No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

SHAUN ALLAHYARI,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. (a) Whether the United States of America, as a junior lienholder on a tax debtor's property, has standing to sue to enforce the tax debtor's contract defenses under a separate contract with a third party senior lienholder?

(b) Whether 26 U.S.C. § 7403 and *United States v. Rodgers*, 461 U.S. 677 (1983), must be abrogated or distinguished consistent with the party standing requirements of Article III of the United States Constitution?

2. (a) Whether an appellate court is obligated to resolve a question of state law presented by the factual record concerning whether past consideration is sufficient to support an agreement giving rise to the security interest or may properly defer those questions to the trial court for resolution?

(b) Whether an appellate court is obligated to resolve a question of state law presented by the factual record concerning whether a debtor's past agreement to allow the recording of a security interest should be considered in analyzing whether the recording of the security interest was a fraudulent transfer?

ALL PARTIES TO THE PROCEEDING

Petitioner Shaun Allahyari was the defendant, appellant, and cross-appellee below. Shaun Allahyari's son Komron Allahyari was the other defendant below and also a cross-appellee. Respondent United States of America was plaintiff, appellee, and cross-appellant below.

DIRECTLY RELATED PROCEEDINGS

1. *United States v. Allahyari*, 980 F.3d 684 (9th Cir. 2020).

2. *United States v. Allahyari*, No. 2:17-cv-00668-TSZ, 2018 WL 4357487 (W.D. Wash. Sept. 13, 2018), *judgment entered,* No. 2:17-CV-00668-TSZ, 2018 WL 5939232 (W.D. Wash. Oct. 30, 2018).

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PETITION FOR WRIT OF CERTIORARI

Shaun Allahyari respectfully petitions for a writ of certiorari to review the decision of the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The Ninth Circuit's opinion is published at *United States v. Allahyari*, 980 F.3d 684 (9th Cir. 2020), and included in Petitioner's Appendix ("Pet. App.") at A. The order denying Shaun Allahyari's Petition for Panel Rehearing or Rehearing *En Banc* is included in Pet. App. at C. The order granting Shaun Allahyari's Motion to Stay Mandate Pending Petition for Writ of Certiorari in the United States Supreme Court is included in Pet. App. at D. The findings of fact and conclusions of law of the district court are available at *United States v. Allahyari*, No. 2:17-cv-00668-TSZ, 2018 WL 4357487 (W.D. Wash. Sept. 13, 2018), *judgment entered,* No. 2:17-CV-00668-TSZ, 2018 WL 5939232 (W.D. Wash. Oct. 30, 2018), and, with the judgment, are included in Pet. App. at B.

JURISDICTION

Following a two-day bench trial, the district court entered findings of fact and conclusions of law on September 13, 2018. Defendant Shaun Allahyari filed a timely appeal to the United States Court of Appeals for the Ninth Circuit, which reversed on November 13, 2020. Shaun Allahyari filed a timely petition for panel rehearing or rehearing *en banc*. On January 20, 2021, the court denied the petition. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS AT ISSUE

26 U.S.C. § 6321:

> If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, additional amount, addition to tax, or assessable penalty, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person.

26 U.S.C. § 6323(a):

> The lien imposed by section 6321 shall not be valid as against any purchaser, holder of a security interest, mechanic's lienor, or judgment lien creditor until notice thereof which meets the requirements of subsection (f) has been filed by the Secretary.

26 U.S.C. § 6323(h)(1):

> The term "security interest" means any interest in property acquired by contract for the purpose of securing payment or performance of an obligation or indemnifying against loss or liability. A security interest exists at any time (A) if, at such time, the property is in existence and the interest has become protected under local law against a subsequent

> judgment lien arising out of an unsecured obligation, and (B) to the extent that, at such time, the holder has parted with money or money's worth.

26 U.S.C. § 7403(a)-(b):

> (a) Filing
>
> In any case where there has been a refusal or neglect to pay any tax, or to discharge any liability in respect thereof, whether or not levy has been made, the Attorney General or his delegate, at the request of the Secretary, may direct a civil action to be filed in a district court of the United States to enforce the lien of the United States under this title with respect to such tax or liability or to subject any property, of whatever nature, of the delinquent, or in which he has any right, title, or interest, to the payment of such tax or liability. For purposes of the preceding sentence, any acceleration of payment under section 6166(g) shall be treated as a neglect to pay tax.
>
> (b) Parties
>
> All persons having liens upon or claiming any interest in the property involved in such action shall be made parties thereto.

INTRODUCTION

1. It is settled law that Article III standing requires more than an "alleged injury sufficient to meet the 'case or controversy' requirement." *Warth v. Seldin*, 422 U.S. 490, 499 (1975). It is fundamental that a party may only "assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties." *Id.*; *see Valley Forge Christian Coll. v. Americans United for Separation of Church & State, Inc.*, 454 U.S. 464, 474 (1982).

Under this established authority, a third party to a contract does not gain standing merely because it seeks an "incidental" or "indirect" benefit from the contract or enforcement of certain contractual rights. *See, e.g.*, *Bochese v. Town of Ponce Inlet*, 405 F.3d 964, 984 (11th Cir. 2005); *Castle v. United States*, 301 F.3d 1328, 1337 (Fed. Cir. 2002); *Jones v. Niagara Frontier Transp. Auth.*, 836 F.2d 731, 736 (2d Cir. 1987). Instead, only the parties, or intended third party beneficiaries, may sue to enforce a contact. *See id.*

The Ninth Circuit disregarded these principles, holding that the United States may raise the contract defenses of a tax debtor against a third party creditor (the Petitioner here) under a written instrument not involving the federal government in any way. This conclusion was erroneous. The Government does not possess any authority to assert such claims under federal law, 26 U.S.C. § 7403(a), and, in any event, federal law cannot create this authority in contravention of the United States Constitution. *Bank Markazi v. Peterson*, 136 S. Ct. 1310, 1322 (2016) (citing *Marbury v. Madison,* 1 Cranch 137, 177

(1803)). The Court should grant the Petition because the lower court's opinion (1) conflicts with decisions of this Court and other circuit courts and (2) resolves an important issue of federal standing that should be addressed by this Court. Sup. Ct. R. 10(a), (c).

