No. 12-5196

In the Supreme Court of the United States

STEPHEN LAW, PETITIONER

v.

ALFRED H. SIEGEL, CHAPTER 7 TRUSTEE

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

**BRIEF FOR THE UNITED STATES
AS AMICUS CURIAE SUPPORTING RESPONDENT**

DONALD B. VERRILLI, JR.
Solicitor General
Counsel of Record
STUART F. DELERY
Assistant Attorney General
MALCOLM L. STEWART
Deputy Solicitor General
SARAH E. HARRINGTON
Assistant to the Solicitor General
MICHAEL S. RAAB
ANNE MURPHY
Attorneys
Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

RAMONA D. ELLIOTT
Deputy Director/General Counsel
P. MATTHEW SUTKO
Associate General Counsel
NOAH M. SCHOTTENSTEIN
Attorney
Executive Office for United States Trustees
Washington, D.C. 20530

QUESTION PRESENTED

Whether the bankruptcy court had the power, pursuant either to its authority under 11 U.S.C. 105(a) or to its inherent power to sanction misconduct, to bring the value of the debtor's homestead exemption into the bankruptcy estate through an equitable surcharge in order to compensate the estate for litigation costs incurred as a result of the debtor's bad-faith litigation conduct.

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Cases: Page

Cases—Continued: Page

Statutes and rules: Page

In the Supreme Court of the United States

No. 12-5196

STEPHEN LAW, PETITIONER

v.

ALFRED H. SIEGEL, CHAPTER 7 TRUSTEE

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

BRIEF FOR THE UNITED STATES
AS AMICUS CURIAE SUPPORTING RESPONDENT

INTEREST OF THE UNITED STATES

The scope of the bankruptcy courts' authority to sanction debtor misconduct, and to compensate parties injured by such misconduct, is an issue of substantial importance to the United States. The Attorney General appoints United States Trustees to supervise the administration of bankruptcy cases and trustees throughout the country. 28 U.S.C. 581-589a. United States Trustees "serve as bankruptcy watchdogs to prevent fraud, dishonesty, and overreaching in the bankruptcy arena." H.R. Rep. No. 595, 95th Cong., 1st Sess. 88 (1977). By statute, United States Trustees "may raise and may appear and be heard on any issue in any case or proceeding under" Title 11. 11 U.S.C. 307.

The United States is also the largest creditor in the Nation, and numerous federal agencies frequently appear as creditors in Chapter 7 cases. Because a bankruptcy estate's assets are typically scarce, the United States has an interest in preventing and deterring Chapter 7 debtors from diminishing or hiding assets that should be used to satisfy claims of the United States.

STATEMENT

1. a. A debtor commences a voluntary bankruptcy case by filing a petition in bankruptcy court. 11 U.S.C. 301. Individual debtors typically file for relief under Chapter 7 or Chapter 13 of the Bankruptcy Code. The present case arises under Chapter 7, which provides for a liquidation of a debtor's non-exempt assets in exchange for a discharge of pre-petition debts. 11 U.S.C. 701 *et seq.* After filing a voluntary bankruptcy petition, a debtor must file a schedule of assets and liabilities, a schedule of current income and current expenditures, and a statement of the debtor's financial affairs. 11 U.S.C. 521(a)(1); Fed. R. Bankr. P. 1007(c); Fed. R. Bankr. P. Official Forms 6 (Schedules) and 7 (Statement of Financial Affairs)). A debtor must file those documents under penalty of perjury. See Fed. R. Bankr. P. 1008.

Commencement of a Chapter 7 case creates an "estate" that includes all of the debtor's "legal or equitable interests * * * in property as of the commencement of the case." 11 U.S.C. 541(a). The debtor must surrender all non-exempt estate property to the Chapter 7 trustee, who serves as the sole representative and fiduciary for the estate. 11 U.S.C. 323; *CFTC* v. *Weintraub*, 471 U.S. 343, 352 (1985). The Chapter 7 trustee takes custody of such property, liquidates it, and disburses the proceeds to creditors in accordance with their rights and priorities under the Code. 11 U.S.C. 507, 521(a)(3) and (4), 704(a)(1), 726.

The Bankruptcy Code accords a high priority to paying administrative expenses incurred by the estate. 11 U.S.C. 507(a)(2); see 11 U.S.C. 503(b) (administrative expenses include "the actual, necessary costs and expenses of preserving the estate"). By statute, a Chapter 7 trustee is paid a flat fee of $60. 11 U.S.C. 330(b). In cases where nonexempt assets are available for liquidation and disbursement, the trustee may also receive a commission based on the amount of "moneys disbursed or turned over in the case by the trustee to parties in interest, excluding the debtor." 11 U.S.C. 326(a).

The Bankruptcy Code ordinarily "give[s] the bankrupt a fresh start with such exemptions and rights as the [bankruptcy] statute left untouched." *Burlingham* v. *Crouse*, 228 U.S. 459, 473 (1913). A debtor is entitled to claim various statutory exemptions to prevent the liquidation or distribution of specific categories of property. 11 U.S.C. 522. Generally speaking, "property exempted" from the estate "is not liable during or after the case for any debt of the debtor that arose * * * before the commencement of the case." 11 U.S.C. 522(c).

Exemptions may be defined by state or federal law. See 11 U.S.C. 522(b)(1)-(2) and (d). The State of California (where this bankruptcy was filed) requires debtors in California to use the exemptions defined by state law. See Cal. Civ. Proc. Code §§ 703.130, 703.140 (West Supp. 2013). As relevant here, California currently provides for a "homestead" exemption of between $75,000 and $175,000 (depending on the debtor's household circumstances) for a debtor's interest in his principal dwelling. See *id.* §§ 704.710(c) (West 2009), 704.730 (West Supp. 2013). When a debtor claims eligible property as exempt and no "party in interest" objects, the federal Bankruptcy Code ordinarily excludes such property from the bankruptcy estate. See 11 U.S.C. 522(*l*).

b. Section 105 of the Bankruptcy Code, 11 U.S.C. 105, sets forth the powers of courts adjudicating bankruptcy cases. Section 105(a) provides that the "court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of" Title 11 of the United States Code. 11 U.S.C. 105(a). Section 105(a) further states that "[n]o provision" of Title 11 "providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process." *Ibid.*

2. In January 2004, petitioner filed a voluntary Chapter 7 bankruptcy petition. J.A. 56a. Respondent was appointed to serve as the Chapter 7 trustee. *Ibid.*

a. Petitioner's bankruptcy schedules listed petitioner's home as the only major asset of the bankruptcy estate. J.A. 56a; S.J.A. 1a-8a. The schedules represented that the home was worth $363,348 and that it was encumbered by two liens totaling $304,085.56. J.A. 56a-57a; S.J.A. 3a-4a, 9a. Petitioner listed a first priority mortgage lien for $147,156.52, held by Washington Mutual Bank, and a second priority lien for $156,929.04, held by "Lin's Mortgage & Associates." J.A. 56a-57a; S.J.A. 9a. Petitioner also claimed a homestead exemption of $75,000 pursuant to Cal. Civ.

