No. 24-

IN THE

Supreme Court of the United States

OLYMPIC COLLECTION INC. (OCI), *et al.*,

Cross-Petitioners,

v.

AKLILU YOHANNES,

Cross-Respondent.

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

CONDITIONAL CROSS-PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Whether Petitioner Akilu Yohannes's ("Yohannes") challenge to an interlocutory order provides a basis for certiorari.

Whether certiorari should be granted where considerations governing review on certiorari under Rule 10 have not been met.

The following questions for a conditional cross-petition of Respondents Olympic Collection, Inc., Farooq Ansari, Susan Cable, and Norman Martin (collectively "Olympic"), apply only if certiorari were to be granted.

Whether Olympic is a private collection agency that is not a state actor for purposes of a due process claim.

Whether an as-applied due process claim can be brought based on an alleged failure to follow a state statute.

Whether this lawsuit should be dismissed if the sole remaining claim is dismissed.

Whether the Court should grant certiorari on cross-petition to determine to answer the above questions.

CORPORATE DISCLOSURE STATEMENT

It is hereby certified that Olympic Collection, Inc. has no parent company and is not a subsidiary of a publicly held company that owns ten percent or more of its stock.

STATEMENT OF RELATED PROCEEDINGS

To the undersigned counsel's knowledge, there are no proceedings in state or federal courts related to this case.

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On August 13, 2024, a divided three-judge panel of the Ninth Circuit Court of Appeals issued an unpublished memorandum, affirming in part and denying in part the district court's grant of summary judgment, and remanding to the district court for trial an as-applied due process claim. A-38-47.[1] Rehearing was denied. A-125-126.

JURISDICTION

Yohannes wishes to challenge reversal of an interlocutory order remanding the case to the district court for trial. Yohannes relies on 28 U.S.C. § 1254(1) as a basis for jurisdiction in this Court. While jurisdiction over interlocutory orders might technically be based on § 1254(1), granting review would contravene a variety other statutes and policies of this Court and Congress.

"The finality requirement of 28 U.S.C. § 1291 embodies a strong congressional policy against piecemeal reviews, and against obstructing or impeding an ongoing judicial proceeding by interlocutory appeals." *United States v. Nixon*, 418 U.S. 683, 690, 94 S. Ct. 3090, 3099, 41 L. Ed. 2d 1039 (1974). This requirement ordinarily promotes judicial efficiency and hastens the ultimate termination of litigation. *Id*. *See also Goldstein v. Cox*, 396 U.S. 471, 478, 90 S. Ct. 671, 675, 24 L. Ed. 2d 663 (1970) (it is longstanding precedent that this Court's "jurisdiction over interlocutory orders under § 1253 is confined to orders granting or denying a preliminary injunction"); *Gibbons v. Ogden*, 19 U.S. 448, 449, 5 L. Ed. 302 (1821).

1. Olympic cites to the Appendix attached to Yohannes's Petition and does not submit another Appendix.

While this Court could exercise jurisdiction under §1254(1), it should deny certiorari until there is an appeal from a final order in the district court, as contemplated by 28 U.S.C. § 1291. However, if certiorari is granted, this Court should accept review of Olympic's conditional cross-petition, so that this Court can resolve the sole remaining as-applied due process claim and dismiss the case.

STATEMENT OF THE CASE

1. A writ of garnishment was issued for Yohannes based on a valid judgment arising from an unpaid dental bill.

Yohannes received dental treatment for which he had an unpaid balance, and claims related to the balance were assigned to Olympic. A-49, 84.

On March 31, 2006, attorney Norman Martin filed a lawsuit against Yohannes on behalf of Olympic in Snohomish County District Court. A-49, 86. The pleadings were served on Yohannes. A-49-50, 86. A motion for default judgment was filed when Yohannes did not appear. A-87. Judgment was entered against Yohannes, which judgement was mailed to Yohannes. A-50, 87.

In September 2015, after learning of a current employer, Olympic issued a writ of garnishment. A-88. The judgment had not expired yet. *Id.*

On May 1, 2016, the judgment expired due to a bona fide error where an employee neglected to seek renewal due to her poor health. A-87-90.

In May 2016, two of Yohannes's paychecks were garnished by $623.71 and $623.72, respectively. A-50, 89.

On May 24, 2016, after review of the matter, Olympic's owner, Farooq Ansari, directed the garnishment to be released. A-91. Olympic took immediate steps to release the garnishment. A-91-92. The full $1,247.43 was refunded to Yohannes in May and June 2016, and Olympic deleted the event from his credit report. A-50-51, 91-92.

