

21-5954  
No.       

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IN THE  
SUPREME COURT OF THE UNITED STATES

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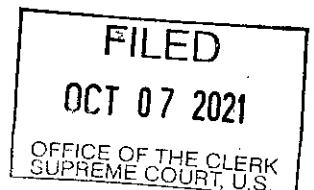
DAVID LEE SMITH, INDIVIDUALLY AND IN HIS CAPACITY AS  
REPRESENTATIVE OF THE ESTATE OF MARY JULIA HOOK,  
DECEASED,

PETITIONER

VS.

UNITED STATES OF AMERICA, LNV CORPORATION,  
RESPONDENTS

ORIGINAL



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

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PETITION FOR A WRIT OF CERTIORARI

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## QUESTION PRESENTED FOR REVIEW

The question presented for review is whether the United States Court of Appeals for the Tenth Circuit has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by United States District Judge Raymond P. Moore of the United States District Court for the District of Colorado, as to call for an exercise of the Supreme Court's supervisory power under Supreme Court Rule 10(a). Specifically, the Tenth Circuit grossly abused its inherent power (and its power under Fed. R. App. P. 38) by imposing the sanction of appeal dismissal against appellant Hook based on its false and defamatory finding that Hook's appeal was frivolous. This harsh and unjustified sanction arbitrarily deprived Hook of her right to appeal and receive meaningful appellate review under 28 U.S.C. § 1291, and arbitrarily deprived Hook of her First Amendment right to access to the courts and her Fifth Amendment right to due process of law; created the *appearance* of extreme judicial hostility to and bias against Hook, in violation of her Fifth Amendment due process right to a fair and impartial appellate panel on appeal; damaged or destroyed Hook's personal and professional reputations, and unjustly opened her up to attorney disciplinary proceedings by courts and bar authorities, further chilling her First Amendment right to access to the courts and her Fifth Amendment right to due process of law; and sanctioned the unlawful judicial taking of Hook and Smith's home and personal property and their substantial equity therein without due process of law or just compensation (*i.e.*, fair market value at the time of taking), in violation of the Due

Process Clause and the Takings Clause of the Fifth Amendment to the Constitution of the United States.

## **LIST OF PARTIES**

All parties appear in the caption of the case on the cover page.

## **RELATED CASES**

*LNV Corporation v. Mary Julia Hook et al.*, Civil Action No. 14-cv-00955-RM, U.S. District Court for the District of Colorado. Final Judgment and Order of Foreclosure and Judicial Sale entered on April 5, 2019; Order Confirming Judicial Sale entered on March 2, 2020.

*LNV Corporation v. Mary Julia Hook et al.*, Case No. 19-1131, U.S. Court of Appeals for the Tenth Circuit. Order and Judgment entered on June 2, 2020, *cert. denied*, 141 S. Ct. 939 (2020).

*LNV Corporation v. Mary Julia Hook et al.*, Case No. 20-1167, U.S. Court of Appeals for the Tenth Circuit. Order and Judgment entered on April 12, 2021.

*In re David Lee Smith & Mary Julia Hook*, Case No. 17-16354-TBM, U.S. Bankruptcy Court for the District of Colorado. Order of Discharge entered on November 8, 2017.

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The opinions of the lower courts have not been published. The unreported decision of the U.S. Court of Appeals for the Tenth Circuit is reproduced in Appendix A to this petition. The unreported decision of the U.S. District Court for the District of Colorado is reproduced in Appendix B to this petition.

## **JURISDICTION**

The Order and Judgment to be reviewed was entered on April 12, 2021. The Order denying rehearing *en banc* was entered on July 12, 2021. The statutory provision believed to confer jurisdiction on the Supreme Court to review on a writ of certiorari the Order and Judgment in question is 28 U.S.C. § 1254(1).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

### **APPENDIX G:**

Constitution of the United States, Amendments 1, 5 & 7

### **APPENDIX H:**

11 U.S.C. § 522

### **APPENDIX I:**

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**STATEMENT OF THE CASE**

On January 8, 2020, the United States Marshal for the United States District for the District of Colorado, purporting to act "pursuant to law" and in compliance with United States District Judge Raymond P. Moore's April 5, 2019 Order of Foreclosure and Judicial Sale, offered the Denver, Colorado home of *pro se* petitioner David Lee Smith ("Smith") and his wife, Mary Julia Hook ("Hook"),<sup>1</sup> for sale. At the February 20, 2020 sale, the United States Marshal purportedly sold Smith and Hook's home and "all of the personal property located thereon" to LNV Corporation ("LNV") for \$1,514,914.80.