Proc. Code § 704.730(a)(2) (West 2009). J.A. 56a; S.J.A. 8a.

Petitioner's schedules thus represented that the total amount of the claimed homestead exemption plus the two listed liens exceeded the value of the house. The practical implication of those figures was that the home was not a source of value that the bankruptcy estate could use to satisfy petitioner's other creditors. Petitioner's homestead exemption became final without opposition from respondent. J.A. 60a. Years of litigation ensued, however, concerning the validity of the second lien and associated deed of trust. See J.A. 83a-84a.

Through his bankruptcy, petitioner sought to discharge debts arising from an October 1999 money judgment of $131,821.74 entered against him in a suit in Los Angeles Superior Court. J.A. 86a; S.J.A. 9a-10a. In June 1999—while that action was pending—petitioner executed and obtained notarization of two separate promissory notes in favor of a person named Lili Lin to document a loan of $168,000 that he alleged he had received a year earlier. J.A. 85a-86a. The same month, petitioner recorded a deed of trust in favor of Lili Lin. J.A. 86a. That alleged loan became the disputed second lien when petitioner later filed his bankruptcy petition.

Petitioner was acquainted with a woman named Lili Lin, who lived in Artesia, California. J.A. 86a. Although she had never loaned money to petitioner, petitioner delivered to her the disputed deed of trust and promissory note in June 1999. J.A. 86a-87a. Petitioner later asked Lin to accept a check from him for $168,000 in satisfaction of the loan, and then to return the money to him. J.A. 87a. Lin refused. *Ibid.*

In February 2000 (after the judgment of $131,821.74 had been entered against petitioner), County Records Research received a letter purporting to be from Lin and seeking to institute foreclosure proceedings on petitioner's home. *Ibid.* Lin stated that she had not sent that letter. *Ibid.* Around the same time, Lin received a packet of documents that, had she signed them, would have transferred to petitioner's ex-wife any interest she had in the disputed second lien. *Ibid.* Lin declined to sign the documents and later entered into a stipulated judgment with respondent, in which Lin stated that she had never loaned money to petitioner and that petitioner had attempted to involve her in a sham foreclosure of the disputed deed of trust. J.A. 87a-89a.

When petitioner filed his bankruptcy petition in 2004, he listed "Lin's Mortgage & Associates," purportedly located in Guangzhou, China, as the holder of the second lien on his residence. J.A. 88a. Respondent filed an adversary proceeding asserting fraud against Lili Lin. *Ibid.* In his opposition, petitioner alleged that he had received the second-lien loan from a *different* woman named Lili Lin who resided in China. J.A. 89a. In the extensive proceedings that followed, petitioner could not produce evidence to establish the form in which he had received the money from Lin, and he offered shifting accounts of how and to whom those funds were paid. J.A. 84a-85a. Although Lin of China purportedly never traveled to the United States during the pendency of the bankruptcy, did not speak English, and was often unrepresented by counsel, numerous pleadings in the bankruptcy court advocating for petitioner's position were filed in her name. J.A. 89a-92a. The bankruptcy court ultimately concluded that no person named Lili Lin—either from Artesia or from China—had ever loaned money to petitioner in exchange for the disputed deed of trust. J.A. 91a-92a.

Respondent's investigation into the validity of the scheduled second lien—and petitioner's resistance to the investigation—spawned years of litigation, including discovery disputes, more than a dozen appeals to the Bankruptcy Appellate Panel (BAP), and several appeals to the Ninth Circuit. J.A. 56a n.4. In 2005, the bankruptcy court entered a default judgment against petitioner denying discharge of his debts in bankruptcy. See No. CC-05-1352, 2006 WL 6810957, at *2 (B.A.P. 9th Cir. 2006). Petitioner appealed the denial of discharge, and both the BAP and the court of appeals affirmed. *Id.* at *3-*4; 309 Fed. Appx. 95 (9th Cir. 2009); see J.A. 133a.

In March 2006, with permission from the bankruptcy court, respondent sold petitioner's residence. J.A. 57a & n.5. Although petitioner had represented on the schedules he filed with his petition that his home was worth $363,348, S.J.A. 4a, 8a, the home in fact sold for $680,000, J.A. 138a. After paying all costs of the sale and satisfying the (undisputed) first lien, the bankruptcy estate was left with $208,777.91. J.A. 57a n.5. If petitioner had not invented the false second lien, that amount would have been sufficient to pay petitioner's (real) creditors, to pay respondent's costs, to pay petitioner the $75,000 value of his homestead exemption, and to return surplus funds to petitioner. J.A. 65a. As a result of the litigation surrounding that fictitious lien, however, respondent (on behalf of the estate) had incurred more than $450,000 in legal fees. J.A. 66a.

b. When respondent moved to sell petitioner's house in 2006, he also filed a motion to "surcharge" petitioner's $75,000 homestead exemption in order to recoup some of the expenses the estate had incurred in resisting petitioner's attempt to shield equity in his home with the fraudulent second lien. J.A. 57a. The bankruptcy court authorized the surcharge, explaining that petitioner's conduct was "the direct cause of the expenses that have been incurred by [respondent]," and that respondent was likely to incur additional related expenses. J.A. 58a.

Petitioner appealed, and the BAP reversed because the surcharge was based on the disputed validity of the second lien, which at that point had not yet been determined. J.A. 59a.

c. In April 2008, respondent filed a second motion to surcharge petitioner's homestead exemption. Respondent alleged that petitioner had used the fictitious second lien to attempt to defraud his creditors; that petitioner had twice perjured himself, first by listing the fraudulent lien in his schedules and then by attaching a fraudulent promissory note to his motion to reconsider the order approving the sale of his residence; and that petitioner had invented Lili Lin of China in order to frustrate respondent's administration of the estate and to exhaust the estate's assets. See J.A. 61a.

The bankruptcy court found that petitioner had attempted to perpetrate a fraud on the court by claiming the second lien on his residence. J.A. 92a. The court concluded that "[t]he preponderance of the evidence clearly shows that the loan was a fiction, meant to preserve [petitioner's] equity in his residence beyond what he was entitled to exempt as a homeowner, and a fraud on his creditors and the court." *Ibid.* (emphasis omitted). The bankruptcy court further found that, if petitioner had not fraudulently invented and tirelessly defended the validity of the second deed of trust, "ample funds would have been available to pay [petitioner's] creditors and [respondent's] costs" and to pay petitioner both his full homestead exemption and surplus funds. J.A. 92a-93a.

