharge an individual debtor from any debt …." Other exceptions share 523(a)(2)(A)'s passive-voice structure and treat "the debtor" as the sole actor. *E.g.*, 11 U.S.C. § 523(a)(1)(B), (3), (4), (12), (14), (14A), (18). Many were enacted contemporaneously. Act of Nov. 6, 1978, Pub. L. No. 95-598, 92 Stat. 2549, 2590-91. This Court can hardly dodge the "meaning of those provisions," U.S. Br. 15, when Buckley's arguments apply equally to them. *Infra* pp. 16-22.

2. Congress linked 523(a)(2)(A), (B), and (C), suggesting Congress targeted the same actor throughout. "[A]ny debt … for money … to the extent obtained by" prefaces all three subparagraphs. (A) covers "fraud," except false financial statements. (B) addresses false financial statements "*the debtor* caused to be made or published with intent to deceive." (emphasis added). Subparagraph (C), "for purposes of subparagraph (A)," renders presumptively nondischargeable debts for cash advances "obtained by *an individual debtor*." (emphasis added). Subparagraphs (B) and (C) apply to only the debtor herself, indicating the same for (A). Br. 22-23; Law Profs. Br. 20-21.

Buckley (at 24-25, 40-42) deems 523(a)(2)(B) and (C) ambiguous. *Accord* U.S. Br. 15. But Buckley previously acknowledged 523(a)(2)(B) "clear[ly]" "hinge[s]" dischargeability "on a debtor's state of mind," not others'.

Br. in Opp. 10. Section 523(a)(2)(C)'s "plain text" does too. *Collier on Bankruptcy* ¶ 523.08[3] (16th ed. 2022).[1]

Section 523(a)(2)(B) is particularly illuminating: "[T]he debtor" must have intentionally made false financial statements to bar discharge. Congress did not illogically absolve debtors for their partners' fraudulent financial statements in 523(a)(2)(B), yet hold debtors responsible for partners' other frauds in (A). Br. 23. The government (at 27) speculates Congress might have limited nondischargeability under 523(a)(2)(B) to the debtor's conduct to help debtors whose nefarious creditors (consumer-finance companies) tricked them into making false statements. Congress' desire to help deceived debtors explains why 523(a)(2)(B) requires, *e.g.*, materiality—creditors cannot block discharge by duping debtors into trivial misstatements. That does not explain why Congress would hold debtors liable for partners' materially identical forms of fraud in (A), but not (B).

Buckley (at 40-41) argues that, by mentioning the "debtor" in 523(a)(2)(B) and (C) but not (A), Congress declined to limit 523(a)(2)(A) to the debtor's fraud. *Accord* U.S. Br. 14-15. Buckley ignores that specifying actors in one place while employing the passive voice elsewhere does *not* mean the latter provision includes everyone. Br. 30-31; *Gladstone, Realtors v. Village of Bellwood*, 441 U.S. 91, 103-05 (1979). This Court's warning against overreliance on negative inference in bankruptcy is especially apt

[1] *Veritex Community Bank v. Osborne*, 951 F.3d 691 (5th Cir. 2020) (cited at Resp. Br. 41), does not help Buckley. *Veritex* permitted imputation under 523(a)(2)(B) because circuit precedent permitted imputation under 523(a)(2)(A), and reading the two divergently would be "anomalous." *Id.* at 703.

as to "the debtor." *See Hartford Underwriters Ins. v. Union Planters Bank, N.A.*, 530 U.S. 1, 8 (2000). The Code arbitrarily omits references to "the debtor" because she is always the central actor. Br. 33-35.

Section 523(a)(2)'s structure further undercuts the negative-inference canon. Subparagraphs 523(a)(2)(B) and (C) pinpoint the "debtor" as the person "obtain[ing]" money "by" deception. The same linking phrase across 523(a)(2)—"any debt … for money … obtained by"—cannot refer to only the "debtor" obtaining money under (B) and (C), but include others under (A).