On March 2, 2020, Judge Moore issued his Order Confirming Judicial Sale of Smith and Hook's home and personal property, stating in part that the United States Marshal "properly conducted the sale of the real property" and that Smith and Hook's home "was sold to LNV Corporation, being the highest credit bid." The March 2, 2020 Order confirmed the sale and ordered the United States Marshal to "execute and deliver to the purchaser a deed of judicial sale conveying the property to the purchaser." Judge Moore referenced the "record" in Civil Action No. 14-cv-00955-RM and the "facts and circumstances" of that case, as well as "the Court's Order of Foreclosure and Judicial Sale" and the "Notice of Sale & Certificate of Purchase" as being the basis for his March 2, 2020 Order Confirming Judicial Sale.

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<sup>1</sup>Hook was the co-owner with Smith of their home and personal property in Denver, Colorado. Smith is filing this Petition for a Writ of Certiorari individually and in his capacity as the representative of Hook's Estate (No. 60PR-21-1290C06D14) in the Circuit Court of Pulaski County, Arkansas. Hook died in Pulaski County on April 27, 2021.

Recusal. The panel denied Hook's request to refer her Request for Panel Recusal to Chief Judge Tymkovich for review and decision; ordered her "to pay all filing and docketing fees for this appeal within fourteen (14) days of the Order"; and stated that "if she fails to pay as ordered, the Clerk of the Court is ordered to dismiss this appeal."

On April 12, 2021, after Hook had paid all filing and docketing fees as ordered by the panel by borrowing the money from her sister, the panel issued its Order and Judgment dismissing Hook's appeal as a sanction for filing an alleged frivolous appeal.

#### **REASONS FOR GRANTING THE PETITION**

Judge Moore lacked statutory jurisdiction or authority to issue his March 2, 2020 Order Confirming Judicial Sale. In his April 5, 2019 Order of Foreclosure and Judicial Sale, Judge Moore said that he had statutory jurisdiction or authority to foreclose on and sell Smith and Hook's home and personal property under 28 U.S.C. §§ 2001 & 2002. However, these general statutes authorizing a federal judge to sell property did not give Judge Moore the authority to foreclose on and sell Smith and Hook's home and personal property without following 26 U.S.C. § 7403 and the other procedures in the Internal Revenue Code (Title 26, United States Code) for tax lien foreclosures and sales of property. *See also* 28 U.S.C. §§ 3202 & 3203 of the Federal Debt Collection Procedure (28 U.S.C. § 3001 *et seq.*) applicable in Civil Action No. 14-cv-00955-RM. 28 U.S.C. §§ 2001 & 2002 certainly did not authorize Judge Moore to evict Smith and Hook from their home, under threat of being

arrested by the United States Marshal and/or being held in contempt of court by Judge Moore if they did not obey his order to vacate their home within 15 days after entry of his April 5, 2019 Order of Foreclosure and Judicial Sale; or to seize and detain their personal property; or to sell their home and personal property as a means of collecting for LNV and the United States of America the damages, attorney's fees and costs of more than \$2,239,000.00 awarded by Judge Moore to LNV and the United States of America against Smith and Hook *personally* in his April 5, 2019 Final Judgment and Order in Civil Action No. 14-cv-00955-RM.

