No.

In the Supreme Court of the United States

GARY L. FRANCE,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The Mandatory Victims Restitution Act permits the government to enforce a restitution order in the same manner as a private party would enforce a civil judgment under state law, subject to certain limitations, including those set forth in Section 303 of the Consumer Credit Protection Act. See 18 U.S.C. § 3613(a). Section 303 of the Consumer Credit Protection Act provides, in turn, that "the maximum part of the aggregate disposable earnings of an individual for any workweek which is subjected to garnishment may not exceed * * * 25 per centum of his disposable earnings for that week." 15 U.S.C. § 1673(a). Accordingly, the government may not garnish more than 25 percent of a person's weekly "disposable earnings" to enforce a restitution order.

The question presented, over which there is an acknowledged conflict between the Seventh and Eighth Circuits, is whether disability payments are "earnings" within the meaning of Section 303 of the Consumer Credit Protection Act, 15 U.S.C. § 1673(a), as applicable under the Mandatory Victims Restitution Act, 18 U.S.C. § 3613(a).

PARTIES TO THE PROCEEDINGS BELOW

The parties in the court of appeals were defendant-appellant Gary France, plaintiff-appellee the United States of America, and third-party-citation-respondent-appellant Theresa Duperon.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Gary L. France respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit in this case.

OPINIONS BELOW

The court of appeals' opinion (App., *infra*, 1a-15a) is reported at 782 F.3d 820. The district court's opinion (*id*. at 16a-32a) and order (*id*. at 33a-35a) granting the government's motion for an order of garnishment are unreported.

JURISDICTION

The judgment of the court of appeals was entered on April 7, 2015. This Court's jurisdiction rests on 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The **Mandatory Victims Restitution Act**, 18 U.S.C. § 3613, provides in relevant part:

(a) Enforcement. The United States may enforce a judgment imposing a fine in accordance with the practices and procedures for the enforcement of a civil judgment under Federal law or State law. Notwithstanding any other Federal law (including section 207 of the Social Security Act), a judgment imposing a fine may be enforced against all property or rights to property of the person fined, except that—

(1) property exempt from levy for taxes pursuant to section 6334(a)(1), (2), (3), (4), (5), (6), (7), (8), (10), and (12) of the Internal Revenue Code shall of 1986be exempt from enforcement of the judgment under federal law;

> **(2)** section 3014 of chapter 176 of title 28 shall not apply to enforcement under Federal law; and
>
> **(3)** the provisions of section 303 of the Consumer Credit Protection Act (15 U.S.C. 1673) shall apply to enforcement of the judgment under Federal law or State law.
>
> * * *
>
> **(f)** Applicability to order of restitution. In accordance with section 3664(m)(1)(A) of this title, all provisions of this section are available to the United States for the enforcement of an order of restitution.

The **Consumer Credit Protection Act** provides in relevant part that

> the maximum part of the aggregate disposable earnings of an individual for any workweek which is subjected to garnishment may not exceed **(1)** 25 per centum of his disposable earnings for that week, or **(2)** the amount by which his disposable earnings for that week exceed thirty times the Federal minimum hourly wage prescribed by section 206(a)(1) of Title 29 in effect at the time the earnings are payable, whichever is less.

15 U.S.C. § 1673(a).

The Act further provides that "[t]he term 'earnings' means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program." 15 U.S.C. § 1672(a).

STATEMENT

This case presents a discrete question of statutory interpretation that has divided the lower courts: whether disability payments are "earnings" within the meaning of the Consumer Credit Protection Act (CCPA), 15 U.S.C. § 1673(a), as applicable under the Mandatory Victims Restitution Act (MVRA), 18 U.S.C. § 3613(a). The Seventh Circuit, in this case, answered that question in the negative. In doing so, the court acknowledged that the Eighth Circuit came to the opposite conclusion in *United States* v. *Ashcraft*, 732 F.3d 860 (8th Cir. 2013), and agreed with the government that *Ashcraft* was "wrongly decided." App., *infra*, 9a.

Every relevant consideration weighs in favor of granting the petition. To begin with, the decision below creates an acknowledged conflict with the Eighth Circuit, exacerbating broad-based confusion among the lower courts over the question presented. Because it exposes disabled individuals to the risk of debilitating garnishment orders that will force many into bankruptcy, the decision below is also a matter of tremendous practical importance; all the more so because the issue is frequently recurring. And the Seventh Circuit's opinion in this case is deeply flawed—it departs from the plain text of the CCPA and suffers from numerous errors of reasoning that call out for this Court's intervention.

Beyond that, this case offers a fully developed vehicle that queues up the question presented free of any factual or procedural complications. The question presented was "France's lead argument" before the Seventh Circuit (app., *infra*, 6a), and it was addressed in detail by both the district court and the court of appeals. Further review is warranted.

A. Statutory background

This case concerns the Consumer Credit Protection Act, the Mandatory Victims Restitution Act, and the interplay between the two.

1. In light of the well documented "'connection between harsh garnishment laws and high levels of personal bankruptcies,'" Congress enacted the CCPA to protect debtors' day-to-day income from excessive garnishment, ensuring that debtors would have a "continued means of support for themselves and their families.'" *Kokoszka* v. *Belford*, 417 U.S. 642, 650-651 (1974) (quoting H.R. Rep. No. 1040, 90th Cong., 2d Sess. (1967), reprinted in 1968 U.S.C.C.A.N. 1962, 1978 (hereinafter "House Report")).

To that end, Section 303 of the CCPA "provides that no more than 25% of a person's aggregate disposable earnings for any workweek or other pay period may be subject to garnishment." *Kokoszka*, 417 U.S. at 649. See 15 U.S.C. § 1673(a). As a regulation of interstate commerce, moreover, the CCPA applies in both federal and state court.[1] By thus protecting disposable earnings from overzealous debt collectors, Congress sought to "relieve countless honest debtors driven by economic desperation from plunging into bankruptcy," while also ensuring "the continued orderly payment of

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[1] The CCPA does not apply to state garnishment actions when the Secretary of Labor has determined by regulation that state credit protection laws "provide restrictions on garnishment which are substantially similar to those provided [under federal law]." 15 U.S.C. § 1675. But in cases governed by state garnishment limits, "the CCPA pre-empts state garnishment laws that allow a greater * * * garnishment than that allowed by federal law." *Big M, Inc.* v. *Texas Roadhouse Holding, LLC*, 1 A.3d 718, 720 (N.J. App. Div. 2010). Accord, *e.g.*, *Brown* v. *Commonwealth*., 40 S.W.3d 873, 876 n.2 (Ky. Ct. App. 1999).

consumer debts." *Kokoszka,* 417 U.S. at 651 (quoting House Report 1979).

The term "earnings" is separately defined under the CCPA as "compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program." 15 U.S.C. § 1672(a). The Court has explained that "earnings" "'do not pertain to every asset that is traceable in some way to compensation'" but do include "periodic payments of compensation needed to support the wage earner and his family on a week-to-week, month-to-month basis." *Kokoszka*, 417 U.S. at 651.

2. The MVRA specifies when restitution must be paid (18 U.S.C. § 3663) and the procedures governing the imposition and enforcement of restitution orders (18 U.S.C. §§ 3611-3615). As relevant here, the Act permits the government to enforce restitution orders "in accordance with the practices and procedures for the enforcement of a civil judgment under Federal law or State law." 18 U.S.C. § 3613(a).

The government's power to enforce restitution orders is limited in a number of important respects. As relevant here, Section 3613(a)(3) mandates that the limitations on garnishment provided for in "section 303 of the Consumer Credit Protection Act (15 U.S.C. 1673) shall apply to enforcement of the judgment under Federal law or State law." 18 U.S.C. § 3613(a)(3).

"Congress incorporated § 303 of the CCPA into the MVRA, recognizing that the purpose of a restitution order would be thwarted if it simultaneously turned the judgment-debtor into a ward of the state and denied the debtor the ability to 'insure a continued means of support' for him and his family." *United*

States v. *DeCay*, 620 F.3d 534, 544 n.10 (5th Cir. 2010) (quoting House Report at 1979).

B. Factual background

Petitioner Gary France, a dentist, pleaded guilty in April 2002 to mail fraud in connection with a scheme to bill insurers for dental services to employees of the City of Chicago. App., *infra*, 2a, 17a-18a. The district court sentenced France to a prison term of 30 months and ordered him to pay $800,000 in restitution to the City of Chicago Law Department and the Chicago Transit Authority. *Id.* at 2a-3a. In 1995 (after the fraud but before his conviction), France was injured in a car accident and could no longer practice dentistry; he shortly thereafter started collecting monthly benefits payments under a disability insurance policy provided by his dental practice. *Id.* at 2a.[2]

C. Procedural background

1. Not content with the pace of France's payments toward satisfaction of the restitution order, the government filed, in France's criminal case in the Northern District of Illinois, citations directed at France, his disability insurer, and Duperon, to discover assets in accordance with Illinois law. App., *infra*, 4a. In response to the citation, France's insurer disclosed that it was distributing $9,296 per month in disability payments to France and $7,000 to Duperon, and it began

[2] In connection with a divorce proceeding, a state-court interpleader action in California, and a bankruptcy proceeding, France's insurer later began dividing the payments between France and his ex-wife, Theresa Duperon (App., *infra*, 2a-3a), who was receiving payments "as guardian" of the couple's then-minor daughter (Dist. Ct. Dkt. 100-1, at 305). Because the divorce and bankruptcy have no bearing on the question presented in the petition, we do not elaborate on them here.

withholding the $9,296 that had been going to France. *Ibid.* Shortly thereafter, the government moved to garnish 100% of the disability payments, and France's insurer began withholding Duperon's payments as well. *Id.* at 4a-5a.[3]

France opposed the motion, arguing among other things that his disability insurance payments are "earnings" under the CCPA, and therefore protected by the limits on garnishment provided by 15 U.S.C. § 1673(a).

