9/10/2024

No. 24-283

In The Supreme Court of the United States

OXANA N. PARIKH

Petitioner,

v.

ANTHONY G. BROWN; JOSEPH GRIFFIN;
LYNN CAUDLE PENDLETON;
JAMES J. DEBELIUS

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

This Petition presents three separate but related questions:

1. Whether it was error to give preclusive effect to an earlier *in rem* orphans' court Estate matter with "special limited jurisdiction" that included only claim available at time of filing and subsequent post-commencement claims for civil rights violations could not be brought or sought, in violation of *Hailey v. Waller*, 363 F.Supp.3d 605 (Md. 2019).
2. Whether it was error to give preclusive effect to earlier *in rem* orphans' court adjudication of Petitioner's "lack of standing" when it was not a final adjudication "on the merits" for purposes of *res judicata* and state court would deny preclusion.
3. Whether it was error to *sua sponte* resurrect a waived affirmative defense that Respondents had the burden of pleading and proving, where USDC had not expended any resources to decide earlier Estate matter, and without providing an opportunity to oppose, in violation of *Arizona v. California*, 530 US 392 (2000) and Due Process.

The Fourth Circuit answered each question in the negative.

PARTIES TO THE PROCEEDING

Petitioner Oxana N. Parikh is a private U.S. citizen, resident of Maryland, Decedent's former daughter-in-law, and mother of Decedent's grandson, designated "sole-legatee," meaning the only person Decedent left all of his Earthly property to under a valid Will.

Respondent Anthony G. Brown was automatically substituted as defendant/appellee after former Md. attorney general, Brian Frosh, left office.

Respondent Joseph Griffin is the Register of Wills for Montgomery County, Md., and is statutorily charged with affecting Decedent's testamentary intentions.

Respondent, Lynn Caudle Pendleton, under her false identity of "Lynn C. Boynton" received an appointment from the Register of Wills to act as state-appointed Personal Representative (Executor) of Decedent's Estate.

Respondent James J. Debelius, feigns to be the "attorney" for "Lynn C. Boynton," an undisclosed pseudonym of "Lynn C. Pendleton."

RULE 29.6 CORPORATE DISCLOSURE

Petitioner and Respondents are not a corporate entity nor have an interest in a publicly traded company.

RELATED PROCEEDINGS

Estate of Dr. Dinesh O. Parikh, Orphans' Court for Montgomery County, Estate No. W-87973.

Lynn C. Boynton v. Oxana Parikh and Namish Parikh, Circuit Court for Montgomery County, Case No. 425847V.

In Re: Estate of Dr. Dinesh O. Parikh (Parikh I) (Consolidated), Appellate Court of Maryland, Case No. CSA-REG-01508-2016, CSA-REG-00546-2017, CSA-REG-01226-2017, CSA-REG-00548-2017. Judgment Entered 01/16/2019; Cert.Denied 07/26/2019, COA-PET-0088-2019.

In Re: Estate of Dr. Dinesh O. Parikh (Parikh II) (Consolidated), Appellate Court of Maryland, Case No. CSA-REG-1480-2017, CSA-REG-1655-2017, CSA-REG-00501-2018, CSA-REG-2312-2018, CSA-REG-0302-2019. Judgment Entered 03/23/2020; Cert.Denied 7/24/2020, COA-PET-0080-2020.

In Re: Estate of Dr. Dinesh O. Parikh (Parikh III), Appellate Court of Maryland, Case No. CSA-REG-2366-2019. Judgment Entered 04/07/2021.

In Re: Estate of Dr. Dinesh O. Parikh (Parikh IV), Appellate Court of Maryland, Case No. CSA-REG-0941-2020. Judgment Entered 09/28/2021; Cert.Denied 1/28/2022, COA-PET-0330-2021.

In Re: Estate of Dr. Dinesh O. Parikh (Parikh V), Appellate Court of Maryland, Case No. CSA-REG-1057-2021, Judgment Entered 04/20/2022.

In Re: Estate of Dr. Dinesh O. Parikh (Parikh VI), Appellate Court of Maryland, Case No. CSA-REG-0807-2022; Judgment entered 5/18/2023. Supreme Court of Maryland, Case No. SCM-PET-0096-2023; Cert. Pet. Denied 8/15/2023, Reconsideration Denied 10/24/2023. United States Supreme Court Cert. Pet. Denied 2/20/2024, 144 S.Ct. 809 (2024).

In Re: Estate of Dr. Dinesh O. Parikh (Parikh VII), Appellate Court of Maryland, Case No. ACM-REG-1533-2023; Briefing Pending (currently stayed).

Petitions for Writ of Mandamus: COA-MISC-0003-2017, Denied 9/21/2017; COA-MISC-0019-2017, Denied 12/13/2017; COA-MISC-0003-2018, Denied 10/25/2018; COA-MISC-0010-2020, Denied 11/20/2020; COA-MISC-0048-2021, Denied 9/23/2022; COA-MISC-0012-2022, Denied 1/24/2023; SCM-MISC-0038-2022, Denied 6/14/2023; SCM-MISC-0072-2022, Denied 9/1/2023.

