No. 22-502

In the Supreme Court of the United States

SPRING VALLEY PRODUCE, INC., ET AL., PETITIONERS

v.

NATHAN AARON FORREST, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

Whether commercial debts owed under the Perishable Agricultural Commodities Act, 7 U.S.C. 499a-499s, are non-dischargeable under 11 U.S.C. 523(a)(4) of the Bankruptcy Code.

PARTIES TO THE PROCEEDING BELOW

Petitioners are Spring Valley Produce, Inc.; Produce Exchange Co., Inc.; Fresh Direct, Inc.; and S. Roza & Company, Inc., the appellants below and plaintiffs in the adversary proceeding before the bankruptcy court.

Respondents are Nathan Aaron Forrest and Marsha Weidman Forrest, the appellees below and defendants in the adversary proceeding before the bankruptcy court.

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INTRODUCTION

According to petitioners, this case implicates a direct 4-3 circuit conflict over whether a debt related to a non-segregated statutory trust is barred from discharge under 11 U.S.C. 523(a)(4)—as a debt for "defalcation while acting in a fiduciary capacity." Petitioners are wrong. There is no circuit conflict; the Eleventh Circuit was the first appellate court in the country to ask whether PACA-related debts are subject to Section 523(a)(4). It applied the same legal analysis that other circuits uniformly apply in addressing similar questions for other statutory trusts. Not a single circuit-level decision has held that a statutory trust with PACA's characteristics gives rise to a qualifying "fiduciary" relationship, and the so-called 4-3 split simply reflects the unremarkable fact that different cir-

cuits applied the same legal standard in evaluating *different* state statutes—with some statutes qualifying as a traditional trust and others not.

Congress enacted PACA to regulate arm's-length third-party transactions involving produce. Nothing in its scheme renders a produce buyer a traditional fiduciary to a produce seller; while PACA declares that certain products and proceeds are held in "trust" for the seller, PACA allows the commingling of trust and non-trust assets, and it permits the use of trust assets for non-trust purposes—two features directly at odds with traditional trust and fiduciary relationships.

Section 523(a)(4) prohibits the discharge of debts for things like fraud, embezzlement, and larceny—things that look nothing like a simple failure (due to economic duress) to satisfy an outstanding invoice for sold produce. Congress granted a limited-purpose trust to PACA sellers in order to prevent produce buyers from granting lenders security interests in their stock (7 U.S.C. 499e(c)(1))—not to "saddle[]" grocers "in a fast-paced business environment" with "a business debt for eternity." Pet. App. 64a-65a.

Petitioners' attempt to cobble together a circuit conflict falls short. This case suffers from several vehicle flaws, and the issue is not nearly as important as petitioners suggest. At a bare minimum, additional percolation is warranted—as there is no reason this Court should be the second appellate court, ever, to decide if PACA debts are subject to Section 523(a)(4). The petition should be denied.

STATEMENT

A. Statutory Background

1. "The principal purpose of the Bankruptcy Code is to grant a 'fresh start' to the 'honest but unfortunate debtor.'" *Marrama* v. *Citizens Bank of Massachusetts*,

549 U.S. 365, 367 (2007) (quoting *Grogan* v. *Garner*, 498 U.S. 279, 286, 287 (1991)). Fundamental to this new beginning is the general rule that an individual debtor's pre-bankruptcy debts are subject to discharge. See 11 U.S.C. 727(a).

While the Bankruptcy Code "balances multiple, often competing interests" through provisions such as 11 U.S.C. 523, exceptions to discharge "'should be confined to those plainly expressed,'" so that exceptions do "not extend beyond their stated terms." *Bartenwerfer* v. *Buckley*, 143 S. Ct. 665, 673, 675 (2023). These admonitions promote the Bankruptcy Code's longstanding purpose of granting debtors a "fresh start."

Pertinent here, Section 523(a)(4) of the Bankruptcy Code bars discharge of any debt "for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny."[1] Similar provisions have existed in the bankruptcy laws for nearly two centuries, and this Court noted in 1934 that "[t]he meaning of these words has been fixed by judicial construction for very nearly a century." *Davis* v. *Aetna Acceptance Co.*, 293 U.S. 328, 333 (1934) (citing *Chapman* v. *Forsyth*, 2 How. 202 (1844)). Consistent with the principle that exceptions to discharge should be construed narrowly, this Court has limited Section 523(a)(4)'s predecessor provisions to "technical trusts." *Chapman*, 2 How. at 208 ("The act speaks of technical trusts, and not those which the law implies from [] contract."). The Court has applied that limitation with "unbroken continuity" in a variety of circumstances. *Davis*, 293 U.S. at 333 (collecting cases). Without so limiting the scope of Sec-

[1] Whether a "fiduciary capacity" exists is a question of federal law. Pet. App. 6a; see also *In re Angelle*, 610 F.2d 1335, 1341 (5th Cir. 1980).

tion 523(a)(4), "it [would] be difficult to limit [the exception's] application," as it would "include all debts arising from agencies; and indeed all cases where the law implies an obligation from the trust reposed in the debtor." *Chapman*, 2 How. at 208.