The district court granted the government's motion, ordering garnishment of the entire amount of France's disability payments. App., *infra*, 17a-32a. The government initially asserted that France had "waived his right to claim the CCPA statutory exemption" by not raising it when served with the citation for discovery of assets, but the court "reache[d] the merits of the issue." *Id.* at 27a. It concluded that France's disability payments were not compensation paid for personal services, and thus did not fall under the CCPA's definition of earnings. *Id.* at 28a. And the district court thought that the Eighth Circuit's decision in *Ashcraft* was distinguishable because, unlike the defendant in that case, "France was self-employed," and thus the payments were "not a benefit of his employment." *Ibid.*

2. The Seventh Circuit affirmed. App., *infra*, 1a-15a. The court quickly dismissed the government's waiver argument and, like the district court, "mov[ed] to the merits." *Id.* at 7a.

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[3] The district court ordered that distribution of the withheld disability payments be stayed "until further order of [the] Court." App., *infra*, 34a-35a. On April 30, 2015, the court of appeals stayed its mandate, preserving the status quo.

On the merits, the court of appeals rejected "France's lead argument on appeal," that "the disability payments are exempt from garnishment because they are 'earnings' under § 1672(a)." App., *infra*, 6a. The court relied primarily on the *expressio unius* canon, reasoning that the CCPA must be interpreted—for the unique purpose of its incorporation into the MVRA—in light of the MVRA's provision, in Section 3613(a)(1), of categorical garnishment exemptions "for two specific types of disability payments, workmen's compensation, and military-related disability payments, without mentioning private disability insurance." *Id.* at 9a (citations omitted). Reasoning that the exclusion of private disability payments from Section 3613(a)(1) was purposeful, the Seventh Circuit concluded that Congress must also have meant to exclude private disability payments from the separate protections of Section 3613(a)(3) and the CCPA. *Id.* at 10a.

Having reached that conclusion, the Seventh Circuit rejected the district court's efforts to distinguish *Ashcraft* (app., *infra*, 9a), acknowledging instead that its "opinion creates a split with the Eighth Circuit" (*id.* at 11a, n.1). In agreeing with the government that *Ashcraft* was "wrongly decided" (*id.* at 9a), the court faulted the Eighth Circuit for "fail[ing] to examine the MVRA" and for misreading this Court's decision in *Kokoszka* (*id.* at 11a).

REASONS FOR GRANTING THE PETITION

This case presents the question whether private disability payments are "earnings" within the meaning of the CCPA, 15 U.S.C. § 1673(a), as applicable under the MVRA, 18 U.S.C. § 3613(a). In express conflict with the Eighth Circuit, the Seventh Circuit held that they are not.

That decision warrants further review. Aside from creating an acknowledged division of authority, it departs from the plain text and clear purpose of the CCPA. The issue is a matter of great importance to the disabled individuals it directly affects (who may be rendered destitute under the Seventh Circuit's holding below), and it is likely to have far-reaching consequences in garnishment proceedings of every kind. Because this case presents a suitable vehicle with which to resolve the conflict, the petition should be granted.

A. The Seventh Circuit's holding creates an acknowledged circuit conflict

The Seventh Circuit, in this case, held that "a plain reading of the MVRA leads to the conclusion that it does not cover France's disability payments." App., *infra*, 10a. That conclusion creates an acknowledged conflict with the Eighth Circuit's decision in *Ashcraft*. See *id*. at 11a n.1 ("this opinion creates a split with the Eighth Circuit").

The facts of *Ashcraft* are materially indistinguishable from those in this case. There, "the government sought to garnish Ashcraft's disability payments pursuant to her restitution sentence." 732 F.3d at 861-862. But "Ashcraft objected," arguing that "her disability payments are 'earnings' within the meaning of the [CCPA] and are thus subject to the Act's limitations on garnishment." *Id*. at 862. The district court disagreed and granted the government's motion, holding that "Ashcraft's disability payments are not 'earnings' within the meaning of the [CCPA] and overrul[ing] her objection to garnishment." *Ibid*.

The Eighth Circuit reversed. "[T]he Act's plain language," according to the Eighth Circuit, "prioritizes

the character of the payment over its label." *Ashcraft*, 732 F.3d at 864. Disability payments "are payments designed to function as wage substitutes" and are "a direct component of the compensation * * * provided to Ashcraft in return for the personal services Ashcraft rendered." *Ibid*. Drawing on *Rousey* v. *Jacoway*, 544 U.S. 320 (2005), in which this Court explained that "'disability * * * benefits * * * provide income that substitutes for wages earned,'" the Eighth Circuit concluded that "Ashcraft's disability payments are 'earnings' within the plain meaning of the Act and are therefore subject to the Act's limitations on garnishment." *Ashcraft*, 732 F.3d at 864-865 (quoting *Rousey*, 544 U.S. at 331).

The holding below cannot be squared with *Ashcraft* on any theory. The district court attempted to distinguish the two cases on the basis that France was "self-employed," whereas Ashcraft was not. App., *infra*, 28a. But as the court of appeals recognized, "that description is not truly accurate" because "France incorporated his dental business, and his insurance policy, like Ashcraft's, was purchased through [the] corporate entity." *Id*. at 8a. The court of appeals likewise rejected as a ground for distinction that France's insurance policy "functioned as business-loss insurance," because, no matter how they might be labeled, "the disability payments * * * function as a wage substitute." *Id*. at 8a-9a.

In reaching its holding in this case, the Seventh Circuit thus "agree[d]" with the government, not that *Ashcraft* is distinguishable, but that *Ashcraft* was "wrongly decided." App., *infra*, 9a. In particular, the Seventh Circuit faulted the Eighth Circuit for focusing on the CCPA while "fail[ing] to examine the MVRA," and otherwise for misreading *Kokoszka*. *Id*. at 11a. The

court thus expressly acknowledged that its holding "creates a split with the Eighth Circuit." *Id.* at 11a n.1.[4]

In light of the acknowledged conflict between the Seventh and Eighth Circuits, the MVRA is being applied to the garnishment of individuals' disability payments in different ways across different federal jurisdictions. Such disparate treatment of similarly situated individuals under federal law should not be tolerated; further review is warranted.

B. This petition offers an ideal opportunity to resolve a question of enormous practical importance

Whether disability payments are "earnings" within the meaning of the CCPA has an obvious and sub-

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[4] The confusion concerning the question presented preexisted the Seventh Circuit's decision in this case. In accord with *Ashcraft*, the Michigan Court of Appeals held that "monthly disability pension payments [are] earnings as defined in 15 U.S.C. § 1672(a)" and thus "subject to the limitations imposed by the Consumer Credit Protection Act." *State Treasurer* v. *Gardner*, 564 N.W.2d 51, 55 (1997) rev'd on other grounds, 583 N.W.2d 687 (Mich. 1998). The Fifth Circuit, in an unpublished decision involving similar facts, cited *Ashcraft* approvingly. See *United States* v. *Lockhart*, 584 F. App'x 268, 270 & n.4 (5th Cir. 2014). And the bankruptcy court for the Southern District of Alabama explained that "'[e]arnings' under the federal [CCPA]" include "disability benefits." *In re Conway*, No. 03-11200-MAM-7, slip op. 10-11 (Bankr. S.D. Ala. Sept. 9, 2003). By contrast, the Second Circuit, construing a New York state law, has held that "[d]isability payments accruing from an insurance contract are manifestly not 'wages, * * * earnings, salary, income from trust funds or profits.'" *Samuels* v. *Quartin*, 108 F.2d 789, 791 (2d Cir. 1940) (quoting New York Civil Practice Act § 684). The decisions of these other courts further confirm general confusion over the question presented.

stantial effect on disabled individuals who receive disability benefits.

Disability insurance policies are designed to protect "against the contingency of the insured becoming prevented by disability from earning a living for himself by working." *United States* v. *Crume*, 54 F.2d 556, 557 (5th Cir. 1931). The question presented thus presumes a situation in which the payments that the creditor seeks to garnish are the primary source of income that the garnishee—unable to work productively to make a living—depends on for day-to-day subsistence. Excessive garnishment in circumstances like those threatens to render garnishees destitute, depriving them of their sole "means of support for themselves and their families." *Kokoszka*, 471 U.S. at 651 (quoting House Report at 1979).

Such circumstances are not unusual. The Social Security Administration reports that "[j]ust over 1 in 4 of today's 20 year-olds will become disabled before reaching age 67," for at least some period of time. Social Sec. Admin. Press Office, *Fact Sheet: Social Security* (perma.cc/3EPN-7U8P). And, indeed, over 12% of Americans—tens of millions of individuals in total—are presently disabled and employed at just half the rate of non-disabled individuals. See Cornell University Employment & Disability Institute, *2012 Disability Status Report: United States* 5, 23, 35 (perma.cc/M6KH-KTG9). Many of those individuals with work-limiting disabilities are bound to be covered by private disability insurance: In 2014, more than 214,000 employers provided long-term disability insurance coverage to more than 32 million U.S. workers. See Council for Disability Awareness, *2014 Long Term Disability Claims Review* 1 (perma.cc/75AG-7RHV).

Garnishment actions are also increasingly common. "The recession and its aftermath have fueled an explosion of [garnishment] cases," and today "[o]ne in 10 working Americans between the ages of 35 and 44 are getting their wages garnished." Chris Arnold, *Millions Of Americans' Wages Seized Over Credit Card And Medical Debt*, NPR (Sept. 15, 2014) (goo.gl/uSQlPX). A recent report by the ADP Research Institute shows that rates of employee garnishments are especially high for workers at large companies—which is to say, at companies more likely to provide disability benefits. ADP Research Institute, *Garnishment: The Untold Story* 12 (2014) (perma.cc/BX34-6ZVB). And workers in the Midwest, where the Seventh and Eighth Circuits are located, have nearly double the rate of garnishment as compared with workers in the Northeast and South. *Id*. at 11. Unsurprisingly, garnishments are overall more common among workers with lower incomes. *Id*. at 12.