In its April 12, 2021 Order and Judgment, the Tenth Circuit panel did not decide Hook's appeal on the merits by deciding the following issues raised and argued by Hook on appeal:

A. Whether Judge Moore lacked statutory jurisdiction or authority to issue his March 2, 2020 Order Confirming Judicial Sale;

B. Whether Judge Moore's March 2, 2020 Order Confirming Judicial Sale constituted a determination of the *personal* liability of Hook and Smith with respect to their alleged debts to LNV and the United States discharged in their Chapter 7 bankruptcy case, rendering Judge Moore's March 2, 2020 Order Confirming Judicial Sale void under 11 U.S.C. § 524(a)(1);

C. Whether Judge Moore's March 2, 2020 Order Confirming Judicial Sale constituted an unlawful judicial taking of Hook and Smith's home and personal property without Fifth Amendment due process of law or just compensation (*i.e.*, fair market value at the time of taking), in violation of the Takings Clause of the Fifth Amendment to the Constitution of the United States; and,

D. Whether Judge Moore abused his discretion, committed reversible error, violated federal statutes, and/or violated the Due Process Clause of the Fifth Amendment to the Constitution of the United States by issuing his March 2, 2020 Order Confirming Judicial Sale.

Instead of deciding Hook's appeal on the merits by deciding these issues, the Tenth Circuit panel dismissed Hook's appeal as a sanction for filing an alleged frivolous appeal. The Tenth Circuit panel said:

Ms. Hook previously appealed from the judgment in the underlying foreclosure case. *See LNV Corp. v. Hook (Hook I)*, 807 F. App'x 893 (10<sup>th</sup> Cir), cert. denied, 141 Sup. Ct. 939 (2020). *Hook I* described Ms. Hook's arguments challenging the judgment as "wholly frivolous." *Id.* at 895. "As an attorney, she should have known that they lacked any merit before she argued them; and in large part, the appellees' briefs make that perfectly clear. We see no need to further educate Hook." *Id.* Accordingly, this Court dismissed her appeal in *Hook I*. *See id.*

Ms. Hook's opening brief largely reiterates the "wholly frivolous" arguments she offered in *Hook I*. But given the law of the case doctrine, we will not revisit those arguments. *See Brokers' Choice of Am., Inc. v. NBC Universal, Inc.*, 861 F.3d 1081, 1099 (10<sup>th</sup> Cir. 2017) ("When a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case. An appellate court decision on a particular issue . . . governs the issue during all later stages of the litigation in the district and thereafter on any further appeal." (citations and internal quotation marks omitted)). There are exceptions to the doctrine, *see id.*, but none applies here. And Ms. Hook's request that this panel vacate and set aside *Hook I* disregards well-established law that one panel cannot overrule the decision of another panel, absent intervening *en banc* or Supreme Court authority. *See Strain v. Regalado*, 977 F.3d 984, 993 (10<sup>th</sup> Cir. 2020).

This was a serious misapplication of the law of the case doctrine. In the first place, the issues in *Hook I* and *Hook II* were not the same. The issues in *Hook I* were:

A. Whether Judge Moore has been proceeding without or in excess of his jurisdiction in this case since the United States of America removed this case from the Denver District Court to the United States District Court for the District of Colorado on April 3, 2014;

B. Whether Judge Moore's Final Judgment and Orders in this case were void under *United Student Aid Funds Inc. v. Espinosa*, 559 U.S. 260, 130 S. Ct. 1367, 176 L. Ed. 2d 158 (2010);

C. Whether Judge Moore's Final Judgment and Orders in this case were void under 11 U.S.C. § 524(a)(1); and,

D. Whether Judge Moore abused his discretion, committed reversible error and/or violated Fifth Amendment due process of law by refusing to acknowledge or permit Hook and Smith to litigate willful and malicious statutory violations of the automatic stay, the discharge order and the discharge injunction by the United States of America, LNV and their counsel by arbitrarily denying Hook and Smith's motion to supplement/amend their Proposed Pre-Trial Order in this case.