The government (at 28) hypothesizes Congress might limit 523(a)(2)(C) to debtors alone because debtors' "high-spending actions" pre-bankruptcy "abuse[] … the bankruptcy system." But if Congress wanted to hold debtors accountable for partners' fraud under 523(a)(2)(A), it would make no sense to let debtors avoid presumptive nondischargeability under (C) when partners abusively accrue pre-bankruptcy debt.

3. Seven other discharge exceptions—523(a)(1)(B), (3), (4), (12), (14), (14A), and (18)—use passive-voice formulations that plainly refer to debtors' acts alone. That pattern confirms that, in 523(a)(2)(A), the debtor is the only person who "obtained" money "by fraud." Br. 24-26.

523(a)(1)(B) bars discharging tax debts if a return "was not filed," *i.e.*, not filed *by the debtor*. Br. 24. Buckley (at 41) responds that taxpayers might file through agents. But 523(a)(1)(B) makes the debtor ultimately responsible for failing to file. And taxpayers sign returns, making the filing their own. 26 C.F.R. § 1.6061-1(a). The government (at 28) inaptly cites a case holding that 523(a)(1)(A)—a different provision—permits imputation. *In re Rizzo*, 741 F.3d 703, 706-08 (6th Cir. 2014).

523(a)(3) prohibits discharging debts "neither listed nor scheduled under section 521(a)(1)"—acts *the debtor* must perform. Buckley (at 41) notes bankruptcy petition preparers might draft lists for debtors. But the debtor must execute that document herself, so she—not her agent—is responsible. 11 U.S.C. § 110(e)(1). The government (at 29) deems 523(a)(3) "irrelevant" because it does not involve "a liability defined by state law." But federal law governs all discharge exceptions. *Grogan v. Garner*, 498 U.S. 279, 283-84 (1991); *infra* pp. 17-19. Whether the same passive-voice structure refers to the debtor alone cannot depend on the nature of the underlying liability.

523(a)(4) bars discharging debts from "fraud or defalcation while acting in a fiduciary capacity." Naturally, *the debtor* committed that misconduct. Buckley has no response. The government's citation (at 28) reasons that because 523(a)(2)(A) purportedly requires imputation, so does 523(a)(4). *In re Cowin*, 864 F.3d 344, 350-51 (5th Cir. 2017). That shows how misreading 523(a)(2)(A) distorts other provisions.

523(a)(12), (14), (14A), and (18) bar discharging debts for "fail[ing] to fulfill" capital commitments (523(a)(12)), "incurred to pay" taxes (523(a)(14) and (14A)), or "owed to" retirement plans (523(a)(18)). These passive-voice framings can only refer to the debtor. Br. 25-26. Buckley ignores 523(a)(18) and previously agreed 523(a)(12) covers the debtor's conduct alone. Br. in Opp. 10. He (at 41) puzzlingly argues that 523(a)(14) and (14A) might "encompass a tax filing made by a paid preparer"; these provisions involve no filings, just debts "incurred to pay a tax." Meanwhile, the government's policy argument (at 28-29) that all four provisions might cover others' conduct to protect "programs with countless beneficiaries" like the tax system is utterly atextual.

4. When Congress wanted to defer to imputation rules underlying liability, Congress directed bankruptcy courts to heed "judgment[s]," "order[s]," and the like. Thus, debtors liable for "order[s] of restitution" cannot discharge those debts under 523(a)(13)—even if that order rests on vicarious liability. Br. 26-27.

Buckley (at 26) agrees these provisions permit imputation, but says 523(a)(2)(A) has "the same structure." The only "structure" Buckley identifies, however, is "any debt" plus passive voice—recurrent features throughout 523(a). Buckley elides the key difference: The "judgment" provisions require deference to previous findings of liability. Under 523(a)(2)(A), bankruptcy courts decide themselves if debtors obtained money via "actual fraud." *Field*, 516 U.S. at 70.

