No. 22-2252

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

In re: DEDRE V. FEYIJINMI,
Debtor.

DEDRE V. FEYIJINMI,
Appellant,
-v.-
STATE OF MARYLAND
CENTRAL COLLECTION UNIT,
Appellee.

On Appeal from the United States District Court
For the District of Maryland

BRIEF OF AMICI CURIAE NATIONAL ASSOCIATION OF CONSUMER BANKRUPTCY ATTORNEYS IN SUPPORT OF APPELLANT

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April 14, 2023

RULE 26.1 CORPORATE DISCLOSURE STATEMENT

Feyijinmi v. Maryland, 22-2252.

Pursuant to FRAP 26.1 and Fourth Circuit Local Rule 26.1(b), Amicus Curiae, the National Association of Consumer Bankruptcy Attorneys (NACBA), makes the following disclosure:

1) Is party/amicus a publicly held corporation or other publicly held entity? **NO**

2) Does party/amicus have any parent corporations? **NO**

3) Is 10% or more of the stock of party/amicus owned by a publicly held corporation or other publicly held entity? **NO**

4) Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation? **NO**

5) Does this case arise out of a bankruptcy proceeding? **YES**. If yes, identify any trustee and the members of any creditors' committee. **Brian A. Tucci, Chapter 13 Trustee. There is no creditors' committee.**

RULE 29(a)(2) STATEMENT

Counsel for NACBA has contemporaneously filed a motion seeking leave of this Court to file this brief in support of the Appellant.

This day of April 14, 2023.

s/ Peter Goldberger

Peter Goldberger, Esq.
Attorney for Amicus Curiae

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STATEMENT OF INTEREST OF AMICUS CURIAE

NACBA is a nonprofit organization, with approximately 3,000 consumer bankruptcy attorney members nationwide. NACBA advocates 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. NACBA has filed *amicus curiae* briefs in various cases seeking to protect the rights of consumer bankruptcy debtors. *See, e.g.*, *Ritzen Grp., Inc.*, 140 S. Ct. 582 (2020); *Harris v. Viegelahn*, 135 S. Ct. 1829 (2015); *Richardson v. Priderock Capital Partners, L.L.C.* (*In re Richardson*), 724 F. App'x 238 (4th Cir. 2018); *LVNV Funding, L.L.C. v. Harling*, 852 F.3d 367 (4th Cir. 2017); *Lynch v. Jackson*, 845 F.3d 147 (4th Cir. 2017).

NACBA and its membership have a vital interest in the outcome of this case. NACBA member attorneys represent individuals in a large portion of all consumer bankruptcy petitions filed, the vast majority of whom are honest but unfortunate debtors seeking a fresh start under the Bankruptcy Code (the "Code"). Because of the importance of this fresh start, not only to the debtor but to society as a whole, Congress has codified the limited exceptions from discharge. In a Chapter 13 bankruptcy, Congress narrowed the exceptions from discharge based on the policy judgment that

it is preferable for debtors to attempt to pay their debts than have the debt remain indefinitely. *See Pennsylvania Dep't of Pub. Welfare v. Davenport*, 495 U.S. 552, 563, 110 S. Ct. 2126, 2133 (1990).

However, that fresh start would be denied to a debtor who continues to face pressure to pay a debt such as the one at issue in this case, when it simply was not included in a sentence of conviction.

Respectfully, NACBA submits that their membership has an interest in the issue at the heart of this case—whether Chapter 13 debtors can discharge debt not included in a criminal sentence. This issue directly implicates consumers' rights and abilities.

AUTHORSHIP AND FUNDING OF AMICI BRIEF

Pursuant to Fed. R. App. P. 29(c)(5), no counsel for a party authored this brief in whole or in part, and no person/entity other than NACBA, its members, and their counsel made any monetary contribution toward the preparation or submission of this brief.

SUMMARY OF ARGUMENT

RESTITUTION ORDERED BY A MARYLAND COURT UPON THE SUCCESSFUL COMPLETION OF A PERIOD OF "PROBATION BEFORE JUDGMENT" IS NOT EXCEPTED FROM CHAPTER 13 DISCHARGE AS A DEBT "FOR RESTITUTION … INCLUDED IN A SENTENCE ON THE DEBTOR'S CONVICTION OF A CRIME."