2. An appellate court is obligated to resolve all legal issues implicated by the factual record presented, including questions of state law. *Salve Regina College v. Russell*, 499 U.S. 225, 230-31 (1991). "[A] decision to give less than full independent *de novo* review to the state law determinations of the district courts would be an abdication of our appellate responsibility." *Matter of McLinn*, 739 F.2d 1395, 1398 (9th Cir. 1984) (en banc); *see, e.g.*, *Elliott v. Liberty Mut. Ins. Co.*, 983 F.2d 1055 (4th Cir. 1993); *Texas Com. Bank-Fort Worth, N.A. v. United States*, 896 F.2d 152, 155 (5th Cir. 1990).

This appeal required the Ninth Circuit to resolve "whether past consideration is sufficient to support an agreement giving rise to the security interest under Washington law." Pet. App. A-15. Yet, the lower court did not do so. Instead, it improperly remanded the issue for resolution by the trial court. *Id.* This exposes the litigants—and, in particular, the individual Petitioner litigating against the Government—to the prospective inefficiency of an additional, unnecessary appeal.

Similarly, the appellate record called for the Ninth Circuit to consider whether, under Washington law, a debtor's preexisting agreement allowing a senior creditor to record a security interest against a property is relevant in resolving whether the debtor engaged in a fraudulent transfer when the security

interest was later in fact recorded after other junior creditors existed. Here again, the panel failed to address this matter of state law that had been argued by the parties and presented by the factual record.

This Court should grant the Petition and review the Ninth Circuit's decision not to resolve the above-noted legal issues because its failure to address these issues (1) departs from the accepted and usual course of judicial proceedings and (2) conflicts with the decisions of this Court and various circuit courts. Sup. Ct. R. 10(a), (c).

STATEMENT OF THE CASE

A. Shaun Allahyari Lends His Son Komron Allahyari Money to Support His Son's Law Practice and Investment in the Property

Komron Allahyari obtained his law degree from the University of Washington in 1990, and thereafter practiced law, eventually opening his own law firm. *See* Pet. App. B-4 ¶¶ 12-13. Komron also engaged in real estate investment at the encouragement of his father, Petitioner Shaun Allahyari. Pet. App. B-2 ¶¶ 2-3.[1]

On April 22, 1991, Komron's parents assisted him in acquiring his first real estate investment, a single family home located at 3453 77th Place S.E., Mercer Island, Washington 98040 (the "Property"). Pet. App. B-2-B-3 ¶ 4. Shaun paid $40,000 in connection with the purchase of the Property, which

[1] Because they share the same last name, Shaun Allahyari and Komron Allahyari are at times referenced herein by their first names.

sum, by mutual agreement and understanding, was a loan to Komron. *Id.* ¶¶ 4-7. The trial court rejected the Government's suggestion that this payment was a gift, finding "both Shaun and Komron understood and agreed this was a loan and not a gift." Pet. App. B-3 ¶ 7. Indeed, on March 29, 1991, Komron and Shaun executed a promissory note to memorialize Shaun's loan to Komron in purchasing the Property (the "1991 Promissory Note"). *Id.* ¶ 9; Pet. App. E-1.

In the years that followed, Shaun regularly requested that Komron repay the debt relating to the Property. Pet. App. B-4 ¶ 15. After Komron made a series of partial payments, Komron's parents agreed to take their names off title for the Property and quitclaimed it to Komron. Pet. App. B-5 ¶ 20. As a result, since September 10, 1999, title to the Property has remained in Komron's name. *Id.*

At the same time, Shaun issued his son numerous additional loans, primarily to support payroll for Komron's legal practice in between large contingent fee recoveries. Pet. App. B-15 ¶¶ 6-7; *see* Pet. App. B-6 ¶ 25. The trial court correctly found that these payments too were bona fide loans, for which Shaun expected repayment. *Id*. Indeed, Shaun repeatedly demanded repayment on these loans and received significant repayments over time. *Id.*

In February 2000, as the loans and repayments continued, Shaun Allahyari requested commercially reasonable protection—i.e., the irrevocable right to secure repayment through Komron's principal asset, the Property. *See* Pet. App. B-6 ¶ 24. Komron assented and executed an addendum to their earlier debt document (the "2000 Addendum"). Pet. App. E-2.

The 2000 Addendum provided in part: "[Komron] understands [Shaun] has a security interest in the [Property] and [Shaun] may at any time file liens or other security again[st] the [Property]." *Id.*

B. Komron Allahyari Hides Financial Losses and Tax Liabilities from His Father Shaun Allahyari and Obtains a Home Equity Loan on the Property

Unbeknownst to Shaun until 2005, Komron was not a trustworthy debtor. Pet. App. B-5-B-6 ¶ 23; Pet. App. B-7 ¶ 33; Pet. App. B-12 n.2. Komron had begun speculating in risky stock options and internet stocks. Pet. App. B-5-B-6 ¶ 23. Komron hid this activity, and the significant losses he incurred as a result, from his father. *Id.*; *see* Pet. App. B-7 ¶ 33; Pet. App. B-12 n.2. As the trial court found, Komron "lied to his own father regarding the extent of his financial troubles." *Id.*

Beginning in late 2000, Komron also failed to file personal federal tax returns. Pet. App. B-7 ¶ 33. In fact, Komron did not submit his tax returns for the years 1999-2002 at all until April 2005. *See id.* The submitted forms reflected overdue taxes owing, but Komron did not remit the required payments. *See id.* ¶ 34. Komron kept this a secret from his father as well. As the district court found, "Komron never told Shaun that he had failed to file tax returns and that he had incurred significant tax liability in those years." *See id.* ¶ 33.