This Court recently narrowed Section 523(a)(4) even further in *Bullock* v. *BankChampaign, N.A.*, 569 U.S. 267 (2013). There, the Court construed the term "defalcation" in light of the company it keeps—holding that "defalcation" in Section 523(a)(4) "includes a culpable state of mind requirement akin to that which accompanies application of the other terms in the same statutory phrase," *e.g.*, embezzlement or larceny. 569 U.S. at 269. The same principles further suggest that "defalcation while acting in a fiduciary capacity" must resemble the kind of wrongdoing and culpable behavior of defalcation's neighboring terms—fraud, larceny, and embezzlement—not merely an ordinary failure to pay a commercial debt.

2. The debt at issue in this case concerns a floating statutory trust created by the Perishable Agricultural Commodities Act of 1930 (PACA), 7 U.S.C. 499a-499s. Congress passed PACA "to encourage fair trading practices in the marketing of perishable commodities by suppressing unfair and fraudulent business practices in marketing of fresh and frozen fruits and vegetables." H.R. Rep. No. 98-534, at 3.

Congress amended PACA in 1984 to address problems caused by produce buyers granting lenders security interests in their unpaid produce. 7 U.S.C. 499e(c)(1); Pub. L. No. 98-273, § 1, May 7, 1984, 98 Stat. 165. To address that concern, Congress made "sellers, who have not received payment for their produce, the beneficiaries of a statutory trust." H.R. Rep. No. 98-534, at 2; see also 7 U.S.C. 499e(c)(2).

Congress designed the PACA trust as a "a nonsegregated floating trust that would apply to the commodities, products derived therefrom, and any receivables or proceeds from their sale in the hands of the commission merchant, dealer o[r] broker." H.R. Rep. No. 98-534, at 2; see also 7 C.F.R. 46.46(b) ("Trust assets are to be preserved as a nonsegregated 'floating' trust.").

Few restrictions exist on how PACA trust funds may be managed or used by produce buyers. In fact, both the implementing regulation and the House Report accompanying the 1984 amendment expressly *permit* commingling of PACA trust assets. 7 C.F.R. 46.46(b) ("Commingling of trust assets is contemplated."); H.R. Rep. No. 98-534, at 4 (the floating trust "permits the commingling of trust assets"). Similarly, there is no requirement "to specifically identify all of the trust assets through each step of the asset accrual and disposal process." H.R. Rep. No. 98-534, at 5. And the Final Rule promulgating the PACA trust regulations in 1984 confirmed that PACA "[t]rust assets are available for other uses by the buyer or receiver," including "to pay other creditors." *Regulations Under the Perishable Agricultural Commodities Act; Addition of Provisions To Effect a Statutory Trust*, 49 Fed. Reg. 45,735, 45,738 (1984).

In short, the PACA trust framework provides additional protections to produce sellers, without placing an undue burden on produce buyers. See, *e.g.*, *Frio Ice, S.A.* v. *Sunfruit, Inc.*, 918 F.2d 154, 159 (11th Cir. 1990) ("Congress sought to minimize the burden of the PACA trust on produce dealers").

3. The real power of the PACA trust lies in the enforcement mechanisms PACA provides. Congress vested district courts with jurisdiction to "entertain (i) actions by trust beneficiaries to enforce payment from the trust, and

(ii) actions by the Secretary to prevent and restrain dissipation of the trust." 7 U.S.C. 799e(c)(5). This permits the Secretary to "act for the benefits of unpaid suppliers in securing an order which will prevent dissipation of assets that make up the floating trust." H.R. Rep. No. 98-534, at 7.

In other words, where a PACA trust is being dissipated or threatened with dissipation, a produce seller may seek to impose additional trust-like duties on the PACA trustee, such as by having a district court order segregation of the trust assets. See Pet. App. 29a ("[A] district court can order the PACA trustee to segregate trust assets upon a showing that the trust is being dissipated."); see also *Frio Ice*, 918 F.2d at 159.

Another "principal benefit" of the PACA trust is that it places produce sellers "first in line among creditors for all produce-related assets if the produce dealer declares bankruptcy." *Frio Ice*, 918 F.2d at 156; see also *Country Best* v. *Christopher Ranch, LLC*, 361 F.3d 629, 632 (11th Cir. 2004) (PACA gives "produce suppliers priority over banks or other creditors who may have perfected security interests in the inventory and receivables of an insolvent produce dealer").