Appellant Dedre Feyijinmi filed a voluntary petition under Chapter 13 of the Bankruptcy Code in October 2014 for approval of a plan to pay down her debts, insofar as she could, and then obtain a discharge from the balance. JA1. See *Virginia Dept. of Social Services v. Webb*, 908 F.3d 941, 943–44 (4th Cir. 2018) (explaining operation of Chapter 13) ("*Webb*"). One of the debts she scheduled to be covered by the plan was the balance of a restitution order that had been entered against Ms. Feyijinmi by the Baltimore City Circuit Court in 2009 in favor of the Maryland Department of Welfare, to recoup benefits which she had received years earlier, but to which she had not been entitled. JA7 (referring to debt to "Central Collection Unit"); JA18 (copy of "Judgment of Restitution," attached to Proof of Claim). The U.S. Bankruptcy Court for the District of Maryland confirmed Ms. Feyijinmi's Chapter 13 plan, JA19, and on February 26, 2020, granted her a discharge under 11 U.S.C. § 1328(a). JA27.

Notwithstanding that resolution, the state continued after Ms. Feyijinmi's discharge to collect on the overpaid welfare benefits debt, including through a wage garnishment. JA30–35, JA275. Dischargeability of the debt was then litigated upon her reopening of the Chapter 13 case. Contrary to the holdings of the Bankruptcy Court and then the District Court below, the debt at

issue was properly dischargeable under the Code. The order appealed from should therefore be reversed.

The restitution order in question was originally entered upon Ms. Feyijinmi's successful completion of a period of "probation without judgment" (Md. Code Crim. Proc. § 6-220), arising out of a criminal charge of welfare fraud (*see* Md. Code Crim. Law § 8-503). *See* JA212–215 (Bnkr.Ct. findings); JA277 (U.S. Dist.Ct. findings); Bnkr. Doc. 30-4 (Att. A–B).[1] In response to the state's ongoing collection efforts, Ms. Feyijinmi filed a motion on February 23, 2021, to reopen the bankruptcy case and to commence an adversary proceeding, seeking a declaration that her debt to the state had been discharged. JA36. The Bankruptcy Court granted the debtor's motion to reopen. JA47. But on cross-motions for summary judgment (JA137, 151), the court held that the debt at issue was nondischargeable under 11 U.S.C. § 1328(a)(3) as one "for restitution, or a criminal fine, included in a sentence on the debtor's conviction of a crime." JA212–216. The District Court affirmed. JA276–284, *available at Feyijinmi v. Md. Cent. Collection Unit*,

[1] A complete and accurate account of what happened in the state criminal proceedings, which took place between 2006 and 2009, is not available, because that case was later (on Nov. 10, 2010; Bnkr.Ct.Doc. 76-1) the subject of a court-ordered expungement under Md. Code Crim. Proc. § 10-105. *See* JA51, 139. Such orders are typical in Maryland following a criminal defendant's successful completion of a Probation Before Judgment disposition. *Id*. § 10-105(a)(3). As a result, no copy of some of the documents that would have been helpful to a full understanding of the history of this matter could be located. The discussion in this brief, like that by the parties and courts below, is based on the best available reconstruction of what occurred. *See also* note 5 *infra* (burden of proof).

Civil Action No. RDB-22-00904, 2022 WL 16575704, 2022 U.S. Dist. LEXIS 198970 (D. Md. Nov. 1, 2022). That order should be reversed, because the record does not show that the restitution in question was "included in a sentence," nor was that order imposed on account of a criminal conviction, within the meaning of § 1328(a)(3).

The "starting point" for finding the meaning of a contested provision of the Bankruptcy Code, like any other federal law, is "the text of the statute." *Bartenwerfer v. Buckley*, 598 U.S. —, 143 S. Ct. 665, 671 (2023); *Ransom v. FIA Card Services, N.A.*, 562 U.S. 61, 69 (2011); *Pennsylvania Dept. of Public Welfare v. Davenport*, 495 U.S. 552, 557–58 (1990) (construing Chapter 13); *Webb*, 908 F.3d at 945 (same). And where, as here, the provision at issue contains several phrases, a proper construction will seek to give independent meaning to each. E.g., *Pennsylvania Dep't of Pub. Welfare*, 495 U.S. at 562; *Sanders v. United States*, 937 F.3d 316, 334 (4th Cir. 2019), citing *Corley v. United States*, 556 U.S. 303, 314 (2009); *Webb*, 908 F.3d at 946 ("The Court 'should give effect to every word of a statute whenever possible.'"). In other words, to be nondischargeable under § 1328(a)(3), the debt in question must be one "for restitution," *and* that restitution obligation must be "included in a sentence," *and* the "sentence" must have been imposed "on the debtor's conviction of a crime."

