No. 04-881

IN THE
Supreme Court of the United States

JAMES LOCKHART,
Petitioner,

v.

UNITED STATES, *et al.*,
Respondents.

On Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit

REPLY BRIEF FOR PETITIONER

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In arguing that it has authority to collect student loan debt by offsetting social security benefits regardless of the age of the debt, the government makes three basic points: (1) the "notwithstanding" clause of the Higher Education Technical Amendments of 1991 (HETA), 20 U.S.C. § 1091a(a)(2), revokes later-enacted legislation regardless of the purpose and history of that legislation; (2) the "express reference" to the Social Security Act's anti-attachment provision contained in the Debt Collection Improvement Act of 1996 (DCIA), 31 U.S.C. § 3716(c)(3)(A)(i), was sufficient to authorize the offset that the government seeks here, even though the DCIA contains a 10-year bar on offset; and (3) the fiscal impact on the government of delinquent student loan debt is relevant to the question presented here. We rebut each argument in turn.

A. HETA's "Notwithstanding" Clause Does Not Apply to the Offset of Social Security Benefits as Authorized by the DCIA and, Thus, Does Not Override the DCIA's 10-Year Bar in this Case.

1. The dispute in this case centers on the breadth of HETA, which abrogates limitations periods on most means of collecting federally insured student loans "notwithstanding any other provision of statute, regulation, or administrative limitation." 20 U.S.C. § 1091a(a)(2). The government maintains that this language affects *subsequent* legislation, just as forcefully as it does legislation that existed at the time of HETA's enactment in 1991. As explained in our opening brief, in light of Congress's *subsequent* overhaul of the Debt Collection Act in 1996, which both reenacted the Act's 10-year bar on collection, and, for the first time, extended the Act to cover the offset of social security benefits, section 1091a(a)(2) does not override operation of the 10-year bar. Simply put,

because the social security offset authority was enacted subject to a requirement that it could not be used to collect debt outstanding for more than 10 years, the "notwithstanding" language of section 1091a(a)(2) does not trump that protection.

2. As an initial matter, the government's plea for deference should be rejected.[1] The government maintains that its litigation position should be vindicated because that position represents "the consistent view of all three federal agencies charged with administration of the relevant statutes." Gov't Br. 16. That is not correct in any respect. With regard to the Treasury Department, the government asserts that the Department has stated that student loans are not subject to the Debt Collection Act's limitations period. Although the Department made a passing general statement in a regulatory preamble that student loans and judgment debts are exceptions to the requirement that a debt subject to offset must "be less than 10 years delinquent," 67 Fed. Reg. 78,936, 78,937 (Dec. 26, 2002), the regulation itself says nothing of the sort. In fact it states only that "[a] debt submitted to [Treasury's Financial Management Service] for collection by centralized offset must be: . . . Less than 10 years delinquent, unless the debt legally may be offset if more than 10 years delinquent[.]" *Id.* at 78,943 (codified at 31 C.F.R. § 285.5(d)(3)(i)(C)). The regulation simply restates the legal issue here; it does not even purport to resolve it. And, not surprisingly, the regulations and the regulatory preamble are entirely silent on the question presented here: whether the 10-year bar applies when an agency is attempting to collect student loan debt from the debtor's *social*

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[1]At one point, the government claims that it "is entitled to deference," Gov't Br. 12, and, at another point, only that its view "is entitled to considerable weight." *Id.* at 16. It does not matter whether these claims represent different degrees of respect, because, for the reasons explained in the text, neither claim should be accepted.

security benefits.

Regarding the Education Department, the government states only that "the Secretary of Education has determined that the Debt Collection Act's ten-year limitation period does not apply to the collection of delinquent student loan debt by administrative offset." Gov't Br. 6 (citing 20 U.S.C. § 1091a(a)(2)). Like the recitation of the supposed views of the Treasury Department, that assertion does nothing more than restate the agency's litigation position — and, again, does not address the specific issue here regarding offset against social security benefits. More fundamentally, the government's citation refers only to what *Congress* supposedly did in 1991 in section 1091a(a)(2), not to any statement of the *agency's* interpretation.