The issues in *Hook I* involved Judge Moore's final judgments, orders and actions in Civil Action No. 14-cv-00955-RM from April 3, 2014, when the United States of America removed the case from the Denver District Court to the United States District Court for the District of Colorado, to the date of Hook's filing of her Notice of Appeal for Tenth Circuit Case No. 19-1131 on April 10, 2019; whereas the issues in *Hook II* involved Judge Moore's final judgments, orders and actions in Civil Action No. 14-cv-00955-RM from the date of Hook's filing of her Notice of Appeal for Tenth Circuit Case No. 19-1131 on April 10, 2019 to March 2, 2020, when Judge Moore issued his final Order Confirming Judicial Sale [of Smith and Hook's home and personal property]. Therefore, the issues in the two appeals were not the same and the law of the case doctrine was inapplicable on the issue of whether Hook's appeal in *Hook II* was frivolous. Furthermore, Hook's appeal in *Hook II* was not frivolous under any possible definition of that term that would not be void for

vagueness and/or overbreadth under the Due Process Clause of the Fifth Amendment to the Constitution of the United States.

In the second place, the *Hook II* panel statement that “[t]here are exceptions to the [law of the case] doctrine . . . but none applies here” was clearly wrong. In her reply briefs in *Hook II*, Hook cited *Grigsby v. Barnhart*, 294 F.3d 1215 (Footnote 4) (10<sup>th</sup> Cir. 2002) recognizing “three ‘exceptionally narrow’ reasons to depart from the law of the case,” including “when the decision was clearly erroneous and would work a manifest injustice”—which was true with respect to the *Hook I* panel decision.

Specifically, the *Hook I* panel<sup>2</sup> did not decide Hook’s appeal on the merits by deciding the issues raised and argued by Hook on appeal. Instead, the *Hook I* panel dismissed Hook’s appeal as a sanction for filing an alleged frivolous appeal. However, Hook’s appeal in *Hook I* was not frivolous under any possible definition of that term that would not be void for vagueness and/or overbreadth under the Due Process Clause of the Fifth Amendment to the Constitution of the United States. The *Hook I* panel did not provide any constitutionally sufficient definition or standard being used to decide whether Hook’s appeal was frivolous. Furthermore, Hook’s appeal in *Hook I* involved constitutional, statutory, procedural and jurisdictional issues of first impression requiring application of the following Supreme Court precedent to the facts of the case to render a decision on the merits: *United Student Aid Funds Inc. v. Espinosa*, 559 U.S. 260, 130 S. Ct. 1367, 176 L.

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<sup>2</sup>The *Hook I* panel was composed of Tenth Circuit Judges Briscoe, Lucero and Hartz.

Ed. 2d 158 (2010). Since this was not done by the *Hook I* panel, Hook's appeal was not decided on the merits, and the *Hook I* panel decision was clearly erroneous.

In addition, the *Hook I* panel decision worked a manifest injustice because it arbitrarily deprived Hook of her right to appeal and receive meaningful appellate review under 28 U.S.C. § 1291, and arbitrarily deprived her of her First Amendment right to access to the courts and her Fifth Amendment right to due process of law; created the *appearance* of extreme judicial hostility to and bias against Hook, in violation of her Fifth Amendment due process right to a fair and impartial appellate panel on appeal; damaged or destroyed Hook's personal and professional reputations (Hook was a well-respected attorney before the Tenth Circuit imposed these harsh and unjustified sanctions against her), and opened her up to attorney disciplinary proceedings by courts and bar authorities, further chilling her First Amendment right to access to the courts and her Fifth Amendment right to due process of law; and sanctioned the unlawful judicial taking of Smith and Hook's home and personal property and their substantial equity therein without due process of law or just compensation (i.e., fair market value at the time of taking), in violation of the Due Process Clause and the Takings Clause of the Fifth Amendment to the Constitution of the United States.

The *Hook II* panel said:

The few assertions in the opening brief that may be relevant to the Order Confirming Judicial Sale are inadequately briefed. *See Fuerschbach v. Sw. Airlines Co.*, 439 F.3d 1197, 1209-10 (10<sup>th</sup> Cir. 2006) (collecting authorities holding that inadequately briefed and underdeveloped theories are waived). Ms. Hook's conclusory assertions of procedural error fail to sufficiently identify or argue any

violations. She criticizes the district court for not holding a hearing before it issued the Order Confirming Judicial Sale, but she does not show that she was entitled to such a hearing, or even that she requested one. And she makes no argument for plain error. *See Richison v. Ernest Grp., Inc.*, 634 F.3d 1123, 1131 (10<sup>th</sup> Cir. 2011) (“[T]he failure to argue for plain error and its application on appeal . . . surely marks the end of the road for an argument for reversal not first presented to the district court.”)

