

No. 24-1084

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

In re: DARRIN LENALD COOPER,

Debtor.

DARRIN LENALD COOPER,

Appellant,

v.

SOCIAL SECURITY ADMINISTRATION

Appellee.

On Appeal from the Bankruptcy Appellate Panel for the Ninth Circuit

**BRIEF OF *AMICI CURIAE* THE NATIONAL CONSUMER BANKRUPTCY
RIGHTS CENTER AND NATIONAL ASSOCIATION OF CONSUMER
BANKRUPTCY ATTORNEYS IN SUPPORT OF
APPELLANT**

Thomas Moers Mayer
Nancy Bello
KRAMER LEVIN NAFTALIS & FRANKEL LLP
1177 Avenue of the Americas
New York, New York 10036
tmayer@kramerlevin.com

Counsel for Amici Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
STATEMENT OF INTEREST OF <i>AMICI CURIAE</i>	1
AMICI’S STATEMENT OF ISSUE ON APPEAL	3
STANDARD OF REVIEW	3
INTRODUCTION	3
I. Post-Discharge Benefits Provided to Avoid Impoverishment Cannot Be Used to Recoup Discharged Overpayments.....	8
II. The Social Security Act Neither Compels Nor Authorizes Disregard of the Bankruptcy Discharge.	12
CONCLUSION	15
STATEMENT OF RELATED CASES	
CERTIFICATE OF COMPLIANCE	

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Cooper v. SSA (In re Cooper)</i> , BAP No. WW-23-1098-CBS, 2024 LEXIS 91 (B.A.P. 9th Cir Jan. 16, 2024)	10
<i>Edwards v. O'Malley</i> , Adv. No. 23-1016-BAH, 2024 Bankr. LEXIS 1078 (Bankr. D.N.H. May 7, 2024)	12
<i>Flemming v. Nestor</i> , 363 U.S. 603 (1960)	5
<i>French v. U.S. Social Sec. Admin. (In re French)</i> , 20 B.R. 155 (Bankr. D. Or. 1982)	11, 15
<i>Gardens Reg'l Hosp. & Med. Ctr. Liquidating Tr. v. California (In re Gardens Reg'l Hosp. & Med. Ctr., Inc.)</i> , 975 F.3d 926 (9th Cir. 2020)	9, 11, 12, 15
<i>Lamar, Archer & Cofrin, LLP v. Appling</i> , 584 U.S. 709 (2018)	12
<i>Lee v. Schweiker</i> , 739 F.2d 870 (3d Cir. 1984)	5, 9, 10, 11
<i>Malinowski v. N.Y. State Dep't of Labor (In re Malinowski)</i> , 156 F.3d 131 (2d Cir. 1998)	11
<i>Neavear v. Schweiker (In re Neavear)</i> , 674 F.2d 1201 (7th Cir. 1982)	9
<i>Padilla-Ramirez v. Bible</i> , 882 F.3d 826 (9th Cir. 2017)	9
<i>Rowan v. Morgan</i> , 747 F.2d 1052 (6th Cir. 1984)	9

U.S. v. Angwin (In re Angwin),
 Adv. No. 15-01080, 2016 Bankr. LEXIS 1733 (Bankr. E.D. Cal.
 Apr. 5, 2016)11

Statutes

11 U.S.C. § 3628
 11 U.S.C. § 523(a)(2)(A)14
 11 U.S.C. § 524(a)(2).....3, 8
 11 U.S.C. § 525(a)14, 15
 11 U.S.C. § 707(b)13
 11 U.S.C. § 7278
 42 U.S.C. § 404(a)9, 12
 42 U.S.C. § 404(b)6
 42 U.S.C. § 404(b)(1).....12, 13
 42 U.S.C. § 4079

Regulations

20 C.F.R. § 404.50714
 20 C.F.R. § 416.13345
 42 C.F.R. § 404.5086, 13

Rules

Fed. R. App. P. 29(a)(4)(E).....1

Other Authorities

Bankruptcy Filings Rise 16.8 Percent, UNITED STATES COURTS
 JUDICIARY NEWS (Jan. 26, 2024),
<https://www.uscourts.gov/news/2024/01/26/bankruptcy-filings-rise-168-percent>4