Finally, the government notes, without citation to *any* regulation or agency publication, that the Social Security Administration "agrees" that the Social Security Act does not bar collection of student loan debt that has been outstanding for more than 10 years. Gov't Br. 16. As the government ultimately concedes, its claim for "deference," *id.* at 12, is based on nothing more than the fact that the relevant agencies "have used the Treasury Offset Program to offset Social Security benefits to collect student loan debt, regardless of the age of the debt." *Id.* at 16. But if judicial deference could be based simply on the *existence* of an agency practice, it would be accorded in nearly every case involving a federal agency, making a mockery of the role of the courts in interpreting congressional enactments and of the requirement that deference be accorded only where the agency's position is stated clearly and with a high degree of formality and consistency outside of litigation. In sum, the Court should reject the government's attempt to put its thumb on the scales in this case, when it is doing no more than pushing its litigation position.

3. Moving to the merits of the dispute, the DCIA's 10-year bar on offset authority requires reversal, unless the government is correct that HETA's "notwithstanding" clause, enacted in 1991, may spring forward to capture social security offsets, which were first authorized in 1996. In embracing that temporal leap, the government misconstrues cases interpreting other "notwithstanding" clauses.

The two cases from this Court concerning "notwithstanding" clauses involved the question whether the clause overrode the operation of another provision of the very same enactment or document. *See Cisneros v. Alpine Ridge Group*, 508 U.S. 10, 18 (1993) (interpreting the effect of "notwithstanding" clause on another clause within the same contract); *Shomberg v. United States*, 348 U.S. 540, 547-48 (1955) (concerning the effect of "notwithstanding" clause of section 318 of the Immigration and Nationality Act of 1952 on section 405(a) of the same Act, enacted at the same time). Indeed, *Cisneros* explicitly acknowledged that, in *Shomberg*, this Court had concerned itself only with the effect of a law's "notwithstanding" clause on a provision of the same law. *See Cisneros*, 508 U.S. at 18 ("As we have noted previously in construing statutes, the use of such a 'notwithstanding' clause clearly signals the drafter's intention that the provisions of the 'notwithstanding' section override conflicting provisions *of any other section*[,]" citing *Shomberg*) (emphasis added). Moreover, most lower federal courts to have addressed the question were also focused on a "notwithstanding" clause's effect on a contemporaneously or previously enacted statute. *See, e.g.*, *Conyers v. Merit Sys. Prot. Bd.*, 388 F.3d 1380, 1382-83 (Fed. Cir. 2004) ("notwithstanding" clause in 2001 Aviation and Transportation Security Act barred review by Merit System Protection Board authorized under pre-existing statute); *Campbell v. Minneapolis Pub. Hous. Auth.*, 168 F.3d 1069, 1072, 1074-75 (8th Cir. 1999) ("notwithstanding" clause of

Housing Opportunity Program Extension Act of 1996 overrode previously enacted anti-discrimination laws).

The government cites, but does not otherwise confront, the decisions of the two courts of appeals that have squarely addressed the effect of a "notwithstanding" clause on a subsequently enacted law. *See Ill. Nat'l Guard v. Fed. Labor Relations Auth.*, 854 F.2d 1396 (D.C. Cir. 1988); *N.J. Air Nat'l Guard v. Fed. Labor Relations Auth.*, 677 F.2d 276 (3d Cir. 1982). Those rulings expressly acknowledge what the government in this case denies: that the applicability of a "notwithstanding" clause in that context presents a difficult problem that demands inquiry into the purpose and text of both pieces of legislation. The reasoning of those cases supports Mr. Lockhart's position that HETA's "notwithstanding" clause does not abrogate the Debt Collection Act's 10-year bar on social security offset, because neither HETA's text nor its legislative history indicate a desire to affect such offsets.

Both *Illinois National Guard* and *New Jersey Air National Guard* addressed the interplay of "notwithstanding" clauses in the National Guard Technician Act of 1968, which gave military commanders broad authority over the employment of guard members, and subsequently enacted federal labor statutes, which limit the authority of federal agencies to impose certain labor practices on employees absent collective bargaining. Because the D.C. Circuit heavily relied on the Third Circuit's analysis, *see Ill. Nat'l Guard*, 854 F.2d at 1403, we focus on *New Jersey Air National Guard,* which was cited with approval by this Court in *Cisneros*, 508 U.S. at 18, and is the leading authority on the effect of "notwithstanding" clauses on subsequently enacted legislation.