Against the national backdrop of tens of millions of disabled individuals, tens of millions of U.S. workers covered by private disability insurance, and millions of workers facing wage garnishment, there can be no serious dispute that the question presented impacts countless individuals. That is especially so because the CCPA governs nearly all garnishment actions, not just those under the MVRA.[5] Thus, with few exceptions, neither state nor federal courts may issue orders gar-

[5] The Seventh Circuit seemed to assume that its interpretation of the CCPA will apply only in MVRA cases. App., *infra*, 9a-10a. But as we explain below (at 20-21), Congress does not draft laws to mean one thing when standing alone and another thing when incorporated in other statutes. The decision below is thus likely to govern application of the CCPA in garnishment cases of every kind.

nishing an individual's "earnings" in excess of the limits imposed by the CCPA.[6]

The frequency with which the question arises is not fully reflected in the number of appellate decisions resolving it, however. See *supra*, p. 11 n.4 (collecting cases). For one thing, debt collectors employ a number of tactics to avoid litigation. For example, debtors who attempt to challenge garnishments in court often are "intercepted by collection lawyers, who press them to sign papers settling without a trial"; although such "settlements may be against the interests of debtors," they often "sign anyway." John Collins Rudolf, *Pay Garnishments Rise as Debtors Fall Behind*, N.Y. Times (Apr. 1, 2010) (goo.gl/edmGIw). Worse, some debt collectors routinely fail to serve debtors with process at all. See, *e.g.*, *Sykes* v. *Mel S. Harris & Assocs. LLC*, 780 F.3d 70, 76 (2d Cir. 2015) (detailing an alleged scheme to obtain default judgments against hundreds of thousands of debtors by "fail[ing] to serve the summons and complaint").

Beyond that, many individuals facing garnishment are unfamiliar with legal proceedings and are living paycheck to paycheck. For such debtors, the procedural steps necessary to challenge excessive garnishments "are often daunting," in no small part because they cannot afford lawyers and "are typically left to navigate the judicial system on their own without attorneys." Nat'l Consumer Law Center, *No Fresh Start: How States Let Debt Collectors Push Families Into*

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[6] The CCPA does not apply to the collection of "debt[s] due for any State or Federal tax" and the enforcement of orders of district courts in Chapter 13 bankruptcies. 15 U.S.C. § 1673-(b)(1). Tax levies and bankruptcies account for approximately 25% of garnishments. See *Garnishment: The Untold Story* 8. See also *supra*, p. 4 n.1.

Poverty 8 (Oct. 2013) (perma.cc/ST28-ZFFS). Challenging garnishment in court also often means accepting the risk of paying contractual attorneys fees in the event of a loss, which "can mean disaster." Rudolf, *Pay Garnishments Rise*, *supra*. Many debtors—even those with strong claims—are unwilling to take that risk. *Ibid*. As a result, few garnishment cases are litigated all the way through an appeal.

In short, the question presented is likely to have sweeping consequences for countless disabled individuals in garnishment proceedings of all kinds. This case offers a fully-developed vehicle for answering the question presented, free of any factual or procedural complications. Further review is therefore in order.

C. The holding below is wrong

The clean presentation of a question of significant practical importance implicating a circuit conflict is reason enough to grant certiorari. But the need for review is especially evident in this case because the decision below is manifestly wrong.

1. "The starting point in discerning congressional intent is the existing statutory text." *Lamie* v. *U.S. Trustee*, 540 U.S. 526, 534 (2004). And when the statute provides an express definition of the term under consideration, the "'[s]tatutory definition[] control[s] the meaning of statutory words.'" *Burgess* v. *United States*, 553 U.S. 124, 129 (2008) (quoting *Lawson* v. *Suwannee Fruit & S.S. Co.*, 336 U.S. 198, 201 (1949)).

Here, the relevant statutory definition is expansive: "[t]he term 'earnings' means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, *or otherwise*, and *includes* periodic payments pursuant to a pension or

retirement program." 15 U.S.C. § 1672(a) (emphasis added).

Two features of that definition bear emphasis. First, the words "or otherwise" indicate that the term "earnings" includes all forms of "compensation," regardless of its type or form. As the Eight Circuit put it in *Ashcraft*, "the Act prioritizes the character of the payment over its label." 732 F.3d at 864.

"When a term goes undefined in a statute," as the word *compensation* goes undefined here, courts must "give the term its ordinary meaning" as reflected in the dictionaries of the time. *Taniguchi* v. *Kan Pac. Saipan, Ltd.*, 132 S. Ct. 1997, 2002 (2012). The ordinary dictionary definition of "compensation" in use at the time the CCPA was enacted in 1968 was "payment for value received or service rendered" and tellingly included "payment received by a worker or his dependents for claims under a workmen's compensation act or cash benefits received by eligible unemployed as provided for by legislation." *Webster's Third New Int'l Dictionary* 463 (1961).

Disability payments plainly fall within that definition. They are the "result of the combination of [the insured's] performance of personal services and his [disability]" and "would not have been received, but for his past employment." *State Treasurer* v. *Gardner*, 564 N.W.2d 51, 55 (Mich. Ct. App. 1997) rev'd on different grounds, 583 N.W.2d 687 (Mich. 1998) (per curiam). Thus, "[a]s a benefit of employment," disability income "is 'other compensation' to employees, paid to them as a part of their earnings for personal services performed in the past." *Ashcraft*, 732 F.3d at 864 (quoting *In re Conway*, No. 03-11200-MAM-7, slip op. 10 (Bankr. S.D. Ala. Sept. 9, 2003)).

Any doubt on that score is resolved by the second notable feature of the statutory definition: the use of the word *includes*. "The word 'includes' is usually a term of enlargement, and not of limitation." *Burgess*, 553 U.S. at 131 n.3. "Thus a term whose statutory definition declares what it 'includes' is [generally] susceptible to extension of meaning" beyond the specifically enumerated items that follow. *Ibid*. That is the case here.

"Earnings" within the meaning of the CCPA "*includes* periodic payments pursuant to a pension or retirement program" (15 U.S.C. § 1672(a)), which are "closely analogous" to disability payments (*Conway*, slip op. 10). Indeed, disability payments "serve the same purpose" as "retirement or pension payments" and, like them, are "replacement income." *Ashcraft*, 732 F.3d at 864 (quoting *Conway*, slip op. 10-11). Stated another way, disability insurance coverage is "an employee benefit like a pension" and serves, like a retirement program, as "an income replacement vehicle." *Ibid.* (quoting same). Cf. *DeCay*, 620 F.3d at 544 ("Retirement benefits, like wages, are intended to provide a 'continued means of support' and subsistence.")

It is of no moment that the reason an employee begins drawing on her 401(k) or pension benefits is retirement rather than disability; retirement plans and disability insurance policies are both benefits of employment that "are designed to function as wage substitutes" when employment ceases. *Ashcraft*, 732 F.3d at 864. Accordingly, both are properly "include[d]" in the CCPA's definition of "earnings" as a form of "otherwise" denominated "compensation." 15 U.S.C. § 1672(a).

2. That conclusion is confirmed by the clear purposes underlying both the CCPA and MVRA. Cf. *Kokoszka*, 417 U.S. at 650 (the Court must "take into consideration the * * * purpose of * * * the Consumer Credit Protection Act in assessing the validity of the petitioner's argument").

It was well recognized, prior to enactment of the CCPA, that "garnishment of a debtor's wages frequently resulted in 'a disruption of employment, production, and consumption,' harming the debtor and interstate commerce." *Decay*, 620 F.3d at 544 n.10 (quoting House Report at 1989). Thus, as this Court recounted in *Kokoszka*, the CCPA was designed to "permit[] the continued orderly payment of consumer debts, while reliev[ing] countless honest debtors * * * from plunging into bankruptcy" by "insur[ing] a continued means of support for themselves and their families." 417 U.S. at 651 (quoting House Report at 1979). "In passing the CCPA," in other words, "Congress was attempting to combat the problems of unemployment and bankruptcy that frequently resulted from the unrestricted garnishment of a debtor's wages." *Decay*, 620 F.3d at 544 n.10 (citing House Report at 1979). Accord *Gehrig* v. *Shreves*, 491 F.2d 668, 674 (8th Cir. 1974).

Those purposes point strongly toward reversal. Private disability payments are precisely the kind of income "needed to support the wage earner and his family on a week-to-week, month-to-month basis" that Congress intended the CCPA to protect. *Kokoszka*, 417 U.S. at 651. And the same purposes that animate the CCPA itself explain why Congress made the CCPA applicable under the MVRA: "Congress incorporated § 303 of the CCPA into the MVRA, recognizing that the purpose of a restitution order would be thwarted if it simultaneously turned the judgment-debtor into a

ward of the state and denied the debtor the ability to 'insure a continued means of support' for him and his family." *DeCay*, 620 F.3d at 544 n.10 (quoting House Report at 1979).

The lower court's answer to the question presented fundamentally undermines those express congressional purposes. Disabled individuals who rely on disability payments as their primary source of income have just as much to lose from the limitless garnishment of their benefit payments as gainfully employed individuals have to lose from the limitless garnishment of their wages. The Seventh Circuit interpretation of "earnings" is thus flatly inconsistent with the CCPA's goal of ensuring that debtors have a continued means of support for themselves and their families, notwithstanding garnishment.

3. To arrive at its contrary holding, the Seventh Circuit relied principally on the *expressio unius* canon, using Section 3613(a)(1) as a tool to interpret Section 3613(a)(3). That approach is fundamentally flawed.

Sections 3613(a)(1) and (a)(3) create different exceptions to garnishment actions under the MVRA. Section 3613(a)(1) is a categorical "exempt[ion]" for certain kinds of income and assets. For example, it exempts (by reference to provisions of the Internal Revenue Code) amounts "payable to an individual as workmen's compensation" (26 U.S.C. § 6334(a)(7)) or "as a service-connected * * * disability benefit" resulting from a military injury (26 U.S.C. § 6334(a)(10)).