On June 20, 2015, Mr. Ansari sent a letter to Yohannes, enclosing the release and a deletion request to the credit bureaus. *Id*. Olympic did not keep any funds and advised Yohannes it would not collect on the debt. *Id*.

2. The district court twice dismissed all of Yohannes's multiple claims; the Ninth Circuit affirmed dismissal on all claims, except for an as-applied due process claim that was remanded for trial.

On March 31, 2017, Yohannes filed this lawsuit, alleging a multitude of causes of action. A-51.

On October 11, 2019, the district court dismissed Yohannes's lawsuit on summary judgment, A-51, 96-115. The district court denied as untimely a motion to amend to add new parties and new causes of action, filed just before trial. A-119-123.

On October 22, 2019, Yohannes filed a first appeal to the Ninth Circuit Court of Appeals.

On March 29, 2022, a three-judge panel of the Ninth Circuit filed a Memorandum, which did not find error in

the district court's decisions but vacated and remanded the entire case so the district court could conduct additional fact-finding on the due process claim. A-52, 78-82.

On December 21, 2022, after further fact-finding, the district court again, in a detailed, well-reasoned order, dismissed Yohannes's lawsuit and held Washington's post-judgment garnishment statute constitutional. A-48-77.

On January 25, 2024, the same three-judge panel of the Ninth Circuit that heard the first appeal affirmed dismissal of almost all of Yohannes's claims, including affirming dismissal of a facial due process claim. A-39-43. However, the panel split on a single cause of action, with one judge holding dismissal should be affirmed as to all claims, because violating a state statute is not state action, A-44-47, and two judges holding that an as-applied due process claim should be remanded for trial. A-41-43.

Yohannes seeks certiorari on this interlocutory order.

SUMMARY OF ARGUMENT

Yohannes petitions for certiorari on an interlocutory unpublished ruling of a divided three-judge panel of the Ninth Circuit Court of Appeals. It is not a final determination of the matter which, once the mandate issues, will still be pending review in the district court for the Western District of Washington. This matter is not ripe for review by the United States Supreme Court and Yohannes fails to meet the considerations for review in Rule 10.

If certiorari is granted, then Olympic's conditional cross-petition should also be granted, so that this Court

can resolve the sole remaining as-applied due process claim, which would then conclude this case after eight years of litigation. The cross-petition seeks review on the ground that: (1) Olympic, a private collection agency, is not a state actor, and (2) a due process claim cannot be based on an alleged failure to follow a state statute.

ARGUMENT WHY REVIEW SHOULD NOT BE ACCEPTED

1. Certiorari should not be granted on an unpublished interlocutory order of a split panel of the Court of Appeals.

Under the judiciary act of 1789, and other acts embodied in the Revised Statutes, the appellate jurisdiction of this Court from the circuit courts of the United States is usually limited to final judgments at law. *Am. Const. Co. v. Jacksonville, T. & K.W. Ry. Co.*, 148 U.S. 372, 378, 13 S. Ct. 758, 761, 37 L. Ed. 486 (1893). With few exceptions, therefore no appeal lay to this Court until after final decree. *Id.* at 378–79. This Court has sparingly reviewed specific types of interlocutory orders under what has been called the "collateral order doctrine." *Shoop v. Twyford*, 596 U.S. 811, 825, 142 S. Ct. 2037, 2047, 213 L. Ed. 2d 318 (2022).

> That doctrine allows interlocutory appeal from a "small class" of orders that "finally determine claims of right separable from, and collateral to, rights asserted in the action." But we have repeatedly stated that this doctrine is a narrow exception that should stay that way and never be allowed to swallow the general rule that

> a party is entitled to a single appeal, to be deferred until final judgment has been entered.

Shoop, 596 U.S. at 825 (citation-internal brackets omitted).

Yohannes petitions on an unpublished interlocutory ruling. A-39-47. This case might become ripe when this remaining issue has been tried and final judgment has been entered on all causes of action, but certiorari is not now appropriate. While this Court could exercise jurisdiction under §1254(1), it should deny certiorari until there is an appeal from a final order in the district court, as contemplated by 28 U.S.C. § 1291.

2. Certiorari is not warranted under Rule 10, considerations governing review.

A Petition for Writ of Certiorari will be granted only for compelling reasons. Rule 10. A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law. *Id*. Yohannes does not seek certiorari under Rule 10(b), and Yohannes's arguments under Rules 10(a) and (c) do not support certiorari.