The Third Circuit explained that the proper analysis of a "notwithstanding" clause's effect on provisions enacted after the clause becomes operative is necessarily different from the

proper analysis of the clause's effect on law existing at the time of the clause's adoption. The Third Circuit used broad language only in connection with a "notwithstanding" clause's effect on *previously* enacted provisions:

> Looking first to the statutory language, we immediately confront the preface to section 709(e) of the Technician Act, which explicitly provides that its terms apply "Notwithstanding any other provision of law ...". A clearer statement is difficult to imagine: section 709(e) must be read to override any conflicting provision of law *in existence at the time that the Technician Act was enacted*.

N.J. Air Nat'l Guard, 677 F.2d at 283 (emphasis omitted and added).[2]

Immediately following that passage, however, the Third Circuit explained that the "notwithstanding" clause's impact on subsequently enacted legislation was not similarly absolute:

> Application of this statement is less certain, however, with respect to a statute such as the Labor-Management Act, adopted after the Technician Act. The drafters of section 709(e) can hardly be said to have had the Labor-Management Act specifically within their contemplation.

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[2]The government quotes part of this language in its brief (at 18), but does not explain that the court was referring only to the effect of a "notwithstanding" clause on *existing* legislation.

Id.[3]

Consequently, the Third Circuit turned to legislative history and a statutory canon to determine the clause's effect on the subsequently enacted labor legislation. *See id.* at 284-85; *accord Ill. Nat'l Guard*, 854 F.2d at 1403-05. Although the Third Circuit ultimately held that the legislative history of the two acts supported application of the "notwithstanding" clause to the subsequently enacted statute, the court relied heavily on history that demonstrated a strong congressional intent to maintain the authority of National Guard military commanders in all matters related to the management of the Guard's employees. *See N.J. Air Nat'l Guard*, 677 F.2d at 283-84. The court also focused on the fact that giving effect to the subsequently enacted labor statute would impliedly repeal the authority that the National Guard commanders had been granted when the "notwithstanding" clause was enacted. *See id.* at 285.

The proper interpretation of "notwithstanding" clauses, as set forth in *New Jersey Air National Guard*, undercuts the government's absolutist position here, because an examination of that decision favors requiring that all social security offsets, including those to recover student loan debt, be subject to the 10-year bar of 31 U.S.C. § 3716(e)(1). As discussed in our opening brief (at 8), HETA's legislative history does not reveal a congressional intent to permit the offset of social security payments to recoup student loan debt that had been outstanding for more than 10 years, which makes sense because, when

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[3]The government's brief (at 18) simply omits these two sentences — which describe exactly what this case is about. Then, without even mentioning the omission, the government's brief quotes the next sentence of the Third Circuit's opinion, a sentence that, when considered out of context, suggests incorrectly that a "notwithstanding" clause affects subsequently enacted legislation just as it would contemporaneous or preexisting legislation.

HETA was enacted in 1991, social security offsets were unlawful. To the contrary, as we explained, HETA's legislative history affirmatively aids Mr. Lockhart because it shows that, in enacting HETA, Congress was motivated by a desire to overrule a circuit court decision that had upheld a 10-year bar on the government's collection of student loan debt through the offset of *tax refunds*, which was authorized under existing law. *See* Pet. Opening Br. 8.

We do not disagree with the government that the plain text of a statute may well allow that statute to be applied in contexts beyond those envisioned by its proponents. Gov't Br. 18-19 (citing cases). But that is beside the point where, as here, the meaning of the statutory text is itself in question. Put otherwise, the issue is *whether* HETA's text, specifically its reference to a "provision of statute, regulation, or administrative limitation," 20 U.S.C. § 1091a(a)(2), reaches any, some, or all *subsequent* enactments. And, under the analysis in *New Jersey Air National Guard*, the fact that the motivation for HETA was to override an *existing* limitations period is highly relevant.

Moreover, contrary to the government's assertion, Gov't Br. 22, the canon disfavoring repeals by implication — which was important to the ruling in *New Jersey Air National Guard* — has no bearing on the question whether HETA's abrogation of limitations periods applies to social security offsets. Until the DCIA's passage in 1996, no student loan debts could be offset against social security benefits, so applying the 10-year bar of 31 U.S.C. § 3716(e)(1) to social security offsets for collection of student loan debt does not repeal any authority that Congress had provided in HETA. In fact, as Mr. Lockhart explained in his opening brief (at 9-10), the DCIA and its legislative history make clear that Congress intended that the power to attach social security benefits be carefully circumscribed, which is inconsistent with allowing HETA's