Section 3613(a)(3), by contrast, does not *exempt* anything; it provides only that the CCPA's 25% cap on the garnishment of periodic payments of earnings (among other limits) "shall apply" to the execution of judgments under the MVRA.

The court below noted that "Congress elected" in Section 3613*(a)(1)* "to incorporate exemptions for certain forms of disability payments," "without mentioning private disability insurance." App., *infra*, 9a-10a. Pointing to the general rule that "'items not mentioned'" should be understood as having been "'excluded by deliberate choice, not inadvertence,'" the court concluded that the exclusion of private disability payments from Section 3613(a)(1) was purposeful. *Ibid*.

No one argues otherwise. But the lower court's subsequent leap of logic—its conclusion that the omission of disability payments from Section 3613*(a)(1)* means that Congress meant also to omit disability payments from the very different limits imposed by Section 3613*(a)(3)*—is indefensible, for two reasons.

First, the lower court's reasoning ignores the statutory structure. For it to make any sense at all, Section 3613(a)(3)'s 25% cap must be read to apply only to those assets that are *not* categorically exempt from garnishment under Section 3613(a)(1). After all, if an asset is categorically exempt under Section 3613(a)(1), the 25% cap applicable under Section 3613(a)(3) necessarily cannot apply. Thus, the observation that private disability benefits are not covered by Section 3613(a)(1) says nothing whatever about whether they are covered separately by Section 3613(a)(3).

Indeed, the lower court's reasoning by negative inference—that something excluded from Section 3613-(a)(1) must also be excluded from (a)(3)—cannot be correct. Section 3613*(a)(1)* excludes (by failing to reference Section 6334(a)(9) of the Internal Revenue Code) amounts "received by an individual as wages or salary for personal services." But "wages" are necessarily covered by Section 3613*(a)(3)* because Section

303 of the CCPA unquestionably covers "wages." See 15 U.S.C. § 1672(a).

Not only is that conclusion compelled by the plain text of the MVRA and CCPA, but it just makes sense: Congress did not want "wages [and] salary for personal services" to be wholly exempt by (a)(1) from garnishment in restitution cases. Instead, it wanted wages to be available for garnishment, protected by the limitations imposed by (a)(3) and the CCPA. It thus omitted "wages" from (a)(1) and included them in (a)(3). As we explained above, there is every reason to conclude that Congress intended the same result for private disability benefits.

Second the Seventh Circuit's "dynamic view of statutory interpretation" (*Harris* v. *United States*, 536 U.S. 545, 556 (2002)) is as unsound as it is troubling. The MVRA adopts, without modification, the garnishment limitations of the CCPA. The Seventh Circuit nevertheless read the Section 3613(a)(1) of the MVRA, in effect, *to modify* the CCPA's definition of "earnings." As a result, according to the opinion below, the CCPA does not cover disability payments—but presumably only in garnishment cases brought by the government under the MVRA.

That theory of statutory relativity is deeply misguided. Statutes are not chameleons; whatever Congress intends a statute to mean, it intends it to mean it universally, regardless whether the statute is read standing alone or as incorporated into other sections of the U.S. Code. Cf. *Clark* v. *Martinez*, 543 U.S. 371, 386 (2005) (describing as "dangerous" the notion that "the same statutory text [could be given] different meanings in different cases"). The Seventh Circuit's contrary approach—interpreting the CCPA as a malleable statute that takes on different meanings depending on con-

text—cannot be squared with that common-sense rule. To put it more simply: Either the CCPA covers disability payments or it does not; Section 3613(a)(1) of the MVRA has nothing to do with it.

Against that backdrop, the Eighth Circuit hardly can be faulted for "fail[ing] to examine the MVRA" for purposes of reading the CCPA. App., *infra*, 11a.

Nor is there the slightest merit to the Seventh Circuit's view (app., *infra*, 10a) that the MVRA's "[n]otwithstanding any other Federal law" language supports its holding. The provision says, in full:

> Notwithstanding any other Federal law (including section 207 of the Social Security Act), a judgment imposing a fine may be enforced against all property or rights to property of the person fined, *except that* * * * the provisions of section 303 of the Consumer Credit Protection Act (15 U.S.C. 1673) shall apply to enforcement of the judgment under Federal law or State law.

18 U.S.C. § 3613(a) (emphasis added). We are here construing the Consumer Credit Protection Act, which is expressly excluded from the "notwithstanding" clause. The Seventh Circuit's failure to acknowledge as much is inexplicable.

In sum, both the plain text and manifest purpose of the CCPA indicate that "earnings" within the meaning of 15 U.S.C. § 1672(a) include disability payments. Not only are the Seventh Circuit's reasons for holding otherwise unpersuasive, but its apparent belief that courts can give the same statutory text different meanings in different cases is downright troubling. For those reasons, too, further review is warranted.

CONCLUSION

The petition should be granted.

Respectfully submitted,

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JULY 2015

APPENDICES

APPENDIX A

* * *

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 14-2743

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
v.
GARY L. FRANCE,
Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 1:00-cr-01061-1—Charles R. Norgle, *Judge*.

ARGUED JANUARY 23, 2015
DECIDED APRIL 7, 2015

Before WOOD, *Chief Judge*,
and KANNE and TINDER, *Circuit Judges*.

TINDER, *Circuit Judge*. In 2002, Dr. Gary France as ordered to pay $800,000 in restitution to victims of a fraudulent billing scheme he committed. By 2014, however, France had paid less than $11,000 toward that amount, so the government moved under the Mandatory Victims Restitution Act (MVRA), 18 U.S.C. § 3613(a), to garnish monthly payments of $16,296 from France's privately purchased disability insurance

policy. France maintains that these payments are at least partially exempt from garnishment, and his ex-wife, Theresa Duperon, seeks to exempt a portion of the payments that she receives for child support. The district court allowed the government to garnish the entire amount. We affirm.

I. BACKGROUND

In the mid-1990s, France owned and operated a dental business in Chicago. During this time, he engaged in a lucrative scheme to fraudulently bill insurers for employees of the City of Chicago and the Chicago Transit Authority. For that scam, he pleaded guilty in April 2002 to mail fraud. *See* 18 U.S.C. § 1341. Meanwhile, in 1996, France closed his solo dental practice after being injured in a car accident and started collecting monthly benefits from a disability income policy he had purchased through his dental business. In 1999, he agreed to give a portion of these monthly payments, for a limited time, to Western United Life Insurance Company in exchange for a lump sum of more than $300,000. He then transferred this money into various accounts in the names of other people, including Duperon (his then-wife), before filing a Chapter 7 bankruptcy petition in early 2000. He failed to disclose the lump sum payment or subsequent transfers in the bankruptcy petition and in fact made affirmative declarations concealing their existence. For that reason, at the same time he pleaded guilty to mail fraud, France pleaded guilty to knowingly making a false declaration under penalty of perjury. *See* 18 U.S.C. § 152(3).

In August 2002, the district court sentenced France to a total prison term of 30 months and ordered him to pay $800,000 in restitution to the City of Chicago Law Department and the Chicago Transit Authority. In

September 2002, the government recorded notice of this lien in California, where France had relocated. Two months later, the trustee appointed in France's bankruptcy proceedings obtained an order giving the trustee title to ongoing payments from the disability insurance. (The Chapter 7 case began with the United States trustee serving as trustee for the estate, but later, in 2002, a private attorney was appointed as trustee, as is standard practice. See 28 U.S.C. § 586(a)(1) (requiring United States trustee to maintain a panel of private trustees for cases filed under Chapter 7); United States Trustee Program, About the Program, http://www.justice.gov/ust/eo/-ust_org/index.htm visited Mar. 13, 2015).)

In July 2003, France and Duperon divorced and reached a marital settlement under which Duperon was to receive payments for child support through 2019 from the disability insurance payments. The payments would increase up to $7,000 per month. A California court approved the settlement in August 2003.

In February 2004, France's insurance company filed an interpleader action in California to resolve conflicting claims to the insurance proceeds from the bankruptcy trustee, France, France's sister, and Duperon. In March 2005, these parties reached a settlement agreement, which the bankruptcy court approved, purporting to control all other judgments in regard to the insurance policy. The settlement did not mention the restitution lien from France's criminal case, and it appears that the bankruptcy trustee was never notified of it.

In May 2013, the government filed in France's criminal case in the Northern District of Illinois citations to discover assets in accordance with Illinois law

that were directed at France, his insurer, and Duperon. *See* 735 ILCS 5/2-1402 (authorizing procedure for creditor to prosecute supplementary proceedings to discover assets). France moved to quash the citation primarily on the basis that his disability payments were exempt from garnishment under California law. But the insurance company responded to the citation by informing the government that it was distributing monthly payments of $9,296 to France and $7,000 to Duperon, for a total of $16,296. France's insurer also began withholding the $9,296 that had been going to France.

In February 2014, based on the information from the insurance company, the government moved to garnish the entire monthly distributions under § 3613(a), which provides as follows:

> **(a) Enforcement.—** The United States may enforce a judgment imposing a fine in accordance with the practices and procedures for the enforcement of a civil judgment under Federal law or State law. Notwithstanding any other Federal law (including section 207 of the Social Security Act), a judgment imposing a fine may be enforced against all property or rights to property of the person fined, except that—
>
> > **(1)** property exempt from levy for taxes pursuant to section 6334(a)(1), (2), (3), (4), (5), (6), (7), (8), (10), and (12) of the Internal Revenue Code of 1986 shall be exempt from enforcement of the judgment under Federal law;

> **(2)** section 3014 of chapter 176 of title 28 shall not apply to enforcement under Federal law; and
>
> **(3)** the provisions of section 303 of the Consumer Credit Protection Act (15 U.S.C. 1673) shall apply to enforcement of the judgment under Federal law or State law.