In *Davenport*, the Supreme Court held that criminal restitution obligations were ordinarily dischargeable under Chapter 13.[2] Congress responded by amending the Code to add the 11 U.S.C. § 1328(a)(3) exception. That provision now allows the discharge of a debt for restitution under Chapter 13 except when that obligation is "included in a sentence on the debtor's conviction of a crime." *See Johnson v. Home State Bank*, 501 U.S. 78, 83 n.4 (1991) (explaining effect of amendment on precedential value of holding of *Davenport*). The court below focused exclusively on the requirement that the restitution arise out of the debtor's criminal "conviction" – a ruling we challenge in Point 2 this brief as erroneous. In doing so, moreover, as we discuss under Point 1, the court below committed a second error: it failed to address or apply the separate requirement that the restitution obligation, to be found non-dischargeable, must be one that is "included in a sentence." Because a Maryland court's disposition of a case through "probation before judgment" neither constitutes a "conviction" nor is part of a criminal "sentence" within the meaning of § 1328(a)(3), the debt at issue here should have been held to be dischargeable.

[2] A few years earlier, based on different statutory language, the Court had held in *Kelly v. Robinson*, 479 U.S. 36 (1986), that debts reflecting unpaid criminal restitution orders included "as part of a criminal sentence" were *not* dischargeable in a *Chapter 7* bankruptcy. *Id.* 50.

ARGUMENT FOR AMICUS

I. The Court Below Erred in Overlooking the Requirement Under Section 1328(a)(3) that to Be Nondischargeable Under Chapter 13, the Order to Pay Restitution Must Have Been "Included in a Sentence," a Condition Which a Maryland "Probation Before Judgment" Does Not Satisfy.

The decision of the court below overlooked this Court's precedential guidance in *Sanders* and *Webb*, directing – in keeping with Supreme Court precedent as well – that statutory construction give separate effect, if reasonably possible, to each word or phrase used by Congress. *See Webb*, 908 F.3d at 946. The district court (like the bankruptcy judge) ruled that a Maryland "probation before judgment" disposition (hereinafter, sometimes "PBJ") requires as a predicate a "conviction" within the meaning of § 1328(a)(3) and therefore satisfies that statute. Under Point 2 of this brief, we show that that conclusion was mistaken. But the court below erred for another reason, which it did not even discuss. A state court order to pay restitution is dischargeable under Chapter 13 (as held in *Davenport*), section 1328 provides, unless the obligation was also "included in a sentence." An order to make restitution arising out of a PBJ does not satisfy that condition.

When a criminal defendant in Maryland is convicted of any but a short list of exempted offenses, *see* Md. Code Crim. Proc. § 6-220(d), the trial court has the option to divert the case out of the criminal system by striking the conviction at any time prior to sentencing, staying imposition of any judgment, and placing the person on probation with specified conditions for a period of

time. *Id*. § 6-220(b); see *Schmidt v. State*, 226 A.3d 842, 847 (Md.App. 2020) (explaining PBJ); *cf. Yanez-Popp v. U.S. Immig. & Nat. Svc.*, 998 F.2d 231, 233 (4th Cir. 1993) (discussing prior PBJ codification); *State v. Hannah*, 514 A.2d 16, 18–20 (Md. 1986) (history and operation of PBJ).[3] If at the end of the probationary period the individual has satisfied the conditions, the court discharges them from the probation without imposing any judgment of sentence. The accused thus emerges with neither a conviction nor a sentence on their record. Md. Code Crim. Proc. § 6-220(g). Finally (sometimes after passage of a specified waiting period), someone who has successfully completed a PBJ may move for expunction, which if granted results in there being no accessible official record of the case at all. *Id*. § 10-105(a)(3), (e)(2).