Regarding Rule 10(a), Yohannes argues that this Court's rulings in *Griffin v. Griffin*, 327 U.S. 220 (1946), and *Endicott-Johnson Corp. v. Encyclopedia Press, Inc.*, 266 U.S. 285 (1924), create a tension regarding the giving of notice in garnishment cases. Petition at 15-16, 25. But this purported spit does not exist and, even if it did, it has no application in this case. In response to Olympic citing *Endicott*, the district court held that, rather relying on *Endicott* regarding whether sufficient

notice was received, the court would "employ the balancing test summarized in *Mathews v. Eldridge*, [424 U.S. 319 (1976)]." A-66-67, and the Ninth Circuit did not mention *Endicott* at all. Since there was no reliance on *Endicott* for any decision below, it is not an issue that calls for review by this Court.

Citing a footnote in a concurring opinion of *Pennzoil Co. v. Texaco Inc.*, 481 U.S. 1 (1987), Yohannes claims there is no difference between prejudgment and post-judgment garnishments, and states that "[t]his case presents an opportunity for the Court to elevate Justice Stevens's concurring opinion to binding precedent." Petition at 25. Yohannes argues that Rule 10(a) is implicated because the Ninth Circuit memorandum allegedly conflicts with *Pennzoil*, and that the Ninth Circuit so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power. Petition at 29-30. Yohannes cites *Pennzoil* for the proposition that garnishment procedures may implicate persons as acting under color of state law for purposes of 42 U.S.C. § 1983. Petition at 25, 29-30. The Ninth Circuit Panel held that Olympic, a private collection agency, acted under color of state law for purposes of 42 U.S.C. § 1983. A-41-43. Therefore, there is no conflict between the Ninth Circuit's unpublished Memorandum and *Pennzoil*.

Finally, regarding Rule 10(c), Yohannes argues that the validity of this Court's decision in *Endicott*, *supra*, is a question of law that should be decided by this Court. But, again, when Olympic cited *Endicott*, the district court rejected it and held that it would "employ the balancing test summarized in *Mathews v. Eldridge*," A-66-67, and the Ninth Circuit did not mention *Endicott*. Since there

was no reliance on *Endicott* for any decision below, it is not an issue that calls for review by this Court.

Rule 10's consideration governing review of certiorari are not met and therefore certiorari should be denied. This rule provides that the brief in opposition should address any perceived misstatement of fact or law in the petition that bears on what issues would be before the Court if certiorari were granted. Rule 15(2). It would be a Herculean effort to identify every misstatement in Yohannes's *pro se* Petition. His descriptions of evidence often differ from what the evidence shows. The district court, which was closer to the full panoply of evidence, provides the best description of events. The following are a couple of examples.

- Yohannes claims the owner of the original creditor testified: (1) that there are no contractual agreements, including assignments between his business and Olympic, and that (2) existing patient account balances became the property of the new business owner. Petition at 4. In fact, the district court saw that the dentist to whom Yohannes owed money simply said that he no longer possessed the contracts and assignments (too many years had passed since the sale of his dental practice). App 84-85, fn 13.

- Yohannes asserts that the certificate of service was inaccurate based on the declaration of service and location of service of process. Petition at 4.[2] But, as the district court saw, the evidence, including Yohannes's own

2. Issues related to service of process in 2006 are also way past the statute of limitations and Yohannes did not move in the state court to vacate the judgment against him. A-87.

testimony, shows that the process server provided sworn testimony that he was unable to enter Yohannes's building but met Yohannes at a nearby location, and Yohannes testified that all descriptions of him in the certificate of service are accurate, with a slight difference in height that was visually estimated by the process server. A-86-87.

These are not genuine issues of material fact but easily observed misstatements of evidence. Olympic will not flood this Court with a description of each misstatement but, solely for purposes of this response, Olympic adopts the district court's description of events and, if there is any difference between the district court's description and Yohannes's representations, Olympic adopts the district court's statements. A-49-52, 84-95, 117-119.

Likewise, regarding issues of law, Olympic first adopts by reference the conclusions of law set forth by the district court in its orders, A-54-76, 96-115, and its arguments within this response brief.

REVIEW OF OLYMPIC'S CONDITIONAL CROSS-PETITION SHOULD BE ACCEPTED IF CERTIORARI IS GRANTED

If this Court were to grant certiorari on Yohannes's issues, then it should also grant accept review of Olympic's conditional cross-petition under Rule 10(c), where the Ninth Circuit "has decided an important federal question in a way that conflicts with relevant decisions of this Court."