Oxana N. Parikh v. Anthony Brown, et al., No. 23-1111, U.S. Court of Appeals for the Fourth Circuit, affirmed in part, reversed in part, and remanded. Petition for Rehearing *en banc* denied, 8/6/2024.

Oxana N. Parikh v. Anthony Brown, et al., No. 22-cv-110, U.S. District Court for the District of Maryland at Greenbelt. Judgment entered 1/9/2023.

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Ms. Oxana Parikh respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

OPINIONS BELOW

Parikh v. Brown, et al., opinion of USDC (Appx., *infra*, 8a-39a) is unreported.

CA4 affirmed in part, reversed in part, and remanded on May 30, 2024 (Appx., *infra*, 2a-7a); and, denied Petition for Rehearing on August 6, 2024 (Appx., *infra*, 1a), both are unreported.

JURISDICTION

The Fourth Circuit entered judgment on May 30, 2024 and denied rehearing *en banc* on August 06, 2024. (Appx., *infra*, 1a-7a). This Court has jurisdiction under 28 USC §1254(1).

STATEMENT OF THE CASE

Legal Framework of Md.'s Orphans' Court

An orphans' court is not a court, rather it is an Executive agency under the direction and control of the Attorney General. "This is so because Courts Art. §1-101(c) provides that the proper noun 'Court' as used in the Courts and Judicial Proceedings Article means '... the court of appeals, court of special appeals, circuit court, and district court of Maryland, or any of them, unless the context clearly requires a contrary mean-

ing. *It does not include an orphans' court, or the Maryland Tax Court.*'" *Willoner v. Davis*, 30 Md.App. 444, 447 (emphasis in original), *aff'd sub nom*, *Davis v. Davis*, 278 Md. 534 (1976).[1]

As the Supreme Court of Maryland stated in *Crandall v. Crandall*, 218 Md. 598, 600 (1959):

> [I]t must be remembered that orphans' courts are not courts of general jurisdiction; on the contrary, they are courts of special and limited jurisdiction only, and they cannot, under pretext of incidental or constructive authority, exercise jurisdiction not expressly conferred by law.

ET §2-102(a) enumerates the powers of the orphans' court: "may conduct judicial probate, direct the conduct of a personal representative, and pass orders which may be required in the course of the administration of an estate of a decedent...." *Barter Sys. v. Rosner*, 64 Md.App. 255, 262 (1985).

Emphatically, however, the orphans' court may not, under pretext of incidental power or constructive authority, exercise any jurisdiction not expressly conferred. "This severely restricted jurisdiction has been stressed by Maryland courts in myriad of cases spanning over a century." *Hailey v. Waller*, 363 F.Supp.3d 605, 608-09 (Md. 2019) (collected cases).

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[1] By recent constitutional amendment, the former court of special appeals and the court of appeals have been renamed the "Appellate Court of Maryland" and the "Supreme Court of Maryland."

In *Hailey*, the district court refused to give *res judicata* effect to an orphans' court decision. "There is no question that the orphans' court would not be competent to consider" whether an insured had the mental capacity to change beneficiary of a life insurance policy. "That would be a matter for the Maryland circuit court, a court of general jurisdiction, or for a Maryland Federal District Court to decide." *Ibid.* at 609. An orphans' court "cannot bind the parties in this [USDC] proceeding[.]" *Ibid.*[2]

To summarize, an orphans' court is not a court of general jurisdiction (*Crandall*), nor is it a "court" (*Willoner*), it has "severely restricted jurisdiction," it cannot entertain federal civil rights claims, bind a USDC by its findings, nor does *res judicata* attach to its orders (*Hailey*).

Hailey v. Waller, a 2019 district of Maryland on-point reported case was omitted by USDC and CA4. This Court's intervention is urgently requested.

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[2] *See, also, DeFelice v. Riggs*, 55 Md.App. 476, 479 (1983) (for example, "an orphans' court may not hear an action against a tortfeasor for the decedent's wrongful death.... Those proceedings are best left for resolution in a forum designed to hear, and which in fact regularly does hear, these somewhat more intricate questions of law."); *McMillan-McCartney v. McMillan*, 2019 WL 2524238 at *9 (D.Md. June 19, 2019) ("Thus, while Plaintiff's breach of contract and quantum meruit claims may relate tangentially to the parties' father's estate, they do not fall within the orphans' court's limited jurisdiction to administer the estate's assets.").

Earlier (2016) *in rem* Estate matter

Petitioner Ms. Oxana Parikh is "sole-legatee" under Dr. Parikh's valid Will because he bequeathed all his Earthly property to Petitioner, Decedent's former daughter-in-law, and mother of Decedent's grandson.[3]

On June 18, 2016, Dr. Dinesh O. Parikh, Petitioner's former father-in-law, Decedent, sadly passed away. Petitioner filed his Last Will and Testament in Montgomery County, Maryland, Register of Wills on June 21, 2016, which opened Estate matter "W87973." Petitioner's opening of Estate matter was solely due to Dr. Parikh passing away. In other words, an *in rem* action to distribute Dr. Parikh's property per his Will. None of the complained of post-June 21, 2016 events had occurred, nor could be included in an *in rem* Estate matter.