The government deems petitioner's position inconsistent with statutory history because 1903 amendments "'broaden[ed] the coverage of the fraud exceptions'" by barring discharge for "liabilities," whereas a short-lived predecessor required "judgments." U.S. Br. 29-30 (quoting *Grogan*, 498 U.S. at 290). But that account is true under petitioner's view. The 1903 amendment vastly expanded the fraud exception by relieving creditors from reducing fraud claims to judgment. *Brown v. Felsen*, 442 U.S. 127, 138 (1979). Switching from "judgments" to "liabilities" just eliminated deference to judgments imposing liability for others' fraud—a smaller change.

D. Imputation Would Upend Bankruptcy

Modern bankruptcy provides debtors with "a fresh start in life." *Lamar, Archer & Cofrin, LLP v. Appling*, 138 S. Ct. 1752, 1758 (2018) (citation omitted); *contra* Resp. Br. 33-34. Today's Code embraces many narrow discharge exceptions, whereas 19th-century bankruptcy law barred discharge unless the debtor paid 50%. Br. 16; *contra* Resp. Br. 33. Denying discharge of even one debt can be an "economic death penalty." Fitzgerald Br. 3; *contra* U.S. Br. 30. Imposing that draconian price on debtors who themselves did not commit fraud would defeat a fresh start.

Buckley (at 27, 42) calls himself the real "victim" and says Kate is not "innocent" because California makes partners vicariously liable regardless of "independent fault." (citation omitted). Buckley (at 26-29) and the government (at 31-33) urge deference to state policies favoring vicarious liability. But bankruptcy law is *federal* law; liability under state law does not control nondischargeability. *Grogan*, 498 U.S. at 283-84. States might endorse vicarious liability, but Congress chose differently, barring discharge only for "strong, special policy considerations, such as the presence of fault." *Bullock*, 569 U.S. at 276.

Buckley (at 42) and the government (at 33) object that, under petitioner's view, a partner who—*unlike* Kate—"is *aware* of their co-partner's fraud" or "possesses fraudulent intent but deputizes an agent to make a false statement on her behalf" could obtain discharge. But awareness of fraud is fraudulent intent, and encouraging someone else to commit fraud is itself fraud. *Restatement*, *supra*, §§ 526, 877(a) & cmt. a. "Fraud" under 523(a)(2)(A) captures witting debtors' participation.

Bankruptcy does not give creditors lifetime recovery against unwitting debtors like Kate.

Barring discharge based on others' misconduct would work "a sea-change on the law of discharge." Fitzgerald Br. 6. Countless debtors would lose the ability to discharge debts because, under state law, the bar for finding partnership/agency is low. Even informal endeavors count as partnerships, including married couples selling homes. Br. 28; NCBRC Br. 11-12; *contra* Resp. Br. 28-29. For "victims of domestic abuse," whose abusers often coerce them into fraudulent debt, imputing responsibility would be "devastating." NCBRC Br. 9; *see* Law Profs. Br. 28-30. Meanwhile, federal courts would face complex evidentiary forays into whether absent third parties committed fraud. Br. 29.

Buckley (at 28) advises innocent partners to "not go[] into business with a fraudster," use "a limited-liability business form," or "terminate the partnership." *Accord* U.S. Br. 31-32. Buckley (at 43) even suggests Kate should "seek indemnification or contribution from the partnership or her partner," *i.e.*, ask her bankrupt husband to pay $1.4 million. But David can never discharge that same debt already. Married couples often have no idea their informal transactions technically created state-law partnerships. Fitzgerald Br. 33. People go bankrupt because something has gone terribly wrong. "Next time, use an LLC" is no answer.[2]

[2] Buckley (at 5 n.1) suggests the Bartenwerfers could have used David's LLC, which David only organized post-sale. Kate never heard of it. C.A. Excerpts of Record 925.

