12/3/24

No. 24-833

In The Supreme Court of the United States

Aklilu Yohannes
Petitioner,

v.

Olympic Collection Inc. (OCI),
Farooq Ansari,
Susan Cable,
Norman L. Martin,
Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

In the District Courts of Washington, creditors' attorneys may issue writs of garnishment on behalf of the court, and for the benefit of their client. Upon service of these writs on garnishees, debtors are deprived of their property without any pre-deprivation process. The courts below ruled, the lack of review by an impartial official and absence of pre-deprivation procedure do not render the statute unconstitutional. The circuits are split on the need for pre-deprivation hearing in similar contexts due to their conflicting interpretations of *Endicott-Johnson Corp. v. Encyclopedia Press, Inc.*, 266 U.S. 285 (1924).

The questions presented are:

1. Whether *Endicott* should be overruled, and whether Washington's garnishment statute should be ruled facially unconstitutional for failing to provide procedural safeguards prior to the seizure of property to satisfy judgments that may be attacked as constitutionally infirm.
2. Whether an attorney's issuance of a writ of garnishment, pursuant to authority conferred by the state and carried out under instructions from the client's officials, renders the attorney, the client, and the client's officials state actors for purposes of a claim under 42 U.S.C. § 1983.
3. Whether the Ninth Circuit departed from the accepted and usual course of judicial proceedings by failing to address Yohannes' non-due process claims.

PARTIES TO THE PROCEEDING

The caption of the case contains the names of all the parties. Petitioner Aklilu Yohannes was the plaintiff and appellant below. Respondents Olympic Collection Inc. (OCI), Martin L. Martin, Farooq Ansari and Susan Cable were defendants and appellees below.

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RELATED PROCEEDINGS

This case is directly related to the following proceedings in the U.S. Court of Appeals for the Ninth Circuit and the U.S. District Court for the Western District of Washington.

- *Yohannes v. Olympic Collection Inc.,* No. 22-36059, U. S. Court of Appeals for the Ninth Circuit. Judgment entered August 13, 2024.
- *Yohannes v. Olympic Collection Inc.,* No. 19-35888, U. S. Court of Appeals for the Ninth Circuit. Judgment entered March 29, 2022.
- *Yohannes v. Olympic Collection Inc.,* No. 2:17-CV-00509-RSL, U.S. District Court for the Western District of Washington. Last judgment entered December 21, 2022.

OPINIONS BELOW

The opinion of the Ninth Circuit for Case No. 22 – 36059 is unpublished and is reproduced at App. A-38 – A-47. The District Court order granting Respondents' motion for summary judgment and denying Petitioner's motion for declaratory relief, following the remand from the first appeal is unpublished and is reproduced at App. A-48 – A- 77. The opinion of the Ninth Circuit for Case No. 19 – 35888 is unpublished and is reproduced at App. A-78 – A-82. The order of the District Court on the parties' motions for summary judgment and the petitioner's motion for declaratory judgment is unpublished and is reproduced at A-83 – A-115. The District Court order denying petitioner's motion for leave to file amended complaint is unpublished and is reproduced at, App. A-116 – A-124.

JURISDICTION

The Ninth Circuit entered its judgment on August 13, 2024. *App.* A-38–A-47. The court denied the parties petitions for rehearing on September 24, 2024. *App.* A-125–A-126. The petition for writ of certiorari was delivered to the Court on December 3, 2024, and was received by the Clerk on December 5, 2024. On December 10, 2024, the Clerk returned the petition with a letter instructing Petitioner to comply with the Rules of the Court and to resubmit within 60 days of the date of the letter. This petition is timely under those instructions. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

COURT RULE 29.4(c) STATEMENT

The constitutionality of the Washington State garnishment statute, RCW 6.27, is drawn into question. Accordingly, 28 U. S. C. §2403(b) may apply and copy of the Petition has been served on the Attorney General of Washington. The District Court notified the Washington Attorney General of this challenge, but the Attorney General chose not to participate. Similarly, the Ninth Circuit certified the same constitutional question under Case No. 19-35888, and again, the Attorney General did not intervene.

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const. amend. XIV, § 1:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATUTORY PROVISION INVOLVED

The case challenges the constitutionality of the Revised Code of Washington (RCW) Chapter 6.27, Garnishment, as violative of U.S. Constitution Amendment XIV, § 1. The relevant provisions of RCW 6.27 are reproduced as Appendix B.

PETITION FOR WRIT OF CERTIORARI

Petitioner Aklilu Yohannes respectfully petitions for a writ of certiorari to review the judgment of the U.S. Court of Appeals for the Ninth Circuit.

STATEMENT OF FACTS

In January 2006, Respondent Olympic Collection, Inc. ("OCI") sent Yohannes a letter demanding payment for $389.03, plus interest of $116.56, claiming that it had acquired the debt through an assignment of claims from Baker Dental Implants and Periodontics ("original creditor"). However, the owner of the original creditor testified that there are no contractual agreements, including the assignment of claims for collection, between his business and OCI. He also stated that after he sold his business in December 2005, any remaining patient account balances became the property of the new business owner. The assignment of claims the Respondents produced to prove the debt is dated February 14, 2006. *App A-84.*

Upon receiving OCI's letter, Yohannes immediately disputed the debt by letter and telephone, stating that he had always paid his bill in full and could not understand how he had an outstanding balance. *App. A-86.* In March 2006, Respondent OCI, through its attorney, Respondent Martin, filed suit against Yohannes at a Washington State District Court. Although the Respondents had Yohannes' correct address at that time, they provided OCI's process a different address. *Id.* Respondents have produced a declaration of service which purports to show service at a local Wendy's restaurant on a person significantly smaller in stature than Yohannes. *App. A-87.* The state court docket and case file, which were judicially noticed by the district court, contain no record of this declaration of service.

Having received no notice of the state court lawsuit, Yohannes did not respond to the complaint. Despite Respondents' knowledge that service had not been properly effectuated, Respondent Martin moved for and obtained a default judgment against Yohannes in the amount of $801.72. The judgment amount includes interest charge of $129.69 on a principal amount of $389.03, calculated from the purported assignment date of January 05, 2006 to the date of filing of the motion, which corresponds to an annual prejudgment interest rate of more than 100 percent.