The failure of a party to follow procedures provided in a state statute is not action that can be attributed to the

state. *Lugar*, 457 U.S. at 940-41. Yohannes argued that due process was violated because Olympic failed to file a certificate of service for a writ of garnishment, in violation of Washington's statute RCW 6.27.130(1). The district court, quoting *Lugar*, dismissed Yohannes's due process claim because Yohannes did not "present a valid cause of action under § 1983" where they allege "only misuse or abuse of the statute. A-61, A-113 (citing *Lugar*. 457 U.S. at 942). Two judges on the Ninth Circuit panel reversed because the record did not "contain proof that Olympic Collection mailed or served the writ of garnishment on Yohannes, as required by § 6.27.130(1)." A-40.[3] The third judge on the panel dissented, A-44-47, and, again quoting *Lugar*, stated that if the defendants "were acting contrary to the relevant policy articulated by the State," then the defendants' conduct "could in no way be attributed to a state rule or a state decision." A-46 (citing *Lugar*, 457 U.S. at 924). Olympic sought an *en banc* rehearing on issues related to this due process claim, which was denied. A-126.

If the cross-petition is granted and the as-applied due process claim is reversed, all causes of action will have been fully adjudicated, and this case will finally be resolved after eight (8) years of litigation. Olympic therefore provides the arguments on its cross-petition below.

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3. In a footnote, the Ninth Circuit suggests that the State district court in the underlying collection action improperly destroyed the court file, stating that "Washington State district courts are required to retain records for 10 years after the date of judgment." A-40. However, the state district court retained the records for 10 years after the date of judgment. Indeed, this case arose because the May 1, 2006 state-court judgment expired after 10 years on May 1, 2016. *See* A-89-91.

A. To support constitutional claims, the court must find both state actors and state action.

Title 42 U.S.C. § 1983 provides a remedy for deprivations of rights secured by the Constitution when that deprivation takes place "under color of state law." *Lugar*, 457 U.S. at 924. *See also Lindke v. Freed*, 601 U.S. 187, 194, 144 S. Ct. 756, 764, 218 L. Ed. 2d 121 (2024). The 14th Amendment offers no shield to private conduct, however wrongful. *Lugar*, 457 U.S. at 936, 102 S. Ct. at 2753. "Careful adherence to the 'state action' requirement preserves an area of individual freedom by limiting the reach of federal law and federal judicial power." *Id.* "It also avoids imposing on the State, its agencies or officials, responsibility for conduct for which they cannot fairly be blamed." *Id.*

> State action requires ***both*** an alleged constitutional deprivation "caused by the exercise of some right or privilege created by the State or by a rule of conduct imposed by the State or by a person for whom the State is responsible," ***and*** that "the party charged with the deprivation must be a person who may fairly be said to be a state actor."

Am. Mfrs. Mut. Ins. Co. v. Sullivan, 526 U.S. 40, 50, 119 S. Ct. 977, 985, 143 L. Ed. 2d 130 (1999) (quoting *Lugar*, 457 U.S. at 937) (emphasis in original).

1. Acting with the mere acquiescence of a state statute regarding issuance of a writ of garnishment did not convert Olympic into a state actor.

The provisions of §1983 and the Fourteenth Amendment protect against acts attributable to a State, not those of a private person. *Lindke*, 601 U.S. at 194, 144 S. Ct. at 764–65. The mere fact that a business is subject to state regulation does not by itself convert its action into that of the State for purposes of the Fourteenth Amendment. *Sullivan*, 526 U.S. at 52. Action taken by private entities with the mere approval or acquiescence of the State is not state action. *Sullivan*, 526 U.S. at 52.

Two judges of the circuit court's three-judge panel held that "Olympic Collection is a state actor because '[t]he nominally private character of [Olympic Collection] is overborne by the pervasive entwinement of [the state court].'" A-41 (citing *Brentwood Acad. v. Tennessee Secondary Sch. Athletics Ass'n*, 531 U.S. 288, 298 (2001).

It is unclear why the Panel majority would characterize the private nature of Olympic as "nominal." Olympic is a private company, and there is no "pervasive entanglement," only action taken by Olympic with the mere approval or acquiescence of RCW 6.27.020(2), which permits the judgment creditor's attorney to issue a writ of garnishment. The district court concluded that Olympic did not use state procedures "with the overt, significant assistance of state officials" required to find state action. A-64 (citing *Tulsa Pro. Collection Servs., Inc, v. Pope.* 485 U.S. 478, 486 (1988); *Gaskell v. Weir*, 10 F.3d 626, 628 (9th Cir. 1993)). The Ninth Circuit itself had previously

identified issuance of a writ as a mere ministerial act. *Seattle Fishing Servs. LLC v. Bergen Indus. & Fishing Co.*, 242 F. App'x 436, 438 (9th Cir. 2007) ("SFS's complaint is devoid of any facts demonstrating the State's role, or the defendants' involvement with the court clerks who issued the writs of garnishment—a purely ministerial act"). *See also United States v. Rippe*, 422 F.2d 867, 868 (9th Cir. 1970) (clerk's issuance of an order was a ministerial act).