Chart Book: Social Security Disability Insurance, CENTER ON BUDGET AND POLICY PRIORITIES (Dec. 13, 2023), at 11-13, <https://www.cbpp.org/sites/default/files/atoms/files/7-21-14socsec-chartbook.pdf>4

Congressional Research Services (June 22, 2023), *Social Security: Major Decisions in the House and Senate Since 1935* (CRS Report No. RL30920), <https://crsreports.congress.gov>6

Denise Hoffman, *How Automation Can Prevent Social Security Overpayments* (May 21, 2024), <https://www.mathematica.org/blogs/how-automation-can-prevent-social-security-overpayments>6, 7

Fiscal Year 2023 Agency Financial Report, SOCIAL SECURITY ADMINISTRATION (NOV. 14, 2023), <https://www.ssa.gov/finance/2023/Full%20FY%202023%20AFR.pdf>6

Get Disability back if your benefit ended, SOCIAL SECURITY ADMINISTRATION, <https://www.ssa.gov/disability/restart>.....5

How You Earn Credits, SOCIAL SECURITY ADMINISTRATION (2024), <https://www.ssa.gov/pubs/EN-05-10072.pdf>4

Report the death of a Social Security or Medicare beneficiary, USAGov (Dec. 8, 2023), <https://www.usa.gov/social-security-report-a-death>5

Social Security Credits, SOCIAL SECURITY ADMINISTRATION, <https://www.ssa.gov/benefits/retirement/planner/credits.html>4

Substantial Gainful Activity, SOCIAL SECURITY ADMINISTRATION, <https://www.ssa.gov/oact/cola/sga.html>5

Testimony of Martin J. O’Malley, SSA Commissioner, before the Senate Committee on Finance, March 20, 2024, https://www.ssa.gov/legislation/testimony_032024b.html13

Types of Beneficiaries, SOCIAL SECURITY ADMINISTRATION, <https://www.ssa.gov/oact/progdata/types.html>5

Understanding Supplemental Security Income – 2024 Edition,
<https://www.ssa.gov/pubs/EN-17-008.pdf>.....5

STATEMENT OF INTEREST OF *AMICI CURIAE*

The National Association of Consumer Bankruptcy Attorneys (“NACBA”) is a non-profit organization of more than 1500 consumer bankruptcy attorneys nationwide. NACBA’s corporate purposes include education of the bankruptcy bar and the community at large on the uses and misuses of the consumer bankruptcy process. Additionally, NACBA advocates nationally on issues that cannot adequately be addressed by individual member attorneys. It is the only national association of attorneys organized for the specific purpose of protecting the rights of consumer bankruptcy debtors.

The National Consumer Bankruptcy Rights Center (“NCBRC”) is a non-profit organization dedicated to protecting the integrity of the bankruptcy system and preserving the rights of consumer bankruptcy debtors. To those ends, it provides assistance to consumer debtors and their counsel in cases likely to have a material impact on consumer bankruptcy law. Among other things, it submits *amicus curiae* briefs when in its view resolution of a particular case may affect consumer debtors throughout the country, so that the larger legal effects of courts’ decisions will not depend solely on the parties directly involved in the case.

Pursuant to Federal Rule of Appellate Procedure Rule 29(a)(4)(E), *Amici* certify that no person or entity, other than *Amici* or their counsel, made a monetary

contribution to the preparation or submission of this brief or authored this brief in whole or in part. The parties have consented to the filing of this brief.

AMICI'S STATEMENT OF ISSUE ON APPEAL

Appellant raises three issues on appeal. *Amici* address only the first, which *Amici* would restate as follows:

Did the courts below err in holding that Appellee Social Security Administration (“SSA”) does not violate 11 U.S.C. § 524(a)(2)’s injunction against collection of discharged claims when SSA reduces Appellant’s post-bankruptcy benefits in order to collect SSA’s discharged pre-bankruptcy claim for benefit overpayment?

STANDARD OF REVIEW

Three circuits have held that SSA cannot recover its discharged claim for pre-bankruptcy overpayments by reducing post-bankruptcy benefits. The decisions of the courts below contrary to these precedents present a pure issue of law subject to this Court’s *de novo* review.