Shortly after obtaining the judgment, in June 2006, the Respondents served a simulated Writ of Garnishment on the Boeing Company ("Boeing"), naming Yohannes as the judgment debtor, despite knowing he was employed by CTS and only had a contractual relationship with Boeing. *App. A-87.* This writ was not filed with the state court. In August and September 2006, the Respondents pressured Boeing to respond to the writ, threatening to seek judgment against it as a garnishee defendant. *Id.* After repeated calls, Boeing answered that it had no record for Yohannes. Nearly a decade later, on September 17, 2015, Respondents discovered Yohannes' employment with the federal government as of August 2015 and noted the default judgment expires on May 1, 2016. *Id.* Around November 2015, the Respondents again served a simulated Writ of Garnishment on Boeing, which, like the prior writ, was not filed with the state court. *Id.* The writs the Respondents served on Boeing, were not served on Yohannes.

From Yohannes perspective, the story ended when he disputed the debt in January 2006. He had good reason to think so, too, as he heard nothing

either from the Respondents or the State Court. Much to Yohannes' surprise, however, he received a letter around April 28, 2016 from the Department of the Interior ("DOI")—which processes payroll for the federal agency where he works—informing him that his wages were being garnished to satisfy a judgment. *App. A-80.* Yohannes did not receive notice of the garnishment from the Respondents. *App. A-90.*

Martin issued and served the writ directly on the DOI without the involvement of a court clerk or judge. The writ sought $1,886.67, a figure inflated by the usurious prejudgment interest and the fact that OCI had waited ten years to enforce the judgment. The writ was served on the DOI around April 18, 2016, just days before the default judgment was set to expire on May 1, 2016. *App. A-80.* Martin backdated the writ to February 15, 2015.

Yohannes immediately began to object strenuously to the validity of the debt by contacting both OCI and Martin. As these discussions unfolded, around May 5, 2016, Ansari became aware of the readily ascertainable fact that Yohannes' default judgment had expired. *App. A-90.* In their subsequent communications with Yohannes, Respondents did not inform him that the Judgment had expired. *Id.*

Around May 16, 2016, Martin informed Cable that they needed to release the writ of garnishment because the judgment had expired. *Id.* On May 18, 2016, Yohannes informed the DOI that his wages were being seized with unlawfully issued writ. The DOI immediately decided to stop the enforcement of the garnishment, and its decision was communicated to Martin and OCI. Cable, introducing herself as

OCI's legal manager, intervened and convinced the DOI that OCI has a valid judgment against Yohannes that justifies the continued enforcement of the garnishment. *App. A-92.* Cable also falsely asserted to the DOI that Yohannes was negotiating with OCI to settle the alleged debt. Around May 20, 2016, Cable and Ansari ordered OCI staff to let the garnishment run. *App. A-91.* Yohannes' wages were garnished in two payments totaling $1,297.43. *App. A-89.*

OCI, Ansari and Cable continued with their aggressive effort to collect on the judgment until they received copy of Yohannes' May 23, 2016 letter to Martin, which made Ansari to reach the conclusion that the continued enforcement of the garnishment could result in a lawsuit against them quite easily. *App. A-91.* OCI staff then immediately issued Yohannes' Release of Writ of Garnishment with Martin's stamped signature. *Id.* Attorney Martin admits, he has granted blanket authority to OCI staff to use his signature stamp on court documents.

Despite returning Yohannes' garnished wages, OCI, Martin, Ansari, and Cable never informed the DOI of their wrongful actions nor took any steps to mitigate the harm caused to his reputation. The garnishment is recorded against Yohannes in the system of records that the DOI shares with other federal government agencies. As a result, Yohannes filed this lawsuit on March 31, 2017. *App A-92.*

STATEMENT OF THE CASE

Petitioner, Yohannes, filed his initial complaint on March 31, 2017. *App. A-92.* On December 7, 2017, in its order on Respondents' motion to dismiss, the District Court ordered Yohannes to amend his complaint to raise constitutional challenge to the Washington State garnishment statute, RCW 6.27, and to cure any other deficiencies. *App. A-118.* Yohannes filed his amended complaint on December 29, 2017. *App. A-92.* The amended complaint challenges the constitutionality of the Washington garnishment statute and alleges violations of 42 U.S.C. § 1983 for deprivation of his wages without due process, as well as claims under the Fair Debt Collection Practices Act (FDCPA), the Washington Collection Agency Act (CAA), the Washington Consumer Protection Act (CPA), abuse of process, defamation, and fraud. *Id.*

On April 5, 2018, after discovering that the Release of Writ of Garnishment bearing Attorney Martin's stamped signature was sent to Yohannes' employer from Attorney Michael S. O'Meara's law office, Yohannes promptly filed a motion for the disqualification of Attorney O'Meara, who was representing the respondents at that time. *App A-122.* Yohannes' motion also informed the District Court about his intentions to amend his complaint to add O'Meara as a defendant. The District Court acknowledged that O'Meara's dual role in representing the respondents in both the state court collection efforts and the current federal action implicated relevant conflict-of-interest concerns but ultimately denied the motion for disqualification.

On April 9, 2019, after discovery had concluded, Yohannes filed a motion for leave to file a second amended complaint. *App. A-117.* The proposed second amended complaint added four new defendants, including Attorney O'Meara, and asserted additional claims under the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. § 1961 et seq., and the Washington Criminal Profiteering Act, RCW 9A.82 et seq. The District Court determined there is no evidence of bad faith and Yohannes filed his motion to amend one day before the deadline; however, denied the motion, reasoning that he has already been granted leave to amend once. *App. A-123-24.*

Following this, each respondent filed separate motions for summary judgment. Yohannes filed a motion for partial summary judgment on his non-due process claims and a motion for declaratory relief, arguing that the post-judgment garnishment procedures in the state district courts violate the due process rights guaranteed by the Fourteenth Amendment. On October 11, 2019, the District Court granted summary judgment in favor of the Respondents on all claims, denying Yohannes' motions for partial summary judgment and declaratory relief. *App. A-84.*

Yohannes filed a timely notice of appeal on October 22, 2019. On March 29, 2022, the Ninth Circuit vacated the District Court's order in its entirety, and remanded the case back to the District Court. *App. A-78-82.* While the Ninth Circuit provided instructions on Yohannes' due process claims under 42 U.S.C. § 1983, it did not address his non-due process claims or his request for leave to amend his complaint. *Id.*

Upon remand, the District Court entered a scheduling order that did not allow for the filing of an amended complaint. Yohannes and Respondents then moved for summary judgment. On December 21, 2022, the District Court entered its order re-adopting its previous rulings, asserting that the Ninth Circuit's memorandum limited the case to Yohannes' due process claims. *App. A-54.* The District Court acknowledged case law is mixed concerning Yohannes' due process claims, and decided to join the circuits in rejecting claims similar to Yohannes'. *App. A-71.* The District Court's order after remand is essentially the same as its previously vacated order.