During the extensive litigation over the fraudulent second lien, however, the bankruptcy estate had incurred more than $450,000 in expenses as a "direct result of [petitioner's] active misrepresentations to [respondent] and to the court." J.A. 93a-94a. Recognizing that "the actual costs" of petitioner's misconduct "to the estate far exceed $75,000 (the exemption to which [petitioner] would otherwise be entitled)," the bankruptcy court granted respondent's motion to surcharge petitioner's homestead exemption in its entirety. J.A. 97a. The practical effect of the surcharge was to deny petitioner the $75,000 portion of the residence-sale proceeds to which he would otherwise have been entitled under the California homestead exemption.

d. Petitioner appealed to the BAP, which affirmed in an unpublished decision. J.A. 54a-80a. The BAP noted a prior Ninth Circuit holding "that a bankruptcy court may equitably surcharge a debtor's statutory exemptions when reasonably necessary to protect the integrity of the bankruptcy process and to ensure that a debtor receives as exempt property an amount no more than what is permitted by the Bankruptcy Code." J.A. 68a (citing *Latman* v. *Burdette*, 366 F.3d 774, 786 (9th Cir. 2004)). The panel also relied on a previous BAP decision upholding a bankruptcy court's surcharge of a debtor's homestead exemption to reimburse the estate for expenses incurred as a result of the debtor's misconduct. J.A. 69a-70a (citing *In re Onubah*, 375 B.R. 549, 553-558 (B.A.P. 9th Cir. 2007)). The BAP concluded that the surcharge against petitioner's homestead exemption was not an abuse of discretion because the "second trust deed loan was a fiction" and a fraud on the court. J.A. 72a.

e. The court of appeals affirmed. J.A. 50a-53a. The court explained that "[t]he BAP properly affirmed the bankruptcy court's order granting [respondent's] surcharge motion because the surcharge was calculated to compensate the estate for the actual monetary costs imposed by [petitioner's] misconduct, and was warranted to protect the integrity of the bankruptcy process." J.A. 52a (citing *Latman* and *Onubah*).

SUMMARY OF ARGUMENT

The modern bankruptcy system balances competing interests by affording honest debtors a fresh start free of crushing debt while maximizing compensation for creditors. Dishonest debtors have ample opportunity to abuse the system by attempting to shield assets that should be distributed to creditors. Petitioner attempted to do exactly that by engaging in a massive and protracted fraud against the bankruptcy court and respondent. Although that fraud was detected and petitioner's creditors were paid in full, respondent incurred substantial litigation costs during the process of uncovering the fraud. The equitable surcharge on petitioner's otherwise-exempt homestead interest was a permissible exercise of the bankruptcy court's authority to penalize litigation misconduct by shifting some of the costs of that misconduct to the culpable party.

A. Section 105(a) of the Bankruptcy Code authorizes a bankruptcy court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions" of the Code. The court's surcharge order in this case was necessary and appropriate to carry out Code provisions that require honest disclosure of debtors' assets and liabilities, limit the amount of property that is exempt from distribution to creditors, and require a trustee to uncover fraud in a debtor's reported financial affairs. The validity of an order under Section 105(a) does not depend on specific authorization elsewhere in the Code—if it did, Section 105(a) would be surplusage.

The surcharge order was also necessary and appropriate to prevent an abuse of process. If petitioner had succeeded in his scheme, he would have effectively used the power of the bankruptcy court to cheat his creditors out of money they were due, while retaining significantly more property than the Code would allow. Even after his fraud was uncovered, a surcharge was necessary to prevent an abuse of process because without it, the entire cost of petitioner's fraudulent scheme would have fallen on respondent. If bankruptcy courts were disabled from shifting the costs of litigation misconduct to a culpable debtor, debtor misconduct would likely become more prevalent, and trustees would face pronounced disincentives to the vigorous performance of their duties.

B. The bankruptcy court's surcharge order was equally justified by the court's inherent authority to sanction bad-faith litigation conduct. That power transcends the statutes or rules that govern any particular case and includes the authority to order a litigant to compensate his opponent for costs associated with vexatious and bad-faith conduct in the proceedings. Longstanding historical practice confirms a bankruptcy court's inherent equitable authority to police the litigants before it. That authority was codified in the pre-Code Bankruptcy Act. When it enacted and subsequently amended Section 105(a), Congress confirmed that power by authorizing bankruptcy courts to take measures "necessary or appropriate" to carry out provisions of the Code or to prevent an abuse of process.

C. Nothing in the Bankruptcy Code prohibits a court from equitably surcharging otherwise-exempt property as a sanction for bad-faith litigation conduct. As this Court held in *Marrama* v. *Citizens Bank*, 549 U.S. 365 (2007), a dishonest debtor forfeits the protections afforded by the Bankruptcy Code when he engages in misconduct such as attempting to hide assets. Here, petitioner attempted to use fraud to achieve a result that no law entitles him to—a discharge of his debts without a loss of property. The equitable surcharge imposed in this case did not reflect any attempt by the bankruptcy court to substitute its own policy judgment for that of Congress. It instead reflected the court's recognition that, although the Code ordinarily would have entitled petitioner to leave bankruptcy with certain property intact and unencumbered, petitioner gave up that right when he flouted his legal obligations.

The Code's provision of other sanctions for certain bad-faith conduct on the part of debtors did not limit the bankruptcy court's authority to impose an equitable sanction here. None of the sanctions that petitioner identifies would have punished petitioner for his egregious behavior; none would have compensated respondent for the enormous costs petitioner imposed on him; and none would deter the type of behavior at issue here. This Court has long held that a court's inherent authority to sanction bad-faith litigation conduct is not limited by the availability of other statutory sanctions.

ARGUMENT

BANKRUPTCY COURTS' STATUTORY AND INHERENT AUTHORITY TO SANCTION DEBTOR MISCONDUCT INCLUDES THE RIGHT TO DENY DISHONEST DEBTORS BENEFITS CONFERRED BY THE BANKRUPTCY CODE ON HONEST DEBTORS

As this Court has often noted, a primary goal of the modern bankruptcy system is to provide honest but unfortunate debtors with a fresh start. Petitioner is not an honest but unfortunate debtor. Petitioner's attempts to perpetrate a massive fraud on the bankruptcy court (and his bankruptcy estate) ultimately cost the estate hundreds of thousands of dollars and tied up the court and litigants in several years of adversary proceedings. When a debtor engages in such egregious bad-faith conduct, the bankruptcy court has statutory and inherent authority to sanction the debtor by imposing an equitable surcharge on otherwise-exempt property.