This statement is false. In her opening brief, Hook argued that Judge Moore merely rubber-stamped the United States Marshal’s sale of Hook and Smith’s home and personal property and distributed \$1,514,914.80 from the sale to LNV without holding a Fifth Amendment due process hearing or making any findings “in respect to the interests of the parties and the United States,” as required by 26 U.S.C. § 7403(c); argued that Judge Moore failed or refused to follow the procedures set forth in 28 U.S.C. §§ 7403, 3202, & 3203 (including the requirement for a hearing) applicable in Civil Action No. 14-cv-00955-RM; and argued that if Judge Moore had taken Hook’s Affirmative Defenses and Compulsory Counterclaims against LNV and the United States of America into consideration, she and Smith would not have owed \$1,514,914.80 or any amount to LNV and/or the United States of America. LNV and/or the United States of America would have owed Hook and Smith an amount to be determined by the jury in the Seventh Amendment jury trial demanded by them in their verified pleadings in Civil Action No. 14-cv-00955-RM. These and the other arguments in Hook’s opening brief involved constitutional, statutory, procedural and jurisdictional issues of first impression requiring application of the following Supreme Court precedent to the facts of the case to render a decision on the merits: *Stop the Beach Renourishment v. Florida*

*Department of Environmental Protection*, 560 U.S. 702, 130 S. Ct. 2592, 177 L. Ed. 2d 184 (2010) and *Knick v. Township of Scott*, 588 U.S. \_\_\_, 139 S. Ct. 2162, 204 L. Ed. 2d 558 (2019). Since this was not done by the *Hook II* panel, Hook’s appeal was not decided on the merits, and the *Hook II* panel decision was clearly erroneous. Furthermore, Hook’s opening brief was not “inadequate” or frivolous, and she did not need to argue for “plain error and its application on appeal.”

In her reply brief to the United States of America, Hook said:

In addition, Judge Moore was required to hold the Seventh Amendment jury trial demanded by Hook and Smith in their verified pleadings in Civil Action No. 14-cv-00955-RM. *See also* 28 U.S.C. § 2402 providing for a jury trial in “any action against the United States under section 1346(a)(1).” Hook’s affirmative defenses and compulsory counterclaims against the United States in Civil Action No. 14-cv-00955-RM were brought under 28 U.S.C. § 1346(a)(1).

At one point, Judge Moore set the case for a Seventh Amendment jury trial but he later arbitrarily vacated the setting without giving any reasons for doing so. Smith and Hook’s Affirmative Defenses and Compulsory Counterclaims against the United States of America and LNV were not frivolous as previously found by Judge Moore.

On April 20, 2019, at 11:59 p.m. MDT, Smith and Hook (aged 74 and 72 at the time) vacated their home of 25 years in Denver, Colorado, leaving the key in the mailbox for Duncan E. Barber (the attorney for LNV) and/or the United States Marshal, as ordered by Judge Moore in his April 5, 2019 Order of Foreclosure and Judicial Sale. Smith and Hook were unable to remove all their personal property from their home due to their financial circumstances and the shortness of time (15

days) to comply with Judge Moore's April 5, 2019 Order of Foreclosure and Judicial Sale. The status of the "Judicial Sale" of Smith and Hook's home and personal property was unknown to them at that time.

In issuing his March 2, 2020 Order Confirming Judicial Sale, Judge Moore failed or refused to follow 26 U.S.C. § 7403(c), providing as follows:

**(c) Adjudication and Decree**

The court shall, after the parties have been duly notified of the action, proceed to adjudicate all matters therein and finally determine the merits of all claims to and liens upon the property, and, in all cases, where a claim or interest of the United States therein is established, may decree a sale of such property, by the proper officer of the court, and a distribution of the proceeds of such sale according to the findings of the court in respect to the interests of the parties and the United States. If the property is sold to satisfy a first lien held by the United States, the United States may bid at the sale such sum, not exceeding the amount of such lien with expenses of sale, as the Secretary directs.