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[3] ET §1-101(m)(1) "Legatee" means a person who under the terms of a will would receive a legacy.

ET §1-101(*l*) "Legacy" means any property disposed of by will, including property disposed of in a residuary clause and assets passing by the exercise by the decedent of a testamentary power of appointment.

ET §4-402: Presumption that Will passes all property a testator owns at time of death, including property acquired after execution of Will.

ET §4-408: Unless contrary intent is expressly indicated in Will, legacy passes to legatee entire interest of testator in property that is subject of legacy.

ET §7-101(b) and ET §7-305(a)(1) ("shall distribute all assets of the estate...within" 9 months). *See, Att'y Griev. Comm'n v. Storch*, 445 Md. 82, 90 (2015) ("A Personal Representative is under a general duty to settle and distribute the estate in accordance with terms of decedent's will [...], and do so expeditiously.").

On June 21, 2016, Petitioner brought only claims that were available at time of commencing *in rem* Estate matter. Problems began shortly after the orphans' court appointed "Lynn C. Boynton" to act as "Special Administrator" (Executor). For example, "Lynn C. Boynton" introduced Dr. Parikh's house-keeper as his "wife" and supported a spousal share for her;[4] "Lynn C. Boynton" altered Dr. Parikh's Will by replacing Petitioner and inserting someone else, and began to advocate that Petitioner is not a legatee under the terms of Dr. Parikh's valid Will, rather someone else is.[5]

Years later, Petitioner learned that "Lynn C. Boynton" was not her real legal name. In 2007, "Lynn C. Boynton" voluntarily and "legally changed her name to 'Lynn C. Pendleton' on her Md. driver's license and U.S. passport." ECF 12 at 5, ¶13 (Am.Compl.).

Respondent Lynn C. Pendleton, under an undisclosed pseudonym, signed affidavits, filed documents, made arguments, obtained court orders, participated on appeals, etc., while lacking a valid appointment.[6]

USDC agreed that Respondent Pendleton uses different identities, but excused the misconduct. "Throughout the underlying state proceedings that are the subject of this litigation, Pendleton also went by the name 'Lynn Boynton.' To avoid confusion, the Court will refer to her as Pendleton throughout this

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[4] ECF 12 at 31 & 39 (Am.Compl.).

[5] ECF 12 at 9 (Am.Compl.).

[6] Lacking a proper appointment under one's legal name is "not a trifling technicality." *Trump v. US*, 144 S.Ct. 2312, 2351 (2024) (Justice Thomas concurring).

opinion." (Appx., *infra*, 38a n.2.). All of Respondent Pendleton's actions in the Estate matter were exclusively under her undisclosed pseudonym, "Lynn C. Boynton," including her appointment and seizure of all estate funds. ECF 12 at 5-9 (Am.Compl.).[7]

USDC found that "it ha[d] been conclusively established that Oxana [Petitioner] lack[ed] standing to participate in the Probation [sic] [misspelled probate] action[.]" (Appx., *infra*, 17a).

Later (2022) federal civil rights matter

> Decedent, Dr. Dinesh O. Parikh ("Decedent" or "Testator"), loved Plaintiff as a daughter, even though she was his daughter-in-law. Decedent was diagnosed with life-ending cancer while in India and contacted Plaintiff to arrange for his return to the United States. Decedent wanted to be with Plaintiff during his end-of-life.
>
> Plaintiff took all steps to satisfy Decedent's wishes and immediately arranged for his return to the United States. Daily, Plaintiff looked after Decedent in hospital until his passing. Decedent had previously executed a healthcare power-of-attorney, a.k.a. living will, and attorney-in-fact power-of-attorney in favor of Plaintiff. Decedent had also previously

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[7] *See, e.g.,* 18 USC §1028A - Aggravated Identity Theft ("Whoever, during [...] any felony violation [mail, bank, and wire fraud], knowingly transfers, possesses, or uses, [...], a means of identification of another person shall, in addition to the punishment provided for such felony, be sentenced to a term of imprisonment of 2-years.").

> executed a valid-Will designating Plaintiff as his Estate's Executor and Sole-Legatee.

ECF 12 at 3 (Am.Compl.). On April 21, 2022, Petitioner sued Respondents Anthony G. Brown, Joseph Griffin, Lynn C. Pendleton, and James J. Debelius, under civil rights statutes and state law torts for claims that arose after commencement of the earlier *in rem* Estate matter.[8]

An *in rem* Estate action cannot adjudicate federal civil rights claims nor award damages due to its "special limited jurisdiction," which deprives it of statutory authority to decide civil rights claims. Also, Petitioner was deemed to lack standing in Estate matter. None of the complained of conduct occurred prior to commencement of earlier *in rem* Estate matter.

"Defendants, jointly or severally, unlawfully altered Decedent's Will by" removing Petitioner "as sole-legatee" and replaced Petitioner with another person to misappropriate appx. $2 million of Petitioner's inheritance. ECF 12 at 3 (Am.Compl.).