A. The Bankruptcy Court's Equitable Surcharge Was Authorized By 11 U.S.C. 105(a)

The equitable powers of bankruptcy courts are codified in 11 U.S.C. 105(a), which provides:

> The court may issue any order, process, or judgment that is necessary or appropriate to carry out

> the provisions of [Title 11 of the United States Code]. No provision of [Title 11] providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

Section 105(a) thus broadly authorizes a bankruptcy court to exercise its equitable authority by issuing "any order" it deems "necessary or appropriate" either "to carry out the provisions of" the Bankruptcy Code or to vindicate the court's own authority, including by "prevent[ing] an abuse of process." *Ibid.*

The Bankruptcy Code also requires debtors to disclose to the bankruptcy court their assets and liabilities. 11 U.S.C. 521. The rules implementing the Code require that such disclosures be made under penalty of perjury. Fed. R. Bankr. P. 1008. The Code also limits the amount of property a debtor may retain free of pre-petition liens at the end of a successful bankruptcy (and while the bankruptcy is pending). 11 U.S.C. 522. The Code further provides that a Chapter 7 trustee (like respondent) "shall," *inter alia*, "collect and reduce to money the property of the estate" and "investigate the financial affairs of the debtor." 11 U.S.C. 704(a)(1) and (4). Together, those (and other) provisions help to effectuate the twin goals at the core of the federal bankruptcy system: giving the honest but unfortunate debtor a fresh start, and ensuring the maximum possible distribution to creditors. See, *e.g.*, *Stellwagen* v. *Clum*, 245 U.S. 605, 617 (1918); *Williams* v. *United States Fid. & Guar. Co.*, 236 U.S. 549, 554-555 (1915).

By making it appear that his home was not a source of value for his creditor, petitioner attempted through fraud to free himself of a money judgment without giving up any portion of his interest in his only major asset. The bankruptcy court's equitable surcharge in this case was designed to penalize that attempted fraud on the court, and to shift from respondent to petitioner a portion of the costs that petitioner's fraud had caused. The court's order was necessary and appropriate to carry out the Code provisions described in the preceding paragraph, and it was therefore authorized by Section 105(a).

Petitioner argues (Br. 16-17) that a court "carr[ies] out" a provision of the Code only by enforcing its express provisions. That parsimonious reading would render largely superfluous Section 105(a)'s general authorization to issue orders "necessary or appropriate to carry out provisions of the" Code. 11 U.S.C. 105(a). To be sure, Section 105(a) is not itself a source of substantive rights and obligations. Section 105(a)'s evident purpose, however, is to confirm the bankruptcy courts' broad authority to devise effective remedial measures to enforce, and redress violations of, rights and duties created by other provisions of law. Section 105(a) could not achieve that objective if (for example) a bankruptcy court could enforce Section 521's honest-disclosure requirement only by requiring a debtor to honestly disclose his assets and liabilities. To ensure that Section 105(a) is given meaningful effect, that provision must be read to authorize bankruptcy courts to take actions beyond those specifically authorized or required by other provisions of the Code.

The court's surcharge was equally justified as necessary and appropriate to "prevent an abuse of process." 11 U.S.C. 105(a). As noted, petitioner attempted to utilize the bankruptcy court in a fraudulent scheme to deprive his tort-judgment creditor of satisfaction of a lawful debt. The diligent efforts of respondent and the court prevented such an abuse. In petitioner's view, he should suffer no adverse consequence as a result of his bad-faith litigation conduct. That result would leave an abuse of process uncorrected by forcing respondent to bear the enormous costs he incurred (on behalf of the bankruptcy estate) to uncover and thwart petitioner's fraud on the court. The bankruptcy court acted well within its equitable discretion by sanctioning petitioner in order to partially offset those costs.

"Perhaps to a greater degree than any other segment of our justice system, Bankruptcy depends on the integrity of the information supplied by its principal participant, the debtor." *In re Little*, 245 B.R. 351, 353-354 (Bankr. E.D. Mo.), appeal dismissed, 253 B.R. 427 (B.A.P. 8th Cir. 2000). The Code does not contemplate that either "the trustee [or] the creditors should be required to engage in a laborious tug-of-war to drag the simple truth into the glare of daylight." See *In re Tully*, 818 F.2d 106, 110 (1st Cir. 1987). Honest and full disclosure of a debtor's assets is particularly important in cases filed under Chapter 7. Because Chapter 7 generally grants the debtor a complete discharge of his pre-petition debts in exchange for the debtor's release to creditors of all his pre-petition and non-exempt property, see 11 U.S.C. 725, 726, 727, a Chapter 7 debtor has a clear incentive to attempt to conceal assets.

Dishonesty and fraud by debtors therefore strike at the foundation on which Chapter 7 is premised. If the bankruptcy court lacked adequate mechanisms to deter and punish debtor fraud, the inducement to systemic misconduct would threaten the integrity of the bankruptcy system. The Code charges the Chapter 7 trustee with investigating the debtor's financial affairs, see 11 U.S.C. 704(a)(4), but trustees receive only a flat $60 fee per case plus a commission based on the amount of "moneys disbursed or turned over in the case by the trustee to parties in interest, excluding the debtor," 11 U.S.C. 326(a) and 330(b). According to data maintained by the Executive Office for the United States Trustees, such nonexempt assets have been available for liquidation and disbursement in less than five percent of all Chapter 7 cases since 2005. If the debtor is dishonest and the trustee must discover and claim concealed assets, the typical costs of basic case administration will vastly exceed the $60 statutory fee, and they may also exceed any commission paid to the trustee for assets that are discovered and disbursed. The bankruptcy courts' authority to respond to debtor misconduct with meaningful sanctions is therefore essential both to enforce the provisions of the Code and to prevent abuses of process.

B. The Bankruptcy Court's Equitable Surcharge Was Also A Valid Exercise Of The Court's Inherent Authority

As applied to the circumstances of this case, Section 105(a) simply confirms the bankruptcy court's inherent authority to impose appropriate sanctions for fraudulent and abusive litigation conduct. This Court has long held that judicial bodies possess inherent authority to sanction misconduct, authority that is "governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases." *Chambers* v. *NASCO, Inc.*, 501 U.S. 32, 43 (1991) (quoting *Link* v. *Wabash R.R.*, 370 U.S. 626, 630-631 (1962)). A court's imposition of sanctions for litigation misconduct "transcends [the] court's equitable power concerning relations between the parties and reaches a court's inherent power to police itself." *Id.* at 46. It encompasses the authority to order an abusive litigant to compensate his opponent for litigation expenses incurred in response to abuses of the judicial process, including by assessing attorney's fees against a party who has "acted in bad faith, vexatiously, wantonly, or for oppressive reasons." *Id.* at 45-46 (quoting *Alyeska Pipeline Serv. Co.* v. *Wilderness Soc'y*, 421 U.S. 240, 258-259 (1975)). A court may exercise such power even when alternative sanctions are authorized by statute or rule. See *id.* at 49 ("[T]he inherent power of a court can be invoked even if procedural rules exist which sanction the same conduct.").