Yohannes then filed a second appeal with the Ninth Circuit. The same three-judge panel that had decided the first appeal presided over the case again. *App. A-38-43.* In its decision, the panel ruled in Yohannes' favor against Respondent OCI on his as-applied due process claim. However, the panel's decision did not clarify whether judgment was entered in Yohannes' favor against the individual respondents—Martin, Ansari, and Cable, creating ambiguity on this issue. As with the first appeal, the panel's memorandum did not properly address Yohannes' non-due process claims or his request to file an amended complaint. *Id.*

Dissatisfied with the panel's decision, both Petitioner and Respondents filed motion for rehearing. On September 24, 2024, the Ninth Circuit entered an order denying the parties requests for rehearing. *App. A-125-126.* This petition for writ of certiorari to the Supreme Court of the United States follows.

STATUTORY BACKGROUND

Understanding the constitutional infirmity in Washington's garnishment statute, RCW 6.27, requires knowledge of how the statute works in practice. To begin the process, the judgment creditor files an affidavit stating that "(1) The plaintiff has a judgment wholly or partially unsatisfied in the court; (2) the amount alleged to be due under that judgment;" (3) that the garnishee, "is indebted to the defendant in amounts exceeding those exempted from garnishment by any state or federal law"; and (4) whether or not the garnishee is the debtor's employer. *RCW 6.27.060.*

Once presented with a garnishment application, court clerks in both Washington State superior and district courts may issue the writ. *RCW 6.27.020(1).* In district courts, "the attorney of record" for the judgment creditor may issue a writ. *RCW 6.27.020(2).* This means, in the district courts of the state, a creditor's attorney can both prepare the writ of garnishment and issue the writ with no oversight whatsoever from the court. Writs issued by the attorneys must be complied with in the same manner as a writ issued by the court. *RCW 6.27.105(2).*

Once the writ is served on the garnishee, the debtor is immediately deprived of his property. The statute instructs the garnishee that it "SHALL HOLD the ... the [debtor's] earnings due at the time of service of this writ" plus sixty days thereafter. *RCW 6.27.105* (capitalization in original). The statute "command[s]" the garnishee "not to pay any debt, whether earnings subject to this garnishment ... owed to the defendant at the time this writ was served and not to deliver ...

any ... property ... of the defendant in your possession ... at the time when this writ was served. Any such payment, delivery ... is void ...." *RCW 6.27.105.*

RCW 6.27.130(1) provides that "on or before the date of service of the writ on the garnishee, the judgment creditor shall mail ... to the judgment debtor, by certified mail, addressed to the last known post office address of the judgment debtor, ... a copy of the writ and a copy of the judgment creditor's ... application for the writ, and ... the notice and claim form ...." *RCW 6.27.130(1).* If the creditor complies with the notice provision of debtor received the notice of the garnishment days after it is served on the garnishee.

The debtor can only file exemptions, and contest the garnishment through a post-deprivation process. The garnishee continues to seize the debtor's property until the court holds a hearing on the claimed exemption and rules for the debtor. The statute does not provide the debtor the opportunity for a pre-deprivation hearing to challenge the creditor's affidavit supporting the original writ.

When the garnishee is the federal government, the writ is accompanied by a notice directing the federal government "to disburse any nonexempt earnings to the court in accordance with the [garnishee's] normal pay and disbursement cycle," and the court is required to maintain control over the funds until the garnishment proceeding is resolved. *RCW 6.27.370.*

REASONS FOR GRANTING THE PETITION

I. CONSTITUTIONALITY OF THE WASHINGTON GARNISHMENT STATUTE

In the district courts of Washington State, attorneys for judgment creditors may issue writs of garnishment on behalf of the court, relying solely on their client's application and without any court oversight. Upon service of these attorney-issued writs on garnishees, debtors are deprived of their wages or bank account funds without any pre-deprivation process. Judgment debtors can only challenge the garnishment through a post-deprivation process.

Although diligent debtors may recover wrongfully garnished property after a post-deprivation hearing, "a temporary, nonfinal deprivation of property is ... a 'deprivation' in the terms of the Fourteenth Amendment." *Fuentes v. Shevin*, 407 U.S. 67, 85 (1972) (citing *Sniadach* v. *Family Finance Corp.*, 395 U.S. 337 (1969); *Bell* v. *Burson*, 402 U.S. 535 (1971)). While "due process is flexible and calls for such procedural protections as the particular situation demands" *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972), "the amount of process required can never be reduced to zero." *Propert v. District of Columbia*, 948 F.2d 1327, 1331-32 (D.C. Cir. 1991). That is precisely what Washington has done for post-judgment garnishment proceedings in the state district courts.

Post-judgment garnishments in the district courts of Washington reflect what this Court described in *Fuentes*:

> The statute[] ... abdicate[s] effective state control over state power. Private parties, serving their own private advantage, may unilaterally invoke state power to replevy goods from another. No state official participates in the decision to seek a writ; no state official reviews the basis for the claim to repossession; and no state official evaluates the need for immediate seizure. There is not even a requirement that the plaintiff provide any information to the court on these matters. The State acts largely in the dark.

Fuentes, 407 U.S. at 93.

The general due process rule "is that absent an 'extraordinary situation' a party cannot invoke the power of the state to seize a person's property without a *prior* judicial determination that the seizure is justified." *United States v. $8,850*, 461 U.S. 555, 563 n.12 (1983) (emphasis original). Moreover, since the "subject matter jurisdiction" of Washington courts in garnishment proceedings hinges on "the validity of the principal action against the debtor," *Watkins v. Peterson Enters., Inc.*, 973 P.2d 1037, 1043 (1999), an impartial official must first confirm the court's jurisdiction before it exercises authority over the debtor's property. However, this safeguard is not being observed in the district courts of Washington.