Nor should Respondent Pendleton's use of false identities be excused; unlike the Fourth, the Seventh and Eleventh Circuits flatly reject excuses. *See, Dotson v. Bravo*, 321 F.3d 663, 668 (CA7 2003) ("Sheppard

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[8] "[Plaintiff] asserts two distinct types of non-class based, or class-of-one, Equal Protection claims under §1983, (1) *LeClair*, and (2) *Olech*; (3) §1981 & §1983 claim regarding contract; (4) §1982 & §1983 claim regarding inheritance; (5) §1983 due process claim regarding fabrication of evidence; and, state law claims of (6) defamation, and (7) fraudulent misrepresentation. Plaintiff seeks compensatory, special, and punitive damages, costs of litigation, declaratory, injunctive, equitable relief[.]" ECF 12 at 2 (Am.Compl.).

first argues that it was not wrong to file the case under the 'Dotson' name because all state criminal proceedings occurred under that name. The fact is that his fraudulent conduct produced such a result and does not justify continuance of the charade in federal court."); *Zocaras v. Castro*, 465 F.3d 479, 483 (CA11 2006) (since changing his legal name, he "filed more than thirty pleadings and motions under a false name in this case. At least some of those pleadings and motions were filed under penalty of perjury. All of them hid his actual identity.").[9]

Respondents moved to dismiss without raising *res judicata*. Petitioner opposed but did not address *res judicata* because it was not raised. USDC, *sua sponte*, without notice to Petitioner or requesting additional briefing, "construe[d] the [Respondents'] argument as one of claim preclusion[,]" (Appx., *infra*, 25a), and dismissed.[10] CA4 affirmed in part (on *res judicata)*, reversed in part, and remanded. CA4 denied rehearing

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[9] Maryland follows a common-sense approach by requiring Respondent Pendleton to use her one true legal name "exclusive[ly], consistent[ly], [and] nonfraudulent[ly]" after she legally changed her surname in 2007. *Stuart v. BoE*, 266 Md. 440, 449 (1972).

[10] In USDC, Respondents mislead by continuously using the non-legal name "Lynn C. Boynton." ECF 16-1 at 2. However, after procuring a dismissal, they changed their name story on appeal. *See*, Brown/Griffin Ans.Br. at 4 & 7 ("Lynn C. Pendleton, Esq."). There is no legitimate reason for Respondents to use false names or different names in different courts.

Another obvious problem is privity or identity of parties; Petitioner lacked standing and was therefore not a party; and Respondent Pendleton using a false identity and never

en banc and denied stay of mandate during certiorari window.

Dr. Parikh passed away in 2016; since 2016, Respondents denied Dr. Parikh his right to bequeath to his chosen "legatee," and denied Petitioner the right to inherit. Respondents used racist and vile name calling in orphans' court to procure "wins."

Only the Court's intervention can correct this departure from well-settled preclusion doctrine and failure of due process. The 33-million residents in the Fourth Circuit should not lose cases they might win in the rest of the country. The Court should grant certiorari because the ruling below was incorrect and unjust. The Court's "power of supervision should be exercised because of the lower court's departure from the accepted and usual course of judicial proceedings," inasmuch as "the decision below is very wrong indeed." Shapiro, *et al.*, *Supreme Court Practice*, Ch.6.31(c) at 6-125 (11th ed. 2019).

Respectfully, the Fourth Circuit is "very wrong indeed." This case presents an ideal opportunity for the Court to reverse an erroneous ruling that prevents a lawfully designated "legatee," i.e., designated by Decedent in his valid-Will from inheriting. "[T]he decision below may itself threaten to increase litigation dramatically." *Ibid.*, Ch.6.31(b) at 6-121.

USDC admits that Petitioner is "sole legatee" (Appx. *infra* at 9a). Petitioner cannot be "legatee" without a valid Will in force at the time of USDC's

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having been lawfully appointed was also not a party. This prong of preclusion test fails. Petitioner and Respondent were not parties to earlier Estate matter.

opinion, and "sole" simply means that 100% of Decedent's Earthly property must pass to his chosen/designated "legatee."

REASONS FOR GRANTING THE WRIT

To survive a motion to dismiss, Petitioner's complaint "must contain sufficient factual matter, accepted as true, to state a claim for relief that is plausible on its face." *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009). The complaint must be viewed in a light most favorable to the non-moving party, taking the well-pleaded factual allegations as true.

A defendant can raise *res judicata* in its motion to dismiss before answering.[11] This triggers a "notice" to *pro se* persons (ECF 27), which informs a *pro se* person of their "right to file a response" and the consequences of failing to oppose (*ibid.*).[12]

Herein lies one of several problems. Respondents did not raise *res judicata* in their motion to dismiss. Therefore, *res judicata* was not opposed or briefed by Petitioner or Respondents. Rather, USDC construed Respondents' motion as one for *res judicata* and unilaterally raised, argued, proved, and ruled, with no opposition, and no possibility to seek reconsideration.

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[11] *Day v. Moscow*, 955 F.2d 807, 811 (CA2 1992) ("[W]hen all relevant facts are shown by the court's own records, of which the court takes notice, the defense may be upheld on a Rule 12(b)(6) motion without requiring an answer.").

[12] The District of Maryland has no local rules specifically related to *pro se* litigants; however, by practice, it does provide a "notice" with excerpts of Fed.R.Civ.P.