In 2003, again without telling Shaun, Komron took out a home equity loan on the Property from the Boeing Employees' Credit Union ("BECU") to keep

himself financially afloat. Pet. App. B-6 ¶ 26. This loan was secured by a deed of trust recorded that same year (the "BECU Deed of Trust"). *Id.*

Eventually, in spring 2005, the United States began requesting that Komron make payments on the overdue taxes. Shortly thereafter, Komron told Shaun that —as the trial court found—"he had outstanding tax liabilities" to the IRS. Pet. App. B-11 ¶ 39. Neither Komron nor Shaun recalled Komron disclosing any specifics, including whether the IRS had issued tax assessments against him. Based on the trial testimony, the trial court found Shaun knew only that Komron was "delinquent on his taxes and that the IRS wanted payment." *Id.* ¶ 43.

C. After Learning of His Son's Misconduct, Shaun Allahyari Records a Deed of Trust Against the Property to Protect His Interest in Being Repaid on His Loans

Following Komron's disclosure of his financial troubles, in early summer 2005, Shaun consulted with an attorney regarding his options to secure repayment. Pet. App. B-11 ¶ 43. As a creditor, he wanted to "make sure [he was] going to be ahead of the IRS" in collecting from Komron. *Id*. Under the 1991 Promissory Note and 2000 Addendum, Shaun had the right to demand immediate payment. Pet. App. E. He also had the right under the 2000 Addendum to record a deed of trust against the Property. Ultimately, Shaun decided to pursue a security interest and forebear an immediate payment demand. Pet. App. B-11 ¶ 43. Shaun calculated the sum owing to him based on contemporaneous running notations of the loans and insisted that Komron agree

to a deed of trust under the 2000 Addendum in that amount.

In this way, on July 12, 2005, Shaun, Komron, and Komron's then-spouse signed a deed of trust securing Shaun's loans to Komron totaling $471,322 plus 12 percent interest against the Property (the "2005 Deed of Trust"). Pet. App. B-11 ¶ 41.

D. Shaun Allahyari's Deed of Trust Securing His Personal Loans Is Senior to the Internal Revenue Service Tax Liens

It is undisputed that Shaun recorded the 2005 Deed of Trust before the United States recorded its tax liens. *See* Pet. App. B-11-B-12 ¶¶ 41, 46. The IRS issued its first tax assessment against Komron on May 23, 2005. *See* Pet. App. B-7-B-10 ¶ 35; *see also* Pet. App. B-7 ¶ 38. However, it was not until October 4, 2005, that the United States recorded its first tax assessments covering 1991-2002 and 2004 in King County, Washington. Pet. App. B-12 ¶ 46. This was almost three months after Shaun recorded the 2005 Deed of Trust. Pet. App. B-11 ¶ 41. The Government recorded additional tax assessments later. *See* Pet. App. B-12 ¶ 46; Pet. App. B-7-B-10 ¶ 35.

E. Shaun Allahyari Purchases the Home Equity Loan on the Property to Protect His Interest Therein

In 2010, Shaun learned that Komron had also fallen delinquent on his payments on the BECU loan. Pet. App. B-12 ¶ 47. Shaun was concerned that BECU would foreclose on the Property, an outcome Shaun wished to avoid in light of his 2005 Deed of Trust and

the Property's appreciating market value. *See* Pet. App. B-13 ¶ 48. Accordingly, in the summer of that year, Shaun purchased the loan and took an assignment of the BECU Deed of Trust. *See id.*

F. The Government Sues Komron Allahyari to Foreclose on Its Tax Liens and Also Sues Shaun Allahyari to Invalidate His Liens on the Property

On April 28, 2017, the Government sued Komron Allahyari in the United States District Court for the Western District of Washington to foreclose on its tax liens. Pet. App. B-1.[2] At the same time, the Government also sued Shaun Allahyari, alleging that Shaun's BECU Deed of Trust (which he had purchased from BECU) and 2005 Deed of Trust (which he obtained from Komron based on the personal loans) were fraudulent, invalid, and should be subordinated to the Government's admittedly junior tax liens. Pet. App. B-1-B-2.

On July 2, 2018, Komron Allahyari stipulated to entry of judgment against him on the tax assessments. *Id.*

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[2] The district court had subject matter jurisdiction under 28 U.S.C. §§ 1340, 1345, and 26 U.S.C. §§ 7402, 7403. However, as explained further below, the court lacked jurisdiction to consider certain contract claims advanced by the Government relating to the BECU loan because those claims belonged only to Komron and the Government lacked Article III standing to advance them.

G. The District Court Finds that the Home Equity Loan Deed of Trust Is Senior to the Government's Tax Liens, but Invalidates the Deed of Trust Based on Shaun Allahyari's Personal Loans

On July 30, 2018, the trial court granted partial summary judgment in Shaun Allahyari's favor, concluding that the BECU Deed of Trust, which dated from 2003, was entitled to first priority on the Property, ahead of the United States' tax liens. *See* Pet. App. B-1-B-2. In doing so, the trial court rejected the Government's arguments that Shaun's purchase of the BECU Deed of Trust was fraudulent or otherwise improper. The trial court reserved the remaining issues for trial, including: (1) whether the 2005 Deed of Trust was a valid lien on the property, (2) whether the 2005 Deed of Trust was entitled to priority status relative to the Government's tax liens, and (3) whether interest on the BECU loan was entitled to priority over the Government's liens.