It is fundamental to a PBJ disposition that the person is never sentenced. Thus, even where (as here) the payment of restitution is a condition of the PBJ (as authorized by Md. Code Crim. Proc. § 6-220(b)(2)(i)), the obligation to pay restitution is not, by definition, "included in a sentence," as required to satisfy the conditions for nondischargeability of the debt under 11 U.S.C. § 1328(a)(3). While the PBJ statute refers to "judgment" not to "sentence,"

[3] In some cases, probation before judgment may even be ordered in Maryland *after* a sentencing and entry of judgment in the criminal case, by way of motion to modify sentence (Md.Ct.R. 4-345), but in that event the benefits of not having been convicted do not attach. See *Hall v. Prince George's Cty. Dem. Central Comm.*, 64 A.3d 210, 221–23 (Md. 2013). That scenario is not implicated here.

these are synonyms in criminal law vocabulary, both state and federal, as this Court has recognized:

> It is well understood "that a criminal judgment includes both a conviction and its associated sentence." *United States v. Dodson*, 291 F.3d 268, 272 (4th Cir. 2002) (internal quotation marks omitted); … *see also Greco v. State*, 347 Md. 423, 701 A.2d 419, 423 n.4 (1997) ("Under Maryland law, a final judgment in a criminal case is comprised of the verdict of guilty, and the rendition of sentence."). The Supreme Court has likewise observed that …"[f]inal judgment in a criminal case means sentence. The sentence is the judgment." *Burton v. Stewart*, 549 U.S. 147, 156 … (2007) (per curiam) (quoting *Berman v. United States*, 302 U.S. 211, 212 … (1937) (internal quotation marks omitted)).

Woodfolk v. Maynard, 857 F.3d 531, 542 (4th Cir. 2017). See also *Johnson v. State*, 788 A.2d 678, 695 (Md. App. 2002) ("'Conviction' and 'sentence' are legally distinct. Conviction is the determination of guilt; *sentence is the judgment* entered thereon." [quoting earlier authority; emphasis added]). The probation that is part of a PBJ is thus not a "sentence" (as required by § 1328(a)(3) for nondischargeability in bankruptcy), because a PBJ, by definition, avoids the imposition of any "judgment" in the criminal case. The applicable Maryland statute in fact expressly states that compliance with a judgment of restitution imposed as a PBJ condition is "instead of a sentence." Md. Code Crim. Proc. § 11-606(a)(1)(iii)(2). It follows that restitution imposed as a condition of a PBJ disposition is not "included in a sentence." As a result, it is not exempt from discharge under Chapter 13.

There is another and separate reason why the restitution debt that Ms. Feyijimni sought to discharge in this case was not "included in a sentence"

within the meaning of 11 U.S.C. § 1328(a)(3). As already noted, when her three years of supervision under PBJ concluded, the Circuit Court discharged her from that supervision, despite the fact that a significant balance remained unpaid on the restitution.[4] At that time, the unpaid balance became, and was recorded as, "a money judgment in favor of the … governmental unit … to whom the restitution obligor has been ordered to pay restitution." Md. Code Crim. Proc. § 11-608(a). It was no longer enforceable by the criminal court, but instead by the Central Collection Unit of Maryland's Department of Budget and Management, *id*. § 11-601(b), 608(b), functioning as "a money judgment creditor." *Id*. § 11-608(c). A judgment for the unpaid balance of Ms. Feyijinmi's restitution was therefore "recorded and indexed in the civil judgment index" (not as a criminal judgment), *id.* § 11-609(a), under a new, civil docket number (03-C-13-011136), no longer under its prior criminal number (03-K-06-004436JG).[5] *See* JA18 (PBJ restitution judgment, dated

[4] Presumably because Ms. Feyijinmi had made the required periodic payments to the best of her ability and her failure to pay in full during the three-year supervisory period was not willful, she was not found to have violated her conditions. The court opted not to extend the supervision, which would have been authorized if helpful to collecting the restitution, *see* Md. Code Crim. Proc. § 6-222(b)(1), and instead terminated it as successful, which was "a final disposition of the matter," Md. Code Crim. Proc. §220(g)(2), thus, in effect, dismissing the criminal case.

[5] The number of the criminal case in Towson (Baltimore County) District Court, prior to its removal to the county's Circuit Court, had been 5C00243213. *See* Dist.Ct.Doc. 33-2, at 11. The record is entirely unclear how Ms. Feyijinmi's case made its way from the Maryland District Court to Circuit Court. Perhaps she appealed for trial *de novo*, *see* 12 Md. Code Jud. Proc. § 12-401(b)(2); that would tend to explain some of the scraps of procedural

12/8/2006); Dist.Ct.Doc. 30-3, at 2(¶4); Dist.Ct.Doc. 30-4. This was the only debt arising out of the welfare overpayments that existed at the time the Chapter 13 bankruptcy petition was filed.