INTRODUCTION

Four decades after losing in three other circuits, the SSA exhumes its rejected bid to recover its discharged claim for pre-bankruptcy overpayment by reducing post-bankruptcy benefits. That bid would override the Bankruptcy Code’s statutory discharge in favor of an unwritten, equitable doctrine – a doctrine that, here, would serve the “equitable” purpose of docking a no-asset-Chapter-7 debtor’s ongoing

disability payments to remedy the SSA's mistake. Consistent with Ninth Circuit precedent, this Court should reject the SSA's gambit.

Every year, hundreds of thousands of Americans file petitions for personal bankruptcy relief.¹ Many if not most individual debtors are or will be entitled to benefits from the federal government – including social security retirement benefits if they have earned sufficient “credits”² to qualify for benefits, supplemental security income if they have insufficient credits to qualify for social security benefits – or, as in Appellant's case, social security disability benefits because they have earned sufficient credits and cannot work.

Most disability beneficiaries have not completed high school, more than 80% do not have a college degree, and more than 35% live in poverty or near-poverty.³

¹ Appellant was one of more than 520,000 non-business debtors in 2020; non-business bankruptcy filings exceeded 374,000 in 2022 and 434,000 in 2023. *See Bankruptcy Filings Rise 16.8 Percent*, UNITED STATES COURTS JUDICIARY NEWS (Jan. 26, 2024), <https://www.uscourts.gov/news/2024/01/26/bankruptcy-filings-rise-168-percent>.

² Beneficiaries become entitled to social security benefits if their earnings that are subject to social security withholding exceed specified amounts, i.e. the individual earns “credits.” *See Social Security Credits*, SOCIAL SECURITY ADMINISTRATION, <https://www.ssa.gov/benefits/retirement/planner/credits.html>; *How You Earn Credits*, SOCIAL SECURITY ADMINISTRATION (2024), <https://www.ssa.gov/pubs/EN-05-10072.pdf>.

³ *See Chart Book: Social Security Disability Insurance*, CENTER ON BUDGET AND POLICY PRIORITIES (Dec. 13, 2023), at 11-13, <https://www.cbpp.org/sites/default/files/atoms/files/7-21-14socsec-chartbook.pdf>.

Social security benefits are based on the current status of the beneficiary.⁴ Beneficiaries qualify for benefits each month based on facts applicable to that month. Social security benefits are paid retroactively each month. If the recipient does not live to the end of the previous month, no benefits are due for that month.⁵ Disability benefits, such as Appellant's, cease if the beneficiary returns to work, resume if the beneficiary becomes unable to work,⁶ and are recalculated (as Appellant's were recalculated) if the beneficiary becomes entitled to supplemental security income, and reduced (as Appellant's were reduced) by Medicare insurance premiums in any year at the level set for that year.⁷ A beneficiary's right to current and future social security benefits is thus fundamentally different from rights or obligations determined by prior agreements or conduct.⁸

⁴ See *Types of Beneficiaries*, SOCIAL SECURITY ADMINISTRATION, <https://www.ssa.gov/oact/progdata/types.html>.

⁵ See *Report the death of a Social Security or Medicare beneficiary*, USAGov (Dec. 8, 2023), <https://www.usa.gov/social-security-report-a-death>; see also 20 C.F.R. § 416.1334.

⁶ See *Substantial Gainful Activity*, SOCIAL SECURITY ADMINISTRATION, <https://www.ssa.gov/oact/cola/sga.html>.

⁷ See Appx. to Appellant's Brief at 19; see also *Get Disability back if your benefit ended*, SOCIAL SECURITY ADMINISTRATION, <https://www.ssa.gov/disability/restart>; *Understanding Supplemental Security Income – 2024 Edition*, at 120, <https://www.ssa.gov/pubs/EN-17-008.pdf>.

⁸ See *Flemming v. Nestor*, 363 U.S. 603, 611 (1960) (describing social security as a “noncontractual governmental benefit”); *Lee v. Schweiker*, 739 F.2d 870, 875-76 (3d Cir. 1984).

Indeed, as shown below, even the obligation of a beneficiary to return an overpayment depends on the beneficiary's status at the time the SSA discovers the overpayment. *See* 42 U.S.C. § 404(b) & 42 C.F.R. § 404.508 (where beneficiary is without fault, overpayments may not be recouped from benefits if doing so would render beneficiary unable to pay necessary expenses).