B. Facts And Procedural History

1. Respondents, Marsha and Nathan Forrest, were 50% owners of Central Market of FL, Inc., which was licensed under PACA to buy and sell wholesale quantities of produce in interstate commerce. C.A. ROA 134. Petitioners contracted with Central Market to sell produce to Central Market for a total of approximately $261,000. C.A. ROA 135. Central Market received the produce, but financial hardship ultimately left respondents unable to pay petitioners.

2. Unable to recover from their financial troubles, respondents voluntarily filed for Chapter 7 bankruptcy in

May 2020, seeking a discharge of their debts, including the amount owed to petitioners. Petitioners responded by initiating an adversary proceeding seeking a declaration that the debt owed was not dischargeable under 11 U.S.C. 523(a)(4), which excepts from discharge any debt "for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny." Petitioners argued the debt was incurred "while acting in a fiduciary capacity" based on PACA's floating trust.

Respondents moved to dismiss petitioners' amended complaint, contending that PACA does not impose any trust-like duties on a PACA trustee, and thus a PACA trustee does not act "in a fiduciary capacity" under Section 523(a)(4).

3. a. The bankruptcy court granted the motion to dismiss. Pet. App. 40a-66a.

The bankruptcy court assumed, without deciding, that respondents are personally liable for Central Market's debt. Pet. App. 41a-42a. The court then analyzed the "trust obligations set forth in PACA" to determine whether they satisfy Section 523(a)(4)'s "fiduciary capacity" requirement, specifically focusing on "whether some segregation of trust funds *or* a prohibition on the use of such funds is required to render statutory trust obligations non-dischargeable." *Id.* at 43a (emphasis added). Finding that PACA requires none of the "formal separation and ownership rules generally associated with a technical trust," *id.* at 63a, the bankruptcy court held that "some clear lines of demarcation should exist before an individual is saddled with a business debt for eternity." *Id.* at 65a. Because the PACA trust did not bear the hallmarks of a conventional trust, the bankruptcy court therefore held respondents' debt to be dischargeable. *Ibid.*

b. The bankruptcy court then granted petitioners' unopposed motion requesting certification for direct appeal

to the Eleventh Circuit, Pet. App. 34a-39a, and the Eleventh Circuit granted permission to appeal, *id.* at 33a.

4. The Eleventh Circuit affirmed. Pet. App. 2a-32a. Recognizing that the question whether a debtor is acting in a "fiduciary capacity" under Section 523(a)(4) is a question of federal law, *id.* at 13a, the court adopted a "three-part test for determining whether such a "fiduciary capacity" exists. First, the relationship requires "(1) a trustee, who holds (2) an identifiable trust res, for the benefit of (3) an identifiable beneficiary or beneficiaries." *Id.* at 2a. Second, "the relationship must define sufficient trust-like duties imposed on the trustee with respect to the trust res and beneficiaries to create a 'technical' trust." *Ibid.* And third, "the debtor must be acting in a fiduciary capacity before the act of fraud or defalcation creating the debt." *Id.* at 3a.

As to the second part of that inquiry, the Eleventh Circuit applied this Court's guidance from *Davis* and *Chapman* to distinguish between "trusts in the technical sense and trusts in the more comprehensive or broad sense." Pet. App. 10a. The court reasoned that a trust in the stricter sense "involves duties imposed on the trustee with respect to the trust res and the beneficiary." *Id.* at 12a. The "core issue," the court reasoned, was "what type of trust-like duties are sufficient to create a technical trust" under Section 523(a)(4). *Ibid.*

In analyzing that question, the Eleventh Circuit emphasized "two duties: the duty to segregate trust assets and the duty to refrain from using trust-assets for non-trust purposes." Pet. App. 13a; see also *id.* at 3a (referring to these duties as the "strongest indicia of a technical trust"), 18a (listing these as "the two most important trust-like duties"), 28a (characterizing these as "hallmark duties of a technical trust"). To illustrate, the court discussed two past decisions addressing those duties. The

court confirmed that *Quaif* v. *Johnson*, 4 F.3d 950, 954 (11th Cir. 1993), did *not* hold that "a segregation of funds requirement is always necessary for a technical trust to exist." Pet. App. 16a. Meanwhile, the court noted that *Carey Lumber Co.* v. *Bell*, 615 F.2d 370, 373 (5th Cir. 1980), held that a statute "can impose sufficient duties if it requires that the trustee cannot use trust funds for a non-trust purpose *even though* the statute did *not* impose a duty to segregate trust assets." Pet. App. 16a (emphasis added). In short, although the Eleventh Circuit noted that a duty to segregate trust assets is an "important factor in the analysis," it did not hold that a duty to segregate trust assets is necessary to find a technical trust. *Id.* at 17a.