In response to the government's motion, France's insurer began withholding Duperon's payments in addition to France's, and France and Duperon asserted that the payments—or at least a portion of them—were exempt from garnishment. In addition to asserting state law exemptions, France argued that the payments were partially exempt under § 3613(a)(3) as "earnings" under the Consumer Credit Protection Act (CCPA), which sets a ceiling of 25% per week for garnishment of "disposable earnings." 15 U.S.C. § 1673(a)(1). He emphasized that the Eighth Circuit recently held that payments from private disability insurance constitute "earnings" under the CCPA in *United States v. Ashcraft*, 732 F.3d 860 (8th Cir. 2013). Duperon additionally argued that the government should be estopped from undermining the interpleader settlement involving the bankruptcy trustee.

The district court rejected France's and Duperon's arguments and ordered garnishment of the entire disability payments. The court noted that France had "arguably waived his right to claim the CCPA statutory exemption" by not asserting it when first served with the citation for discovery of assets. The court concluded that, in any event, the disability payments were not compensation paid for personal services, and thus did not fall under the CCPA's definition of earnings. *See* 15 U.S.C. § 1672(a). The court distinguished *Ashcraft* on the grounds that, unlike the defen-

dant there, "France was self-employed," and thus the payments were "not a benefit of his employment." The court also concluded that state law exemptions did not apply because the government was proceeding under federal law.

As for Duperon, the district court acknowledged that 26 U.S.C. § 6334(a)(8), which is incorporated into § 3613(a)(1), exempts payments for support of minor children if ordered by a court judgment "entered prior to the date of levy." But the court reasoned that, assuming Duperon had standing to assert the exemption, the government's restitution lien was superior to her interest, having been entered well before the couple's divorce. Moreover, the court noted that France no longer had a minor child because the couple's daughter had turned 19. The court also rejected Duperon's estoppel argument, concluding that the government was not bound by the results of the California litigation because it was unaware of those proceedings, and that the bankruptcy trustee had acted as a representative of the estate, not the government.

The district court also noted that, at that time, France had paid only $10,223.04 toward the restitution judgment. At argument, the government reported that, as a result of the garnishment order, it had already recovered almost $250,000. At that rate, counsel stated, the restitution judgment will be paid in three to four years.

II. DISCUSSION

France's lead argument on appeal is that the disability payments are exempt from garnishment because they are "earnings" under § 1672(a). The district court observed that France had "arguably" waived

this argument by not asserting it when the government first sought to discover his assets, but we are not persuaded that waiver is appropriate here. As France notes, and the government does not dispute, the CCPA contains no requirement that a debtor affirmatively assert an exemption, and in fact, § 1673(c) states that "[n]o court . . . may make, execute, or enforce any order or process in violation of this section," suggesting the exemption is automatic. Moreover, the only authority the district court cited in support of waiver, *Guess?, Inc. v. Chang*, 912 F. Supp. 372, 379 (N.D. Ill. 1995), is distinguishable because it involved an exemption under state law, not the MVRA or CCPA.

Moving to the merits, we start with the text of the MVRA, which incorporates the cap on garnishment of "disposable earnings" found in § 1673 into a list of exemptions from garnishment. 18 U.S.C. § 3613(a)(3). "Disposable earnings" is defined in § 1672(b) as "that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld." 15 U.S.C. § 1672(b). "Earnings" is defined as "compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program." *Id.* § 1672(a).

Based on that language, we held in *United States v. Lee*, 659 F.3d 619, 621 (7th Cir. 2011), that the government may not garnish more than 25% of the monthly payments from a defendant's 401(k) and defined benefit pension. The Fifth Circuit has decided likewise. *United States v. DeCay*, 620 F.3d 534, 544 (5th Cir. 2010); *compare United States v. Laws*, 352 F. Supp. 2d 707, 714 (E.D. Va. 2004) (holding that retirement annuity payments that had already passed to the deb-

tor were not earnings). We have never, however, had occasion to address whether the CCPA, as incorporated into the MVRA, also covers payments made pursuant to a privately purchased disability policy.

As recognized by the district court, the only appellate decision to squarely address this issue is the Eighth Circuit's decision in *Ashcraft*. There, the court emphasized that the Supreme Court, in *Kokoszka v. Belford,* 417 U.S. 642, 651 (1974), endorsed the view that "earnings" as defined in the CCPA are "limited to periodic payments of compensation and do not pertain to every asset that is traceable in some way to such compensation." *Id.* (alterations and quotations omitted). Citing that interpretation, the Eighth Circuit concluded that payments made pursuant to a disability-benefits plan purchased by Ashcraft's former employer were "earnings" because they were "designed to function as wage substitutes" and thus were "not merely 'traceable in some way' to Ashcraft's compensation, but [were] themselves a direct component of [her] compensation." *Ashcraft*, 732 F.3d at 864.

The district court concluded that France, unlike Ashcraft, was "self-employed," but that description is not truly accurate: France incorporated his dental business, and his insurance policy, like Ashcraft's, was purchased through a corporate entity. France's policy *is* distinguishable from Ashcraft's for another reason: unlike Ashcraft's insurance, France's policy essentially functioned as business-loss insurance because his business depended entirely on his ability to perform dental work and his insurance covered only his ability to perform that occupation. We are not convinced, however, that this distinction provides a principled basis for distinguishing the reasoning in *Ashcraft* from the situation here, since the disability payments are

still arguably designed to function as a wage substitute.

The government seems to recognize that the district court's reason for distinguishing *Ashcraft* is problematic and thus argues that, even if *Ashcraft* is on point, it was wrongly decided. The government urges us to examine how the CCPA applies *in the context of* § 3613(a), noting that, although *Ashcraft* technically involved the MVRA, the Eighth Circuit's decision did not address interpretation of the list of exemptions in § 3613(a) and, in fact, failed to even cite that provision. This oversight is critical, the government argues, because "[i]n drafting § 3613, Congress deliberately included and excluded various kinds of disability income, and the exclusion of private disability cannot be considered an accident or oversight that should be judicially corrected."

We agree. Section 3613(a)(1), which selectively incorporates exemptions from the Internal Revenue Code, makes express exceptions for two specific types of disability payments, workmen's compensation, 26 U.S.C. § 6334(7), and military-related disability payments, *id.* § 6334(10), without mentioning private disability insurance. Further, the list in § 3613(a)(1) *does not* include § 6334(11), which exempts certain forms of public assistance, including Social Security disability payments. Although somewhat "beleaguered," the canon of *expressio unius est exclusio alterius*—"the expression of one thing suggests the exclusion of others"—remains a compelling interpretive guide when "'the items expressed are members of an 'associated group or series,' justifying the inference that items not mentioned were excluded by deliberate choice, not inadvertence.'" *Exelon Generation Co. v. Local 15, Int'l Bhd. of Elec. Workers, AFL-CIO*, 676 F.3d 566, 571 (7th

Cir. 2012) (quoting *Barnhart v. Peabody Coal Co.,* 537 U.S. 149, 168 (2003)). Furthermore, "[w]here Congress explicitly enumerates certain exceptions to a general prohibition, additional exceptions are not to be implied, in the absence of evidence of a contrary legislative intent." *Andrus v. Glover Constr. Co.,* 446 U.S. 608, 616–17 (1980); *see In re Robinson*, 764 F.3d 554, 562 (6th Cir. 2014) (applying this concept to § 3613(a)). Here, where Congress elected to incorporate the exemptions for certain forms of disability payments and not others, we think that a plain reading of the MVRA leads to the conclusion that it does not cover France's disability payments.

This reading is further supported by the opening paragraph of § 3613(a), which states that the statute operates "[n]otwithstanding any other Federal law (including section 207 of the Social Security Act)." According to the Supreme Court, "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." *Cisneros v. Alpine Ridge Grp.,* 508 U.S. 10, 18 (1993). For that reason, several circuits have read § 3613(a) broadly as superseding other statutory provisions safeguarding a defendant's assets. *See, e.g., Robinson*, 764 F.3d at 561–62 (collecting cases and holding that MVRA supersedes bankruptcy stay); *United States v. Novak,* 476 F.3d 1041, 1047 (9th Cir. 2007) (en banc) (holding that MVRA supersedes ERISA's non-alienation provisions); *United States v. Hyde,* 497 F.3d 103, 108 (1st Cir. 2007) (holding that MVRA supersedes Bankruptcy Code provisions). This case law underscores the importance of not adopting an expansive reading of the exemptions to § 3613(a).

Furthermore, we note that not only did *Ashcraft* fail to examine the MVRA, it also, in our view, relied on *Kokoszka* for a proposition that decision does not support. In *Kokoszka*, the Supreme Court *limited* the reach of the CCPA's definition of earnings, adopting the view that earnings do not include "every asset that is traceable in some way to such compensation" and concluding that the cap on garnishment does not apply to income tax refunds. 417 U.S. at 651. At the very least, this language cautions against stretching the definition of "earnings" to include wage substitutes that are not explicitly mentioned in the statute.[1]

France alternatively argues that his disability payments are exempt under 28 U.S.C. § 3014(a)(2), which allows a debtor to elect to exempt property that is exempt under the law of the state where the debtor has been domiciled for at least 180 days. He argues that in California, where he is domiciled, disability insurance benefits are exempt from garnishment. Notably, § 3613(a)(2) states that § 3014 "shall not apply to enforcement under Federal law." But France argues that this provision is inapplicable because the government used an Illinois procedural mechanism to seek discovery of his assets. He points to *Paul Revere Insurance Group v. United States*, 500 F.3d 957, 960 (9th Cir. 2007), in which the Ninth Circuit held that California law exempted disability income from garnishment of a restitution lien.

This argument is unpersuasive. As the government observes, although it issued a discovery citation under

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[1] Because this opinion creates a split with the Eighth Circuit, we circulated it in advance of publication to all judges of this court in regular active service, pursuant to Circuit Rule 40(e). None voted to hear the case en banc.