The principles at stake here are of critical importance not only to the parties but to the public at large. The continued operation of this statute poses an ongoing threat to countless individuals whose wages and bank accounts are at risk under similarly flawed procedures. The Washington statute is modeled after

the Oregon statute, which raises broader concerns about the constitutionality of similar garnishment laws in other states. *House Bill Report, HB 1816, App. B-152.* A decision in this case would not only address the specific flaws in the Washington statute but would also serve as a lesson, guiding other states in ensuring their garnishment procedures meet the constitutional standards required under the Due Process Clause. Importantly, procedural safeguards not only prevent the erroneous deprivation of debtors' property but also protect creditors from the risk of liability for wrongful deprivations.

A. Circuit Split Stemming from Conflicting Interpretations of Precedents.

There is a persistent and unresolved split among the circuits whether due process requires a pre-deprivation hearing to be conducted for post-judgment garnishment procedures. This conflict has its roots in the tension between this Court's rulings—*Griffin v. Griffin*, 327 U.S. 220 (1946), and *Endicott-Johnson Corp. v. Encyclopedia Press, Inc.*, 266 U.S. 285 (1924)—which has led to divergent readings among the courts of appeals.

In *Hanner v. Demarcus*, 390 U.S. 736 (1968), the Court granted certiorari to determine whether *Endicott* should be overruled but later dismissed the writ as improvidently granted. Three justices dissented, reasoning that the propriety of overruling *Endicott* was properly presented and that "[t]he *Endicott* rationale that a party who has litigated a case and had a judgment taken against him is deemed, for purposes of due process, to be on notice of further proceedings in the same action was rejected in

Griffin v. *Griffin*, 327 U.S. 220." *Hanner*, 390 U.S. at 741.

Since *Hanner*, the Appeals Courts are splint on the continued precedential value of *Endicott*. See *Aacen v. San Juan County Sheriff's Dep't,* 944 F.2d 691, 695 n. 5 (10th Cir.1991) (courts "have questioned the precedential value of *Endicott*"); *Morrell v. Mock,* 270 F.3d 1090, 1097 (7th Cir.2001), *cert. denied,* 537 U.S. 812 (2002) ("as to issues and rights that were not litigated in the underlying judgment, such as defenses to execution on particular assets, *Endicott* does not supply the answer"); *Duranceau v. Wallace,* 743 F.2d 709, 711 (9th Cir.1984) (the "'established rules of our system of jurisprudence' have changed since" *Endicott.*); *Brown v. Liberty Loan Corp. of Duval*, 539 F.2d 1355, 1364 (5th Cir. 1976) ("[w]e are unable to say ... that *Griffin* entirely undercuts the *Endicott*"); *McCahey v. L.P. Investors*, 774 F.2d 543, 548 (2d Cir. 1985) ("debate has arisen over the effect as of *Griffin* on *Endicott*'s vitality"); *Finberg v. Sullivan*, 634 F.2d 50, 56-57 (3d Cir. 1980) (*Endicott* "did not consider the possibility that the garnishment might deprive the judgment debtor of exempt property"). The Court should grant certiorari to overrule or clarify *Endicott*.

Some Appeals courts have ruled due process does not require notice and a hearing before seizure of property for post-judgment garnishment. See, e.g., *Dionne,* 757 F.2d at 1352 (due process does "not ... require notice or hearing before a post-judgment attachment); *McCahey,* 774 F.2d at 549-50 ("additional procedural protections ... can hardly be required where the creditor's claim has been ... confirmed by a court"); *Brown,* 539 F.2d at 1363 ("due process ... does not require notice and an opportunity

for a hearing on entitlement to the exemption before wages are garnished"). Other Court's that rely on more recent precedents recognize due process requires notice and a hearing to be afforded when it is practicable. See *Resnick v. Krunchcash, LLC,* 34 F.4th 1028, 1036 (11th Cir. 2022). ("[T]he distinction between pre- and post-judgment deprivations is not relevant for a due process analysis because the relevant point in the analysis is whether deprivation occurred before or after notice and opportunity to be heard, not whether the deprivation occurred before or after judgment.").

"An elementary and fundamental requirement of due process *in any proceeding* which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane* v. *Central Hanover Trust Co.,* 339 U. S. 306, 314 (1950) (citations omitted, emphasis added). "A court proceeding is defined as an act or step that is part of a larger action and an act done by the authority or direction of the court." *Bloate v. U.S.*, 559 U.S. 196, 218-19 (2010) (citing Black's Law Dictionary 1324 (9th ed.2009) (internal brackets and quotation marks omitted). Post-judgment garnishment proceedings are not exempt from *Mullane's* notice requirement.

The standard this Court enunciated is that due process requires "an individual be given an opportunity for a hearing *before* he is deprived of any significant property interest, except for extraordinary situations where some valid governmental interest is at stake that justifies postponing the hearing until after the event." *Boddie v. Connecticut,* 401 U.S. 371,

379 (1971) (emphasis original). Accordingly, "when no valid governmental interest would demonstrably be disserved by delay, and when full retroactive relief cannot be provided, an after-the-fact evidentiary hearing ... is not constitutionally sufficient." *Mackey v. Montrym*, 443 U.S. 1, 21-22 (1979). The dispute the Washington garnishment statute aims to resolve between private parties, does not represent an emergency that warrants delaying the hearing until after the deprivation.

Washington courts recognize, "a judgment may be impeached by evidence that contradicts the record in the action." *Farmer v. Davis,* 161 Wn. App. 420, 429 (2011). See also *State v. Olivera-Avila* 949 P.2d 824, 827 (1997) (judgment "should be subject to collateral attack" to determine if "a constitutional defect renders a judgment void"). Accordingly, garnishment of debtors' properties without pre-deprivation notice and hearing, "would be inconsistent with the due process limitations on a state's jurisdiction that the right of collateral attack protects, and is also inconsistent with a proper balancing of the competing interests at stake." *Morrell,* 270 F.3d at 1100 (internal quotes omitted).

The courts below concluded, the "underlying judgment," irrespective of the debtor's knowledge about its existence, "was sufficient notice of what would follow." *App. A-69.* This rationale is exactly what the justices of this Court said "was rejected in *Griffin" Hanner*, 390 U.S. at 741. Moreover, recent precedents of this Court teach, an interested party's knowledge of the consequences that may follow does not constitute notice of an impending taking. See *Mennonite Board of Missions v. Adams*, 462 U.S. 791,

800 (1983) ("a mortgagee's knowledge of delinquency in the payment of taxes is not equivalent to notice that a tax sale is pending."); *Jones v. Flowers,* 547 U.S. 220, 232, 126 S.Ct. 1708, 164 L.Ed.2d 415 (2006) ("the common knowledge that property may become subject to government taking when taxes are not paid does not excuse the government from complying with its constitutional obligation of notice before taking private property.").