The nature and effect of a local judgment underlying a debt that is the subject of a federal bankruptcy petition is determined under state law. *In re Ansari*, 113 F.3d 17, 19 (4th Cir. 1997), applying *Grogan v. Garner*, 498 U.S. 279 (1991). Because the civil money judgment for restitution was no longer, at the time Ms. Feyijinmi sought relief under Chapter 13, "included in a sentence" in any sense (even if it ever had been), it was not exempted from discharge under the Code. For this reason as well, the order appealed from should be reversed.

II. The Court Below Erred in Holding that Restitution Imposed as Part of a Maryland "Probation Before Judgment" Arises Out of a "Conviction" Within the Meaning of Section 1328(a)(3).

The court below held that Ms. Feyijinmi's restitution debt to the Maryland Central Collections Unit was nondischargeable because it was "on the debtor's conviction of a crime." JA280–81. This conclusion was erroneous, even apart from the "sentence" issue, because the restitution debt originated in

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history that have survived the expunction. But to the extent that any gaps may impede this Court's ability to reach a confident decision, the default consequence is in favor of finding the debt dischargeable: "[T]he rule in bankruptcy [is] that the party who challenges discharge – in this instance [the State] – must prove the dispositive statutory factor for nondischarge." *In re Raynor*, 922 F.2d 1146, 1149–50 (4th Cir. 1991). Accord, *Grogan v. Garner*, 498 U.S. 279 (1991) (burden to establish nondischargeability is on the creditor, albeit only by a preponderance of the evidence).

a judgment entered as a result of a PBJ, and a PBJ does not rest on "conviction of a crime."[6] Under Maryland law, according to the state's highest court, it is well-settled that a PBJ is not premised on a conviction. *State v. Hannah, supra*; *State v. Myers*, 496 A.2d 312 (Md. 1985). If the defendant is convicted before PBJ is imposed, the court's first step is to strike that conviction from the record. See *Yanez-Popp*, 998 F.2d at 233; *Hannah*, 514 A.2d at 17. The restitution imposed as a PBJ condition is premised on losses to a victim of alleged criminal conduct, *see* Md. Code Crim. Pro. § 6-220(b)(2)(i), but not on any *conviction* for that crime.

The same conclusion is reached if the court proceeds on the view that "conviction" in § 1328(a)(3) is to be given a uniform federal meaning, rather than a meaning derived from the law of the state where the supposed conviction was sustained. If so, that meaning will derive from context and purpose:

> It is certainly correct that the word "conviction" can mean either the finding of guilt or the entry of a final judgment on that finding. … [T]he meaning of a word cannot be determined in isolation, but must be drawn from the context in which it is used. … In the context of [18 U.S.C.] § 924(c)(1), we think it unambiguous that "conviction" refers to the finding of guilt by a judge or jury that necessarily precedes the entry of a final judgment of conviction.

[6] The opinion below did not discuss, and Amicus is not aware of any explanation for Congress's use of the odd prepositions "on" and "of" in this provision. We proceed here on the assumption that "on the debtor's conviction" means "on account of" a conviction, or perhaps "arising out of" the conviction. Likewise, we assume that "conviction of" a crime means "conviction on a charge of" or "for committing" a crime.

Deal v. United States, 508 U.S. 129, 131–32 (1993).[7] Here, as in the federal criminal law the Supreme Court interpreted in *Deal*, the sort of "conviction" out of which the debt must arise to be nondischargable under § 1328(a)(3) would likewise have to be "the finding of guilt by a judge or jury that necessarily precedes" the imposition of a sentence and entry of judgment, given that the duty to pay the debt in question must also be "included in a sentence on" that conviction. Only a "conviction" upon which a judgment of sentence is then to be imposed can be a "conviction" for purposes of § 1328(a)(3). A Maryland PBJ does not qualify.

The authorities cited by the court below in support of its order rejecting discharge of Ms. Feyijinmi's restitution debt do not support the holding against her. The court first cited *Dickerson v. New Banner Institute*, 460 U.S. 103 (1983), a case in which the Court held that a federal law barring receipt of a firearm in interstate commerce by a person "who has been convicted in any court" of "a crime punishable by imprisonment for a term exceeding one year" applied to someone whose conviction was subsequently expunged after successful completion of a term of probation granted upon deferment of sentencing.[8] There was no suggestion in *Dickerson* that the Iowa procedure at

[7] In 2018, Congress amended the statute construed in *Deal* to moderate somewhat the severity of the sentences that the 1993 decision authorized, but it did not alter or redefine the statutory language discussed there.

