

IN THE SUPREME COURT OF THE UNITED STATES

No. 17-1307

DENNIS OBDUSKEY, PETITIONER

v.

McCARTHY & HOLTHUS LLP, ET AL.

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

MOTION OF THE UNITED STATES FOR LEAVE TO
PARTICIPATE IN ORAL ARGUMENT AS AMICUS CURIAE
AND FOR DIVIDED ARGUMENT

Pursuant to Rules 28.4 and 28.7 of the Rules of this Court, the Solicitor General, on behalf of the United States, respectfully moves that the United States be granted leave to participate in oral argument in this case as amicus curiae in support of respondent and that the United States be allowed ten minutes of argument time. Respondent has agreed to cede ten minutes of argument time to the United States and therefore consents to this motion.

1. This case concerns the Fair Debt Collection Practices Act (FDCPA or Act), 15 U.S.C. 1692 et seq. Congress enacted the

FDCPA "to eliminate abusive debt collection practices by debt collectors." 15 U.S.C. 1692(e). To that end, the Act imposes various requirements and restrictions on the conduct of "a debt collector * * * in connection with the collection of any debt." 15 U.S.C. 1692c(a); see 15 U.S.C. 1692c-1692g.

The Act defines two categories of "debt collector," subject to various exceptions, 15 U.S.C. 1692a(6), and it imposes different sets of obligations on each, see 15 U.S.C. 1692c-1692i. First, the Act's general definition of "debt collector" encompasses "any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another." 15 U.S.C. 1692a(6). Debt collectors who fall within that general definition are subject to all of the Act's requirements for debt collectors. Second, the Act contains an additional, limited-purpose definition stating that, "[f]or the purpose of section 1692f(6) of this title, [the] term ['debt collector'] also includes any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the enforcement of security interests." Ibid. The question presented in this case is whether enforcement of a security interest in property through a state-law nonjudicial-foreclosure process constitutes debt collection under the FDCPA.

2. The United States has a substantial interest in the resolution of that question. The FDCPA authorizes the Bureau of Consumer Financial Protection to “prescribe rules with respect to the collection of debts by debt collectors, as defined in [the FDCPA].” 15 U.S.C. 16921(d). The Bureau, the Federal Trade Commission, and other federal agencies are responsible for enforcing the Act through administrative proceedings and civil litigation. 15 U.S.C. 16921(a)-(c). The United States has previously presented oral argument as amicus curiae on questions concerning the interpretation and application of the FDCPA. See, e.g., Midland Funding, LLC v. Johnson, 137 S. Ct. 1407 (2017); Sheriff v. Gillie, 136 S. Ct. 1594 (2016); Marx v. General Revenue Corp., 568 U.S. 371 (2013); Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich LPA, 559 U.S. 573 (2010). In this case, the United States has filed a brief as amicus curiae in this Court supporting respondent, contending that enforcement of a security interest through nonjudicial-foreclosure proceedings generally does not constitute debt collection under the Act. In light of the substantial federal interest in the scope of the FDCPA, the government’s participation in oral argument could materially assist the Court in its consideration of this case.

Respectfully submitted.

NOEL J. FRANCISCO
Solicitor General
Counsel of Record

NOVEMBER 2018