Finally, while the right of contracting parties to offset or recoup is based on their agreement or mutual conduct, the right of a beneficiary to post-bankruptcy benefits depends on the statute and regulations in effect at the time of the post-bankruptcy benefit – which Congress or SSA can change (as they often have).⁹

Overpayment is relatively insignificant to the SSA (comprising in Fiscal Year 2023 approximately 0.5% of \$1.3 trillion in retirement and disability benefit payments)¹⁰ but burdensome to thousands of beneficiaries such as Appellant:

Thousands of disabled Americans are receiving steep bills from SSA to repay overpayments, often resulting in devastating financial consequences for them and their families. . . . It can take several months, or even years, for overpayments to get noticed and for SSA to notify beneficiaries about the overpayment. While this happens, overpaid benefits can accumulate and result in sizable debt for beneficiaries.

⁹ *See* Congressional Research Services (June 22, 2023), *Social Security: Major Decisions in the House and Senate Since 1935* (CRS Report No. RL30920), <https://crsreports.congress.gov>.

¹⁰ *See Fiscal Year 2023 Agency Financial Report*, SOCIAL SECURITY ADMINISTRATION (Nov. 14, 2023), at 177, <https://www.ssa.gov/finance/2023/Full%20FY%202023%20AFR.pdf>.

Denise Hoffman, *How Automation Can Prevent Social Security Overpayments* (May 21, 2024), <https://www.mathematica.org/blogs/how-automation-can-prevent-social-security-overpayments>.

Overpayment of any month's benefits is by definition due to a mistake of facts (whether innocent or fraudulent) applicable to that month. SSA describes the instant case as involving "mutual mistake": Appellant did not report receiving workers' compensation benefits in his 2017 application but corrected that disclosure in 2019 before SSA calculated the amount of his benefits.¹¹ In August 2019, SSA sent Appellant a check for \$67,355.50 representing his retroactive benefits for May 2016 through April 2019, less \$6,000 which was paid to his legal representative (i.e. a total of \$73,355.50).¹² However, SSA failed to account for his corrected disclosure, leading to an overpayment of \$73,112.90.¹³

SSA discovered its mistake in 2022 and notified Appellant that it would reduce Appellant's monthly disability benefit until SSA had recouped the overpayment of benefits for May 2016 through May 2019.¹⁴ SSA commenced reducing benefits in January 2023.

¹¹ See Appellant's Brief at 11; Appx. to Appellant's Brief at 5-11.

¹² See Appx. to Appellant's Brief at 20 (Notice of Award, May 10, 2019).

¹³ See Appx. to Appellant's Brief at 43-44 (Notice of Change in Benefits, Oct. 30, 2022).

¹⁴ See *id.*

Appellant had filed a petition for relief under chapter 7 of the Bankruptcy Code in July 2020. The chapter 7 trustee determined that Appellant had no assets to distribute to unsecured creditors.¹⁵ On October 21, 2020, Appellant obtained a discharge under Section 727 of the Bankruptcy Code, 11 U.S.C. § 727.¹⁶

Section 524(a)(2) of the Bankruptcy Code provides that the discharge “operates as an injunction against the commencement or continuation of an action . . . or an act, to collect, recover or offset any such debt as a personal liability of the debtor.” 11 U.S.C. § 524(a)(2). Accordingly, in February 2023 Appellant filed a motion to hold SSA in contempt and enjoin recovery of the overpayment.¹⁷ SSA suspended its deductions from benefits until the resolution of this litigation.

I. Post-Discharge Benefits Provided to Avoid Impoverishment Cannot Be Used to Recoup Discharged Overpayments.

SSA concedes that its claim for overpayment is subject to discharge under Section 727, but argues that its right to recover the overpayment from Appellant’s post-bankruptcy benefits is not subject to discharge. The SSA has made – and lost – this argument in various guises for 40 years. With no compelling reason

¹⁵ See Appx. to Appellant’s Brief at 85 (Designation of Record on Appeal – Chapter 7 Trustee’s Report of No Distribution (Aug. 19, 2020)).

¹⁶ See Appx. to Appellant’s Brief at 30-31.