Turning to PACA itself, the Eleventh Circuit explained that PACA "does not provide any specific duties on the PACA trustee." Pet. App. 22a. Indeed, the court concluded, neither of the "two most important trust-like duties" exist with respect to a PACA trust. *Id.* at 18a, 24a. Specifically, "PACA does not impose the important trust-like duty to segregate trust assets," nor "the duty to refrain from using trust-assets for a non-trust purpose." *Id.* at 24a. Accordingly, the court held that a PACA trust is not a "technical trust" as required by Section 523(a)(4), meaning respondents' debt was dischargeable.

ARGUMENT

A. The Decision Below Does Not Conflict With Any Decision Of Another Court Of Appeals Or Any Decision Of This Court

Petitioners contend that the decision below creates or deepens multiple conflicts among the courts of appeals, the lower courts, and even this Court, leaving confusion over the proper application of Section 523(a)(4), PACA's role under other Bankruptcy Code provisions, and the

necessary requirements of a proper statutory "trust." Petitioners are wrong across the board.

There is no "direct" circuit conflict because the Eleventh Circuit was the first appellate court nationwide to address PACA in the context of Section 523(a)(4); no other circuit has even *confronted* the issue, let alone rejected the Eleventh Circuit's holding. Nor is there a 4-3 circuit conflict over the meaning of "fiduciary capacity" under Section 523(a)(4): each circuit in the so-called "split" applied the *same* federal standard to whatever underlying state law happened to be before the court. In applying that uniform federal standard, circuits (unremarkably) found that some state laws impose "trust-like duties" while others did not—and not a *single* decision found "defalcation while acting in a fiduciary capacity" under a law that looked anything like PACA.

Nor is there any conflict between the decision below and PACA cases addressing *different* Bankruptcy Code provisions—which is unsurprising, given those Code provisions raise *different* issues. Nor did the Eleventh Circuit somehow contravene *Begier* v. *IRS*, 496 U.S. 53 (1990)—a case addressing neither PACA nor Section 523(a)(4), which is likely why neither the Eleventh Circuit nor the bankruptcy court (nor any party on appeal) even *mentioned Begier* below.

At bottom, petitioners did manage to identify one genuine conflict: a narrow disagreement among district courts and bankruptcy courts, often without much (or any) reasoned analysis. But that conflict can be readily resolved at the circuit level, just as the Eleventh Circuit did here. If this issue is truly as important as petitioners claim, this Court should not be the second appellate court in the country to resolve this legal question.

1. Contrary to petitioner's contention (Pet. 11), there is no "direct" circuit conflict for a simple reason: no other

appellate decision involved a dispute over PACA. See Pet. 12 (so conceding: "those decisions deal with other statutes," not PACA).

The decision below is apparently the first circuit-level decision addressing the PACA-specific question. Every other case identified in petitioners' so-called "conflict" involved different statutes with different elements, and the results in those cases necessarily turned on the specifics of those underlying state laws. See Pet. 11-12 (flagging cases that each involved a different underlying statute: "Wisconsin's 'Theft by Contractors' Statute"; the "Michigan Building Contract Fund Act"; the "Arizona materialmen's lien statute"; and the "Oklahoma Third-Party Administrator Act").[2]

Petitioners made no effort to align the elements of those varying laws with PACA's distinct elements, or examine any material differences in each legal scheme—which readily explains away the so-called "conflicting" results. There is simply no basis to presume that any of those courts would depart from the Eleventh Circuit's holding when confronting PACA itself.[3]

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[2] According to petitioners, an "unpublished" Fifth Circuit decision "upheld summary judgment rendering obligations under a PACA trust non-dischargeable pursuant to Section 523(a)(4), although without significant discussion." Pet. 14 n.12 (citing *Sterling* v. *First Intermark, Inc.*, 979 F.2d 1534 (5th Cir. 1992) (table)). This is wrong. The Fifth Circuit had no occasion to address PACA and Section 523(a)(4), because it found the PACA plaintiff's claims were *barred by res judicata*. The Fifth Circuit therefore *reversed* (not "upheld") the lower courts' PACA-related Section 523(a)(4) holdings. Aside from misstating the holding, there was *zero* discussion of the question presented here—aside from recapping, without comment, the lower-court holdings under review.