USDC applied Maryland's *res judicata* test but reached an incorrect conclusion for reasons discussed below: "(1) the parties or their privies in both suits are identical; (2) the claims in the new suit were or could have been brought in the original suit; and (3) the claims in the original suit reached a final judgment on the merits." (Appx., *infra*, 25a).[13]

"To qualify for preclusion, a judgment must be valid, final, and on the merits."[14] Preclusion attaches "[o]nce final judgment has been entered by a trial court,"[15] "so long as the court clearly intended to terminate all proceedings as to the claims or parties involved[.]"[16] "[P]reclusion is not affected by the fact that an appeal has [or has not] been taken[.]"[17] There is "only one final judgment per case."[18] "To say that there can be two

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[13] USDC's formulation of Md.'s *res judicata* test is almost correct. Here are the actual "three elements: (1) the parties in the present litigation are the same or in privity with the parties to the earlier litigation; (2) the claim presented in the current action is identical to that determined or that which could have been raised and determined in the prior litigation; and (3) there was a final judgment on the merits in the prior litigation." *R&D 2001 v. Rice*, 402 Md. 648, 663 (2008).

[14] Wright, Miller & Cooper, 18A *Fed. Prac. & Proc. Juris.* §4432, at 51 (3d ed. 2017).

[15] 18A *Fed. Prac. & Proc. Juris.* §4432, at 58.

[16] 18A *Fed. Prac. & Proc. Juris.* §4432, at 57.

[17] 18A *Fed. Prac. & Proc. Juris.* §4432, at 60.

[18] *Chaka v. Lane*, 894 F.2d 923, 924 (CA7 1990).

[or more] final judgments upon the same pleadings, in the same cause, in the same court,...involves a solecism[.]"[19]

All that was required was careful attention to the nature of the initial opening of *in rem* Estate matter and the basis of orphans' court decision and its limited jurisdiction.[20] USDC offered no coherent justification for its conclusion that preclusion attached. Important overlooked exceptions to preclusion doctrine undermine USDC's position.

These important exceptions are separate but related: (a) include only claim due at the time of commencing earlier action; (b) claims arose after commencement of earlier *in rem* Estate matter, not before commencement; (b)(1) an *in rem* Estate action cannot adjudicate federal civil rights claims nor award damages, due to "special limited jurisdiction"; (b)(2) orphans' court lacked statutory authority to decide federal civil rights claims, award damages, or enforce damages; (b)(3) could not seek monetary/punitive damages for civil rights violations in earlier *in rem* matter; (c) lack of standing; (d) state court would deny preclusion; and, (e) due process and *Arizona* violations.

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[19] *Insurance Co. v. Dunn*, 19 Wall. 214, 225, 86 US 214 (1874).

[20] 18A *Fed. Prac. & Proc. Juris.* §4445, at 288 ("All that is required is careful attention to the nature of the initial proceeding and the basis of decision.").

I. Petitioner included only claim due at the time of commencing earlier *in rem* Estate action after Decedent passed away

The earlier orphans' court Estate matter was *in rem*. "A probate proceeding is *in rem* because it determines heirs and disposes of a deceased's property. Such disposal binds all the world according to the rules of probate." *Branca v. Sec. Ben. Life Ins.*, 773 F.2d 1158, 1162–63, *modified sub nom.*, 789 F.2d 1511 (CA11 1986). "We see no reason why we should allow a judgment *in rem* to establish the facts on which that judgment is based in another suit, and we decline to do so. In *Becher*,...Justice Holmes stated...'[a] judgment *in rem* binds all the world, but the facts on which it necessarily proceeds are not established against all the world.'" *Ibid.* at 1163.

In earlier Estate matter, the orphans' court was a court of "special limited jurisdiction."[21] As with Decedent here, in a testate estate, orphans' court's sole purpose is to dispose Decedent's property per the terms of his valid Will to his "legatee," (or, if no Will (intestate), then per intestate succession statute to "heirs").[22]

The earlier Estate matter was opened directly due to Dr. Parikh passing away. "[A]n [earlier] action need

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[21] *Radcliff v. Vance*, 360 Md. 277, 286 (2000) ("The orphans' courts are tribunals of special limited jurisdiction, and can only exercise such authority as is expressly provided by law.").

[22] *Muffoletto v. Melick*, 72 Md.App. 551, 556 (1987) ("[D]uty to ascertain and effectuate the testator's intention — is virtually ironclad.").

include only the portions of the claim due at the time of commencing that action[.]"[23]

Only after Respondents unlawfully acted, after commencement of Estate matter, new claims arose. Fully cognizant of a "clear identification of a stopping point" on the date of commencement of Estate matter and clear on-point CA4 and USDC precedent, USDC misapplied *res judicata*.[24] All that was required was a common sense understanding of before-and-after, and limited jurisdiction.

II. New claims that arose post-commencement cannot be raised in earlier *in rem* probate matter

Another important exception to *res judicata* is when new claims arising under, for example, §1983, cannot be brought in an earlier state court *in rem* Estate matter due to its limited jurisdiction and a statutory prohibition to consider and award compensatory and/or punitive damages. *See, Hailey, and McMillan, supra* at p.2-3.