"notwithstanding" clause to override the 10-year bar.[4]

In addition, other aspects of the DCIA also demonstrate that HETA's "notwithstanding" clause was not intended to reach social security offsets. Our opening brief (at 21-22) explains that Congress focused specifically on social security offset in the DCIA, while, at the same time, it retained the 10-year bar on offset authority. The government caricatures Mr. Lockhart's argument, suggesting that it relies merely on the re-designation of the 10-year bar from one subsection of the Debt Collection Act to another. *See* Gov't Br. 20-21. That is not what we said. As we explained, in 1996, Congress carefully reviewed the Debt Collection Act. In the section of the DCIA immediately before the section authorizing social security offsets, Congress revisited the provision of the Debt Collection Act that describes situations in which offset authority "does not apply." 31 U.S.C. § 3716(e). In subsection 3716(e)(1), Congress retained the 10-year bar, while in subsection 3716(e)(2), it eliminated the prohibition on administrative offset in situations where another statute provides for administrative offset of the claim or type of claim. *See* Pet. Opening Br. 21-

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[4]For much the same reason, the government's invocation of the doctrine that Congress is assumed to legislate with the knowledge of existing legislation in mind is inapposite, and, indeed, circular. *See* Gov't Br. 20 (citing *Goodyear Atomic Corp. v. Miller*, 486 U.S. 174, 184-85 (1996)). It makes no sense to say that the DCIA's 1996 extension of offset authority to social security benefits was adopted against a backdrop that included *the government's* understanding of the breadth of HETA's "notwithstanding" clause, because the issue here is *whether* that understanding is correct. For the reasons stated in the text, it is sensible to believe that Congress did not intend HETA to apply to social security offsets because there was no authority for such offsets when HETA was enacted. Thus, charging Congress with "knowledge of the then-existent Code," Gov't Br. 20, when it enacted the DCIA in 1996, undermines, not advances, the government's position in this case.

22. This congressional focus on the Debt Collection Act as a whole, on authorizing social security offset, and on the very subsection of the Act containing the 10-year bar, forcefully underscores that the 10-year bar, and not HETA, applies to offsets of social security benefits to collect student loan debt.

4. Finally, in his opening brief, Mr. Lockhart relied on the canon of statutory construction requiring that an amendment to a law (here, the 1996 amendment extending the Debt Collection Act to social security offsets) be read to incorporate the whole law, including its original characteristics (here, as relevant, the Debt Collection Act's 10-year time bar). Pet. Opening Br. 22-23 (citing 1A *Sutherland Statutory Construction* § 22.34 (6th ed. 2002) and cases). The government's reason for rejecting the canon's applicability here is that the DCIA did not expressly repeal HETA's abrogation of limitations periods for student loan collection. *See* Gov't Br. 21. But that assertion sidesteps the statutory canon and simply repeats the government's basic position that HETA's "notwithstanding" clause is omnipotent. The canon, however, means that the DCIA, which authorized social security offsets for the first time, should be construed as having enacted all of the provisions of the Debt Collection Act into which it was inserted, including the provision that offset authority "does not apply" "to a claim … that has been outstanding for more than 10 years." 31 U.S.C. § 3716(e)(1).

B. The Government's Position Cannot Be Reconciled With the Social Security Act's Anti-Attachment Provision.

1. The government misapprehends Mr. Lockhart's reliance on the Social Security Act's anti-attachment provision, 42 U.S.C. § 407(a), and its express reference requirement. *Id.* § 407(b). Mr. Lockhart did not claim that an "additional reference to Section [4]07 [was] required in [HETA's] Section

1091a(a) before that provision [could] be applied" to offset social security benefits to recover student loan debt that has been outstanding for more 10 years. Gov't Br. 24. To be sure, if HETA had included an express reference to the anti-attachment provision, it would have authorized the offsets that the government seeks here. The fundamental problem with the government's position, however, does not relate to the fact that an express reference is missing from HETA, but, rather, to where and how the express reference was, in fact, employed by Congress.