Judge Moore failed or refused to "adjudicate all matters therein and finally determine the merits of all claims to and liens upon the property." In fact, Judge Moore merely rubber-stamped the United States Marshal's sale of Smith and Hook's home and personal property and distributed \$1,514,914.80 from the sale to LNV without holding a Fifth Amendment due process hearing or making any findings "in respect to the interests of the parties and the United States," as required by 26 U.S.C. § 7403(c). As a consequence of this rubber-stamp process, Judge Moore failed or refused to make any finding or determination of the total amount of his April 5, 2019 Final Judgment and Order in favor of LNV and the United States of America, leaving Hook and Smith without a clue as to which

alleged debts to the United States of America and LNV had been collected and/or satisfied, and unjustly opening them up to further attempted collections by LNV and the United States of America. Furthermore, Judge Moore failed or refused to acknowledge that his March 2, 2021 Order Confirming Judicial Sale constituted a determination of the *personal* liability of Smith and Hook with respect to their alleged debts to the United States of America and LNV discharged in their Chapter 7 bankruptcy case,<sup>3</sup> rendering his March 2, 2021 Order Confirming Judicial Sale void under 11 U.S.C. § 524(a)(1):

(a) A discharge in a case under this title—(1) voids any judgment at any time obtained, to the extent that such judgment is a determination of the personal liability of the debtor with respect to any debt discharged under section 727, 944, 1141, 1192, 1228, or 1328.

Judge Moore failed or refused to set off amounts owed by LNV to Smith and Hook against the \$1,514,914.80 distributed to LNV from the sale to LNV of their home and personal property. Judge Moore failed or refused to determine the fair market value of Smith and Hook's home and personal property<sup>4</sup> or the amounts owed by LNV to Smith and Hook based on the Affirmative Defenses and Compulsory Counterclaims pled by Smith and Hook against LNV in Civil Action No. 14-cv-00955-RM. If Judge Moore had taken these Affirmative Defenses and

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<sup>3</sup>Appendix F, Order of Discharge, *In re: David Lee Smith & Mary Julia Hook*, Case No.17-16354-TBM (D. Colo. Chap. 7 Bankr.) (November 8, 2017).

<sup>4</sup>The \$1,514,914.80 distributed to LNV from the sale was the amount of LNV's "credit bid" to purchase Smith and Hook's home and personal property, not the fair market value of their home and personal property. This unauthorized use of a "credit bid" as a substitute for determining the fair market value of Smith and Hook's home and personal property as the basis for the sale constituted a fraud upon Smith and Hook, resulting in a theft of their home and personal property and their substantial equity therein.

Compulsory Counterclaims into consideration, Smith and Hook would not have owed \$1,514,914.80 or any amount to LNV. LNV would have owed Smith and Hook an amount to be determined by the jury in the Seventh Amendment jury trial demanded by them in Civil Action No. 14-cv-00955-RM.

Judge Moore failed or refused to determine the amounts owed by the United States of America to Smith and Hook based on the Affirmative Defenses and Compulsory Counterclaims pled by Smith and Hook against the United States of America in Civil Action No. 14-cv-00955-RM. If Judge Moore had taken these Affirmative Defenses and Compulsory Counterclaims into consideration, Smith and Hook would not have owed any amount to the United States of America. The United States of America would have owed Smith and Hook an amount to be determined by the jury in the Seventh Amendment jury trial demanded by them in Civil Action No. 14-cv-00955-RM.

Judge Moore failed or refused to distribute to Smith and Hook the amount of their homestead and personal property exemptions under 26 U.S.C. § 6334, 11 U.S.C. § 522, and Colo. Rev. Stat. §§ 13-54-102 & 38-41-201 *et seq.* In fact, Judge Moore failed or refused to acknowledge that Smith and Hook's home and personal property were part of the bankruptcy estate in their Chapter 7 bankruptcy case (No. 17-16354-TBN, District of Colorado) or that Smith and Hook were entitled to homestead and personal property exemptions in the distribution of proceeds from the sale of their home and personal property in Civil Action No. 14-cv-00955-RM. Smith and Hook were thus deprived of their right to receive the amount of their

homestead and personal property exemptions in the distribution of proceeds to provide the “fresh start” after bankruptcy intended by Congress in enacting the United States Bankruptcy Code (Title 11, United States Code).