E. There Is No Forfeiture or Waiver

Buckley (at 29-30) accuses Kate of forfeiting her argument that 523(a)(2)(A) requires the debtor herself to commit fraud because she previously argued that the debtor must *know* of partners' fraud. The question presented plainly includes both arguments: "May an individual be subject to liability for the *fraud of another* that is barred from discharge in bankruptcy under 11 U.S.C. … § 523(a)(2)(A), by *imputation, without any act, omission, intent or knowledge* of her own?" Pet. i (emphases added); *accord* Pet. 3, 28. Kate's petition repeatedly attacked barring discharge "for conduct over which [debtors have] *no control* or even knowledge." Pet. 3, 9, 29 (emphasis added); *accord* Pet. 10, 28 ("circumstances *outside her control* and indeed outside of her awareness"); Pet. 18 ("without *her participation* or even knowledge").

Nor is Kate's position a U-turn from barring discharge only if the debtor "knew or should have known" of fraud. *Contra* Resp. Br. 29; U.S. Br. 23-24. Kate has always argued for "some level of scienter on the part of the debtor." Pet. 14; *accord* Pet. 3, 8-10, 17; *see* Pet. 7 (urging knew-or-should-have-known standard "at a minimum"); Pet. 22 ("some showing of culpability"). And "knew or should have known" is one articulation of fraud's intent requirement. *Cummings v. HPG Int'l*, 244 F.3d 16, 23 (1st Cir. 2001); *Mary Pickford Co. v. Bayly Bros.*, 86 P.2d 102, 111 (Cal. 1939). Though Buckley (at 29-30) differentiates "knowledge" and "intent," his brief in opposition (at 16) described "knew or should have known" as an "intent requirement." Buckley's cries of bait-and-switch are also ironic given his reversals from his brief in opposition. *Compare* Br. in Opp. 10 (contending references to "the debtor" "clear[ly]" bar imputation), *with* Resp. Br. 25 (same references "ambiguous").

The government (at 23-24) sees grounds for "pause" in addressing whether debtors must themselves commit fraud, because lower courts focused on debtors' knowledge. But in lower-court cases, intent was the only contested fraud element. Holding that the debtor herself must commit fraud resolves the split over whether 523(a)(2)(A) bars discharge for unwitting debtors. If the debtor herself must satisfy all elements of "fraud," including intent, her debt is dischargeable where she lacks knowledge.

Statutory-interpretation cases unavoidably ask what statutory terms mean. And this Court may consider any "subsidiary question fairly included" in the question presented. *Unicolors, Inc. v. H&M Hennes & Mauritz, L.P.*, 142 S. Ct. 941, 949 (2022) (quoting S. Ct. R. 14.1(a)). Having "consistently claimed" 523(a)(2)(A) permits her discharge, Kate is "not limited to the precise arguments [she] made below." *See Egbert v. Boule*, 142 S. Ct. 1793, 1806 n.3 (2022) (citation omitted).

Buckley (at 30) accuses Kate of waiving the argument that the debtor must possess fraudulent intent because, at trial, Kate pressed and won under the knew-or-should-have-known standard. The knew-or-should-have-known standard *is* an intent standard, and bankruptcy precedent bound Kate to that standard below. *Sachan v. Huh*, 506 B.R. 257, 271-72 (B.A.P. 9th Cir. 2014) (en banc).

II. Contrary Interpretations Fail

Neither the text nor *Strang* supports Buckley's and the government's disparate theories for refusing a fresh start to debtors for others' fraud.

1. Buckley's and the government's textual arguments are meritless and extend far beyond 523(a)(2)(A).

523(a)(2)(A)'s exception. Buckley (at 17) says 523(a)(2)(A)'s express exception for fraudulent financial statements forecloses unstated exceptions. *Accord* U.S. Br. 14. But Kate advocates a plain-meaning reading, not an exception. "[D]ebt … obtained by … fraud" covers only the debtor's fraud—no "unstated exception" required.

Passive voice/omitting "the debtor." Buckley (at 24-26) and the government (at 14-16) take 523(a)(2)(A)'s passive voice and omission of "the debtor" as proof that anyone's fraud counts. Treating those features as dispositive is untenable and would distort parallel discharge exceptions. *Supra* pp. 5-6, 9-11. Buckley (at 24-25) and the government (at 15) also retreat from this theory, doubting that active formulations like "money the debtor obtained by fraud" would limit imputation.