1. Bankruptcy courts "are courts of equity and 'appl[y] the principles and rules of equity jurisprudence.'" *Young* v. *United States*, 535 U.S. 43, 50 (2002) (brackets in original) (quoting *Pepper* v. *Litton*, 308 U.S. 295, 304 (1939)). As such, bankruptcy courts have a duty to thwart fraud in their proceedings, including by "sift[ing] the circumstances surrounding any claim to see that injustice or unfairness is not done in administration of the bankrupt estate." *Pepper*, 308 U.S. at 307-308; see *Holmberg* v. *Armbrecht*, 327 U.S. 392, 396-397 (1946). Although a litigant need not have led a "blameless li[fe]" to invoke protections offered by an equity court, see *Loughran* v. *Loughran*, 292 U.S. 216, 229 (1934), he forfeits such protections when he fails to "act[] fairly and without fraud or

deceit as to the controversy in issue," *Precision Instrument Mfg. Co.* v. *Automotive Maint. Mach. Co.*, 324 U.S. 806, 814-815 (1945).

This Court has recognized that, "even if § 105(a) had not been enacted, the inherent power of every court to sanction 'abusive litigation practices' might well provide an adequate justification" for a bankruptcy court to take action not specifically authorized in the Code in order to remedy misconduct by a debtor. *Marrama* v. *Citizens Bank*, 549 U.S. 365, 375-376 (2007) (quoting *Roadway Express, Inc.* v. *Piper*, 447 U.S. 752, 765 (1980)). Although "Congress may intervene and guide or control the exercise of the courts' discretion," this Court "do[es] not lightly assume that Congress has intended to depart from established principles." *Weinberger* v. *Romero-Barcelo*, 456 U.S. 305, 313 (1982); see *id.* at 320 (noting that "a major departure from the long tradition of equity practice should not be lightly implied"). Nothing in Section 105(a) suggests that Congress intended to curtail, in the bankruptcy context, the usual broad power of courts to sanction bad-faith litigation conduct. Rather, at the very least, Section 105(a) confirms that bankruptcy courts retain their traditional equitable authority to detect, prevent, and remedy a fraud against the court.

Here, the bankruptcy court found that petitioner had engaged in systemic abuse of the bankruptcy process, including through misrepresentations to respondent and the court. See J.A. 92a. The court further found that respondent's "reasonable costs of coping with [petitioner's] deception far exceed $75,000, the exemption to which [petitioner] otherwise would be entitled." J.A. 93a (emphasis omitted).

Even in the absence of Section 105(a)'s explicit authorization, those findings would have fully justified the imposition of a $75,000 sanction as an exercise of the bankruptcy court's inherent authority to penalize petitioner's litigation misconduct and vindicate the integrity of the court's own processes. See 2 *Collier on Bankruptcy* ¶ 105.02[6][b] at 105-33 to 105-34 (Alan N. Resnick & Henry J. Sommer eds., 16th ed. 2009) (*Collier*) ("Bankruptcy courts have the inherent power to regulate the practice of law before them. Whether this power is inherent, and thus need not be stated, or is found in the various words and phrases of section 105, is largely irrelevant. Courts may thus regulate who appear before them, and may sanction attorneys or their clients for abuses of process and other harms.").

2. This Court "will not read the Bankruptcy Code to erode past bankruptcy practice absent a clear indication that Congress intended such a departure." *Hamilton* v. *Lanning*, 130 S. Ct. 2464, 2473 (2010) (quoting *Travelers Cas. & Sur. Co. of Am.* v. *Pacific Gas & Elec. Co.*, 549 U.S. 443, 454 (2007)). The enactment of Section 105(a) cannot reasonably be understood to reduce bankruptcy courts' long-established inherent equitable powers to sanction litigants who engage in bad-faith litigation conduct. Rather, Section 105(a) carried forward Section 2(15) of the pre-Code Bankruptcy Act, which provided that a bankruptcy court may "issue such process, and enter such judgments, in addition to those specifically provided for, as may be necessary for the enforcement of the provisions of [the] Act." Bankruptcy Act, ch. 541, § 2(15), 30 Stat. 546 (1898) (11 U.S.C. 11(15) (1925)). Indeed, whereas former Section 2(15) authorized

measures "necessary" to enforce the bankruptcy laws, Section 105(a) authorizes the issuance of any order that is "necessary or appropriate" to carry out the provisions of the Code. Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, ch. 1, § 105, 92 Stat. 2555; see H.R. Rep. No. 595, 95th Cong., 1st Sess. 316 (1977) (stating that Section 105 granted "increased powers" to bankruptcy courts compared to Section 2(15)).

In 1986, Congress amended Section 105(a) by adding the second sentence:

> No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986, Pub. L. No. 99-554, § 203, 100 Stat. 3097. That sentence serves in part to make clear that, if a particular order is substantively within the bankruptcy court's authority, the court may act without a specific request from a party. Contrary to petitioner's contention (Br. 37), however, the added sentence does not focus on judicial actions specifically authorized elsewhere in the Code. Rather, the added text authorizes the court "to enforce or implement court orders or rules, or to prevent an abuse of process," and to take any subsidiary steps "necessary or appropriate" to achieve those ends.

As the leading bankruptcy treatise explains, the 1986 amendment to Section 105(a) "broadened the ability of bankruptcy judges to manage their own docket, by explicitly authorizing them to raise, on their own motion, issues which are necessary to enforce their jurisdiction." 2 *Collier* ¶ 105.LH[4] at 105-109 (16th ed. 2011); see 1 *Collier Bankruptcy Manual*, ¶ 105.02[1][b] at 105-7 (Alan N. Resnick & Henry J. Sommer eds., 4th ed. 2010) (noting that "[s]everal courts have held that the addition of the second sentence to section 105 indicates that Congress meant section 105 to serve as the statutory basis for the civil contempt power of bankruptcy judges"). Far from constraining bankruptcy courts' inherent authority to sanction bad-faith litigation conduct, Section 105(a) confirms the breadth of that authority. The equitable surcharge in this case was a permissible exercise of the powers described in Section 105(a) and of the bankruptcy court's pre-existing inherent authority.