After a two-day bench trial, the district court resolved the remaining issues. First, and crucially, the court rejected the Government's main allegation that the transfers from Shaun to Komron were gifts, never intended to be repaid: "The Court finds that the transfers from Shaun to Komron beginning in 1991 through 2005 were bona fide loans, not gifts." Pet. App. B-15 ¶ 6. The trial court further explained:

> The [1991 Promissory Note] and [2000 Addendum] underlying the 2005 Deed of Trust do not contain illusory promises to pay. Repayment was not solely within Komron's discretion, and

> the contingencies requiring repayment occurred. Shaun regularly and repeatedly requested repayment.
>
> Komron repaid significant sums to Shaun between 1991 and 2005 providing additional evidence that the transfers were bona fide loans.

Id. ¶¶ 6-7 (internal citations omitted).

Second, the district court found that Shaun was entitled to recover all outstanding principal and accrued interest on the BECU loan. Pet. App. B-21 ¶ 25. The Government had argued that it could step into Komron's shoes and enforce the statute of limitations against Shaun on uncollected installment payments and interest on the BECU loan. At a colloquy during closing argument, the trial court requested authority from the Government that it would have standing to enforce Komron's contract defenses, but the Government failed to provide any such authority. Accordingly, the trial court concluded the following regarding the BECU Deed of Trust:

> The Court finds that the actual substance of the [BECU Deed of Trust] assignment indicates a bona fide debt, which Shaun and Komron intended to be repaid. Because Shaun never provided Komron with written notice of any change in the applicable interest rate, he has not proven that he is entitled to a rate any different than the 4.125% rate in effect at the time of assignment.

Id. ¶ 26.

On the other hand, the district court incorrectly found that the 2005 Deed of Trust was not a "security interest" entitled to recognition under 26 U.S.C. § 6323(a). The court explained:

> A security interest exists only where (1) the interest was "acquired by contract for the purpose of securing payment or performance of an obligation or indemnifying against loss or liability"; (2) the interest is "protected under local law against a subsequent judgment lien arising out of an unsecured obligation"; and (3) the interest holder "parted with money or money's worth." 26 U.S.C. § 6323(h)(1); *see also* Treas. Reg. § 301.6323(h)-1(a)(1)(i)-(ii).

Pet. App. B-17 ¶ 14. The district court reasoned that, first, "the 2005 Deed of Trust is not entitled to priority under local law with respect to the tax liens . . . because Shaun had actual and/or constructive knowledge of Komron's tax liabilities prior to recording the 2005 Deed of Trust." *Id.* ¶ 16. Second, the court concluded "Shaun did not part with money or money's worth in connection with the granting or recording of the 2005 Deed of Trust." Pet. App. B-17-B-18 ¶ 17. As the Ninth Circuit would later recognize, each of these conclusions was erroneous.

Separately, the district court concluded that Komron fraudulently encumbered the Property with the 2005 Deed of Trust under Washington's Uniform Fraudulent Transfers Act ("UFTA"). Pet. App. B-18 ¶ 19. The court explained that it found "the majority

of factors under [Wash. Rev. Code] § 19.40.041(a)(1) support the conclusion that Komron acted to hinder, delay, and defraud the United States." Pet. App. B-18-B-20 ¶ 20.[3] The district court rejected Shaun's argument that the 2005 Deed of Trust was not, and could not be, a fraudulent transfer because the 2005 Deed of Trust was executed at Shaun's insistence based on (1) a pre-existing debt and (2) a pre-existing agreement in the 2000 Addendum allowing Shaun to securitize that debt. *See* Pet. App. B-20 ¶ 22; Pet. App. E-2. Thus, the trial court ordered that the 2005 Deed of Trust "is voidable and is subject to being set aside" as a fraudulent transfer. Pet. App. B-20 ¶ 23. As the Ninth Circuit would later recognize, the district court erred in this UFTA analysis too.

In sum, the district court concluded: "The United States has established that it has valid federal tax liens against the Property, and therefore the United States is entitled to judgment and to foreclose those liens, sell the Property, and apply the proceeds toward its tax liens." Pet. App. B-23 ¶ 35; *see* Pet. App. B-25-B-27.

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[3] UFTA was amended in 2017 and as part of that amendment statutory subsections were re-labelled. *See* Uniform Voidable Transactions Act, 2017 Wash. Legis. Serv. Ch. 57 (S.B. 5085) (WEST). For example, under the current statute, the section that was formerly Wash. Rev. Code § 19.40.041(a)(1) is now Wash. Rev. Code § 19.40.041(1)(a). However, the revised statute is not relevant here since it applies only to transfers or obligations incurred on or after July 23, 2017. *See* Wash. Rev. Code § 19.40.905.

H. The Ninth Circuit Court of Appeals Reverses the District Court's Finding that the 2005 Deed of Trust Was Invalid but Allows the Government to Enforce Komron Allahyari's Contract Defenses to the BECU Loan

Shaun timely filed his notice of appeal from the trial court's Judgment, Order of Foreclosure, and Findings of Fact and Conclusions of Law entered by the district court. The Government cross-appealed.

In an Opinion issued November 13, 2020, the court of appeals substantially reversed three aspects of the trial court's findings of fact and conclusions of law and remanded to the trial court for further proceedings. Pet. App. A.

First, the court of appeals reversed the trial court's findings on lien priority with respect to the 2005 Deed of Trust. In contrast with the flawed approach of the district court, the court of appeals correctly characterized the 26 U.S.C. § 6323 analysis.

Initially, a court must consider whether "the interest has become protected under local law against a subsequent judgment lien arising out of an unsecured obligation[.]" Pet. App. A-10. The court of appeals correctly reversed and remanded the trial court's resolution of this first prong, concluding that: "By recording the 2005 Deed of Trust on July 26, 2005, Shaun perfected his security interest under Washington state law and protected it from that day forward." Pet. App. A-14.