Illinois law, it did so only because Fed. R. Civ. P. 69(a) explicitly authorizes use of state procedure in obtaining discovery from a judgment debtor. More than that, once it obtained the information about France's assets from his insurer, the government moved for garnishment solely pursuant to § 3613. That fact sets this case apart from *Paul Revere*, where, critically, "the government elected to use California state law *to create and enforce* its judgment lien." 500 F.3d at 963 (emphasis added). In contrast, as the district court noted, the government here is enforcing a federal judgment lien and moved for garnishment under federal law. For that reason, we are convinced that state law exemptions are inapplicable to the government's enforcement efforts.

As for Duperon, she maintains that the district court erred in concluding that the child support she received from the insurance disbursements are not exempt under § 6334(a)(8). As a preliminary matter, however, we note that, although not meaningfully addressed in the appellate briefs, we are concerned about Duperon's standing to assert the exemption. In the district court, Duperon asserted standing under *States v. Kollintzas*, 501 F.3d 796, 800–01 (7th Cir. 2007), which allowed a defendant's wife to participate in an appeal regarding collection proceedings against her husband under the Federal Debt Collection Procedures Act because she was a person with interest in property subject to collection. But Duperon's interest in this case appears to be limited to her role as a representative for her daughter, who is no longer a minor—a fact that Duperon more or less ignores. We need not resolve the appeal on this basis, however, because, as will be discussed, we are not persuaded that any interest Duperon (or her daughter) possesses trumps the government's restitution lien.

Duperon contends that, although the restitution order was entered before the marital settlement, the restitution lien did not attach to France's interest in the policy proceeds because the bankruptcy trustee, as administrator of the bankruptcy estate, obtained title to all of France's assets when he filed for bankruptcy in 2000. *See* 11 U.S.C. § 541(a)(1) (stating that, with limited exceptions, "all legal or equitable interests of the debtor in property" become part of the bankruptcy estate). Thus, in Duperon's view, the government's restitution lien attached to only the $9,296 that France began receiving after the California interpleader settlement, when the trustee relinquished its title to the insurance policy. Duperon emphasizes that a restitution lien is treated like a tax lien, 18 U.S.C. § 3613(c), and that the Supreme Court, in *United States v. Speers*, 382 U.S. 266, 275 (1965), held that a bankruptcy trustee's authority to settle outstanding debts, *see* Fed. R. Bankr. P. 9019, prevailed over a prior unrecorded federal tax lien.

But adopting Duperon's view would lead to the troubling result that, by concealing information from the bankruptcy trustee—part of the basis for his criminal conviction—France might be able to shield a portion of his insurance payments from government collection. This concern underscores an important difference between this case and *Speers*, where the trustee knew about the pre-existing, unrecorded tax lien and specifically concluded that it was invalid as to him. 382 U.S. at 268. Here, in contrast, the government recorded its lien in the midst of the bankruptcy, and it appears that the trustee was never formally notified of it before entering the settlement.

More importantly, as the government emphasizes, Duperon's arguments run headlong into the text of the

MVRA. As other circuit courts have held, the language in § 3613(a) stating that the statute operates "[n]otwithstanding any other Federal law" appears to supersede conflicting provisions of the Bankruptcy Code. *See Robinson*, 764 F.3d at 557 (holding that "§ 3613 supersedes the automatic stay and allows the government to enforce restitution orders against property included in the bankruptcy estate"); *Hyde,* 497 F.3d at 108 (holding that the Bankruptcy Code does not "restrict[ ] the reach of the MVRA's clear language"). As further pointed out by the Sixth Circuit in *Robinson*, § 3613(e) explicitly dictates that a bankruptcy discharge shall not "discharge liability to pay a fine pursuant to this section, and a lien filed as prescribed by this section shall not be voided in a bankruptcy proceeding," suggesting "that Congress had the potential effects of the Bankruptcy Code in mind when it drafted § 3613(a)." *Robinson*, 764 F.3d at 561–62. Finally, as also noted in *Robinson*, § 3613(c) states that a restitution lien "arises on the entry of judgment" without making any exception for pending bankruptcy matters. *Id.* at 562 ("Conspicuously, the Bankruptcy Code, including the automatic stay, is absent from [§ 3613(a)'s] list of exceptions . . . ."). For these reasons, we are convinced that the bankruptcy proceedings here did not limit the reach of the MVRA as Duperon suggests.

Finally, Duperon argues that equitable estoppel should apply to bar the government from garnishing her child-support payments because the bankruptcy trustee, a party to the interpleader settlement, is part of the Department of Justice and thus, in her view, "in privity" with the United States Attorney's Office. Based on this understanding, she argues that the government should be bound by a provision in France's criminal plea agreement stating that the plea did not

limit any "judicial civil claim, demand, or cause of action whatsoever of the United States or its agencies."

The district court found this argument to be "wholly without merit," and we agree. As the government notes, it is a high standard to apply equitable estoppel against the government. *See Matamoros v. Grams*, 706 F.3d 783, 793–94 (7th Cir. 2013) ("The Supreme Court has *never* affirmed a finding of estoppel against the government. And that is not for lack of review. The Court, in fact, has reversed every finding of estoppel that it has reviewed.") (internal quotations and alterations omitted). Although the United States Trustee Program is indeed part of the Department of Justice, 28 U.S.C. § 586, *see Bell v. Thornburg*, 743 F.3d 84, 88 (5th Cir. 2014) (explaining the history of the Trustee Program), the Supreme Court has long recognized that "[t]he bankruptcy trustee is the representative of the estate of the debtor, not an arm of the Government," *Cal. State Bd. of Equalization v. Sierra Summit, Inc.*, 490 U.S. 844, 849 (1989) (internal quotations and alterations omitted); *see also* 11 U.S.C. § 101(27) (excluding a trustee who is serving as trustee in a bankruptcy case from the definition of "governmental unit"). Further, as often occurs, the United States Trustee here recruited a private attorney to serve as trustee, providing a further layer of separation between the trustee and the prosecuting attorneys. Because Duperon has provided no persuasive reason to allow the actions of a private bankruptcy trustee to estop the criminal enforcement efforts of the Department of Justice, we affirm the district court's refusal to apply equitable estoppel.

Accordingly, the district court's judgment is AFFIRMED.

APPENDIX B

* * *

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

UNITED STATES OF AMERICA	) Criminal Action 00 CR 1061
v.	) Hon. Charles R. Norgle
GARY FRANCE	)

OPINION AND ORDER

CHARLES R. NORGLE, District Judge

Before the Court is the government's motion for a garnishment order for the entirety of the monthly proceeds due under Defendant Gary France's ("France") AXA Equitable Life Insurance Company, Policy No. 91-708-722 (the "disability insurance policy"). For the following reasons, the motion is granted.

I. BACKGROUND

On April 16, 2002, France pleaded guilty to mail fraud, in violation of 18 U.S.C. § 1341, and false declaration in relation to bankruptcy proceedings, in violation of 18 U.S.C. § 152(3), as charged in Counts One and Seven of the Second Superseding Indictment. With respect to Count One, France admitted, inter alia, that from January 1991 through February 5, 1996, in Chicago, Illinois, he devised and executed a scheme to defraud the City of Chicago, the Chicago

Transit Authority, Blue Cross-Blue Shield of Illinois, and Bankers Life & Casualty Company, by fraudulently billing Blue Cross-Blue Shield of Illinois for dental work on patients that he did not perform. As to Count Seven, France admitted, inter alia, that in 2000, he filed a Chapter 7 Bankruptcy petition in the Northern District of Illinois, but his petition omitted, among other items, his receipt of approximately $308,692.38 in September 1999 from Western United Life Insurance Company (in return for his right to receive seventy-three monthly installments of $7,000 from his disability insurance policy, including payments due between August 7, 1999 and continuing through August 7, 2005), and the transfer of $50,000 of these funds to his then-wife, Theresa Duperon ("Duperon") and $50,000 to his daughter, Faith France ("Faith"), in October 1999. On July 22, 2002, France was sentenced to thirty months' imprisonment to run concurrently, three years of supervised release to run concurrently, and was ordered to pay $800,000 in restitution pursuant to the Mandatory Victims Restitution Act of 1996 ("MVRA"), 18 U.S.C. § 3663A—$135,760 to the City of Chicago Law Department, and $664,240 to the Chicago Transit Authority.[1] Since the entry of judgment in this criminal case, France has paid only $10,223.04 against the $800,000 owed to his victims.

The government recorded its notice of lien against France's property and rights to property on September 24, 2002 in the Los Angeles County California

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[1] The judgment was amended on August 22, 2002 to change the name of France's attorney, and to include a recommendation to the Bureau of Prisons that France participate in the Bureau of Prisons Intensive Confinement Program.

Recorder of Deeds Office as document number 02-2243129.

Meanwhile, France was denied discharge in bankruptcy because of fraud in the bankruptcy proceedings—he failed to list any interest in his disability insurance policy or any transfer that he made to others, including to his then-wife, Duperon and to his daughter, Faith. In 2002, the Trustee of the Gary France Bankruptcy Estate (the "Trustee") filed suit in the United States District Court for the Central District of California to recover allegedly fraudulent transfers that France had made to Duperon and Faith, or otherwise diverted from the bankruptcy estate. In response to that suit, France attempted to exempt his interest in the disability insurance policy in the bankruptcy proceedings in this District, which the bankruptcy court denied. On November 13, 2002, the bankruptcy court awarded all of Gary France's interest in the disability insurance policy to the Trustee. France appealed that order. On March 17, 2003, the Trustee, France, and Duperon, individually and as guardian of Faith, settled the California federal lawsuit. The settlement included a provision that France's appeal from the bankruptcy court's order was dismissed with prejudice and that payments from the disability insurance policy were to be made directly to the Trustee at the rate of $2,008 per month for the period from December 2002 through August 2005. The bankruptcy court approved the settlement and the California federal court's order on March 10, 2003.