Judge Moore failed or refused to lift or remove the federal tax liens on their home so they could qualify for a reverse mortgage on their home under 15 U.S.C. § 1648. Smith and Hook challenged the validity and amounts of these federal tax liens in the Affirmative Defenses and Compulsory Counterclaims pled by them against the United States of America in Civil Action No. 14-cv-00955-RM. Judge Moore failed or refused to acknowledge that Smith and Hook could qualify for a reverse mortgage on their home if he lifted or removed the federal tax liens on their home. Smith and Hook were thus deprived of their right to qualify for a reverse mortgage on their home.

Judge Moore failed or refused to follow the procedures set forth in 28 U.S.C. §§ 3202 & 3203. These procedures are part of the Federal Debt Collection Procedure (28 U.S.C. § 3001 *et seq.*) applicable in Civil Action No. 14-cv-00955-RM.

As Hook argued in her briefs on appeal, Judge Moore lacked statutory jurisdiction or authority to issue his March 2, 2020 Order Confirming Judicial Sale. In addition to being void under 11 U.S.C. § 524(a)(1), Judge Moore’s March 2, 2020 Order Confirming Judicial Sale constituted an unlawful judicial taking of Hook and Smith’s home and personal property without Fifth Amendment due process of law or just compensation (*i.e.*, fair market value at the time of taking), in violation of the Takings Clause of the Fifth Amendment to the Constitution of the United States.

*See Stop the Beach Renourishment v. Florida Department of Environmental Protection*, 560 U.S. 702, 130 S. Ct. 2592, 177 L. Ed. 2d 184 (2010); *Knick v. Township of Scott*, 588 U.S. \_\_\_, 139 S. Ct. 2162, 204 L. Ed. 2d 558 (2019). Therefore, Judge Moore abused his discretion, committed reversible error, violated federal statutes, and/or violated the Due Process Clause of the Fifth Amendment to the Constitution of the United States by issuing his March 2, 2020 Order Confirming Judicial Sale.

## CONCLUSION

Based on the foregoing, the United States Court of Appeals for the Tenth Circuit has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by United States District Judge Raymond P. Moore, as to call for an exercise of the Supreme Court's supervisory power under Supreme Court Rule 10(a). Specifically, the Tenth Circuit has grossly abused its inherent power (and its power under Fed. R. App. P. 38) by imposing the sanction of appeal dismissal against Hook based on its false and defamatory finding that Hook's appeal was frivolous. This harsh and unjustified sanction has arbitrarily deprived Hook of her right to appeal and receive meaningful appellate review under 28 U.S.C. § 1291, and has arbitrarily deprived Hook of her First Amendment right to access to the courts and her Fifth Amendment right to due process of law; has created the *appearance* of extreme judicial hostility to and bias against Hook, in violation of her Fifth Amendment due process right to a fair and impartial appellate panel on appeal; has damaged or destroyed Hook's personal and

professional reputations, and unjustly opened her up to attorney disciplinary proceedings by courts and bar authorities, further chilling her First Amendment right to access to the courts and her Fifth Amendment right to due process of law; and has sanctioned the unlawful judicial taking of Smith and Hook's home and personal property and their substantial equity therein without due process of law or just compensation (*i.e.*, fair market value at the time of taking), in violation of the Due Process Clause and the Takings Clause of the Fifth Amendment to the Constitution of the United States. For these reasons, Smith respectfully requests the Supreme Court to grant his Petition for a Writ of Certiorari, and to grant such other and further legal and equitable relief as may be just under the circumstances, including an order vacating, setting aside, or reversing the Tenth Circuit panel's April 12, 2021 Order and Judgment under 28 U.S.C. § 2106 providing for such relief.

Respectfully submitted,



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