Given the persistent circuit split, this Court should resolve whether the notice and hearing requirements articulated in its recent precedents apply equally to post-judgment garnishments. The continued validity of *Endicott* is "an important question of federal law that has not been, but should be, settled by this Court." *Sup.Ct. R. 10(c).* Without the clarification, debtors remain vulnerable to abusive debt collectors' practices, and courts and legislators are left without clear guidance on the constitutional limits of post-judgment garnishment procedures.

B. Case Involves Considerations Of Both Due Process and Equal Protection

When the Washington garnishment statute was amended to delegate authority to attorneys of creditors, the legislature explained: "Garnishment is used to force a debtor's employer to pay the creditor directly out of the debtor's paycheck. Garnishment may also be used to reach other assets of the debtor, such as a bank account." *House Bill Report, HB 1816, App. B-150.* Obviously, the legislator knowingly vested attorneys with the state's coercive power to seize property, empowering them to wield judicial authority and issue writ of garnishment—a court

order. The statute does not grant this authority to attorneys in the state superior courts. The legislature reasoned, "superior courts ... deal with judgments of substantial weight. Clerks provide a check and balance and give extra protection to creditors and debtors." *App. B-156, B-153.* The distinction in the between district and superior courts procedures reflects a flawed assumption that low-income individuals, who are often targeted by small-amount fraudulent debt lawsuits in state district courts, do not deserve the same legal protections as the wealthy judgment debtors in superior courts. "The State is not free to produce such a squalid discrimination." *Griffin v. Illinois*, 351 U.S. 12, 24 (1956) (Frankfurter, J., concurring). The courts below upheld this unequal protection of law, reasoning that the state has interest in "the efficient use of judicial resources, so they are not wasted in proceedings of little value." *A-70-71* (citing, *McCahey,* 774 F.3d at 549). Yet due process requires that those who are most vulnerable to harm or exploitation receive heightened safeguards—not be denied protections altogether. By denying the safeguards from these individuals, "the risk of erroneous deprivation that the State permits [and the courts below uphold] here is substantial." *Connecticut v. Doehr*, 501 U.S. 1, 12 (1991).

This Court has "held that the denial of equal protection, viz., invidious discrimination, may be 'so unjustifiable as to be violative of due process.'" *Picard v. Connor*, 404 U.S. 270, 279 (1971) (citing *Bolling v. Sharpe*, 347 U.S. 497, 499 (1954)). "The question that the Court treats exclusively as one of due process inevitably implicates considerations of both due process and equal protection." *Boddie v. Connecticut*, 401 U.S. 371, 388 (1971) (Brennan, J., concurring). As

in other cases the Court has previously dealt, "the evil is the same: discrimination against the indigent." *Boddie*, 401 U.S. at 384.

The Washington statutes that govern the collection of child support judgments, RCW §§ 74.20A and 26.18, afford obligators with heightened protections against erroneous deprivations. Under these statutes, state officials—not private attorneys—issue writs, and obligators receive an elaborate pre-deprivation notice and a hearing. A child support judgment debtor, like any other judgment debtor, is a post-judgment debtor. The State's interest for enforcement of child support debts is obviously weightier than its interest in enforcement of judgments for private creditors. The courts below upheld the validity of the procedures of RCW 6.27 because they are not convinced that the same level of "procedural protections must be accorded debtors" when the seizure is for the benefit of a private judgment creditor. *App A-72* (citing *McCahey,* 774 F.2d at 549-50).

C. The Washington Garnishment Statute vs. *Sniadach* and Related Precedents

More than fifty years ago this Court invalidated the Wisconsin statute where "the clerk of the court issues the [writ] at the request of the creditor's lawyer ... who by serving the garnishee sets in motion the machinery whereby the wages are frozen." *Sniadach,* 395 U.S. at 338-39. The Court also invalidated the Georgia statute where the "writ [was] issuable ... by the court clerk, without participation by a judge." *North Georgia Finishing, Inc. v. Di-Chem, Inc.*, 419 U.S. 601, 607 (1975). Subsequently, the Georgia

Supreme Court explained, this "Court invalidated Georgia's procedure in both pre-judgment and post-judgment cases." *Coursin v. Harper,* 236 Ga. 729,732 (225 SE2d 428) (1976). "The mere fact that a creditor has obtained a judgment does not give him a right to enforce that judgment by depriving the alleged judgment debtor of his property without due process of law." *Id* at 733.

The Ninth Circuit compared the procedures of the Washington statute with statute in *North Georgia Finishing*; however, endorsed the "district court's ruling that [Yohannes'] facial due process challenge fails under" the balancing test of *Mathews v. Eldridge*, 424 U.S. 319 (1976). *App. A-41.* However, the *Mathews* balancing test applies only to cases in which "the government itself seeks to effect a deprivation on its own initiative." *Connecticut v. Doehr,* 501 U.S. 1, 10 (1991). By contrast, the modified balancing test adopted in *Doehr,* governs in cases, as in this one, where the statute in question applies "to disputes between private parties." *Id.* This Court has "never viewed *Mathews* as announcing an all-embracing test for deciding due process claims." *Dusenbery v. United States,* 534 U.S. 161, 167 (2002).

The procedure under the Washington statute is more deficient than those in *Sniadach* and *North Georgia Finishing*. Under the challenged provisions of the Washington statute, the writ is issued directly by the attorney of the judgment creditor, with no involvement from a judge or court clerk. In contrast, those in *Sniadach* and *North Georgia Finishing* required the writ to be issued by the court clerk. In all cases, the debtor is deprived of the use of the property in the hands of the garnishee immediately upon

service of the writ. The attorneys exercising the authority vested on them under the Washington statute have the motivation to decide for their clients, not to ensure a fair and impartial process.