The express reference at issue in this case is part of the DCIA, 31 U.S.C. § 3716(c)(3)(A)(i), and that statute contains a 10-year bar on offset authority. *Id.* § 3716(e)(1). The difficulty for the government is that neither the DCIA, HETA, nor any other statute expressly referring to 42 U.S.C. § 407 authorizes collection by offset of student loan debt, or any other debt, that has been outstanding for more than 10 years.[5]

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[5]The government also suggests that the offset program may not constitute "legal process" within the meaning of 42 U.S.C. § 407(a), and thus that social security benefits may be offset without any express reference to 42 U.S.C. § 407. *See* Gov't Br. 23-24 n.4 (citing *Wash. State Dep't of Soc. & Health Servs. v. Keffeler*, 537 U.S. 371 (2003)). The government then says that the Court "need not decide" that issue here because the Debt Collection Act's express reference is sufficient for it to prevail. *Id.* There is no basis for injecting this issue into this case. First of all, the government never raised the issue below, and, therefore, it is waived. *See, e.g., Sprietsma v. Mercury Marine*, 537 U.S. 51, 56 n.4 (2002). Indeed, not only did the government never raise the issue, as Mr. Lockhart's opening brief explained (at 17), the Department of Education acknowledged both in its own regulations and in prior appellate litigation that, without an express reference to 42 U.S.C. § 407, social security benefits may not be offset. *See also* Gov't Br. 7 ("The 1996 amendments to the Debt Collection Act also explicitly extended the offset program to encompass Social Security benefits."). In any event, as the government all but concedes, Gov't Br. 24

(continued...)

2. The government also misconstrues Mr. Lockhart's discussion of the relationship between failed legislation in the 108th Congress and the absence of an express reference to 42 U.S.C. § 407. As explained in our opening brief (at 10-11), this legislation would have amended the Debt Collection Act to abrogate limitations periods and make an express reference to the anti-attachment provision, thus authorizing the offset of social security benefits to collect debts that have been outstanding for more than 10 years. Our point in citing the proposal was neither that Congress's failure to pass this legislation was a barometer of the intent of earlier Congresses, nor that the 108th Congress had taken a position on the dispute at issue in this case, as the government claims we maintain. Rather, the text of the proposed legislation simply indicates what the current Administration, which proposed the provision in its fiscal year 2005 budget, *see* Pet. Opening Br. 11, and the legislation's congressional proponents correctly believed was necessary to achieve the result that the government seeks here.

The proposed legislation would, in words similar to HETA's, 20 U.S.C. § 1091a(a)(2), have amended the Debt Collection Act, 31 U.S.C. § 3716(e), to eliminate any time bar on offsets, but, unlike HETA, *it would have contained the necessary express reference to the Social Security Act's anti-attachment provision*. Moreover, the new express reference would have been in addition to the express reference contained,

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[5](...continued)
n.4 , the offset process is a highly formal procedure that easily qualifies as "legal process" under *Keffeler*, 537 U.S. at 385 (equating "legal process" with "some judicial or quasi-judicial mechanism," even if not "an elaborate one"). *See* 31 C.F.R. § 285.5(d)(6)(ii) (Treasury Department due process requirements for creditor agencies); 34 C.F.R. §§ 30.22-.26 (Department of Education offset procedures); Pet. Opening Br. 6, 21 (describing due process procedures).

since 1996, in 31 U.S.C. § 3716(c)(3)(A)(i). The proposed legislation thus acknowledged exactly what other cases have held, *see Lee v. Paige*, 376 F.3d 1179, 1180 (8th Cir. 2004), *pet. for cert. pending sub. nom.*, *Spellings v. Lee*, No. 04-1139 (U.S. filed Feb. 25, 2004); *Guillermety v. Sec'y of Educ.*, 241 F. Supp.2d 727, 755-56 (E.D. Mich.2002), and Mr. Lockhart maintains: An express reference to section 407 can authorize the attachment of social security benefits, *i.e.,* it can override the "all-inclusive" anti-attachment provision of 42 U.S.C. § 407(a), *Philpott v. Essex County Welfare Bd.*, 409 U.S. 413, 415 (1973), but only to the extent that the attachment is consistent with the statute that authorizes it. Therefore, in this case, the express reference of 31 U.S.C. § 3716(c)(3)(A)(i) is necessarily constrained by the statute in which it appears, and thus carries with it the 10-year bar contained in the very same section of the Debt Collection Act, 31 U.S.C. § 3716(e)(1).