C. Nothing In The Bankruptcy Code Prohibits A Bankruptcy Court From Relying On Section 105(a) Or Its Inherent Authority To Equitably Surcharge Otherwise-Exempt Property As A Sanction For Bad-Faith Litigation Conduct

Although bankruptcy courts retain broad equitable authority, their "equitable powers * * * must and can only be exercised within the confines of the Bankruptcy Code." *Norwest Bank Worthington* v. *Ahlers*, 485 U.S. 197, 206 (1988); see *SEC* v. *United States Realty & Improvement Co.*, 310 U.S. 434, 455 (1940) ("A bankruptcy court * * * is guided by equitable doctrines and principles except in so far as they are inconsistent with the [Bankruptcy] Act."). The same is true of a court's inherent authority, which a court may not exercise in violation of an express statutory limit. *Chambers*, 501 U.S. at 47. As discussed, however, courts will not lightly assume that Congress intended to restrict courts' traditional equitable powers. See *ibid.*; *Romero-Barcelo*, 456 U.S. at 313, 320. Contrary to petitioner's contentions (Br. 18-36), nothing in the Bankruptcy Code precluded the bankruptcy court from sanctioning petitioner's bad-faith litigation conduct by equitably surcharging his otherwise-exempt property.

1. Section 522 does not preclude the court's equitable surcharge in this case

Petitioner's primary contention (see Br. 18-36) is that a bankruptcy court's authority with respect to exempt property is entirely limited by the specific Code provisions that address such property. Those provisions are found primarily in 11 U.S.C. 522, which defines what property a debtor may claim as exempt and sets forth exceptions to the general rule that a debtor retains his exempt property at the conclusion of the bankruptcy case. Contrary to petitioner's position, Section 522 neither gives debtors an absolute right to retain exempt property nor limits a court's authority to impose an equitable surcharge on such property as a sanction for bad-faith litigation conduct.

a. Petitioner forfeited the protection afforded to honest debtors by Section 522

Sections 522(c) and (k) prohibit the use of exempt property to pay most pre-petition debts and administrative expenses. Petitioner argues (Br. 18-23) that those provisions barred the bankruptcy court from equitably surcharging his otherwise-exempt homestead interest in order to pay some of respondent's fees and costs. Petitioner repeatedly invokes this Court's oft-stated insight that one of the core purposes of our bankruptcy system is to allow debtors to exit bankruptcy with sufficient property to enjoy a "fresh start." Br. 2, 10, 19 n.6, 20, 24, 29. Petitioner fails to acknowledge, however, that the Code offers a fresh start "only to an 'honest but unfortunate debtor.'" *Cohen* v. *de la Cruz*, 523 U.S. 213, 217 (1998) (quoting *Grogan* v. *Garner*, 498 U.S. 279, 287 (1991)).

In *Marrama*, *supra*, this Court held that a debtor who abuses the bankruptcy process may forfeit a statutory right or protection granted to honest debtors. 549 U.S. at 374. The Bankruptcy Code states that a Chapter 7 debtor "may convert" his case to a Chapter 13 case "at any time." 11 U.S.C. 706(a). The Chapter 7 debtor in *Marrama* conducted himself in "bad faith" during the bankruptcy proceedings, including by concealing assets in order to retain more property than the Code would allow after discharging his debts through Chapter 7. 549 U.S. at 367-369. When the debtor's bad faith was discovered, he attempted to convert his case to a Chapter 13 bankruptcy so that he could retain the no-longer-concealed assets. *Id.* at 368-369. Declaring that "there is no 'Oops' defense to the concealment of assets," the bankruptcy judge denied the motion to convert notwithstanding Section 706(a)'s unqualified statement that a Chapter 7 debtor may convert his case to Chapter 13 "at any time." *Id.* at 369-370. This Court upheld the denial, reasoning that, although debtors generally "do possess an absolute right to convert their cases from Chapter 7 to Chapter 13," a debtor who commits fraud or hides assets is "not a member of the class of 'honest but unfortunate debtor[s]' that the bankruptcy laws were enacted to protect." *Id.* at 374 (brackets in original) (quoting *Grogan*, 498 U.S. at 287).

Section 522(k) reflects a congressional policy judgment that the typical honest debtor's interest in retaining exempt property should ordinarily supersede the federal interest in full payment of the estate's administrative expenses. The equitable surcharge imposed in this case did not reflect any disagreement with that general policy choice. Rather, the surcharge was premised on the bankruptcy court's case-specific determination that petitioner's dishonest conduct had caused the estate to incur expenses vastly greater than would otherwise have been necessary. Because Section 522(k) does not speak to the proper balancing of interests in that unusual circumstance, it does not "limit[] the authority of the [bankruptcy] court to take appropriate action in response to fraudulent conduct by the atypical litigant who has demonstrated that he is not entitled to the relief available to the typical debtor." *Marrama*, 549 U.S. at 374-375. "On the contrary, the broad authority granted to bankruptcy judges to take any action that is necessary or appropriate 'to prevent an abuse of process' described in § 105(a) of the Code, is surely adequate" to empower a bankruptcy court to deploy sanctions when a debtor engages in fraud, misrepresentation, or other misconduct. *Id.* at 275 (footnote omitted).[1]

[1] Petitioner relies (Br. 21, 34) on commentary that the Commission on the Bankruptcy Laws of the United States offered on an unenacted bill that preceded the Code. The unenacted bill provided that "[a]n individual debtor * * * shall be allowed exemptions as provided in this section." H.R. Doc. No. 137, 93d Cong., 1st Sess. Pt. 2, at 125 (1973). The Commission opined that this provision would afford debtors an "unqualified" right to exempt property. *Id.* at 128. That stray statement sheds no meaningful light on the question presented here, however, both because the Code as ultimately enacted did not use the word "shall" in describ-

The bankruptcy court's findings regarding petitioner's bad-faith litigation conduct would have amply justified the court in imposing a $75,000 sanction as an exercise of the court's inherent authority to police the bankruptcy system. Standing alone, such an order would have raised no issue under Section 522(k). Petitioner's argument based on Section 522(k) depends entirely on the fact that the court employed the "equitable surcharge" mechanism, rather than ordering that the $75,000 homestead exemption be paid over to petitioner while simultaneously directing that petitioner pay the same sum to respondent. But "[t]he right of setoff (also called 'offset') allows entities that owe each other money to apply their mutual debts against each other, thereby avoiding 'the absurdity of making A pay B when B owes A.'" *Citizens Bank* v. *Strumpf*, 516 U.S. 16, 18 (1995) (quoting *Studley* v. *Boylston Nat'l Bank*, 229 U.S. 523, 528 (1913)). A federal court's ability to implement sanctions imposed in furtherance of its inherent authority supersedes contrary provisions of state law, including provisions that declare particular property to be exempt from execution of a money judgment. See, *e.g.*, *FTC* v. *Neiswonger*, 580 F.3d 769, 777 (8th Cir. 2009); *In re Ward*, 210 B.R. 531, 538 (Bankr. E.D. Va. 1997).