Then, a court is to consider whether "at such time, the holder has parted with money or money's

worth." Pet. App. A-14-A-15. On this point, the court of appeals accurately determined that federal law requires a court to make a "determination of whether state law allows past consideration to give rise to a security interest" (Pet. App. A-15) and properly held that the trial court erred in (1) relying on inapposite authority from the Fourth Circuit for the "assump[tion that] contemporaneous exchange was necessary" and (2) failing to address the question under Washington law. *Id.*

Each of the foregoing conclusions was correct, as far as it went. But the court of appeals fell short of performing its function as an appellate tribunal when it ended its analysis of the second prong without resolving the final legal issue: "whether past consideration is sufficient to support an agreement giving rise to the security interest under Washington law." *Id.* Instead, the court of appeals disregarded the issue and remanded to the district court to analyze Washington law. *Id.* As explained further below, the court of appeals erred in remanding, rather than resolving, this legal issue.

Second, the court of appeals correctly found that the trial court erred when it applied a "preponderance of the evidence standard" in finding that the 2005 Deed of Trust was a fraudulent transfer in violation of UFTA. Pet. App. A-17-A-18. The court reasoned that "Washington has long required clear and satisfactory proof to find a fraudulent transfer under the 'hinder, delay, or defraud' prong of section 19.40.041." Pet. App. A-17-A-18. Accordingly, the court "remand[ed] for the district court to reweigh the evidence using the clear-and-satisfactory-proof standard of proof." Pet. App. A-18.

In doing so, the court failed to address Shaun's legal argument that the 2000 Addendum, a pre-existing agreement between Komron and Shaun allowing Shaun to record a lien against the Property at any time, weighed against any arguable finding of a volitional and fraudulent transfer by Komron in 2005. *See* Pet. App. E-2. Here again, the court of appeals erred by failing to address a ripe legal issue.

Third, agreeing with the Government's cross-appeal argument, the court of appeals also reversed a portion of the trial court's order finding that the BECU Deed of Trust (held by Shaun) was entitled to full seniority over the tax liens. Pet. App. A-18-A-20. Without citation to relevant authority, the court of appeals held that the Government, when acting as a junior lienholder and pursuing litigation under 26 U.S.C. §7403(a), is entitled to enforce the private contractual rights (specifically a statute of limitations defense) held by the tax debtor (Komron) against the senior BECU Deed of Trust lienholder (Shaun). *Id.* As explained below, this holding is inconsistent with the U.S. Constitution and misapplies and conflicts with authority of this Court and various circuit courts.

I. The Ninth Circuit Court Denies Rehearing and Stays the Mandate Pending a Petition for Writ of Certiorari to this Court

On December 28, 2020, Shaun filed a Petition for Panel Rehearing and Rehearing *En Banc* with the court of appeals, arguing, among other things, that the court of appeals erred in (1) failing to resolve the pure legal issue of "whether past consideration is sufficient to support an agreement giving rise to the

security interest under Washington law," (2) failing to resolve the legal question of whether the preexisting 2000 Addendum obviated any argument that there was a fraudulent transfer by Komron in 2005 after the IRS began seeking repayments from Komron, and (3) holding that the United States was entitled to assert contract defenses held by a debtor (Komron) against a separate creditor (Shaun), contrary to authority of this Court. By an order dated January 20, 2021, the court denied Shaun's petition. Pet. App. C.

On February 5, 2021, Shaun filed a Motion to Stay Mandate Pending Petition for Writ of Certiorari in the United States Supreme Court. By an order dated February 11, 2021, the court granted Shaun's motion and stayed the mandate through June 21, 2021. Pet. App. D.

This Petition for Writ of Certiorari has been timely filed under this Court's March 18, 2020, Order List: 589 U.S.

REASONS TO GRANT THE PETITION FOR CERTIORARI

A. The Ninth Circuit's Holding that the Government, as a Creditor, Has Standing to Assert the Contract Defenses of a Debtor Against a Third Party Creditor Is Erroneous, Conflicts with Authority this Court and Other Circuits, and Creates Important Federal Law that Should Be Settled by this Court

The Government has argued that Shaun should be time-barred from collecting installment payments on the BECU loan that came due more than

six years prior to this lawsuit was initiated under Washington's statute of limitations. *See* Pet. App. A-18-A-19. Shaun has argued that the Government lacks standing to assert a statute of limitations argument on Komron's behalf since it is not a party to the BECU loan (or related note). *See* Pet. App. A-20. Following trial and closing argument, the district court agreed with Shaun and resolved that he could enforce the outstanding principal and accrued interest on the BECU loan against the Property. *See* Pet. App. B-21 ¶ 26.[4]

The court of appeals reversed this aspect of the district court's order. Pet. App. A-18-A-20. Without citation to relevant authority, the court of appeals held that the Government, as a junior lienholder, in fact has standing to enforce a private contractual right held by the Komron against the senior BECU Deed of Trust lienholder, Shaun. *Id.* This holding is clearly erroneous and would work a substantial injustice, illegally impairing Shaun's contract rights.

As this Court has recognized, federal courts must enforce "a set of prudential principles that bear on the question of standing." *Valley Forge Christian Coll. v. Americans United for Separation of Church &*

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[4] After the Government's trial counsel failed to provide any authority showing that the Government had standing to assert claims on behalf of Komron in closing arguments, the trial court issued findings and conclusions that refrained from ruling in the Government's favor on the issue. *See* Pet. App. B-21 ¶ 26. On this record, it is clear the trial court rejected the Government's theory. *See United Nurses Associations of California v. Nat'l Labor Relations Bd.*, 871 F.3d 767, 784 (9th Cir. 2017) (absence of factual findings or conclusion presumed against party bearing burden of proof on issue).