The government also claims that the 2004 legislation is irrelevant because it would have abrogated limitations with respect to all types of offsets and all sources of debt. Gov't Br. 25. That is true, but immaterial. For present purposes, the legislation is significant only because it contained an express reference (and because it shows that Congress can easily effect the result the government seeks here if it wishes to do so).[6] The express reference was required by 42 U.S.C. § 407(b) to authorize recovery of social security benefits to collect debt outstanding for more than 10 years, but it was *not* necessary to

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[6]To explain that a "notwithstanding" clause does not ineluctably affect later-enacted legislation and to illustrate the ease with which Congress could have legislated the result the government seeks in this case, Mr. Lockhart's opening brief points to legislation, including the Social Security Act's express reference provision, 42 U.S.C. § 407(b), that explicitly targets future congressional enactments. *See* Pet. Opening Br. 19-20. Tellingly, the government's brief does not respond on this score.

abrogate the 10-year bar on any other type of collection. Thus, Mr. Lockhart's point remains undisturbed: In HETA in 1991, or in the DCIA in 1996, Congress could have eliminated the time bar for collecting student loans by offsetting social security, using the same language that was proposed and rejected in 2004. It did not do so, and, therefore, the government lacks authority to offset Mr. Lockhart's social security benefits to collect student loans that have been outstanding for more than 10 years.

C. The Government's Policy Arguments Are Irrelevant to the Proper Resolution of this Case.

The government ends its brief by maintaining that student loan defaults have a significant budgetary impact and that social security beneficiaries are protected by safeguards that protect their benefits from undue offset. Gov't Br. 27-32. Assuming for present purposes that both of these statements are correct, they are not relevant, because they tell us nothing about whether Congress, as the government maintains, silently repealed the general 10-year bar on a small subset of offsets — offsets of social security benefits to collect student loans — when it enacted the DCIA in 1996. After all, prior to 1996, a full five years after the enactment of HETA, whose purpose was to extend the period for collection of student loan debt, it is undisputed that the government lacked authority to offset social security benefits *at any time to collect any debt*. Thus, it cannot be that HETA's enactment was motivated by a desire to improve the government's fiscal health through the offset of social security benefits. Moreover, even today, the government generally lacks authority to use any legal process, other than offset, to recover student loan debt (or any other debt) from a recipient's social security benefits, because Congress has never enacted a comprehensive override of the anti-attachment

provision, 42 U.S.C. § 407(a). Thus, not surprisingly, the government's extended discussion of the impact on the treasury of student loan debt does not even attempt to show, let alone demonstrate, a link between that discussion and the narrow issue of congressional intent before this Court.

The government speculates that offsetting social security benefits is an important component of the government's student loan debt recovery program, yet its statistics do not back up that speculation. The government asserts, for instance, that student loan defaults "increased by more than three hundred percent between 1972 and 1976," Gov't Br. 3 (quoting *Fed. Credit Union v. DelBonis*, 72 F.3d 921, 936 (1st Cir. 1995)), yet, again, during that time, the government did not have authority to recover student loan debt from social security benefits. The government also maintains that of the $33.6 billion in delinquent student loans, Gov't Br. 3, approximately $5.7 billion of it is both "over ten years old" and has been certified by the Department of Education to the Department of the Treasury for collection. Gov't Br. 28. This statement suggests that much of the debt may be collectible by offsetting social security benefits because it has been outstanding for less than 10 years.

To be sure, because of the age of many social security recipients — at least those who receive social security *retirement* benefits — some student loan debt will have been outstanding for more than 10 years before the debtor is eligible for social security benefits. *See* Gov't Br. 29. On the other hand, Congress may well have understood that reality and decided to strike a balance between collection and forbearance different from that which the government urges on the Court here. Given that the aggregate debt reduction achieved by offsetting social security benefits to collect student loan debt that has been outstanding for more than 10 years would likely

be quite small, Congress could have chosen to maintain the 10-year bar in light of the significant hardship that would be wrought on social security recipients who are elderly or disabled. *Guillermety*, 241 F. Supp. 2d at 758-59 (describing severe financial harm).

But, again, these questions of policy are both speculative and irrelevant because the government's need to collect outstanding student loan debt, however great, cannot create statutory authority that does not exist. If Congress wishes to allow the government to collect student loan debt from social security benefits no matter how old the debt (and no matter how aged or impoverished the recipient), it may do so, just as the Administration proposed, and the Congress rejected, late last year. Until then, however, collection efforts like those at issue here are impermissible.

CONCLUSION

For the reasons stated above and in petitioner's opening brief, the decision of the Ninth Circuit should be reversed.

Respectfully submitted,

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