The test for post-judgment garnishment is whether Olympic acted "with the overt, significant assistance of state officials." *Pope*, 485 U.S. at 486. It did not. A private party, such as Olympic, does not become a state actor simply by using state authorized litigation powers, such as by commencing a lawsuit, issuing a subpoena, or noting a deposition. *See Polk County v. Dodson*, 454 U.S. 312, 318, 102 S.Ct. 445, 450, 70 L.Ed.2d 509 (1981), *Skolnick v. Martin*, 317 F.2d 855 (7th Cir.1963), *Barnard v. Young*, 720 F.2d 1188, 1189 (10th Cir. 1983).

A due process claim under § 1983 will not lie because Olympic is not a state actor.

2. An alleged failure to follow procedures in RCW 6.27.130 is not state action.

The question of whether there is state action begins by identifying "the specific conduct of which the plaintiff complains." *Sullivan*, 526 U.S. at 51.

RCW 6.27.130(3) requires that proof of service on the garnishment debtor must be filed with the state district court. Yohannes argued that due process was violated because Olympic failed to file a certification of service

for the writ of garnishment, in violation of Washington's statute RCW 6.27.130(3). The issue, then, is whether a private collection agency's alleged failure to follow the state statute's requirement of filing a certification may be fairly attributable to the State so as to subject collection agencies to the constraints of the Fourteenth Amendment. *Sullivan*, 526 U.S. at 51. This Court's answer to that question should be an unequivocal "no." *Id*.

The district court dismissed this claim because, under *Lugar*, this claim is not actionable under § 1983 because it challenges only private action. A-45-46. The Ninth Circuit, however, reversed, indicating that an issue of fact was created because Olympic was unable to produce several documents related to the declaration of service since the state district court had destroyed the file. A-40.[4] However, regardless as to whether or not Olympic could provide the documents, Yohannes's claim still only implicated the private conduct of a party (i.e., alleged failure to follow the state statute). As the district court held:

> However, whether or not defendants successfully complied with the state statute need not be resolved to rule on this motion. The Supreme Court in Lugar clearly stated that plaintiffs do not "present a valid cause of action under § 1983" where they allege "only misuse or abuse of the statute.

A-61 (quoting *Lugar*. 457 U.S. at 942).

4. It is undisputed that the state district court file was destroyed when the underlying judgment expired. A-60.

This Court recently held that not every act by a state actor is state action, and a constitutional claim can only lie where the offending action itself is state action. *See Lindke*, 601 U.S. at 191-92, 196-99. State action exists only when "the claimed deprivation has resulted from the exercise of a right or privilege having its source in state authority." *Lindke*, 601 U.S. at 198 (quoting *Lugar*, 457 U.S. at 939). Under well-settled law, the failure to follow the procedures laid out in a state statute is not action that can be attributed to the state. *Lugar*, 457 U.S. at 940-41. As this Court held in *Lugar*:

> By "unlawful," petitioner apparently meant "unlawful under state law." To say this, however, is to say that the conduct of which petitioner complained could not be ascribed to any governmental decision; rather, respondents were acting contrary to the relevant policy articulated by the State. Nor did they have the authority of state officials to put the weight of the State behind their private decision.

Lugar, 457 U.S. at 940.

The claim against Olympic is that it failed to act in accordance with RCW 6.27.130(3)'s notice procedures, which is not an action that can be fairly attributable to the state. An alleged failure to provide proper notice under RCW 6.27.130 is private action, is not attributable to Washington State, either facially or as applied, and the sole remaining as-is due process claim should be dismissed.

CONCLUSION

This Court should deny Yohannes's Petition for a Writ of Certiorari where this petition is based on an interlocutory order and Yohannes fails to meet the standard for certiorari in this Court's Rule 10 and under long-standing policy regarding taking interlocutory appeals.

However, if certiorari were to be granted, then this Court should also accept Olympic's conditional cross-appeal and consider the sole remaining as-applied due process claim, so that this litigation, which has already lasted eight (8) years, can be fully resolved and dismissed.

Respectfully submitted this 21st day of February 2025.

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