This Court has consistently reiterated that due process requires a "neutral and detached judge in the first instance." *Ward v. Village of Monroeville*, 409 U.S. 57, 61-62 (1972)). This requirement applies to "officers acting in a judicial or quasi-judicial capacity." *Tumey v. Ohio*, 273 U.S. 510, 522 (1927). And, it is not diminished "when a legislature delegates adjudicative functions to a private party." *Concrete Pipe Prods. v. Constr. Laborers Trust*, 508 U.S. 602, 617-18 (1993). Due process requires adjudicator who is not in a situation that "would offer a possible temptation to the average man as a judge... not to hold the balance nice, clear, and true between" the parties. *In re Murchison,* 349 U.S. 133, 136 (1955). Certiorari is warranted because the decisions of the courts below, affirming the facial validity of the Washington statute despite its denial of debtors' rights to an impartial adjudicator, "conflicts with [these] relevant decisions of this Court." *Sup. Ct. R. 10(c).*

Yohannes has not found any Circuit precedent upholding the constitutionality of a statute that confers judicial power on interested parties or their attorneys to seize property unrelated to the underlying debt. The decision below is at odds with the Third Circuit precedent that "[d]ue process requires at a minimum that the sworn statement be presented to an official with sufficient legal competence ...; [and] the issuance of the writ should be conditioned on approval by such official." *Jonnet v. Dollar Sav. Bk. of City of New York*, 530 F.2d 1123,

1130 (3d Cir. 1976). Requiring an impartial judicial official to be involved in this process ensure fairness in the proceedings and provides the essential safeguards against unlawful deprivations. Otherwise, the District Courts of Washington will continue to be the constant instruments of fraud.

As was in *Sniadach* this case deals "with wages—a specialized type of property presenting distinct problems in our economic system." *Sniadach,* U.S. at 340. Accordingly, "the nature of that property" dictates, the answer for the "problems of procedural due process." *Id.* The Due Process Clause forbids such garnishment absent notice and prior hearing, because the "leverage of the creditor on the wage earner is enormous" and garnishment of wages may "drive a wage-earning family to the wall." *Id.* at 341-342. "For if an applicant for the writ knows that he is dealing with an uneducated, uninformed consumer with little access to legal help and little familiarity with legal procedures, there may be a substantial possibility that a summary seizure of property—however unwarranted—may go unchallenged ...." *Fuentes*, 407 U.S at 83 n.13. All of these factors are present under post-judgment garnishment.

When Yohannes discovered the unlawful garnishment of his wages, he acted immediately by contacting the state court, his employer, and the Respondents. Despite his swift efforts, a total of $1,297.43 was taken from him in two payments before he could halt the enforcement. His experience contrasts with what the Court noted that it was not "apparent in *Sniadach* with what speed the debtor could challenge the validity of the garnishment ...." *Mitchell v. W.T. Grant Co.*, 416 U.S. 600, 614 (1974).

Due process "allows no distinction between a litigant's prejudgment and postjudgment involvement." *Pennzoil Co. v. Texaco Inc.*, 481 U.S. 1, 31 n.1 (1987) (Stevens, J., concurring). This case presents an opportunity for the Court to elevate Justice Stevens's concurring opinion to binding precedent, affirming that due process protections apply equally to litigants in both prejudgment and postjudgment proceedings. The challenge to the garnishment statute implicates the due process rights of judgment debtors, raises an issue of significant public concern that warrants decisive resolution by this Court. *Sup. Ct. R. 10(c).*

D. The Need for Clarification of Due Process Standards in Garnishment Cases

"'Due process' is an elusive concept. Its exact boundaries are undefinable, and its content varies according to specific factual contexts." *Hannah v. Larche*, 363 U.S. 420, 442 (1960). Accordingly, starting with Yohannes, understanding of the particular situation consumers face in the hands of debt collectors is essential to determine the due process owed to individuals facing post-judgment garnishments.

The validity of the assignment of claims that Respondents relied on to bring the state court action against Yohannes is denied by the original creditor, leaving Respondents without standing to bring the state court action. *App. A-84-85.* Moreover, Respondents obtained the state court default judgment without properly serving Yohannes with the complaint. "The judgment was therefore void under [Washington] law." *Peralta v. Heights Medical*

Center, Inc., 485 U.S. 80, 82 (1988). The same misconduct that the court observed "[i]n *Sniadach*, ... that garnishment was subject to abuse by creditors without valid claims," is being challenged here. *Mitchell,* 416 U.S. at 614.

Despite the lack of proof of service in the judicially noticed state court records, the District Court accepted a declaration service the Respondents produced as evidence of service of the process. The declaration describes service on a person of a different height and build than Yohannes. *App. A-87.* The Ninth Circuit observed, unlike the remaining documents in the judicially noticed state court record, the "declaration of service is devoid of a stamp evidencing that the declaration was filed in state court." *App. A-40.* The state court rule provides that "default judgment shall not be rendered unless proof of service is on file with the court." *CRLJ 55(b)(4).* When, as in here, "a federal court finds that a state-court decision was ... tainted by due process violations, it may declare the state court's judgment void *ab initio* and refuse to give the decision effect in the federal proceeding." *Twin City Fire. Insurance Co. v. Adkins,* 400 F.3d 293, 299 (6th Cir.2005). The Court's below should have fully accorded this right to Yohannes by granting his request to set aside the state court judgment.

Yohannes' case reflects a broader pattern of abuse by debt collectors nationwide. The vast majority of suits on invalid debts lead to default judgments "because 90% or more of consumers sued in these actions do not appear in court to defend." Fed. Trade Comm'n, *The Structure and Practices of the Debt Buying Industry* 45 (2013)). A debt collector attorney

also testified before the Ninth Circuit that "approximately 90% of the collection lawsuits resulted in a default judgment." *McCollough v. Johnson, Rodenburg & Lauinger, LLC,* 637 F.3d 939, 948 (9th Cir. 2011). This is because debt collectors "routinely engage[] in 'sewer service' whereby [they] would fail to serve the summons and complaint but still submit proof of service to the court." *Sykes v. Mel S. Harris & Assocs. LLC*, 780 F.3d 70, 76 (2d Cir. 2015). When debtors fail to appear for lack of notice of the action, the debt collectors move the court "for a default judgment by providing the court with ... an 'affidavit of merit' attesting to their *personal knowledge* regarding the defendant's debt ...." *Id.* (emphasis original). The *Endicott* assumption that the "defendant has been granted an opportunity to be heard and has had his day in court" to present his defenses before the entry of the judgment, does not apply under present-day debt collectors' practices of obtaining judgments without proper service of the complaint on debtors. *Endicott,* 266 U.S. at 288. Creditors do not deserve a judicial mechanism to seek compensation for debts that are not owed.