¹⁷ Appellant moved to hold SSA in contempt for violating the automatic stay under Bankruptcy Code §362. The parties treated the motion as asserting a violation of the discharge injunction. See Appx. to Appellant’s Brief at 74 (Hr’g Tr. 3:10-19 (May 10, 2023)).

counseling otherwise, this Court should “decline to create a circuit split” – especially where, as here, “the rules at issue are best applied uniformly.” *Padilla-Ramirez v. Bible*, 882 F.3d 826, 836 (9th Cir. 2017) (internal quotation marks omitted).

SSA’s so-far futile attempts to overwrite the Bankruptcy Code’s statutory discharge with “the non-statutory equitable doctrine of ‘recoupment,’” *In re Gardens Reg’l Hosp. & Med. Ctr., Inc.*, 975 F.3d 926, 932 (9th Cir. 2020) (“*Gardens Regional Hospital*”), have garnered rebukes from several of this Court’s sister circuits. First, the SSA contended that Section 207 of the Social Security Act, 42 U.S.C. § 407, deprived the Bankruptcy Court of jurisdiction to discharge pre-bankruptcy overpayments and protect post-bankruptcy benefits – a contention first rejected by the Seventh Circuit in *Neavear v. Schweiker (In re Neavear)*, 674 F.2d 1201 (7th Cir. 1982) and then by the Sixth Circuit in *Rowan v. Morgan*, 747 F.2d 1052 (6th Cir. 1984).

Then the SSA contended that Section 204(a) of the Social Security Act, 42 U.S.C. § 404(a), allowed it to recover a pre-petition overpayment by reducing post-petition benefits notwithstanding the automatic stay. The Third Circuit rejected that argument in *Lee v. Schweiker*, 739 F.2d 870, 875-76 (3d Cir. 1984) – a detailed decision by Judge Becker that speaks directly to this case:

Social welfare payments, such as social security, are statutory “entitlements” rather than contractual rights. The purpose of these payments is to provide income to qualifying individuals. Although the paying agency can ordinarily recover overpayments, just as creditors

can ordinarily obtain payment from a debtor's future income, the Bankruptcy Code protects a debtor's future income from such claims once a petition has been filed, and the SSA violated the automatic stay in continuing to withhold part of Lee's benefits after she had filed her petition. . . .

Accordingly, we hold that SSA may not recoup previous overpayments from benefits payable after a bankruptcy petition is filed.

Id.

The Bankruptcy Appellate Panel rejected *Lee v. Schweiker* because, in its view, this Court had adopted an interpretation of "same transaction" broader than that of the Third Circuit. *Cooper v. SSA (In re Cooper)*, BAP No. WW-23-1098-CBS, 2024 LEXIS 91, at *21 (B.A.P. 9th Cir Jan. 16, 2024). But *Lee v. Schweiker's* holding was not based on a limited interpretation of "same transaction" – the Third Circuit instead held that social security benefits are not subject to recoupment because they are social welfare benefits and not a contract claim. 739 F.2d at 875-76.

While this Court has allowed recoupment where there is no contract, this Court has never taken issue with *Lee v. Schweiker's* holding – echoed in the decisions of the Seventh and Sixth Circuits – that post-petition social security payments are protected from recoupment because they are social welfare benefits. *Id.* Social security benefits are designed not to compensate for previous work, nor to provide the benefit of a bargain already struck, but instead to ensure beneficiaries' current income security. Other lower courts in this circuit have correctly adopted

Lee v. Schweiker's view that SSA cannot recover pre-bankruptcy overpayments by reducing post-bankruptcy social security benefits because such recovery does not qualify as recoupment – post-bankruptcy benefits address the current condition of the beneficiary, not her condition at the time of the overpayment. *See U.S. v. Angwin (In re Angwin)*, Adv. No. 15-01080, 2016 Bankr. LEXIS 1733, at *23 (Bankr. E.D. Cal. Apr. 5, 2016); *French v. U.S. Social Sec. Admin. (In re French)*, 20 B.R. 155, 156-57 (Bankr. D. Or. 1982).