[8] Congress subsequently disapproved the holding in *Dickerson* by amending the pertinent definition of "crime punishable by imprisonment for a term exceeding one year" to make state law determinative of what constitutes a

issue there involved the court's first "striking" the conviction, as is a regular part of the Maryland process. Nor did the federal firearms law at issue there, unlike Chapter 13 of the Bankruptcy Code, limit disqualifying convictions (or, as here, disqualifying financial penalties imposed "on a conviction") to those "included in a sentence." The 40-year-old, since-rejected decision in *Dickerson* therefore offers precious little support for the district court's decision.

Similarly, the decision of the Eighth Circuit's Bankruptcy Appellate Panel in *In re Wilson*, 252 B.R. 739 (B.A.P. 8th Cir. 2000),[9] is not persuasive. The *Wilson* case is largely on point, in that it also involved the interpretation of § 1328(a)(3) (as applied to a similar Texas provision). Once again, as in *Dickerson*, there is no suggestion in the opinion that the state court process at issue involved the striking of a conviction before granting the pre-judgment probation. Nor did the panel explain how its decision was consistent with the Code's additional requirement that there not only have been a conviction but also that the restitution at issue be "included in a sentence" on that conviction. Instead, the court substituted its own more lenient test for that adopted by Congress: "the crucial issue is whether the criminal court implicitly found the defendant guilty of the crime before the imposition of restitution obligation."

"conviction" and to exclude from firearms disqualification those whose convictions had been expunged under state law. *See* 18 U.S.C. § 921(20).

[9] A Bankruptcy Appellate Panel hears appeals from the Bankruptcy Courts within a circuit that opts to utilize this process, 28 U.S.C. § 158(b), and thus has precedential weight equivalent to that of a district court, not that of a sister Circuit.

Wilson, 252 B.R. at 743 (sic). That is simply not the strict and specific rule articulated by Congress when it limited (but did not wholly overrule) the holding in *Davenport*.

Even less weighty as precedent is this Court's decision in *Yanez-Popp v. U.S. Immig. & Nat. Svc.*, 998 F.2d 231 (4th Cir. 1993). Although the issue in that case also involved, as here, the effect of a Maryland PBJ on a federal disqualification based on a "conviction," the governing legal principles were entirely different. The ground for deportation (now called "removal") at issue there was simply having been "at any time after entry … convicted of a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance." Unlike the Bankruptcy Code's 11 U.S.C. § 1328(a)(3), that provision was not focused on the current state of affairs (here, the existence of a debt of a certain sort) and made no reference to the relevance of any "sentence," but only to the imposition of any form of "punishment, penalty or restraint." *Yanez-Popp*, 998 F.2d at 237. PBJ probation satisfied that non-technical rule. Even more important, this Court's task in *Yanez-Popp* was to apply *Chevron* deference to the immigration agency's own expert (and broad) definition of a "conviction," as applied to enforcement of its statutory mandate, rather than to reach this Court's own conclusion based on the tools of statutory construction. The panel thus approved the Board of Immigration Appeals' three-part test that avoided placing "form over substance." *Yanez-Popp*, 998 F.2d at 237. That rule called for deportation of the petitioner for mere "criminal behavior" if at any time the

state court "could have" convicted and sentenced him. *Id*. The Bankruptcy Code, by requiring the creditor to prove that the debtor's obligation to pay restitution is "included in a sentence" that is based "on a conviction," does not allow for that sort of loose interpretation.

For all these reasons, the National Association of Consumer Bankruptcy Attorneys, as friend of the Court, urges that the order of the district court affirming the ruling of the bankruptcy court must be reversed.

Conclusion

The obligation to pay the balance of court-ordered restitution that remains, in the form of a civil judgment, after the successful completion of a term of "probation before judgment" under Maryland law is not a debt "for restitution, or a criminal fine, included in a sentence on the debtor's conviction of a crime." 11 U.S.C. § 1328(a)(3). It is therefore dischargeable under Chapter 13 of the Bankruptcy Code. The order of the court below must be reversed.

Respectfully submitted,

Dated: April 17, 2023

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Fed. R. App. P. 29(b)(4) because this brief contains 4,255 words, excluding parts exempted by Fed. R. App. P. 32(f).

2. This filing complies with Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman 14-point type.

s/ Peter Goldberger

Peter Goldberger, Esq.
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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fourth Circuit by using the appellate CM/ECF system on April 17, 2023. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

s/ Peter Goldberger

Peter Goldberger, Esq.
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