"Any." Buckley argues that because "any" means "all," "*any* debt" for assets "obtained by … fraud" covers all assets fraudulently obtained by anyone. Resp. Br. 2, 16-18; U.S. Br. 13-14. That argument cuts broadly. "[A]ny debt" prefaces all of section 523(a), so *all* discharge exceptions would saddle debtors with others' conduct. *But see* Resp. Br. 24-25 (arguing 523(a)(2)(B) and (a)(6) might not allow imputation); U.S. Br. 15 (calling 523(a)(2)(B) and (C) ambiguous).

Further, "any" modifies "debt," not "fraud." *See Cohen*, 523 U.S. at 218. Section 523's preface reads: "A discharge … does not discharge an individual debtor from *any debt*—." (emphasis added). "[A]ny" does not modify each element of 523(a)'s 21 grounds for nondischargeability. Take 523(a)(2)(A): The debt must be for specified assets like "money," not "any" asset. And assets must be "obtained by … actual fraud," not "any" fraud. The prefatory "any debt" does not cover "any" fraud by anyone. "[A]ny" may "convey[] breadth," but cannot "reach [something] it would not otherwise include." *Cf. Peter v. Nantkwest, Inc.*, 140 S. Ct. 365, 372-73 (2019) ("all").

Cases recognizing 523(a)(2)(A)'s "breadth" confirm "any debt" defines what liabilities count as "debt," not what conduct bars discharge. *Archer v. Wagner*, 538 U.S. 314 (2003); *Cohen*, 523 U.S. 213; *Brown*, 442 U.S. 127; *contra* U.S. Br. 16-18; Resp. Br. 14-15. "[A]ny debt" encompasses settlement agreements and punitive damages, not just loans. But those debts must still satisfy 523(a)'s grounds for nondischargeability. On that score, *Cohen* explained: "The most straightforward reading of § 523(a)(2)(A)" reaches assets "*the debtor* has fraudulently obtained." 523 U.S. at 218 (emphasis added).

State-Law Liability. Alternatively, Buckley and the government contend, 523(a)(2)(A) bars discharge whenever *state* law holds debtors liable. Resp. Br. 3, 16, 42; U.S. Br. 9, 12-13. Because California law holds Kate liable for David's actions as her partner, Buckley (at 16) claims, the Code treats Kate's ensuing debt as one Kate "obtained by … fraud." Even a federal discharge bar for debts arising from "*the debtor's* intentional fraud" could sweep in others' fraud. *See* Resp. Br. 12-13.

No court endorses this theory, which confuses federal bankruptcy discharge rules with individual States' rules for liability. "[B]ankruptcy law is federal law." *Brown*, 442 U.S. at 136. "[S]tate-law concept[s]" often "differ from th[ose] adopted in the federal statute." *Id.* at 135. State law defines whether creditors have rights to payment and thus claims in bankruptcy. *Travelers Cas. & Sur. Co. v. Pac. Gas & Elec.*, 549 U.S. 443, 451 (2007). But "the issue of nondischargeability [is] a matter of federal law governed by the terms of the Bankruptcy Code." *Grogan*, 498 U.S. at 284; Zuckerman Br. 17.

Just because debtors incurred state-law liability and creditors have state-law rights to payment does not mean federal bankruptcy law forecloses discharge. *Brown*, 442 U.S. at 135. Debtors liable under Hawaii law for willful conduct causing injury do not necessarily satisfy 523(a)(6)'s bar for "willful and malicious injury." *Kawaauhau*, 523 U.S. 57. Likewise, Illinois-law breach-of-fiduciary-duty claims do not automatically equal 523(a)(4) "defalcation." *Bullock*, 569 U.S. 267. This Court interprets discharge exceptions using ordinary statutory-interpretation tools, not by borrowing individual States' definitions. Creditors like Buckley can sue Kate or David in state court to impose state-law liability. But federal bankruptcy law clears most state-law debts, employing federal grounds for nondischargeability.