State, Inc., 454 U.S. 464, 474 (1982). "[E]ven when the plaintiff has alleged injury sufficient to meet the 'case or controversy' requirement, this Court has held that the plaintiff generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties." *Warth v. Seldin*, 422 U.S. 490, 499 (1975); *accord. Valley Forge Christian College*, 454 U.S. at 474.

As several circuit courts have noted, when applying this prudential analysis, a third party to a contract does not gain standing because it seeks an "incidental" or "indirect" benefit from the contract or from enforcement of certain contractual rights. *See, e.g.*, *Bochese v. Town of Ponce Inlet*, 405 F.3d 964, 984 (11th Cir. 2005) ("Because Mr. Bochese was neither a party to nor an intended beneficiary of the Fourth Contract Amendment, he has not himself suffered a legally cognizable injury as a result of its rescission; thus, even though he might benefit collaterally from the reinstatement of that agreement, he lacks standing to bring this challenge."); *Castle v. United States*, 301 F.3d 1328, 1337 (Fed. Cir. 2002) ("Standing is a threshold jurisdictional issue, which implicates Article III of the Constitution and therefore may be decided without addressing the merits of a determination. . . . We conclude that only Castle and Harlan have standing to sue for breach of the alleged contract because only Castle and Harlan signed any document constituting the alleged contract."); *Jones v. Niagara Frontier Transp. Auth. (NFTA)*, 836 F.2d 731, 736 (2d Cir. 1987) (a non-party to a contract does not have standing to challenge enforcement of the contract even if the non-party feels "aggrieved" or "may have

faced the risk of financial loss as a result"). Here, the Government cannot credibly contend that it is an intended third party beneficiary of the BECU loan and note. Indeed, it has never even tried to do so. Thus, it lacks standing to assert contract defenses belonging to Komron under the BECU loan.

The same result would hold if this matter were analyzed as a matter of Washington substantive contract law. In Washington, a non-party to a contract cannot state a claim unless it is an intended third party beneficiary of the contract. *See West v. Thurston Cty.*, 183 P.3d 346, 349 (Wash. Ct. App. 2008); *Warner v. Design & Build Homes, Inc.*, 114 P.3d 664, 670 (Wash. Ct. App. 2005); *Lobak Partitions, Inc. v. Atlas Constr. Co.*, 749 P.2d 716, 718 (Wash. Ct. App. 1988) ("Under ordinary circumstances, a stranger to a contract may not sue. A third party may enforce a contract to which he is not in privity only if the contracting parties intended to secure to him personally the benefits of the provisions of the contract.").

GMAC Mortgage, LLC v. City of Spokane, No. 30749–2–III, 2013 WL 3148224 (Wash. Ct. App. 2013) is an instructive case applying Washington contract law. In that case, a debtor waived the statute of limitations to allow a senior lienholder to foreclose on a deed of trust—an action that would have been time-barred otherwise. A junior lienholder challenged the debtor's waiver in an action contesting the foreclosure. The Washington court held that the junior lienholder lacked standing. *Id.* at *4. In rejecting a declaratory judgment claim on the issue, the court noted that nothing in the law "grants a party with no standing in a contract issue the right to

interject itself into the contractual dealings between third parties and assert substantive rights under the contract." *Id.* at *6. The same is true here.

In short, the Government has no power to supersede or contradict the actions or agreements of a debtor/mortgagee with respect to the satisfaction of a bona fide mortgage debt. Indeed, its attempt to reach into the private dealings of a bona fide lender and debtor here (Pet. App. B-21 ¶ 26) appears to be wholly without legal precedent.

Citing *United States v. Rodgers*, 461 U.S. 677 (1983), the Government has argued that the foregoing analysis does not apply to the Government in its role as a tax collector because under 26 U.S.C. § 7403, once tax liens attach, the United States "steps into the taxpayer's shoes." The court of appeals agreed with the Government's position. *See* Pet. App. A-18-A-20 & n.10. Yet, *Rodgers* does not justify the lower court's conclusion. *Rodgers* provides only that "[t]he Government's lien under § 6321 cannot extend beyond the property interests held by the delinquent taxpayer." *Rodgers*, 461 U.S. at 690–91 (emphasis added). *Rodgers* does not create any entitlement or authority for the Government to step in and wield a taxpayer's legitimate contracts in a manner exclusively beneficial to the Government and injurious to the legitimate contract rights of an innocent third party. *See id.*

Indeed, the relevant federal tax statute, 26 U.S.C. §7403, cannot create such authority in direct contravention of the Constitution of the United States. "Article III of the Constitution establishes an independent Judiciary, a Third Branch of

Government with the 'province and duty . . . to say what the law is' in particular cases and controversies." *Bank Markazi v. Peterson*, 136 S. Ct. 1310, 1322 (2016) (quoting *Marbury v. Madison,* 5 U.S. (1 Cranch) 137, 177 (1803)). "Necessarily, that endowment of authority blocks Congress from 'requir[ing] federal courts to exercise the judicial power in a manner that Article III forbids.'" *Bank Markazi*, 136 S. Ct. at 1322 (quoting *Plaut v. Spendthrift Farm, Inc.,* 514 U.S. 211, 218 (1995)). To the extent 26 U.S.C. §7403 or *Rodgers*, 461 U.S. 677, are inconsistent with well-established principles of Article III standing, that authority must fall. *Bank Markazi*, 136 S. Ct. at 1322.