[3] Incidentally, petitioners' 4-3 circuit count is also incorrect: two of the "contrary" decisions are BAP decisions, not circuit decisions (see

2. Without a square circuit conflict, petitioners instead argue the circuits are divided, generically, over whether a "nonsegregated statutory trust" can "satisfy the fiduciary-capacity requirement under Section 523(a)(4)." Pet. 11-16 (alleging that four circuits "hold that a nonsegregated statutory trust may satisfy Section 523(a)(4)," whereas three circuits hold the opposite). Petitioners are incorrect, and there is no conflict even at this general level.

a. First and foremost, petitioners fail to identify a single circuit endorsing a bright-line "rule" that "nonsegregated statutory trusts * * * may not establish a fiduciary capacity." Contra Pet. 15. Indeed, the Eleventh Circuit itself rejected that proposition: it refused to "adopt" a rule "that a segregation of funds requirement is always necessary for a technical trust to exist." Pet. App. 16a. On the contrary, "a statute can impose sufficient duties if it requires that the trustee cannot use trust funds for a non-trust purpose *even though the statute did not impose a duty to segregate trust assets*." *Ibid.* (emphasis added). The proper test is more holistic, "look[ing] to the duties imposed by the statute" and asking whether it "impose[s] sufficient trust-like duties." *Id.* at 12a.

In so holding, the Eleventh Circuit has stressed that "the substance of the transaction, rather than its form, controls" (Pet. App. 9a), and it has "generally emphasized two duties: the duty to segregate trust assets *and* the duty to refrain from using trust-assets for non-trust purposes"

Pet. 12); and BAP decisions are not even binding on district courts in those circuits. While this Court does occasionally count (*relevant*) decisions from bankruptcy appellate panels when weighing a split (see, *e.g.*, *Schwab* v. *Reilly*, 560 U.S. 770, 778 & n.4 (2010)), it is incorrect to include a BAP decision as part of an actual "circuit" conflict.

(Pet. App. 13a (emphasis added)). But the ultimate question remains whether "the relationship * * * define[s] sufficient trust-like duties." Pet. App. 2a-3a.[4]

b. Contrary to petitioners' view, this is effectively the identical standard applied on each side of the (non-existent) "split." Each court at issue asks whether the underlying statute imposes sufficient "trust-like duties" to transform an arm's-length commercial transaction into a genuine fiduciary relationship. While each court appropriately considers segregation an important factor, none of those courts declared segregation alone was dispositive. The ultimate question was the presence of sufficient trust-like duties, with the outcome turning on the specific scheme at issue. And any variance in results—with courts holding certain "trusts" qualified under Section 523(a)(4) and others did not—is readily explained by the different features of the specific state statute at issue.

i. Take petitioners' cases holding that certain nonsegregated statutory trusts satisfied Section 523(a)(4)'s fiduciary-capacity requirement.

In *Carlisle Cashway, Inc.* v. *Johnson (In re Johnson)*, 691 F.2d 249 (6th Cir. 1982), for example, the Sixth Circuit found that a Michigan law gave rise to a qualifying fiduciary relationship, despite (like PACA) not "mandat[ing] any particular form or procedure in handling trust funds."

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[4] In order to conjure up the purported split over "nonsegregated" accounts, petitioners incorrectly gloss over the Eleventh Circuit's actual holding. Petitioners instead deliberately conflate as "a single factor" "[t]he duty to segregate and the prohibition against non-trust uses." Pet. 7 n.5 (declaring the petition will treat those terms "interchangeably" and "use[] the term 'segregation' to refer to both aspects"). But the courts of appeals treat these concepts differently, and the Eleventh Circuit itself reaffirmed these are "two [separate] duties"—where the presence of one can suffice where the other is absent. *E.g.*, Pet. App. 16a. This error alone explains away most of petitioners' alleged circuit "conflict."

691 F.2d at 252. But, unlike PACA, "[o]nce a statutory trust is activated by payment into a building contract fund, the statute prohibits the contractor or subcontractor's use of monies received for a particular project *for anything other tha[n] first paying laborers and suppliers on that project*." *Id.* at 253 (emphasis added). That feature rendered the statutory trust sufficiently like conventional trusts to qualify as a "fiduciary relationship." *Ibid.*

Likewise, in *Stoughton Lumber Co., Inc.* v. *Sveum*, 787 F.3d 1174 (7th Cir. 2015), the Seventh Circuit confronted a Wisconsin statute that expressly prohibited the use of "trust" funds for "any" non-trust purposes. 787 F.3d at 1176 (requiring contractors to hold in trust money paid by a homeowner, which "could be used only to pay for materials used in the construction of homes"). Although "[s]egregation of the trust funds was not required" (like PACA), the contractor "had to preserve intact the assets of the trust fund" without spending it on non-trust purposes (unlike PACA). *Ibid.* The Seventh Circuit held that the wrongful spending of the trust funds qualified under Section 523(a)(4). *Ibid.*