Indeed, in *Gardens Regional Hospital*,¹⁸ which upheld recoupment of Medicaid provider overpayments from statutorily-related tax reimbursements, this Court cited *Lee v. Schweiker*. This Court also cited the Second Circuit's decision in *Malinowski v. N.Y. State Dep't of Labor (In re Malinowski)*, 156 F.3d 131, 134 (2d Cir. 1998), which reasoned that recoupment should not be broadened “in contravention of the federal bankruptcy policies of debtor protection and equal distribution to creditors.”¹⁹

In this case, SSA uses commercial recoupment precedents, consistent with federal bankruptcy policy relating to the relative treatment of creditors, to deny Appellant post-bankruptcy benefits he needs to live – in contravention of federal

¹⁸ *See Gardens Reg'l Hosp. & Med. Ctr. Liquidating Tr. v. California (In re Gardens Reg'l Hosp. & Med. Ctr., Inc.)*, 975 F.3d 926 (9th Cir. 2020).

¹⁹ *See id.* at 935.

bankruptcy policy of debtor protection. “One of the main purpose[s] of the federal bankruptcy system is to aid the unfortunate debtor by giving him a fresh start in life, free from debts,” except those the statute excepts from discharge. *Lamar, Archer & Cofrin, LLP v. Appling*, 584 U.S. 709, 714 (2018) (internal quotation marks omitted). To allow SSA to recoup overpayments from those post-discharge benefits would dilute the benefit of bankruptcy for people who need it most – “undermin[ing] the fundamental purposes” of the Bankruptcy Code.²⁰ The Social Security Act does not compel that result itself.

II. The Social Security Act Neither Compels nor Authorizes Disregard of the Bankruptcy Discharge

SSA argues that it can recover overpayments from post-bankruptcy benefits because Section 204(a) of the Social Security Act requires such recovery, 42 U.S.C. § 404(a). But Section 204(a) does not define SSA’s liability for social security disability benefits. Section 204(a) merely provides that the SSA shall collect overpayments and lists several remedies for doing so. *See Edwards v. O’Malley*, No. 23-1016-BAH, 2024 Bankr. LEXIS 1078, at *12 (Bankr. D.N.H. May 7, 2024).

And Section 204(a) is qualified by the very next paragraph:

In any case in which more than the correct amount of payment has been made, there shall be no adjustment of payments to, or recovery by the United States, from any person who is without fault if such adjustment

²⁰ *See id.* at 934-35, quoting 5 Collier on Bankruptcy ¶ 553.10[3].

or recovery would defeat the purpose of this title or would be against equity and good conscience.

Section 204(b)(1), 42 U.S.C. § 404(b)(1).

SSA treats this provision as authorizing waivers of recoupment, but the statute does not read that way. The statute provides there *shall* be no adjustment of payments to, or recovery from, “any person who is without fault” if recoupment would “defeat the purpose” of the title providing benefits, or would be inequitable. Thus the statute does not require recovery of pre-bankruptcy overpayments (which even SSA has recognized),²¹ and it cannot be read to authorize recovery without creating conflicts with the Bankruptcy Code.

The SSA’s regulations provide that recouping overpayments from current benefits “defeats the purposes of this title” when the beneficiary needs those benefits to pay ordinary and necessary expenses, including for food, clothing, shelter, medical bills and child support. 42 C.F.R. § 404.508. But the Bankruptcy Court has already made that determination by granting a discharge. *See* 11 U.S.C. § 707(b) (a chapter 7 case may be dismissed if debtor’s income would be sufficient, after deducting necessary expenses, to pay creditors).

²¹ *See* Testimony of Martin J. O’Malley, SSA Commissioner, before the Senate Committee on Finance, March 20, 2024, at 13-20, ssa.gov/legislation/testimony_032024b.html (limiting recoupment to 10% of monthly social security benefits with respect to overpayments after March 25, 2024).

Allowing SSA to recover overpayments from bankruptcy benefits would allow SSA (and not the Bankruptcy Court) to decide whether Appellant's poverty justifies a discharge, based on Appellant's poverty today (under SSA rules) as opposed to Appellant's poverty at the time of bankruptcy (under the Bankruptcy Code) in direct contravention of the "fresh start principle."