When the garnishment proceedings are devoid of a pre-deprivation process, debtors do not know about the judgment until the debt collector successfully had their wages garnished. Yohannes did not know the existence of the state court default judgment until "the end of April in 2016," the day he received a letter from his employer informing him that his wages were being garnished. *App. A-90.* That judgment "expired on May 1, 2016," before he can attack it at the state court. *App. A-87.* "[T]he judgment against him and the ensuing consequences

occurred without notice ... that would have given him an opportunity to be heard." *Peralta,* 485 U.S. at 86.

The core issue here—what process is due an individual facing post-judgment garnishment—is "an important question of federal law that has not been, but should be, settled by this Court." *Sup. Ct. R. 10(c).* The Court should therefore grant certiorari to establish a due process standard that protects judgment debtors from erroneous deprivations, and enables creditors to collect legitimately owed debts without fear of liability for wrongful garnishment.

II. ATTORNEYS AND CREDITORS AS STATE ACTORS.

In *Lugar*, the Court addressed the issue of when the conduct of a private party can be treated as state action for the purposes of claims under 42 U.S.C. § 1983. *Lugar v. Edmondson Oil Co., Inc.,* 457 U.S. 922, 940-42 (1982). The Court distinguished between private misuse of state law—which is not attributable to the state—and abuse of authority by individuals acting under color of state law, which is attributable to the state and gives rise to liability under § 1983. *Id.* The Courts below struggled distinguishing between these two principles; and they were divided on the question of whether the action of each of the Respondents makes them state actors for the purpose of 42 USC § 1983.

This case involves a unique situation where a creditor and its officials conspire with a private attorney, who is vested with state authority to issue writs on behalf of the state court. The District Court characterized Yohannes' claim as "private misuse of a

state statute," and ruled the Respondents did not act under the color of state law. *App. A-58-61.* The divided Ninth Circuit panel ruled Yohannes was deprived of his wages without due process of law and entered judgment for him on his as-applied due process claim against the corporate defendant, OCI. *App. A-39-47.* However, the decision fails to clearly articulate whether judgment was also entered against the individual Respondents—Martin, Mr. Ansari, and Ms. Cable—leaving ambiguity on this critical matter. The Ninth Circuit denied the parties' motion for rehearing seeking clarification on this issue. *App. A-125.*

Martin, as attorney of OCI, and acting pursuant to the authority conferred on him under RCW 6.27, and with instructions from Respondents Ansari and Cable issued a writ of garnishment against Yohannes' wages. Consequently, Yohannes was deprived of his wages without having the opportunity to challenge the garnishment. "Attorneys' use of the garnishment procedure and [their clients' officials] instructions to them to do so made both of them state actors for purposes of section 1983." *Jordan v. Fox, Rothschild, O'Brien & Frankel*, 20 F.3d 1250, 1255 (3d Cir. 1994). Certiorari is warranted because the Ninth Circuit "has entered a decision in conflict with the decision of [the Third Circuit] on [this] same important matter." *Sup.Ct. R. 10(a).*

In *Pennzoil,* although the Court vacated the Second Circuit's opinion on abstention grounds, the justices of this Court in their concurring opinions have noted, the Second Circuit was "correct to hold that a creditor's invocation of a State's postjudgment collection procedures constitutes action 'under color of' state law within the meaning of 42 U.S.C. § 1983."

Pennzoil Co., 481 U.S. at 30. Certiorari is warranted because the Ninth Circuit decision is in conflict with the decision of the Second Circuit and the relevant opinions of the justices of this Court. *Sup.Ct. R. 10(a).*

The Washington garnishment statute, RCW 6.27, confers attorneys with the power to seize debtors' property. Traditionally, "the person initiating the seizure has been a government official responsible for determining, under the standards of a narrowly drawn statute, that it was necessary and justified in the particular instance." *Fuentes,* 407 U.S. at 91. The attorneys who invoke the authority the statute vests in them qualify as a state actors because they are performing functions and exercising "powers traditionally exclusively reserved to the State." *Jackson* v. *Metropolitan Edison Co.,* 419 U. S. 345, 352 (1974). See *Rawson v. Recovery Innovations, Inc.*, 975 F.3d 742, 747 (9th Cir. 2020) ("private parties ... act under color of state law when they perform actions under which the state owes constitutional obligations to those affected.").

When performing the function, the state delegated to them, the attorneys "have the authority of state officials to put the weight of the State behind their private decision." *Lugar,* 457 US at 941. As in "*Sniadach, Fuentes, W. T. Grant*, and *North Georgia*, ... [the Washington] state statute provided the right to garnish ...as well as the procedure by which the rights could be exercised." *Id.* at 937. Each Respondent "may fairly be said to be a state actor" because Respondent Martin has the authority of "a state official" or "his conduct is otherwise chargeable to the State," and Respondents OCI, Ansari and Cable "acted together with or ... obtained significant aid

from [Martin acting as a state agent or] state official[]." *Id.* The Court should grant certiorari and clarify the case falls under the abuse of authority doctrine.

This Court has repeatedly held that "when private individuals or groups *are endowed by the State* with powers or functions *governmental* in nature, they become agencies or instrumentalities of the State and subject to its constitutional limitations." *Evans* v. *Newton,* 382 U. S. 296, 299 (1966) (emphasis added). "Misuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law, is action taken 'under color of' state law.'" *United States v. Classic*, 313 U.S. 299, 326 (1941). The fact that Washington delegates Martin its power to seize property "does not change the governmental character of the power exercised." *Edmonson v. Leesville Concrete Co., Inc.,* 500 U.S. 614, 626, (1991).

"The purpose of §1983 is to deter state actors from using the badge of their authority to deprive individuals of their federally guaranteed rights." *McDade v. West*, 223 F.3d 1135, 1139 (9th Cir. 2000). That badge of authority is clearly indicated in the writ Martin issued against Yohannes' wages with: "This writ is issued by the undersigned attorney of record for plaintiff under the authority of chapter 6.27 of the Revised Code of Washington, and must be complied with in the same manner as a writ issued by the clerk of the court." *RCW 6.27.105.*

The writ issued by Martin commanded Yohannes' employer, a federal government agency, to seize Yohannes wages. Absent the authority granted

by Washington law, Martin, as an attorney, would not possess such power.