The Ninth Circuit bankruptcy appellate panel reached the same conclusion in *Woodworking Enters., Inc.* v. *Baird (In re Baird)*, 114 B.R. 198 (B.A.P. 9th Cir. 1990). The Arizona law at issue "create[d] a trust in favor of those persons who furnish the labor and materials for which the payment to [a] contractor is made and *expressly prohibits the diversion or use of the funds for any purpose other than to satisfy the claims of those for whom the trust is created.*" 114 B.R. at 203 (emphasis added). Although the law did not "expressly obligate the fund holder to maintain the separate identify of any trust res," did not "require the segregation of funds," and did not "impose bookkeeping obligations," the bar on using trust funds for

non-trust purposes was "sufficient to find a fiduciary relationship for purposes of section 523(a)(4)." *Id.* at 203-204.

Finally, while petitioners include the Tenth Circuit bankruptcy appellate panel on this side of the so-called "split," that court confronted an Oklahoma statute that required *both* segregation and restricted the use of trust assets for non-trust purposes. See *Employers Workers' Comp. Ass'n* v. *Kelley (In re Kelley)*, 215 B.R. 468, 473-474 (B.A.P. 10th Cir. 1997). Petitioners apparently overlook that the "mingling" permitted under that statute was the combining of "property of one trust with the property of another trust when permission to do so is given at the creation of each trust" (*id.* at 474)—not, as in PACA, the commingling of trust and *non-trust* assets. Moreover, the BAP separately reaffirmed that "[n]either a general fiduciary duty of confidence, trust, loyalty, and good faith, nor an inequality between the parties' knowledge or bargaining power, is sufficient to establish a fiduciary relationship for purposes of dischargeability." *Id.* at 472.

Each of these decisions ultimately concluded there was a qualifying "fiduciary" relationship under Section 523(a)(4) based on the distinct elements of the underlying state statutes—and specifically the creation of a statutory trust that charged the holder to retain funds without using trust assets for any non-trust purpose. That is the precise feature lacking from PACA. There is simply no indication that those courts (which viewed each statutory trust for all its elements) would depart from the Eleventh Circuit's view when confronting PACA's materially distinct statutory design.

ii. While petitioners insist that three circuits—the Fifth, Eighth, and Eleventh—require segregation as a "necessary condition" to "establishing a fiduciary capacity under Section 523(a)(4)" (Pet. 14-16), petitioners simply misread those decisions.

As explained above, the Eleventh Circuit did not "require[] segregation of trust assets" (Pet. 14)—on the contrary, it explicitly rejected that proposition. Pet. App. 16a. Petitioners' contrary contention is perplexing.

Nor does the Fifth Circuit "hold that a statutory trust must require segregation to satisfy Section 523(a)(4)." Pet. 14. In *Texas Lottery Comm'n* v. *Tran (In re Tran)*, 151 F.3d 339 (5th Cir. 1998), for example, the court did not simply ask whether funds were segregated, but asked whether a statutory trust "impose[s] 'trust-like' duties." 151 F.3d at 342-343; see also *id.* at 343 ("The preliminary question—and the one on which the Commission's argument founders—is whether the Act imposes sufficient 'trust-like' duties on a ticket sales agent."). Just like the Eleventh Circuit, the Fifth Circuit found that "one such duty has loomed large—the duty that a trustee refrain from spending trust funds for non-trust purposes." *Id.* at 343-344. And while the court also found the lack of a "segregat[ion]" requirement undercut a Section 523(a)(4) fiduciary relationship, the court's holding was driven by the statute's failure to "expressly and totally prohibit" the expenditure of "trust funds for non-trust purposes." *Id.* at 344.

And that core holding reflects only certain aspects of the Fifth Circuit's general reasoning. As the court explained, "the concept of fiduciary under § 523(a)(4) is narrower than it is under the general common law'"; "[a] state cannot magically transform ordinary agents, contractors, or sellers into fiduciaries by the simple incantation of the terms 'trust' or 'fiduciary.'" 151 F.3d at 342-343. Part of the inquiry thus asks whether "the supposed trustee appears not so much to be responsible for managing a beneficiary's funds on the beneficiary's behalf as to be engaged in a typical agency relationship." *Id.* at 344. And the court found "insufficient" that a statute imposes the "relatively

prosaic duties" of remitting net proceeds or "account[ing] for and preserv[ing]" those proceeds; States cannot "bootstrap a principal/agent relationship into a § 523(a)(4) relationship," and basic duties to track and remit funds cannot satisfy "the central focus of the inquiry under § 523(a)(4)—whether the alleged fiduciary exercises actual control over the alleged beneficiary's money or property." *Id.* at 345.