Federal law controls 523(a)(2)(A)'s scope. "Actual fraud" means the common-law elements of intentional fraud, not whether debtors are liable for fraud under "the law of any particular State." *Field*, 516 U.S. at 70 & n.9. If Georgia defines fraud to exclude fraudulent intent, 523(a)(2)(A) might not bar discharge of Georgia-law fraud debts. Federal bankruptcy courts would decide whether federal fraud elements, including intent, were met. *Grogan*, 498 U.S. at 284. Iowa might hold defendants liable for every penny in transactions infected by fraud. But bankruptcy courts refuse discharge only for portions of debts traceable to fraud. *Cohen*, 523 U.S. at 218. Likewise, federal, not state law, determines whether 523(a)(2)(A) bars discharge based on others' fraud.

Buckley and the government repeatedly misstate that Kate owes a "state-law fraud debt" "because David defrauded respondent within the scope of their partnership." Resp. Br. 2, 4 n.1, 12-13, 16, 19, 43; U.S. Br. 6-7, 12, 31. No state-law fraud judgment even exists. The jury found Kate and David each *directly* liable for California-law "non-disclosure of material facts"; that tort does *not* require fraudulent intent. J.A.3, 7. The state-court judgment did not deem even David liable for fraud, much less Kate. Hence, the federal bankruptcy court held a mini-trial to determine if the facts constituted federal "fraud" under 523(a)(2)(A), and found only David acted fraudulently.

A state-law liability theory would also sow inconsistency. States employ diverging imputation rules. Some States, for instance, hold parents liable for negligently supervising their children; others refuse to impute intentional harms by children to parents. *See Dinsmore-Poff v. Alvord*, 972 P.2d 978, 981 (Alaska 1999). Debts implicating that rule could be nondischargeable under 523(a)(6)'s "willful and malicious injury" bar in States allowing imputation, but not elsewhere. The same conduct should not trigger disparate federal bankruptcy outcomes, where uniformity ordinarily reigns. *See Siegel v. Fitzgerald*, 142 S. Ct. 1770 (2022).

A state-law liability theory would also bar discharge no matter how debtors became liable under state law. A daughter who collects on her father's life insurance policy. A girlfriend who assumes her boyfriend's student-loan debt. Br. 38-39. A doctor who buys the assets and liabilities of another practice, only to get sued for Medicare fraud. All are on the hook.

Vicarious-Liability Presumption. Buckley, but not the government, presses a presumption of vicarious liability. Unlike the state-liability theory, this theory treats vicarious liability as a default *federal* rule whereby the "individual debtor" would encompass anyone for whose conduct the debtor might be vicariously liable, absent a "clear statement" otherwise. Resp. Br. 10, 37. That theory would upend countless statutes by imposing vicarious liability "throughout federal civil law." Resp. Br. 41.

Reading vicarious liability into federal statutes constitutes improper federal common-lawmaking. "[C]ourts must exercise 'great caution' before recognizing new forms of liability" absent express congressional authorization. *See Jesner v. Arab Bank, PLC*, 138 S. Ct. 1386, 1403 (2018) (citation omitted). This Court thus refused to read aiding-and-abetting liability into the Securities Exchange Act or contribution rights into antitrust law—cases Buckley ignores. *Cent. Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 182-83 (1994); *Tex. Indus., Inc. v. Radcliff Materials, Inc.*, 451 U.S. 630, 646-47 (1981); Br. 43. This Court likewise refused to impose vicarious liability under Title IX, which (like 523(a)) does not mention "'agents,' and so does not expressly call for application of agency principles." *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 283 (1998).