For example, in *Feener v. New Eng. Tel. & Tel.*, 20 Mass.App.Ct. 166, 478 N.E.2d 1289, 1291–1292 (1985) (*citing* Wright, Miller & Cooper), a probate court lacked jurisdiction to determine whether deceased's insurer had acted negligently in failing to act on an

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[23] 18 *Fed. Prac. & Proc. Juris.* §4409, at 233 (3d ed. 2016); *Bethel v. Montgomery Cnty.*, 706 F.3d 548, 554 n.2 (CA4 2013)("to avoid *res judicata*, a plaintiff need not expand its suit in order to add a claim that it could not have asserted at the time the suit was commenced.").

[24] *Ibid.* See also, *Hailey, supra* at p.2-3.

attempted change of beneficiaries. Probate court's refusal to resolve the question, and order that the proceeds of the policy be distributed to the estate, thus did not preclude a subsequent action against the insurer on the negligence theory.[25]

USDC offers no coherent justification for its conclusion that preclusion attached when Petitioner's claim is based exclusively on events occurring after initiation of Estate matter, in an orphans' court of "special limited jurisdiction" to solely distribute Decedent's property, and has no general jurisdiction to entertain, conduct a jury trial, award damages, or enforce an award of damages. *See, US v. Tohono O'odham Nation*, 563 US 307, 328-29 (2011) (Justice Sotomayor, concurring) ("There is, however, an exception to this rule when a plaintiff was unable to obtain a certain remedy in the earlier action.").

III. Earlier orphans' court ruling of Petitioner's lack of standing is not "on the merits" under preclusion doctrine

As a threshold issue, right out the gate, contrary to preclusion doctrine, USDC found that orphans' court ruled that Petitioner lacked standing to participate in

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[25] 18 *Fed. Prac. & Proc. Juris.* §4412, at 307 ("Claim preclusion is readily denied when the remedies sought in the second action could not have been sought in the first action, so long as there was good reason to maintain the first action in a court or in a form of proceeding that could not afford full relief."). Decedent passing away is not only a good reason, but is the only statutorily permissible reason to commence an *in rem* Estate matter.

an *in rem* Estate matter;[26] that docketed order was a threshold determination before inquiry into merits, by definition. Once the orphans' court determined Petitioner lacked standing, it was barred from reaching the merits of any claim. The "on the merits" prong fails.

In Maryland, standing is a threshold issue and must be established before proceeding to the merits of any case. *See, Kendall v. Howard Cnty*, 431 Md. 590, 614 (2013) ("Indeed, the very essence of the standing doctrine is that certain persons may invoke the judicial process in a given case, while others may not."); *Norman v. Borison*, 192 Md.App. 405, 420 (2010) ("Standing is a threshold issue; a party may proceed only if he demonstrates that he has a real and justiciable interest that is capable of being resolved through litigation.").[27]

An earlier orphans' court ruling depriving Petitioner of "standing," by definition, prevents any adjudication on the merits. There was no final judgment "on the merits" of the earlier Estate matter.

However, Petitioner has standing to pursue civil rights claims in USDC. *See, Hailey*, and *McMillan, supra* at p.2-3. An earlier court that lacked jurisdiction due to lack of standing cannot rule on the merits and

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[26] "What's it to you?" *Acheson Hotels v. Laufer*, 601 US 1, 26 (2023).

[27] Accord, *Whitmore v. Arkansas*, 495 US 149, 154 (1990) ("before a federal court can consider the merits of a legal claim, the person seeking to invoke jurisdiction of the court must establish the requisite standing to sue."); *Steel v. Citizens*, 523 US 83, 95 (1998) ("courts must resolve...standing issues before proceeding to consider the merits of a claim.").

cannot enter a judgment that precludes later judgment on the merits by USDC that has jurisdiction.[28] In USDC, Petitioner did not seek to relitigate her lack of standing in orphans' court. Rather Petitioner questioned "how" Respondents misappropriated appx. $2 million of Petitioner's inheritance by subverting Decedent's valid-Will.[29]

After admitting that Petitioner is "sole-legatee" per the terms of Dr. Parikh's valid-Will, i.e., left all his Earthly property to Petitioner and no one else, USDC nonetheless finds Petitioner lacked standing there (*in rem* Estate matter) and is precluded by *res judicata* in USDC from complaining about her misappropriated inheritance.[30] Petitioner simply questioned Respondents' post-commencement conduct to subvert a valid-Will by filing a civil rights complaint. *See, McMillan,* and *Hailey, supra* at p.2-3.

Petitioner's lack of standing in earlier orphans' court matter is not an adjudication on the merits. Wright, Miller & Cooper agree,[31] as do other circuits

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[28] 18A *Fed. Prac. & Proc. Juris.* §4436, at 159 n.30.

[29] USDC admits that Petitioner is "sole legatee" (Appx. *infra* at 9a). Petitioner cannot be "legatee" without a valid Will in-force at the time of USDC's opinion, and "sole" simply means that 100% of Decedent's Earthly property must pass to his chosen/designated loved one – so much is "ironclad."