Under the SSA's own statute, the SSA cannot recover overpayments unless the SSA determines that the beneficiary was "at fault." Any fault by the beneficiary is sufficient, even if the SSA was itself also fault. *See* 20 C.F.R. § 404.507. Under the Bankruptcy Code, the SSA's claim is subject to discharge unless the Bankruptcy Court determines SSA was defrauded. 11 U.S.C. § 523(a)(2)(A). Exempting overpayment claims from discharge would allow (a) SSA's "at fault" standard to supersede the Bankruptcy Code's discharge standard, and (b) the SSA, and not the Bankruptcy Court, to determine whether "fault" justifies exemption from discharge. As explained above, every circuit that has considered the issue has ruled that the Bankruptcy Court, not SSA, has jurisdiction to determine whether recovery of an overpayment is exempt from the stay or from discharge. SSA's arrogation to itself of jurisdiction to exempt its recovery from discharge flies in the face of those precedents.

It is also inconsistent with Section 525(a) of the Bankruptcy Code, which provides that no government agency can withhold from a debtor a license, permit or

“similar grant” merely because the debtor has failed to pay a debt to that agency. *See* 11 U.S.C. § 525(a); *French v. U.S. Social Sec. Admin. (In re French)*, 20 B.R. 155, 157 (Bankr. D. Or. 1982).

As recoupment is an equitable exception to statutory discharge found nowhere in the Bankruptcy Code’s text, this Court has prescribed caution in its application. *Gardens Regional Hospital*, 975 F.3d at 935. That caution would not be served here by exempting from discharge SSA’s recovery of a pre-bankruptcy overpayment from post-discharge benefits.

CONCLUSION

The Memorandum Opinion and Order of the Bankruptcy Appellate Panel of the Ninth Circuit should be reversed and remanded to the Bankruptcy Court to issue an order barring Appellee from asserting against Appellant any claim for overpayments arising on or before October 21, 2020, the date Appellant obtained a discharge of all claims in Appellant’s chapter 7 bankruptcy case.

Dated: June 17, 2024

Respectfully submitted,

/s/ Thomas Moers Mayer

Thomas Moers Mayer

Nancy Bello

KRAMER LEVIN NAFTALIS & FRANKEL LLP

1177 Avenue of the Americas

New York, NY 10036

Tel.: (212) 715-9100

tmayer@kramerlevin.com

Counsel for Amici Curiae

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

Form 17. Statement of Related Cases Pursuant to Circuit Rule 28-2.6

Instructions for this form: <http://www.ca9.uscourts.gov/forms/form17instructions.pdf>

9th Cir. Case Number(s)

The undersigned attorney or self-represented party states the following:

- I am unaware of any related cases currently pending in this court.
- I am unaware of any related cases currently pending in this court other than the case(s) identified in the initial brief(s) filed by the other party or parties.
- I am aware of one or more related cases currently pending in this court. The case number and name of each related case and its relationship to this case are:

Signature

Date

(use "s/[typed name]" to sign electronically-filed documents)

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

Form 8. Certificate of Compliance for Briefs

Instructions for this form: <http://www.ca9.uscourts.gov/forms/form08instructions.pdf>

9th Cir. Case Number(s)

I am the attorney or self-represented party.

This brief contains **words, including** **words**

manually counted in any visual images, and excluding the items exempted by FRAP 32(f). The brief's type size and typeface comply with FRAP 32(a)(5) and (6).

I certify that this brief (*select only one*):

- complies with the word limit of Cir. R. 32-1.
- is a **cross-appeal** brief and complies with the word limit of Cir. R. 28.1-1.
- is an **amicus** brief and complies with the word limit of FRAP 29(a)(5), Cir. R. 29-2(c)(2), or Cir. R. 29-2(c)(3).
- is for a **death penalty** case and complies with the word limit of Cir. R. 32-4.
- complies with the longer length limit permitted by Cir. R. 32-2(b) because (*select only one*):
- it is a joint brief submitted by separately represented parties.
- a party or parties are filing a single brief in response to multiple briefs.
- a party or parties are filing a single brief in response to a longer joint brief.
- complies with the length limit designated by court order dated
- is accompanied by a motion to file a longer brief pursuant to Cir. R. 32-2(a).

Signature

Date

(use "s/[typed name]" to sign electronically-filed documents)

Feedback or questions about this form? Email us at forms@ca9.uscourts.gov