On October 22, 2002, France and Duperon separated. France and Duperon entered into a marital settlement agreement on July 2, 2003. Notice of entry of judgment, the dissolution of their marriage, was filed in the Superior Court of the State of California for

the County of Los Angeles on August 5, 2003. The marital settlement agreement provided for child support payments until September 1, 2019—payable from the proceeds of the disability insurance policy—in the sum of $1,000 per month and increasing to $7,000 per month on September 1, 2005.[2]

Thereafter, the Trustee, France, France's sister, Gay France ("Gay"), and Duperon asserted conflicting claims to the same disability insurance proceeds. AXA Equitable Life Insurance Company filed an interpleader action in the California state court to resolve the conflicting claims. On September 17, 2004, Duperon filed a notice of relatedness regarding the interpleader and the dissolution proceedings; the California state court deemed the matters related and joined the two actions. On March 11, 2005, the Trustee, France, Gay, and Duperon executed a settlement agreement and mutual release—subject to approval by the bankruptcy court—which purports to control all other orders and judgments entered in connection with the distribution of all proceeds under the disability life insurance policy. As relevant here, the settlement agreement provides that Duperon shall receive $7,000 per month from September 2007 through September 2019.

On January 24, 2013, the government issued a citation to discover assets as to France. On April 15, 2013, the government issued third party citations to Faith, and Disability Management Services, Inc., a

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[2] The divorce decree indicates that the $7,000 per month child support includes $2,000 per month of spousal support, which would cease to be payable based upon certain contingencies, such as remarriage or if Duperon is physically able to work full time and becomes eligible for retirement and health benefits.

third party administrator for AXA Equitable Life Insurance Company. Disability Management Services, Inc.'s answer to the citation revealed that as of May 2013, it distributes two proceeds checks per month under the disability insurance policy: (1) a check for $7,000 to Duperon, as guardian for France's daughter, Faith; and (2) a check for $9,296 to France. On June 3, 2013, the government issued a third party citation to Duperon. The government now seeks to collect the $800,000 restitution ordered through garnishment proceedings under the Federal Debt Collection Procedure Act ("FDCPA"), 28 U.S.C. § 3205. The government's motion for a garnishment order is fully briefed and before the Court.

II. DISCUSSION

A. Standard of Decision

"The FDCPA is a procedural vehicle available to the United States under federal law for the enforcement of its civil judgments . . . ." *United States v. Kollintzas*, 501 F.3d 796, 800 (7th Cir. 2007). The FDCPA "shall not be construed to curtail or limit the right of the United States under any other Federal law or any State law to collect any fine, penalty, assessment, restitution, or forfeiture arising in a criminal case." 28 U.S.C. § 3003(b)(2). In addition, "[t]he United States may enforce a judgment imposing a fine in accordance with the practices and procedures for the enforcement of a civil judgment under Federal or State law." 18 U.S.C. § 3613(a). The civil remedies available for the satisfaction of an unpaid fine apply equally to the United States for the enforcement of an order of restitution. 18 U.S.C. § 3613(f). An order of restitution "is a lien in favor of the United States on all property or rights to property of the person fined." 18 U.S.C. § 3613(c). "Moreover, § 3613 treats a restitution

order under the MVRA like a tax liability. This means that any property the IRS can reach to satisfy a tax lien, a sentencing court can also reach in a restitution order." *United States v. Hosking*, 567 F.3d 329, 335 (7th Cir. 2009) (citations omitted). "[D]istrict courts may entertain civil garnishment and other collection proceedings as postjudgment remedies within an underlying criminal case." *United States v. Lee*, 659 F.3d 619, 620 (7th Cir. 2011) (citing *Kollintzas*, 501 F.3d at 800-01).

B. Motion for a Garnishment Order

The government argues that the entirety of the proceeds due under France's disability insurance policy is subject to garnishment. France and his ex-wife, Duperon, oppose the motion for garnishment, asserting various exemptions and objections. Although Duperon is not a party, her participation in the instant garnishment proceedings is nevertheless appropriate for the limited purpose of asserting her interest in the property subject to collection remedies pursuant to the FDCPA. See *Kollintzas*, 501 F.3d at 800-01.

1. State Law Exemptions

Both France and Duperon argue that the disability insurance policy is exempt from citation or garnishment under state law, as permitted by 28 U.S.C. § 3014. Pursuant to § 3014, an individual debtor may elect to exempt, *inter alia*,

> any property that is exempt under . . . State or local law that is applicable on the date of the filing of the application for a remedy under this chapter at the place in which the debtor's domicile has been located for the 180 days immediately preceding the date of the filing of

> such application, or for a longer portion of such 180-day period than in any other place.

28 U.S.C. § 3014(a)(2)(A). France argues that his monthly disability payments are entirely exempt under California Code of Civil Procedure § 704.130(a). Duperon, on the other hand, argues that the disability payments are personal property exempt under Illinois law as a disability benefit and as "alimony, support, or separate maintenance, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor." 735 Ill. Comp. Stat. 5/12-1001(g)(3)-(4). Section 3014, however, does not apply to enforcement of a judgment under federal law. 18 U.S.C. § 3613(a)(2).

France and Duperon argue that the government is seeking relief under a state law lien and procedure, and therefore the state exemptions apply. In support of this position, France relies on *Paul Revere Insurance Group v. United Sates*, 500 F.3d 957 (9th Cir. 2007). There, the Ninth Circuit held that because the government used California state law to create and enforce a civil judgment award for unpaid disability income, federal law did not preempt the state law on execution of the judgment lien. *Id.* at 962-63. This non-binding authority is inapposite.

Here, the government asserts a lien under federal law, the MVRA. "An order for payment of restitution becomes a lien on all property and rights to property of the defendant upon entry of judgment. . . ." *Kollintzas*, 501 F.3d at 802 (citing 18 U.S.C. § 3613(c)). The $800,000 restitution order therefore became a lien under federal law on July 22, 2002. The lien was subsequently perfected on September 24, 2002, when a notice of lien was filed. *See id.* (citing 18 U.S.C. § 3613(d); 26 U.S.C. § 6323(f)). Moreover, the

government is seeking a garnishment order under federal law, the FDCPA. It is well established that "[a]ny effort to collect a debt due to the United States presents a claim under federal law, although state law may supply the substance of that federal law." *United States v. Vitek Supply Corp.*, 151 F.3d 580, 586 (7th Cir. 1998) (citing *United States v. Kimbell Foods, Inc.*, 440 U.S. 715 (1979); *see also Kollinstzas*, 501 F.3d at 801. That the government initiated the instant supplemental proceedings by service of a citation to discover assets, which references Illinois Code of Civil Procedure § 2- 1402(b), is not tantamount to proceeding under Illinois state law enforcement procedure. Pursuant to Federal Rule of Civil Procedure 69, "[t]he procedure on execution—and in proceedings supplementary to and in aid of judgment or execution—must accord with the procedure of the state where the court is located, but a federal statute governs to the extent it applies." Fed. R. Civ. P. 69(a)(1). Because the FDCPA does not provide its own attachment and execution procedure, the Court finds that the government has not "act[ed] under the authority of the state law, but under that of the United States, which adopts such law." *Fink v. O'Neil*, 106 U.S. 272, 279 (1882) (internal quotation marks and citation omitted). In sum, France is not entitled to state law exemptions. See 18 U.S.C. § 3613(a)(2).

2. "Earnings" Exemption Under the Consumer Credit Protection Act

Next, France argues that his disability payments are exempt "earnings" under the Consumer Credit Protection Act ("CCPA"), 15 U.S.C. § 1673, as permitted under 18 U.S.C. § 3613(a)(3). Under the CCPA, the maximum allowable garnishment of disposable earnings for any workweek is twenty-five percent. 15 U.S.C. § 1673(a)(1). As an initial matter, the government argues that France has waived such an exemption by filing a Second Amended Statement of Claimed Exemptions—asserting this exemption for the first time—contemporaneously with his response in opposition to the instant motion for garnishment.

France, however, contends that exemptions under the CCPA automatically apply and therefore need not even be claimed. To support this proposition, France provides the following parenthetical quotation of non-binding authority, *United States v. Thomas*: "The exceptions under the Consumer Credit Protection Act, 15 U.S.C. § 1673, for disposable earnings, automatically apply and do not need to be claimed." No. 2:11–mc-00064 LKK KJN, 2012 WL 147876, at *8 (E.D. Cal. Jan. 18, 2012). This artfully chosen quotation is not the holding of the *Thomas* court. Rather, it is an excerpt from the "Claim for Exemption Form" the government sent to the defendant in that case, and was used to highlight the contradictory positions the government asserted in the garnishment proceedings, seeking in excess of twenty-five percent of the defendant's wages. *Id*. The court rejected the government's argument that the CPPA's protections for debtors does not apply because a federal criminal restitution order was at issue. While it is true that the

defendant in Thomas did not claim exemptions under § 3613(a)(3), the court neither addressed the issue of waiver, nor estoppel (based upon the government's Claim for Exemption Form). *Id*. at *5.

Thomas is also factually distinguishable—the assets at issue in Thomas included the defendant's biweekly net income, in addition to the amount of money she voluntarily contributed to her employee-sponsored retirement account, which are explicitly defined as "earnings" under the CCPA. "The term 'earnings' means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program." 15 U.S.C. § 1672(a). Here, in contrast, the asset at issue—the proceeds of a disability insurance policy—are not plainly "earnings." Moreover, there is no authority in the Seventh Circuit supporting France's untimely Second Amended Statement of Claimed Exemptions that such proceeds constitute exempt "earnings." In other words, whether disability payments are "earnings" within the meaning of the CCPA is an issue of first impression in the Seventh Circuit. France's assertion that the Seventh Circuit has considered this issue is absurd. France's citation to *United States v. Lee*, 659 F.3d 619 (7th Cir. 2011), is grossly misplaced. There, the court held, based on the plain language of the statute, that "periodic payments from a pension or retirement savings plan made in accordance with its terms would be made 'pursuant to' the pension or retirement plan and therefore be subject to the 25% limitation of the CCPA." *Id*. at 621 (quoting 15 U.S.C. § 1672(a)). While § 1672 defines "earnings" to include "periodic payments pursuant to a pension or retirement program," it does not mention payments pursuant to a disability insurance policy. Accordingly,

the Court rejects France's argument that the "earnings" exemptions under the CCPA automatically applies and therefore need not even be claimed.