[30] "Under the terms of Dr. Parikh's Last Will and Testament (the 'Will'), Oxana [Petitioner] was named the Estate's personal representative and sole legatee." (Appx. *infra* 9a). The "Will" has never been, nor can be, invalidated.

[31] 18A *Fed. Prac. & Proc. Juris.* §4436, at 159 ("This result

(Fed. and CA10).[32] But not the Fourth. Moreover, dismissal of Petitioner for lacking standing renders Petitioner a non-party to the earlier state court matter. The first prong of Md.'s *res judicata* test (parties are the same) fails.

Petitioner's lack of standing in the earlier Estate matter is equivalent to Petitioner not being a party to that earlier matter. Petitioner lacked standing there; and barred in USDC by *res judicata*. Petitioner suggests an unfair and unjust outcome. *See Taylor v. Sturgell*, 553 US 880, 891 (2008) ("[P]reclusion is...subject to due process limitations"). These limits are "part of our deep-rooted historic tradition that everyone should have his own day in court." *Richards v. Jefferson Cnty*, 517 US 793, 798 (1996).

IV. Another exception to deny preclusion is when state court would deny preclusion

Another important exception is when state court would deny preclusion.[33] USDC incorrectly stated that

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holds for dismissals based on a lack of standing").

[32] *Media Tech. Licensing v. Upper Deck*, 334 F.3d 1366, 1369-70 (Fed. 2003); *Brereton v. Bountiful City*, 434 F.3d 1213 (CA10 2006).

[33] 18B Fed. Prac. & Proc. Juris. §4471.3, at 328-29 (3d ed. 2019) ("Claim preclusion has been denied because the claim presented to the federal court falls outside the state definition of a single claim, because the state would not require the claim to be presented in the first proceeding, and because the state tribunal lacked authority to entertain the

Petitioner "litigated her claims to final judgment in the state courts many times over." (Appx. *infra* at 27a). This statement merely establishes that state courts have not precluded Petitioner under *res judicata* from demanding implementation of a valid-Will, nor is there a "final judgment" in the earlier *in rem* Estate matter.[34] Petitioner suggests that it could not be one-and-done, because Respondents continue to pull Petitioner in, in an on-going *in rem* Estate matter, wherein Petitioner has no standing and is therefore not a party, by continually obtaining orders against Petitioner, in violation of civil rights statutes. The Estate matter is still open, on-going, and active. No distributions of Decedent's Earthly property have been made to Petitioner, and Respondents' have taken the position that they will never distribute per terms of valid-Will – obviously.

The preclusion doctrine undermines USDC's position. By omitting *Hailey*, USDC admits new claims that arose post-commencement, violating federal civil rights statutes, could not be raised in earlier *in rem* Estate matter. No wonder Respondents did not raise *res judicata*.

Rather, USDC "construed" Respondents' failure to raise the affirmative defense of *res judicata* and *sua sponte* raised, argued, carried the burden, proved, and

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new claim."); *see also, McMillan,* and *Hailey, supra* at p.2-3.

[34] In *R&D 2001 v. Rice*, Maryland found that a lack of a final judgment in an earlier matter defeated *res judicata*. 402 Md. at 663 ("Both doctrines hinge, in part, on there having been a final judgment in the earlier litigation, and therein lies the problem with appellants' argument.").

ruled against Petitioner.[35] While providing no notice or opportunity to oppose. To be sure, traditional allocation of the proof burden was disturbed, but also troubling is that process due was disturbed.

V. No "notice," opportunity to be "heard," and no "special circumstance" prior to ruling

The Court has etched in stone that due process requires, at a minimum: (1) notice; (2) an opportunity to be heard; and (3) an impartial tribunal. *Mullane v. Central Hanover Bank*, 339 US 306 (1950). "The fundamental requisite of due process of law is the opportunity to be heard." *Grannis v. Ordean*, 234 US 385, 394 (1914). This right to be heard has little worth unless one is informed that a matter is pending and can choose whether to appear, default, acquiesce or contest.

Respondents' failure to raise and prove the affirmative defense of *res judicata* prevented Petitioner from opposing a non-raised and non-argued defense. USDC failed to provide any "notice" to Petitioner that a waived issue is being resurrected, and failed to provide an opportunity to oppose. USDC raised, carried the burden of proof, proved, and ruled. If Petitioner had an

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[35] "Claim preclusion, like issue preclusion, is an affirmative defense. Ordinarily, it is incumbent on the defendant to plead and prove such a defense, and we have never recognized claim preclusion as an exception to that general rule, see 18 Wright & Miller §4405, at 83 ('[A] party asserting preclusion must carry the burden of establishing all necessary elements.')." *Taylor v. Sturgell*, 128 S.Ct. at 2179-80 (some citations omitted).

enforceable due process right to present arguments, made for the first time in CA4 and now presented to the Court, to the USDC, the outcome would probabilistically be different. *See, Hailey, and McMillan, supra* at p.2-3.