b. The Code's inclusion of specific exceptions applicable to exempt property does not impliedly prohibit the equitable surcharge in this case

Petitioner argues (Br. 23-28) that bankruptcy courts may not equitably surcharge the otherwise-

---

ing a debtor's right to exempt property, and because the Commission's statement did not specifically address the scope of a bankruptcy court's authority to penalize bad-faith behavior.

exempt property of a fraudulent litigant because "Congress has stated with great detail and clarity in Section 522 the circumstances in which exempt property *may* be taken from a debtor." Br. 23. Petitioner's statutory analysis is fundamentally unsound. By enacting specific provisions governing exempt property (including exceptions to the general rule that a debtor should retain exempt property unencumbered), Congress did not leave the bankruptcy courts powerless to remedy and deter litigation abuses, particularly abuses that are not specifically addressed in the Code.

i. None of the Section 522 provisions invoked by petitioner specifically addresses the scope of a court's authority to prevent or remedy a litigant's attempted fraud on the court. This case is therefore materially different from *D. Ginsberg & Sons, Inc.* v. *Popkin*, 285 U.S. 204 (1932), on which petitioner relies (Br. 12-13, 25-27). In *D. Ginsberg & Sons*, a district court issued a writ of ne exeat authorizing the arrest of the president of a bankrupt corporation, who was alleged to be on the verge of fleeing the jurisdiction in order to evade examination. 285 U.S. at 204-205. This Court held that, notwithstanding Section 2(15)'s grant of authority to issue such orders as may be necessary to enforce provisions of the bankruptcy law, the district court lacked power to arrest the corporate officer. *Id.* at 206-208.

The Court in *D. Ginsberg & Sons* relied on Section 9 of the Bankruptcy Act, which generally prohibited courts from arresting debtors in Section 9(a), but provided an exception in Section 9(b) when a debtor was about to leave the jurisdiction for the purpose of avoiding examination. 285 U.S. at 207. Section 9(b) authorized a court, in certain circumstances, to order a debtor detained (though not imprisoned) for a limited period of time for the purpose of examination. *Ibid.* Section 9(b) did not authorize the use of a writ of ne exeat, and the creditor who sought the writ in *D. Ginsberg & Sons* had not complied with the specific requirements of Section 9(b). See *In re Foster Constr. Corp.*, 50 F.2d 693, 694 (2d Cir. 1931), aff'd, *D. Ginsberg & Sons*, 285 U.S. 204. This Court held that Section 2(15) did not "grant[] additional authority in respect of arrest of bankrupts" on the verge of fleeing the jurisdiction, over and above the powers provided in Section 9(b). *D. Ginsberg & Sons*, 285 U.S. at 208.[2]

The Court's decision in *D. Ginsberg & Sons* thus turned on the presence of statutory provisions that specifically addressed the detention of debtors who sought (or were viewed as likely to seek) to leave the jurisdiction in order to avoid examination. The Court's reasoning might be applicable to this case if the Bankruptcy Code expressly prohibited, or established specific preconditions to, a bankruptcy court's imposition of an equitable surcharge on a debtor whose bad-faith conduct during the bankruptcy proceedings resulted in increased administrative expenses. Because the Code includes no such specific provision, however, the equitable authority codified in Section 105(a) authorizes bankruptcy courts to take nec-

---

[2] The Court also reasoned that, even if Section 2(15) generally authorized bankruptcy courts to allow writs of ne exeat, the writ issued in *D. Ginsberg & Sons* was impermissible. 285 U.S. at 209. The Court concluded that, because the bankruptcy laws did not allow arrest of a bankrupt, Section 2(15) would not permit the arrest of an officer of a bankrupt corporation. *Ibid.*

essary and appropriate steps to deal with that form of debtor misconduct.

ii. More generally, the existence of statutory exceptions does not impliedly preclude a bankruptcy court from invoking general equitable powers based on case-specific findings of bad-faith and vexatious litigation conduct. A bankruptcy court may not use its authority under Section 105(a) to contravene explicit provisions of the Code by substituting its own policy judgments for those of Congress. Contrary to petitioner's assertion (Br. 22), however, the bankruptcy court did not do that in this case.

In *United States* v. *Noland*, 517 U.S. 535 (1996), this Court explained that a bankruptcy court may not use its equitable authority (there, the power of equitable subordination codified in 11 U.S.C. 510(c)) to subordinate claims "on a categorical basis in derogation of Congress's scheme of priorities." 517 U.S. at 536. Although the Court in *Noland* held that the bankruptcy court had erred by supplanting Congress's policy judgments about the ordering of priorities in bankruptcy, the Court recognized that Section 510(c)'s codification of courts' equitable subordination power "permits a court to make exceptions to a general rule when justified by particular facts." *Id.* at 540. The Court explained that, so long as a bankruptcy court respects "the relative levels of generality at which trial courts and legislatures respectively function in the normal course," *ibid.*, the court may use its equitable authority when a case-specific finding of creditor misconduct justifies a departure from the usual priority rules. *Id.* at 538-543.

The bankruptcy court in this case did not equitably surcharge petitioner's otherwise-exempt property in order to effectuate a policy judgment different from Congress's. In particular, the court did not suggest that the payment of administrative expenses should *generally* take precedence over the debtor's interest in retaining exempt property. Rather, the court's exercise of equitable authority was premised on case-specific factual findings concerning petitioner's concealment of assets and vexatious litigation conduct, and on the further case-specific determination that petitioner's misconduct had vastly increased the administrative expenses borne by respondent. Although petitioner and his amici rely on a string of cases to support their argument that the inclusion of specific statutory exceptions necessarily precludes a court's use of other equitable exceptions, none of those cases involved a party who had engaged in bad-faith litigation conduct. See *Hillman* v. *Maretta*, 133 S. Ct. 1943, 1953 (2013); *United Student Aid Funds, Inc.* v. *Espinosa*, 559 U.S. 260, 278-279 (2010); *Noland*, 517 U.S. at 539-543; *Taylor* v. *Freeland & Kronz*, 503 U.S. 638, 644 (1992); *Guidry* v. *Sheet Metal Workers Nat'l Pension Fund*, 493 U.S. 365, 376 (1990); *Norwest Bank Worthington*, 485 U.S. at 206-207; *Butner* v. *United States*, 440 U.S. 48, 52-58 (1979).

iii. This Court has long held that a litigant's bad-faith or vexatious conduct in judicial proceedings can justify an equitable sanction that a court could not otherwise impose. The issue has arisen most frequently with respect to the award of attorney's fees. "In the United States, the prevailing litigant is ordinarily not entitled to collect a reasonable attorneys' fee from the loser." *Alyeska Pipeline Serv. Co.*, 421 U.S. at 247. Congress may provide exceptions to that "American Rule," and it has done so for specific categories of cases. *Id.* at 254-255. In most cases, however, the costs that may be taxed against the losing party are limited to those specified in 28 U.S.C. 1920 and 1923, which do not include compensation for an attorney's time.