Buckley's sole authority (at 21), *Meyer v. Holley*, 537 U.S. 280 (2003), does not endorse cross-cutting vicarious liability. *Meyer* held: "*[W]hen Congress creates a tort action*, it legislates against a legal background of ordinary tort-related vicarious liability rules and consequently intends its legislation to incorporate those rules." *Id.* at 285 (emphasis added). The Code creates no tort actions; it governs bankruptcy discharge. Even tort statutes like 42 U.S.C. § 1983 do not import vicarious liability where statutory text "cannot be easily read to impose" such liability. *Monell v. Dep't of Soc. Serv.*, 436 U.S. 658, 692 (1978).

Buckley (at 35) reads *Meyer* to "hold[] that Congress's use of the word 'person' or 'individual' does not abrogate background rules of vicarious liability." But the Fair Housing Act provision in *Meyer* forbid discrimination by "any person or other entity" and defined "person" to include "individuals, corporations, partnerships," etc. 537 U.S. at 285 (quoting 42 U.S.C. § 3605(a)). That language lumped persons and entities without regard to who does what. The Code does the opposite. *Supra* pp. 4-5.

Buckley's vicarious-liability-everywhere view would breed uncertainty. If even Code provisions expressly mentioning "the debtor" require "assess[ing] the text, history, and context of [that] provision" to see if Congress overrode vicarious liability, federal courts would constantly struggle with imputation. Resp. Br. 25. Buckley identifies *no* bankruptcy provision satisfying his clear-statement rule. His only example of clear-enough language anywhere is a highway rider protecting rental-car companies. Resp. Br. 24 (citing 49 U.S.C. § 30106(a)). Apparently even 523(a)(9), which bars discharge of debts "caused by the debtor's operation of a motor vehicle … if such operation was unlawful because the debtor was intoxicated," does not adequately focus on the debtor herself. Br. 33-34.

Section 727(a) illustrates the dangers of across-the-board vicarious liability. That provision bars discharge altogether when "the debtor, with intent to … defraud," disperses assets. 11 U.S.C. § 727(a)(2). For decades, courts interpreted a predecessor provision to bar imputed fraud. Br. 42 n.7. That consensus endures: "[T]he debtor must have intent to defraud." *Collier*, *supra*, ¶ 727.02[3][a]; *e.g.*, *In re Kempff*, 847 F.3d 444, 448-49 (7th Cir. 2017). Buckley's presumption would overturn that consensus and stop debtors from discharging *any* debts in bankruptcy if partners or agents committed fraud. Br. 38-39, 45-47.

2. *Strang*, 114 U.S. 555, does not justify reading 523(a)(2)(A) to bar discharge for others' fraud. Br. 40-45.

a. *Strang* imputed one partner's fraud to others by creating federal common law that *Erie* disavowed—not by engaging in statutory interpretation. Br. 42. Evidence that *Strang* was federal common law abounds. This Court called *Strang*'s imputation holding a decision "[a]t common law." *James-Dickinson Farm Mortg. Co. v. Harry*, 273 U.S. 119, 123 (1927). *Strang* tracks other federal common-lawmaking that *Erie* abrogated. *E.g.*, *Atherton v. FDIC*, 519 U.S. 213, 217-18 (1997). And *Strang* relied on state-law cases and treatises and engrafted atextual, policy-based limits. 114 U.S. at 561-62. At one point, the government (at 21) even agrees *Strang*'s imputation holding "was based on federal-common-law principles," but puzzlingly says those principles did not address bankruptcy discharge.

Buckley (at 19, 37-38) recasts *Strang* as a textual holding that fraud "of the bankrupt" under the 1867 Act encompassed any fraud for which the bankrupt was vicariously liable. He claims *Strang* held that innocent partners' discharges "d[id] not constitute a defense" if debt was "created by" other partners' fraud. Resp. Br. 19 (quoting 114 U.S. at 561). The quoted part of *Strang* rejected a *different* argument: that defendants' debt was based in contract, not fraud, and thus was dischargeable. 114 U.S. at 560-61. *Strang* therefore held, "whether the claim asserted by plaintiffs is regarded as one arising out of the deceit or fraud of the defendants or as a debt created by their fraud, the discharges in bankruptcy do not constitute a defense." *Id.* at 561. That contract-versus-fraud question had nothing to do with imputation.