Arizona v. California, 530 US 392, 412-13 (2000) teaches against the practice of USDC *sua sponte* resurrecting waived issues because it erodes the principle of party presentation so basic to our adjudication system, while trivializing due process.[36]

In declining to apply *res judicata, sua sponte*, the Court held that a USDC might properly raise *res judicata* in special circumstances, "most notably, if [USDC] is on notice that it has previously decided the issue presented." *Ibid.* However, the Court advised that "where no judicial resources have been spent on the resolution of a question [by USDC], trial courts must be cautious about raising a preclusion bar *sua sponte*, thereby eroding the principle of party presentation so basic to our system of adjudication." *Ibid.*

That "special circumstance" was not present here: USDC did not previously expend any resources to decide the earlier *in rem* Estate matter. Where no judicial resources have been spent on a resolution by USDC; then, "USDC should not therefore have raised and considered the waived [*res judicata*] issue *sua*

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[36] "Vertical stare decisis—both in letter and in spirit—is a critical aspect of our hierarchical Judiciary headed by 'one supreme Court.'" *Winslow v. F.E.R.C.*, 587 F.3d 1133, 1135 (DC 2009) (quoting U.S. Const. art. III, § 1); *see Schwab v. Crosby*, 451 F.3d 1308, 1325-26 (CA11 2006). Where, as here, the Supreme Court has expressly addressed an issue, lower courts are bound to follow it. The lower courts treatment of *Arizona* departed from that foundational principle.

sponte." *Wiener v. AXA*, 58 F.4th 774, 782 (CA4 2023). USDC's decision to nonetheless do so, constitutes an error of law. Accord, *Stern v. Dept. of Navy*, 280 F.3d 1376, 1380-81 (Fed. 2002) (error to dismiss in violation of *Arizona.*). Other circuits have correctly held, at a minimum, due process guarantees notice and opportunity to be heard.[37]

For reasons that CA4 correctly reversed in part, Petitioner was prevented from seeking "reconsideration" from a *sua sponte* ruling without notice or opportunity to be heard. The first opportunity to oppose *res judicata* was on appeal. It appears inconsistent or illogical to reverse on an issue that prevented Petitioner from seeking "reconsideration," but nonetheless affirm on *res judicata* ruling that violated due process, *Arizona*, preclusion doctrine, *McMillan,* and *Hailey, supra* at p.2-3.

Everyone admits that Petitioner is "sole-legatee" under a valid-Will since 2016.[38] But due to Respondents' unlawful conduct, Petitioner's inheritance was misappropriated – an unjust result. Respondents' post-commencement conduct of injecting Decedent's

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[37] *Headwaters v. US Forest Service*, 382 F.3d 1025, 1035 (CA9 2004) ("this court has never upheld a *sua sponte* dismissal for claim or issue preclusion where the parties were not given any opportunity to be heard on the issue"); *Macy v. Hopkins Cnty.Sch.Bd. of Ed.*, 484 F.3d 357, 367 n.5 (CA6 2007) ("Macy was put on notice of the defense and had an opportunity to respond, both in the district court and on appeal.").

[38] *Supreme Court Practice*, Ch.6.31(c) at 6-124 ("emphasize practical, common sense arguments, and arguments of public policy that reinforce the petitioner's more traditional legal arguments.").

"maid" as his "wife," procuring an appointment under a false name, thereby rendering all of her actions void, and altering Decedent's valid-Will to remove Petitioner to misappropriate entire inheritance should not go unpunished and is clearly excepted by preclusion doctrine and Fourth Circuit's own precedent. *See*, *Supreme Court Practice*, Ch.6.31(c) at 6-123 ("the Court is more inclined to review a decision that it thinks to be wrong.").[39]

If CA4's decision stands, then Respondents will disregard other decedents' written testamentary intensions, i.e., "Wills," probabilistically driven by racial animus, to fashion outcomes that decedent did not approve of.

Respondents had available a simple, alternative means of administering Decedent's estate without violating Petitioner's federal rights – they just chose not to pursue it and *res judicata* is no bar for claims that did not exist at time of *in rem* Estate matter commencement; could not have been raised; lack of standing; lack of privity of parties; state-court would deny preclusion; and no notice.[40]

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[39] Then-Justice Rehnquist said that "the most common reason members of our Court vote to grant certiorari is that they doubt the correctness of the decision of the lower court" and that, at oral argument, the petitioner has "the benefit of a putative, though of course tentative, view that several of the Justices before whom he will argue doubt the correctness of the lower-court decision." William H. Rehnquist, *Oral Advocacy: A Disappearing Art*, 35 Mercer L. Rev. 1015, 1027-28 (1984).

[40] Decedent's *in rem* estate matter "is not a masquerade party nor is it a game of judicial hide-n-seek where [Re-

The Court is requested to intervene to ensure that federal civil rights statutes receive the respect it deserves, no more and no less. Any one of the five reasons to grant writ, individually, is sufficient to reverse.

CONCLUSION

This petition for a writ of certiorari should be granted.

Respectfully submitted,

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spondents] may offer [Petitioner] the added challenge of uncovering [her] real name. We sometimes speak of litigation as a search for the truth, but the parties ought not have to search for each other's true identity." *Zocaras*, 465 F.3d at 484. All *in rem* Estate proceedings are proceeding under an admitted false identity – excusing such misconduct is itself inexcusable.