France received the government's citation to discover assets on January 24, 2013. The citation specifically notified France of his right to declare exemptions; and, although he was represented by counsel and had filed two previous statements of claimed exemptions, he failed to assert an "earnings" exemption until he filed his response brief to the instant motion on March 17, 2014. France has therefore arguably waived his right to claim the CCPA statutory exemption. *See Guess?, Inc. v. Chang*, 912 F. Supp. 372, 379 (N.D. 111.1995).

However, in an abundance of caution, the Court reaches the merits of the issue: whether payments made pursuant to France's privately purchased disability insurance policy are "otherwise" earnings under 15 U.S.C. § 1672. In support of his exemption argument, France relies on *United States v. Ashcraft*, 732 F.3d 860 (8th Cir. 2013). In *Ashcraft*, the Eighth Circuit held that a criminal defendant's disability payments were "earnings" within the meaning the meaning of the CCPA. *Id*. at 861. Specifically, the court found that the defendant's disability payments—received through her former employer—were designed to function as wage substitutes. *Id.* at 864. The central issue was whether the disability payments were "'compensation paid or payable for personal services.'" *Id*. (quoting 15 U.S.C. § 1672(a)). The court held that they were. *Id.* The court found that the disability insurance was a direct component of the compensation provided to the defendant in return for the personal services that she had previously performed for the employer. *Id*. at 864-65. Thus, the court determined

that the disability payments constituted "other compensation," as denominated by her former employer, within the plain meaning of the CCPA. *Id*. at 865 (internal quotation marks and citation omitted).

In contrast to the defendant in Ashcraft, France was self-employed, and privately purchased the disability insurance policy at issue here. Put differently, France's disability insurance payments are not a benefit of his employment. Based on the unambiguous language of the CCPA, the Court holds that France's disability payments are not "compensation paid or payable for personal services." 15 U.S.C. § 1672(a). Because the "earnings" exemption under the CCPA does not apply here, the Court need not reach the government's argument as to judicial estoppel.

3. Child Support Exemption Under Federal Law

To the extent that Duperon asserts a child support exemption under § 3613, the government argues first that Duperon lacks standing to assert such an exemption, and second that the exemption is not applicable. Even assuming that Duperon has standing to assert France's right to a federal child support exemption, the exemption is inapplicable. A judgment for support of a minor child is property exempt from enforcement of the judgment under federal law "[i]f the taxpayer is required by judgment of a court of competent jurisdiction, entered prior to the date of levy, to contribute to the support of his minor children, so much of his salary, wages, or other income as is necessary to comply with such judgment." 26 U.S.C. § 6334(a)(8) (emphasis added), incorporated by reference into 18 U.S.C. § 3613(a)(1). Approximately one year after the government's lien attached, the California state court entered judgment, approving of a

marital settlement agreement between France and Duperon, in which child support payments—in the sum of $1,000 per month and increasing to $7,000 per month on September 1, 2005—are payable until September 1, 2019. Such payments were to be made directly from the asset at issue here and directly to Duperon. However, the disability insurance policy was already encumbered by and subject to a perfected lien (the $800,000 restitution ordered in this criminal matter). Thus, the child support exemption under federal law does not apply. Moreover, the Court notes that France no longer has a minor child; his child is now nineteen years old. Mem. of L. in Resp. & Opp'n to the Gov't's Mot. for Garnishment Order Ex. A-1, Dec. of Theresa M. Duperon-France ¶ 3.

4. Estoppel

Finally, Duperon argues that the government should be estopped from pursuing her interest in the disability insurance payments based upon the results of the California litigation. On March 11, 2005, following years of litigation in both the federal and state courts in California, the Trustee, France, Gay, and Duperon executed a settlement agreement and mutual release—subject to approval by the bankruptcy court—which purports to control over all other orders and judgments entered in connection with the distribution of all proceeds under the disability life insurance policy. As relevant here, the settlement agreement provides that Duperon shall receive $7,000 per month from September 2007 through September 2019.

According to Duperon, the United States Attorney's Office is in privy with the United States Trustee's Office; and, therefore any final judgment the Trustee obtained with respect to the disability insurance policy

should preclude the government from pursuing collection proceedings against the same asset. Duperon points to the plea agreement entered in this criminal case to support her argument, and appears to rely on the following provision contained therein: "This Plea Agreement concerns criminal liability only, and nothing herein shall limit or in any way waive or release any administrative or judicial civil claim, demand, or cause of action whatsoever of the United States or its agencies." Mem. of L. in Resp. & Opp'n to the Gov't's Mot. for Garnishment Order Ex. K. Duperon argues that a bankruptcy trustee is a United States agency. This argument is wholly without merit. "The bankruptcy trustee is the representative of the estate of the debtor, not an arm of the Government." *Cal. State Bd. of Equalization v. Sierra Summit, Inc.*, 490 U.S. 844, 849 (1989) (internal quotation marks and citation omitted). The government was not a party to the bankruptcy proceedings in this District, or any of the California litigation (the fraudulent transfer action, the divorce proceedings, and the interpleader action) regarding the disability insurance policy.

France did not list the government as a creditor in the bankruptcy proceedings—the Trustee was ill advised, and did not know of the government's priority in the asset. Moreover, France failed to notify the government of any of the litigation with respect to the disability insurance proceeds while the litigation was ongoing. In financial statement forms that France submitted to the government in the period of 2002-2005, France responded "no," or otherwise failed to answer the question: "Are you involved in any litigation in which you might receive money or something of value?" France also failed to submit a financial statement in the years 2005 and 2006. Furthermore, he underreported the amount of money

he was entitled to pursuant to the disability insurance policy and failed to report the payments that were diverted to Duperon and others over the last ten years. Indeed, France's actions demonstrate his continued effort to defeat the government's interest in the asset. The government—unaware of any of the California litigation—cannot be bound by the terms of the final California settlement agreement to which it was not a party.

France owes the government $800,000 in restitution. The government's lien was perfected on September 24, 2002, before the bankruptcy court awarded the Trustee all of France's interest in the disability insurance policy, before France and Duperon separated, before the divorce proceedings commenced, and before the final settlement agreement was reached in the California state court. Any interest Duperon has as part of the marital estate, or otherwise, is subject to and encumbered by the government's perfected lien. *See Kollintzas*, 501 F.3d at 803. Thus, Duperon fails to establish a claim to the asset superior to that of the government. *See id.*; *see also Fed. Nat'l Mortg. Ass'n v. Kuipers*, 732 N.E.2d 723, 726 (Ill. App. Ct. 2000) ("A lien that is first in time generally has priority and is entitled to prior satisfaction of the property it binds."). The government is entitled to collect the restitution owed by France; and, the entirety of the proceeds due under France's disability insurance policy is a proper source of funds to provide restitution.

III. CONCLUSION

For the foregoing reasons, the government's motion for a garnishment order as to the disability insurance policy is granted.

IT IS SO ORDERED.

[signature]

CHARLES RONALD NORGLE, Judge

United States District Court

DATE: July 8, 2014

APPENDIX C

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	)
v.	)
GARY FRANCE,	)
Defendant,	) No. 00 CR 1061-1
	) Hon. Charles R. Norgle
DISABILITY MANAGEMENT SERVICES, INC., A THIRD PARTY ADMINISTRATOR FOR AXA EQUITABLE LIFE INSURANCE COMPANY,	)
Third-Party Citation Respondent.	)

GARNISHMENT ORDER

This matter is before the Court on the motion of the United States for a garnishment order (D.E. No. 99) pursuant to section 3205(c) (7) of the Federal Debt Collection Procedures Act, 28 U.S.C. § 3205(c) (7). Judgment in the captioned matter was entered in favor of the United States and against the defendant on July 22, 2002. As of July 10, 2014, the defendant has an

outstanding balance of $789,655.96. For the reasons set out in this Court's Opinion and Order (D.E. No. 119), the motion is granted. It is therefore,

ORDERED that the Respondent, Disability Management Services, Inc., a third-party administrator for AXA Equitable Life Insurance Company, shall submit to the United States, all funds held by the Respondent since the government served Respondent with a citation to discover assets in April 2013;

It is further ORDERED that the Respondent shall thereafter submit to the United States the entirety of the monthly disability payments presently payable as proceeds under a certain AXA Equitable Life Insurance Company's policy of insurance issued to defendant Gary France. At the time the citation was served the Respondent distributed two proceeds checks per month: one check for a $7,000 to Theresa Duperon, as guardian, and second check for about $9,296 to Gary France. By its opinion and order, the Court ruled that the government's judgment lien takes priority over Duperon's, and as such the entirety of the policy proceeds are to be submitted to the United States. Garnishee shall continue to submit the entirety of the monthly proceeds, currently in the amount of approximately $16,296, until the debt to the United States is paid in full, or until garnishee no longer has custody, possession or control of property belonging to defendant, or until further order of this Court.

It is further ORDERED that, because the Clerk of the Court collects payments in criminal cases, all remittances pursuant to this Order should be submitted to: Clerk of the Court; U.S. District Court, Northern District of Illinois; 219 South Dearborn Street, 20th Floor; Chicago, Illinois 60604, and the case number, 00 CR 1061, should be written in the lower

left corner of the check. The Clerk shall withhold disbursement to the victims until further order of this Court.

[signature]

CHARLES RONALD NORGLE, Judge

United States District Court

Date: July 18, 2014