Even in contexts where no express statutory authority to award fees applies, however, the Court has long and repeatedly recognized an exception to the American Rule "when the losing party has 'acted in bad faith, vexatiously, wantonly, or for oppressive reasons.'" *Alyeska Pipeline Serv. Co.*, 421 U.S. at 258-259 (quoting *F.D. Rich Co.* v. *United States*, 417 U.S. 116, 129 (1974)). A court's power to impose an award of attorney's fees as a sanction for bad-faith or fraudulent conduct stems from its inherent authority. *Id.* at 259; see *Roadway Express, Inc.*, 447 U.S. at 766; *Universal Oil Prods. Co.* v. *Root Ref. Co.*, 328 U.S. 575, 580 (1946). Thus, "if a court finds 'that fraud has been practiced upon it, or that the very temple of justice has been defiled,' it may assess attorney's fees against the responsible party, as it may when a party 'shows bad faith by delaying or disrupting the litigation or by hampering the enforcement of a court order.'" *Chambers*, 501 U.S. at 46 (quoting *Universal Oil Prods. Co.*, 328 U.S. at 580; *Hutto* v. *Finney*, 437 U.S. 678, 689 n.14 (1978)).

As in *Chambers*, the bankruptcy court's authority to sanction bad-faith conduct in this case was not limited by "the sanctioning scheme of the statute and the rules" governing exempt property in bankruptcy, which "taken alone or together, are not substitutes for the inherent power [of courts], for that power is both broader and narrower than other means of imposing sanctions." 501 U.S. at 46. A court's "inherent power extends to a full range of litigation abuses" and "must continue to exist to fill in the interstices." *Ibid.*; see *id.* at 60 (Scalia, J., dissenting) (agreeing that a court may rely on its inherent authority to sanction bad-faith conduct that is related to the court's proceedings).

2. *The availability of other sanctions in the Code did not preclude the court's use of an equitable surcharge here*

Petitioner also relies (Br. 29-35, 39-42) on certain Bankruptcy Code provisions that are specifically designed to punish debtor misconduct. Contrary to petitioner's contention, those provisions do not preclude resort to other sanctions not enumerated in the Code.

Petitioner and his amici rely (Pet. Br. 29-32) on 11 U.S.C. 522(q), which caps the value of a debtor's homestead exemption if the debtor has engaged in certain forms of fraud or other serious conduct. Although petitioner asserts that Section 522(q) is "[o]f greatest relevance here," Br. 29, that provision does not apply to this case. Congress added Section 522(q) to the Code in 2005—after petitioner's bankruptcy petition was filed—and made the provision applicable only to cases commenced after its enactment. Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, §§ 322, 1501(b)(2), 119 Stat. 97, 216. Section 522(q) therefore has no bearing on this case.

In any event, Section 522(q) establishes a *cap* on a fraudulent debtor's homestead exemption; it does not guarantee that such a debtor will receive that amount (or the maximum allowed by state law if lower) in all cases. The statutory cap in Section 522(q), moreover, is nearly twice the value of the homestead exemption provided to Chapter 7 debtors (like petitioner) in California. 11 U.S.C. 522(q). That incongruity reinforces the conclusion that a bankruptcy court may invoke its equitable authority to "fill in the interstices" in exceptional circumstances. *Chambers*, 501 U.S. at 46.

Petitioner also argues (Br. 32-35, 39-41) that a bankruptcy court's statutory authority to dismiss a debtor's case or to deny a debtor's discharge precludes imposition of the equitable sanction in this case. Nothing in the text or structure of the relevant statutory provisions indicates a congressional intent that those sanctions serve as the exclusive means of sanctioning a debtor's bad-faith litigation conduct. To the contrary, Congress's explicit authorization of "*any* action * * * necessary or appropriate * * * to prevent an abuse of process," 11 U.S.C. 105(a) (emphasis added), indicates that other provisions of the Code are not the exclusive means of achieving that objective.

Even if Section 105(a) did not exist, moreover, a federal court is not "forbidden to sanction bad-faith conduct by means of the inherent power simply because that conduct could also be sanctioned under statute or the Rules." *Chambers*, 501 U.S. at 50. "[I]f in the informed discretion of the court, neither the statute nor the Rules [is] up to the task, the court may safely rely on its inherent power." *Ibid.* This is just such a case. None of the alternative sanctions petitioner identifies would have provided an effective remedy for his egregious conduct. A dismissal of petitioner's case would have offered him "an 'escape hatch' from the charges of bad faith." *In re Jacobsen*, 609 F.3d 647, 654 (5th Cir. 2010). And while petitioner was denied a discharge, that ruling had little practical effect because petitioner's major creditors were all paid in full after his fraud was uncovered and his house sold.

Neither dismissal nor discharge, moreover, would have redressed the harm that petitioner inflicted on respondent while the case was pending. And neither remedy would sufficiently deter vexatious litigation conduct. If no effective sanction were available, a debtor in petitioner's position would have nothing to lose, and potentially much to gain, by obstructing a trustee's investigation into his finances and subjecting the trustee to onerous litigation expenses. That is not what Congress intended. Section 105(a) and courts' inherent authority are necessary backstops for maintaining an orderly and efficient federal bankruptcy system.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

DONALD B. VERRILLI, JR.
Solicitor General
Counsel of Record
STUART F. DELERY
Assistant Attorney General
MALCOLM L. STEWART
Deputy Solicitor General
SARAH E. HARRINGTON
Assistant to the Solicitor General
MICHAEL S. RAAB
ANNE MURPHY
Attorneys

RAMONA D. ELLIOTT
Deputy Director/General Counsel
P. MATTHEW SUTKO
Associate General Counsel
NOAH M. SCHOTTENSTEIN
Attorney
Executive Office for United States Trustees

OCTOBER 2013