The court of appeals cited *United States v. National Bank of Commerce*, 472 U.S. 713 (1985), for the proposition that in seeking recovery, the United States affirmatively "acquires whatever rights the taxpayer himself possesses." Pet. App. A-19-A-20. Yet, *National Bank of Commerce* did not address 26 U.S.C. §7403. Instead it concerned only the narrow question of whether an administrative levy under 26 U.S.C. § 6331 could reach money held by a tax debtor in a bank account. *Nat'l Bank of Com.*, 472 U.S. at 724-25. This Court reached the "[c]ommon sense" conclusion that "a delinquent taxpayer's unrestricted right to withdraw constitutes 'property' or 'rights to property' subject to provisional IRS levy." *Id.* Importantly, the Court expressly rejected reaching any broader or different conclusion:

> We stress the narrow nature of our holding. By finding that the right to withdraw funds from a joint bank account is a right to property subject to

> administrative levy under § 6331, we express no opinion concerning the federal characterization of other kinds of state-law created forms of joint ownership. This case concerns the right to levy only upon joint bank accounts.

Nat'l Bank of Com., 472 U.S. at 726 n.10.

The court of appeals erred in expanding the holding in *National Bank of Commerce* in a manner inconsistent with federal standing jurisprudence and Washington substantive contract law. Nothing in *National Bank of Commerce* dictates that the Government has standing to take over a tax debtor's unrelated written contracts and wield them in a manner prejudicial to an unrelated, innocent third party. In this regard, black letter standing law (*Warth*, 422 U.S. 499) and "common sense" legal principles (*GMAC Mortgage, LLC*, 2013 WL 3148224) dictate that the court of appeals reached the incorrect result.

Perhaps recognizing the position it has advocated is entirely novel, the Government has invoked public policy considerations, including the argument that it should be allowed to assert a taxpayer's contractual rights to avoid a "collusive grant of a security interest in real property." This is a false risk. The necessary tools to avoid collusive transfers are already at the Government's disposal. Indeed, the Government wielded Washington's fraudulent transfer statute in this litigation. *See* Pet. App. A-16-A-18.

Since the lower court's legal conclusion is "in conflict with the decision[s]" of the appellate courts

and this Court (Sup. Ct. R. 10(a), (c)) and purports to resolve and an important question of federal court standing that should be addressed by this Court (*id.* 10(c)), the Court should grant this Petition.

B. The Ninth Circuit's Failure to Resolve Each Legal Question Departs from the Accepted and Usual Course of Judicial Proceedings and Conflicts with Authority from this Court and the Circuit Courts

As explained above, the Ninth Circuit's analysis of lien priority under federal tax law, 26 U.S.C. § 6323, was correct as far as it went. Yet, the court fell short of performing its function as an appellate court when it ended its analysis without resolving a significant legal issue: "whether past consideration is sufficient to support an agreement giving rise to the security interest under Washington law." Pet. App. A-15. On this point, the court remanded to the trial court to analyze Washington law in the first instance. *Id.* This was erroneous.

Similarly, the Ninth Circuit review of the trial court's UFTA analysis was incomplete. The Ninth Circuit appropriately found that the trial court applied the incorrect legal standard (Pet. App. A-16-A-18) but it failed to address whether, under Washington law, a pre-existing agreement (the 2000 Addendum) that committed a tax debtor (Komron) to allow a third party creditor (Shaun) to record a lien obviates any argument that the tax debtor later engaged in a fraudulent transfer when he assented to the recording of the lien after the Government began pursuing the debtor for unpaid tax liabilities. Again,

this a question of Washington law, and failing to address it was erroneous.

Under black letter law, an appellate court is charged with addressing and resolving legal issues presented by the record, whether under state law or otherwise. *See Salve Regina Coll. v. Russell*, 499 U.S. 225, 230-31, 111 S. Ct. 1217, 1220-21, 113 L. Ed. 2d 190 (1991). In *Salve Regina College*, this Court considered whether it was permissible for a court of appeals to defer an issue of state law to a resolution by the district court. *Id.* at 230. This Court held that such deference was improper and that an appellate court is vested with the power and obligation to resolve all legal issues presented:

> We conclude that a court of appeals should review *de novo* a district court's determination of state law. As a general matter, of course, the courts of appeals are vested with plenary appellate authority over final decisions of district courts. The obligation of responsible appellate jurisdiction implies the requisite authority to review independently a lower court's determinations.

Id. at 231 (citing 28 U.S.C. § 1291). In reaching this conclusion, the Court noted that "[i]ndependent appellate review of legal issues best serves the dual goals of doctrinal coherence and economy of judicial administration" and that appellate courts "are structurally suited to the collaborative juridical process that promotes decisional accuracy." *Id.*

Various circuit courts to address this issue are in accord. *See, e.g.*, *Elliott v. Liberty Mut. Ins. Co.*, 983 F.2d 1055 (4th Cir. 1993) ("The district court's state law determinations are reviewed *de novo*. In conducting a *de novo* review, an appellate court must carefully consider a district court's legal analysis of state law questions."); *Texas Com. Bank-Fort Worth, N.A. v. United States*, 896 F.2d 152, 155 (5th Cir. 1990) ("Where, as here, questions of law control . . . we must subject the controverted issues to full appellate review.")

For example, the Ninth Circuit has previously held that "a decision to give less than full independent de novo review to the state law determinations of the district courts would be an abdication of our appellate responsibility." *Matter of McLinn*, 739 F.2d 1395, 1398 (9th Cir. 1984) (en banc). "Every party is entitled to a full, considered, and impartial review of the decision of the trial court" and "[t]here is no justification for being less thorough, for abdicating any portion of our appellate responsibility, or for curtailing the parties' appellate rights simply because the law involved is state law." *Id.*; *see id.* (noting that, with respect to pure legal questions, the appellate court has certain "structural" advantages and leveraging those advantages to resolve pertinent legal issues "serves to minimize judicial error by assigning to the court best positioned to decide the issue the primary responsibility for doing so").