Petitioners' reliance on the Eighth Circuit's decision in *Arvest Mortg. Co.* v. *Nail (In re Nail)*, 680 F.3d 1036 (8th Cir. 2012), is likewise misplaced. The Eighth Circuit analyzed an Arkansas statute declaring that written assignments create a trust. The Eighth Circuit found the statute "[did] not create a fiduciary relationship 'in the strict and narrow sense' required by § 523(a)(4)," because it "simply prescribe[d] the legal effect when a party to an assigned account in good faith pays the assignor rather than the unknown assignee"; it "impose[d] no trust-like duties *such as segregation*." 680 F.3d at 1041 (emphasis added). Segregation was thus merely an *example* of the type of "trust-like duties" absent from the Arkansas statutory trust; it was not a "necessary condition." Contra Pet. 14; see *Nail*, 680 F.3d at 1040 (declaring that "'[i]t is the substance of a transaction, rather than the labels assigned by the parties, which determines whether there is a fiduciary relationship for bankruptcy purposes,'" and ultimately asking whether a statutory trust "'impose[s] "trust-like" duties'").

As these cases collectively confirm, petitioners' circuit-level authority adopts the same framework and conducts a functionally identical analysis—asking whether a statutory trust imposes sufficient "trust-like duties" to qualify as a traditional "fiduciary" relationship under Section 523(a)(4). Each decision examined the entire statutory scheme, asked whether a statutory trust imposed

conventional fiduciary requirements, and resolved the Section 523(a)(4) question based on each scheme's distinct elements. There was not a single statute at issue that was materially indistinguishable from PACA and yet was held sufficient under Section 523(a)(4). The Eleventh Circuit's decision does not conflict with the decisions of any of those courts.[5]

3. Without a genuine conflict involving Section 523(a)(4), petitioners next try to cobble together an alleged split involving other provisions of the Bankruptcy Code. Pet. 13.

Yet there is nothing inconsistent between the Eleventh Circuit's decision below (whether PACA's statutory trust qualifies as a "fiduciary" relationship under Section 523(a)(4)) and the decisions referenced parenthetically in the petition. Those cases generally asked whether PACA assets are "estate" assets for purposes of Section 541 of the Bankruptcy Code. See, *e.g.*, *Nickey Gregory Co., LLC* v. *AgriCap, LLC*, 597 F.3d 591, 595 (4th Cir. 2010) (obliquely addressing this point as background). The proper application and understanding of Section 541(a)(1) and (d) (defining estate assets) does not answer whether debtors who fail to satisfy PACA debts engage in "defalcation while acting in a fiduciary capacity" under Section 523(a)(4).

This is why the Eleventh Circuit "emphasize[d]" that its "limited" holding—addressing "the narrow meaning of 'fiduciary capacity' in the context of § 523(a)(4)'s exception

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[5] Petitioners further maintain that federal courts are "irreconcilably split" over the proper treatment of "a variety of other statutory and common-law trusts." Pet. 15 n.14 (so asserting without any specific articulation of the actual split). If a genuine circuit conflict exists in any of those other settings (unlike here), the Court assuredly can resolve the conflict in a case where the issue is factually presented.

to discharge"—was irrelevant to those other Code sections. Pet. App. 18a; see also *id.* at 27a-28a ("our holding does not impact the legal definition of PACA assets as trust assets, thus entitling PACA creditors to priority in bankruptcy proceedings"; "'[t]rust assets are actually exempt from the bankruptcy estate'").

If there is any conflict or tension here at all, the Eleventh Circuit certainly did not perceive it.[6]

4. Petitioners maintain the decision below "conflicts" with this Court's "analysis" in *Begier* v. *IRS*, 496 U.S. 53 (1990). Yet *Begier* involved federal tax laws, not PACA, and asked whether a pre-petition payment to the IRS was an avoidable transfer, not whether a PACA debt is nondischargeable as "defalcation while acting in a fiduciary capacity." See 496 U.S. at 56-57. Aside from both cases arising in the bankruptcy context, one has little to do with the other.

In any event, if petitioners are correct that *Begier* is somehow relevant, their position only underscores the need for further percolation. Neither side discussed (or even cited) *Begier* in the proceedings below, and accordingly neither court below addressed the case in any decision. Petitioners' reliance on a new argument that has not been vetted by a single appellate court is yet another reason to deny review.