Strang then pivoted to the "other question"—whether defendants could "be held liable for the false and fraudulent representations of their partner." *Id.* That one-paragraph analysis never mentioned statutory text in holding that one partner's "fraud is to be imputed … to all the members of his firm." *Id.* Buckley (at 38-39) notes the *Strang* defendants made "statutory arguments." But *plaintiffs* won by championing "elementary" principles "found in all the treatises," *i.e.*, federal common law. *Strang* Resp. Br. 3-4 & n.*.

Buckley (at 39) claims "the scope of 'actual fraud' remains a federal-common-law term today" that encompasses *Strang*'s "underlying rule of agency law." Not so: "[A]ctual fraud" is a term of art incorporating settled "elements that the common law has defined [fraud] to include." *Field*, 516 U.S. at 69. Supplementing those elements with vicarious liability constitutes impermissible common-lawmaking. *Supra* p. 20.

b. Even had *Strang* interpreted the 1867 Act's "fraud of the bankrupt" to mean "fraud for which the bankrupt is vicariously liable," that would not govern today's Code. Br. 43-45. Congress ratifies judicial interpretations by reenacting statutory language "without change." *Jama v.*

ICE, 543 U.S. 335, 349 (2005). The opposite happened here: Congress repealed and repudiated the 1867 Act. The 1978 Code introduced the "individual debtor" and differentiated her from partners and others. And the Code reorganized the fraud exception into three provisions with significantly different language—actual fraud (523(a)(2)(A)), false financial statements (523(a)(2)(B)), and embezzlement (523(a)(4)).

Buckley (at 20-22, 39) contends that Congress ratified *Strang* and confirmed anyone's fraud counts by *deleting* the 1867 Act's "of the bankrupt." That is the antithesis of ratification, which requires reenacting the exact same language. *Jama*, 543 U.S. at 349. Buckley's theory that "of the bankrupt" triggers vicarious liability also contradicts his admission that fraud "by the debtor" is a "potential textual hook" for excluding vicarious liability. Resp. Br. 24-25; U.S. Br. 15.

Nor did this Court confirm *Strang*'s "vitality." *Contra* Resp. Br. 20. *McIntyre v. Kavanaugh* predates *Erie* and cites state-law partnership authorities. 242 U.S. 138, 139 (1916). And *Milavetz* cites *Strang* just to show that partnerships involve "joint responsibilities." 559 U.S. at 238. Both cases reinforce that *Strang*'s imputation holding was "[a]t common law." *James-Dickinson*, 273 U.S. at 123.

Congress' failure to enact an independent commission's proposal to forbid imputation does not show *Strang* endures. Nat'l Bankr. Rev. Comm'n, *Bankruptcy* 223 (1997); *contra* Resp. Br. 23. Such "[p]ost-enactment legislative history … is not a legitimate tool of statutory interpretation." *Bruesewitz v. Wyeth LLC*, 562 U.S. 223, 242 (2011). Congress may have considered the proposal superfluous. Anyway, the proposal merely asked Congress to expressly reject imputation to "minimize uncertainty" because the circuit split over 523(a)(2)(A) was "creat[ing] confusion." NBRC Report, *supra*, at 225-26.

Finally, the government reframes *Strang* as "past bankruptcy practice" that Congress has not "clear[ly]" disavowed. U.S. Br. 20 (quoting *Cohen*, 523 U.S. at 221). But the government fails to show any entrenched post-*Erie* practice of imputation and ignores longstanding lower-court cases *refusing* to apply vicarious liability under related bankruptcy provisions. Br. 42. If pre-*Erie* federal common law could be recast as "past bankruptcy practice," obsolete extratextual rules would govern bankruptcy until Congress expressly disagreed, turning *Erie* on its head.

CONCLUSION

The Ninth Circuit's judgment should be reversed.

Respectfully submitted,

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