In other words, there is "no justification for [an appellate court] to use deference to the trial judge's determination as an excuse for cursory or more limited inquiry into the state law question." *Id.* at 1400. The appellate court's task is to determine

whether "the facts have been developed." *United States v. Allard*, 634 F.2d 1182, 1183 n.1 (9th Cir. 1980). If so, the appellate court "must now resolve all the legal issues presented." *Id.*

Here, the trial court already received all available and necessary evidence to resolve the legal issues presented. With respect to whether past consideration may support a security interest, the trial received all evidence regarding the timing and nature of Shaun's loans to Komron spanning from 1991 through 2005. Pet. App. B-5 ¶ 21; Pet. App. B-15 ¶ 6. It found each of them to be bona fide transactions, not gifts. *Id*. The trial court further found that Komron executed the 2005 Deed of Trust securing those transactions, which Shaun recorded on July 26, 2005. Pet. App. B-11 ¶ 41. Finally, the court found that while Shaun made loans throughout the 2000s and into 2005 (*id.*), he did not pay any money "at or around the time of the 2005 Deed of Trust." *Id.* ¶ 42. This undisputed record is sufficient to finally resolve whether consideration for the 2005 Deed of Trust was adequate under Washington law.[5] If this issue were resolved in Shaun's favor by the appellate court, as it

[5] The Government has argued that the precise sum of the loans conveyed throughout the 2000s remains disputed on the margins. Yet, the law is clear that an exchange of money for property need not be calculated with scientific precision. It is enough that "money's worth" is exchanged. 26 U.S.C. § 6323(h)(1). The trial court's findings plainly support the conclusion that "money's worth" was earlier exchanged. Pet. App. B-5 ¶ 21. Indeed, in colloquy, the trial court indicated that valid loans, if properly secured under the 2005 Deed of Trust, would eliminate the Government's recovery on the tax liens.

necessarily would be,[6] such ruling would promote judicial economy and relieve the parties of the need for an additional appeal, an important function of an appellate court. *Salve Regina Coll.*, 499 U.S. at 231.

Likewise, with respect to whether the 2000 Addendum obviates an UFTA analysis based on Komron's conduct in 2005, the relevant facts are simple and well-established. In 2000, Komron agreed that "[Shaun] has a security interest in the [Property] and [Shaun] may at any time file liens or other security again[st] the [Property]." Pet. App. E-2. It is uncontroverted that Komron did not have any delinquent tax liabilities at the time he entered into the 2000 Addendum (*see* Pet. App. B-7 ¶ 33) and that the Government did not notify him of any tax

[6] Washington courts have consistently recognized "past" consideration as sufficient to create a security interest in circumstances comparable to those presented here. In *Tucker v. Brown*, the Washington Supreme Court held that "[b]etween the original parties, a mortgage given to secure a pre-existing debt is supported by a sufficient consideration." 150 P.2d 604, 673 (Wash. 1944). Likewise, in *Lumbermen's National Bank v. Ellis H. Gross Company*, the court held that a "pre-existing debt or obligation was a sufficient consideration" for an "agreement and note." 79 P. 470, 471–72 (Wash. 1905); *see also Copeland Planned Futures, Inc., v. Obenchain*, 510 P.2d 654, 659 (Wash. Ct. App. 1973) ("consideration for the renewal note originally sued on was an antecedent debt" and "[s]uch consideration is sufficient"); *Nat'l Sur. Co. v. Udd*, 118 P. 347, 349 (Wash. 1911) (recognizing and enforcing a mortgage where "consideration is wholly or mainly an antecedent debt"). Relatedly, the Washington Supreme Court has also explained that a new debt instrument based on earlier loans is enforceable even without contemporaneous exchange because forbearance of the right to sue on the earlier debt is adequate consideration. *Seattle Ass'n of Credit Men v. Am. All. Aluminum Smelting Corp.*, 257 P.2d 637, 640 (Wash. 1953).

assessments until five years later. *See* Pet. App. B-7-B-10 ¶ 35. This record is sufficient to resolve whether, as a matter of Washington law, the 2000 Addendum negates any finding of fraudulent transfer by Komron in 2005. Here again, if this issue were resolved in Shaun's favor by the appellate court, and it would be,[7] judicial economy would be served. *Salve Regina Coll.*, 499 U.S. at 231.

For these reasons, the lower court's failure to reach questions of law presented by the record is a "depart[ure] from the accepted and usual course of judicial proceedings" (Sup. Ct. R. 10(a)) and "in conflict with the decision[s]" of the appellate courts and this Court (*id.* 10(a), (c)). Review by this Court is just and proper.

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[7] Under UFTA, and all similar laws throughout the country, "[t]he relevant question is the debtor's—not the transferee's—intent." *Lacey Marketplace Associates II, LLC v. United Farmers of Alberta Co-op. Ltd.*, 2015 WL 403165, at *7 (W.D. Wash. Jan. 28, 2015) (emphasis added). So, the question is: When did Komron effectuate his assent to convey a security interest in the Subject Property through volitional conduct? *See United States v. Nichols*, 2015 WL 13047134, at *3 (E.D. Wash. Mar. 10, 2015) (debtor's "intent at the time of the conveyance" is the relevant UFTA analysis). The only answer is: At the time Komron agreed to the 2000 Addendum. *Cf. Snohomish Cty. v. Bowers*, 2008 WL 4087250 (W.D. Wash. Aug. 28, 2008); *Clearwater v. Skyline Const. Co., Inc.*, 835 P.2d 257, 266 (Wash. Ct. App. 1992). And, in 2000, before Komron had incurred any overdue obligations to the Government whatsoever, there can be no evidence, whether inferred or actual, of intent to defraud another "creditor" because no relevant second "creditor" yet existed. Wash. Rev. Code § 19.40.041(a)(1) (2000).

CONCLUSION

For the reasons described herein, Shaun Allahyari respectfully requests that the Court grant the Petition.

DATED this 17th day of June, 2021.

Respectfully Submitted,
s/Gregory J. Hollon

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