5. Petitioners also assert that multiple bankruptcy and district courts have reached opposite conclusions regarding whether PACA-related debts satisfy Section

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[6] Petitioners ultimately admit these decisions are not "part of the split" "because of the[ir] lack of clear holdings that non-segregated statutory trusts satisfy Section 523(a)(4)." Pet. 13 n.11. Of course, the problem is not the lack of "clear" holdings—it is the lack of *any* holding on the operative question. Rather than guess how those circuits would "probably" resolve this question (*ibid.*), allowing a short amount of additional percolation should provide a definitive answer.

523(a)(4)'s fiduciary-capacity requirement. Pet. 12. But any conflict among lower courts can be resolved at the circuit level—just as the Eleventh Circuit did here. See Pet. App. 5a n.1 (noting division among bankruptcy courts and resolving that division). And especially in light of the circuits' consistent approach to statutory trusts, there is every reason to think each circuit will eventually align itself with the Eleventh Circuit.[7]

At a minimum, the issue again calls for further percolation. This Court should not be the second appellate court in the country to decide whether PACA gives rise to non-dischargeable commercial debts—"saddling [an individual] with a business debt for eternity" (Pet. App. 65a)—despite lacking any kind of conduct that remotely resembles defalcation's neighboring terms in Section 523(a)(4): fraud, larceny, and embezzlement. Cf. *Bullock*, 569 U.S. at 274-275.

B. Petitioners Overstate The Issue's Importance, And This Case Is A Suboptimal Vehicle For Deciding The Question Presented

1. Petitioners overstate the issue's importance. PACA may regulate "the nation's multi-billion dollar produce industry" (Pet. 16), but that says little about how often Section 523(a)(4) non-dischargeability questions arise—or the (comparatively smaller) stakes of those cases. PACA claims already get priority in most bankruptcy proceedings, which increases the odds of getting paid (with little debt subject to potential discharge).

PACA further authorizes courts to grant orders requiring segregation and prohibiting the dissipation of

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[7] While petitioners are correct that some "lower courts" apply non-PACA circuit decisions in the PACA context (Pet. 12-13), that merely begs the question whether that extension is correct—a question the regional circuits are well-positioned to sort out.

trust assets. See 7 U.S.C. 499e(c)(5); Pet. App. 29a. Such an order could prevent any harm in the first place. And a violation of such an order could indeed give rise to non-dischargeable debt under Section 523(a). But petitioners failed to seek that protection here, even though other parties can always invoke this option to avoid the question presented entirely.

At bottom, these are arm's-length commercial transactions. PACA's express purpose was not to burden for eternity produce buyers with commercial debts; it was to prevent buyers from granting security interests in their stock—a limited purpose that likewise explains PACA's limited trust-like duties. See 7 U.S.C. 499e(c)(1). If Congress wishes to eliminate the "fresh start" for good-faith debtors who happen to face financial troubles while running groceries, it can always craft (yet another) express exception to the discharge. But there is no urgent need for this Court to impair the discharge simply because a single circuit has finally (after decades) found occasion to address this question.

2. Review should also be denied because this case is an imperfect vehicle for multiple reasons.

First, although the adversary proceeding was filed against respondents, it was Central Market that accepted the produce and "became a PACA trustee of a trust *res*." Pet. 4. As petitioners candidly acknowledge, the decisions below merely "assume[]" that respondents "are personally liable for Central Market's [PACA] obligations." Pet. 6 n.4. That assumption is far from unassailable, and it could stand as a direct obstacle to deciding the question presented: there is no need to determine if PACA-related debts are non-dischargeable if respondents are deemed only indirect participants in any PACA-related violation.

Second, as noted above, petitioners have raised new arguments in their petition, including that this Court's decision in *Begier* forecloses the Eleventh Circuit's position. Additional percolation is warranted to provide at least some lower-court opportunity to examine these issues before this Court is forced to dive in. See *Cutter* v. *Wilkinson*, 544 U.S. 709, 718 n.7 (2005) (this Court is a "court of review, not of first view").

Finally, to the extent petitioners stake their case for review on the issue's significance outside PACA, PACA itself presents a poor vehicle for testing the generic limits of nonsegregated trusts. In the proceedings below, for example, the parties could not agree on certain points that target the core of the question presented. While PACA "contemplate[s]" the "commingling of trust assets" (7 C.F.R. 46.46(b)), petitioners took the position that PACA allows "commingling" solely of different *trust* property, not of trust and *non-trust* assets. See Pet. App. 22a. The Eleventh Circuit rejected that argument (*id.* at 23a), but petitioners have not disavowed their earlier position before this Court. And it is unclear how the Court can fairly decide the question presented without first resolving this PACA-specific predicate question.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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APRIL 2023