Martin has delegated OCI staff to perform his duties as an attorney, including the authority Washington conferred on him under RCW 6.27. In the underlying state court action OCI staff, with direction from Ansari and Cable, issued the Release of Writ of Garnishment with a rubber-stamped signature of Martin. The writ release is a court order quashing the writ. OCI staff, Ansari and Cable acted under the color of law when they performed the functions of the state court with a rubber-stamped signature of Martin. "[U]nder 'color' of law means under 'pretense' of law." *Screws v. United States,* 325 U.S. 91, 111 (1945). See also *Barna v. City of Perth Amboy,* 42 F.3d 809, 815 (3d Cir. 1994) (one "who is without actual authority, but who purports to act according to official power, may also act under color of state law.").

"State action, as that phrase is understood for the purposes of the Fourteenth Amendment, refers to exertions of state power in all forms." *Shelley v. Kraemer*, 334 U.S. 1, 20 (1948). "That the action of state courts and judicial officers in their official capacities is to be regarded as action of the State within the meaning of the Fourteenth Amendment ...." *Id.* at 14. The issuance of a writ of garnishment constitutes state action for the purpose of 42 USC § 1983. This is because regardless of whether it is issued by a court official or the attorney of judgment creditor, the state possesses the compelling power of the garnishment.

Yohannes is seeking Respondents to be "accountable for their abuse of their broadly

delegated, uncircumscribed power to effect the deprivation at issue." *Zinermon v. Burch*, 494 U.S. 113, 136 (1990). Respondent are liable under §1983 because the State has "delegated to them the power and authority to effect the very deprivation complained of' and [have] the concomitant duty to initiate the procedural safeguards ... against the unlawful [deprivation]." *Id.* at 124.

The Court should grant certiorari and clarify the case falls under the abuse of authority doctrine.

III. NON-DUE PROCESS CLAIMS AND MOTION TO AMEND COMPLAINT

During the first appeal, Case # 19-35888, the Ninth Circuit vacated the district court's order in its entirety, and remanded the case for further proceedings. *App. A-78-82.* On remand, the District Court simply reinstated its prior rulings on Yohannes' non-due process claims by adopting the reasoning from its previous summary judgment order. The court concluded that the Ninth Circuit's remand limited its focus to due process claims, leaving non-due process claims without review. *App. A-54-55.* In the second appeal, Case No. 22-36059, the Panel acknowledged that its prior decision vacated the district court's order, yet failed to address Yohannes' non-due process claims. *App. A-39.* Without a valid judgment on these issues, the failure to address these claims constitutes a departure "from the accepted course of judicial proceedings" *Sup.Ct. R. 10(a).*

Moreover, the Ninth Circuit sanctioned the District Court's decision that attorney Martin's authorization of the use of his signature stamp by OCI

staff on court documents did not constitute unauthorized practice of law. *App A-108-109.* The courts below have effectively endorsed practices that are contrary to state law prohibiting collection agencies and their employees from performing "any act or acts, either directly or indirectly, constituting the unauthorized practice of law." *RCW 19.16.250(5).* Moreover, under Washington law, "the unlawful practice of law is a crime." *State v. Yishmael*, 456 P.3d 1172, 1175 (Wash. 2020) (citing RCW 2.48.180(3)). Without doubt, the decision below is toxic to the proper functioning of the state courts. The "exercise of this Court's supervisory power," *Sup. Ct. R. 10(a)*, is appropriate because the decision sanctions unlawful conduct and undermines "the exclusive power" of the Washington Supreme Court to regulate the practice of law in Washington. *Yishmael*, 456 P.3d at 1175 (Wash. 2020).

In *Avila v. Rubin*, 84 F.3d 222 (7th Cir. 1996), and *Clomon v. Jackson*, 988 F.2d 1314 (2d Cir. 1993), the courts condemned the use of attorneys' facsimile signatures on dunning letters, holding that such practices misrepresent the involvement of attorneys. These widely accepted and well-reasoned precedents emphasize that the misuse of an attorney's name and signature deceives recipients into believing that the communication carries more weight than it does. In stark contrast, the decision of the courts below permits broader misuse by allowing debt collectors to use stamped attorney signatures on formal instruments that exercise the state's judicial authority. This dangerous ruling not only contradicts the principles articulated in *Avila* and *Clomon* but also sets a dangerous precedent by extending judicial powers to debt collectors.

OCI employees, under Ansari's order, drafted and issued a Release of Writ of Garnishment using Martin's signature stamp. The release was transmitted to Yohannes' employer from attorney Michael O'Meara's office fax number, 253-942-4736, demonstrating O'Meara's involvement. O'Meara has established satellite law offices within OCI and other collection agencies, where the use of attorney signature stamps has become routine. Yohannes' Motion for Leave to File an Amended Complaint sought to add O'Meara and the O'Meara law offices, and the companies that host his satellite law offices as defendants, requesting an injunction to halt abusive debt collection practices and unlawful practices of law. The injunction would prevent the prosecution of debt collection cases using court filings with facsimile signature of attorneys, curbing these practices across several collection agencies. Despite timely filing—one day before the court-imposed deadline—the District Court denied the motion without evidence of prejudice or bad faith. *App. A-123.* The Panel upheld this denial, stating that "the district court acted within its discretion...." *App. A42.* Yohannes' motion for leave to amend his complaint was timely.

Courts "should freely give leave when justice so requires." *Fed.R.Civ.P. 15(a)(2).* The factors relevant to whether leave to amend should be denied are "undue delay, bad faith or dilatory motive, futility of amendment, and prejudice to the opposing party." *United States v. Webb*, 655 F.2d 977, 980 (9th Cir. 1981). None of these factors are present here. The District Court denied the motion reasoning that Yohannes had been given the opportunity to amend his complaint when it ruled on the Respondents

motion to dismiss at the start of the litigation. *App. A-123.* An "outright refusal to grant the leave without any justifying reason ... is ... abuse of ... discretion and inconsistent with the spirit of the Federal Rules." *Foman v. Davis*, 371 U.S. 178, 182 (1962).

Certiorari is warranted because the Ninth Circuit deviated from the usual course of judicial proceedings; and the right to amend the complaint is "an important federal question" affecting every litigant, and the denial to grant leave to amend without proper justification "conflicts with" the commands in *Foman v. Davis. Sup.Ct. R. 10(a) &(c).*

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be granted.

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