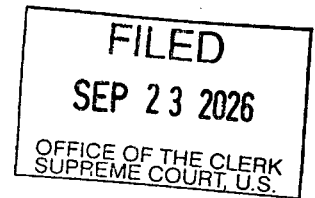


ORIGINAL

No. 20-449



IN THE
Supreme Court of the United States

ANTOINE LENOIR JENKINGS I,

Petitioner,

v.

ANDRETTA WHITE-JENKINS,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE DISTRICT COURT OF APPEAL
OF FLORIDA, SECOND DISTRICT

PETITION FOR A WRIT OF CERTIORARI

Antoine Lenoir JenKings I
Petitioner, Pro Se
P.O. Box 340427
Tampa, Florida 33694
(847) 722-9528
toine.jenk@yahoo.com

QUESTIONS PRESENTED

1. Whether the Uniformed Services Former Spouses' Protection Act permits a State to enforce, as a matter of state contract law, an indemnification provision that fixes a monthly property award measured by "disposable retired pay," credits every payment made through 10 U.S.C. § 1408 dollar-for-dollar, and makes the member personally liable for the balance, to the extent that the obligation replaces retirement value excluded from division by federal law.

2. Whether 38 U.S.C. § 5301(a)(1) permits a state court to compel payment of a non-support marital-property obligation from protected veterans' benefits through an order directed to the veteran personally rather than to the benefit payor or depository.

PARTIES TO THE PROCEEDING

Petitioner is Antoine Lenoir JenKings I, who was the petitioner/former husband in the circuit court and the appellant in the District Court of Appeal of Florida, Second District. Petitioner litigated below as Antoine L. Jenkins and is now known as Antoine Lenoir JenKings; the captions in the certified record reflect that change. Both names refer to the same individual.

Respondent is Andretta White-Jenkins, who was the respondent/former wife in the circuit court and the appellee in the Second District.

Petitioner is a natural person. No corporation is a party, and Supreme Court Rule 29.6 is inapplicable.

RELATED PROCEEDINGS

JenKings v. White-Jenkins, Circuit Court of the Thirteenth Judicial Circuit, Hillsborough County, Florida, No. 19-DR-018205: dissolution judgment entered August 18, 2022; military-retirement enforcement denied July 10, 2025; rehearing granted July 24, 2025; equitable-distribution enforcement ordered September 22, 2025; amended rehearing denial entered September 29, 2025; military-retirement enforcement ordered October 3, 2025. Emergency injunctive relief against the two enforcement orders was denied December 17, 2025. A separate children's-expense enforcement order was electronically conformed that day. Neither December order is under review here.

JenKings v. White-Jenkins, District Court of Appeal of Florida, Second District, No. 2D2025-2821: order striking filings and allowing replacement entered October 30, 2025; per curiam affirmance entered June 3, 2026; Petitioner sought rehearing June 5, 2026; rehearing, written opinion, and certification denied June 26, 2026.

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OPINIONS BELOW

The District Court of Appeal of Florida, Second District, entered a per curiam affirmance on June 3, 2026. Pet. App. 1a. The Second District denied Petitioner's motions for rehearing, written opinion, certification of express and direct conflict, and certification of a question of great public importance on June 26, 2026. Pet. App. 49a.

The circuit-court orders under review are the October 3, 2025 military-retirement enforcement order, Pet. App. 5a–16a, and the September 22, 2025 equitable-distribution enforcement order, *id.* at 19a–30a. The September 29 amended rehearing denial appears at 17a–18a; the initial military-retirement denial and grant of rehearing appear at 31a–34a. The appellate order striking earlier filings and permitting replacement appears at 2a–4a. The appellate dispositions are unreported.

JURISDICTION

The Second District entered judgment on June 3, 2026. Petitioner timely sought rehearing on June 5, 2026. The court denied rehearing on June 26, 2026. Pet. App. 1a, 49a. Under Supreme Court Rule 13.3, the ninety-day period runs from the denial of timely rehearing and expires September 24, 2026.

This Court has jurisdiction under 28 U.S.C. § 1257(a). The Second District was the highest state court in which a decision could be had: its affirmance contained no written opinion, and it denied the requests for an opinion and certification that could have supplied a basis for further review. See *Jenkins v. State*, 385 So. 2d 1356, 1359 (Fla. 1980). Both

enforcement orders were identified in the notice of appeal and challenged in the Amended Initial Brief. Pet. App. 102a-108a, 110a-111a, 112a-117a. The federal objections were raised below and renewed on appeal. The October 3 ruling expressly resolved the contract-versus-preemption issue. The September 22 source-of-payment objection was expressly raised in a motion directed to that order and denied without explanation. *Id.* at 17a-18a, 96a-101a. The unexplained appellate affirmance requires consideration of adequate and independent state grounds; Petitioner does not infer a particular appellate rationale from the absence of an opinion.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Supremacy Clause provides that the Constitution and laws of the United States are the supreme law of the land. U.S. Const. art. VI, cl. 2.

The Uniformed Services Former Spouses' Protection Act authorizes a state court to treat "disposable retired pay" as marital property, 10 U.S.C. § 1408(c)(1), and defines that term by excluding specified amounts, including amounts waived to receive veterans' disability compensation and specified Chapter 61 disability amounts, *id.* § 1408(a)(4).

Section 1408(c)(4) identifies the jurisdictional predicates for a state court order dividing disposable retired pay. Section 1408(e)(6) preserves otherwise lawful obligations left unsatisfied after the maximum direct-payment amounts permitted by § 1408(e)(1) and § 1408(e)(4)(B) have been paid; it does not enlarge the statutory category of military retired pay divisible as property.

Section 5301(a)(1) of Title 38 exempts covered veterans' benefit payments from creditors' claims and from attachment, levy, or seizure by legal or equitable process before or after receipt. It supplies the independent statutory ground presented in Question Two. Section 659(a) of Title 42 addresses federal consent to support enforcement; § 659(i)(3)(B)(ii) excludes equitable-distribution property transfers from its definition of alimony. Pertinent constitutional and statutory text appears at Pet. App. 149a, 151a–152a, 154a, 155a, and 150a, 153a, 156a–157a.

INTRODUCTION

Congress authorized States to divide “disposable retired pay” while excluding specified disability-related amounts. 10 U.S.C. § 1408(a)(4), (c)(1). It separately protected veterans' benefit payments against creditors and legal or equitable process. 38 U.S.C. § 5301(a)(1). These limits apply to what state enforcement accomplishes. *Howell v. Howell* held the challenged indemnification orders preempted “[r]egardless of their form.” 581 U.S. 214, 222 (2017). Assent does not itself enlarge the property Congress made divisible. *Mansell v. Mansell*, 490 U.S. 581, 588–89 (1989).

This petition challenges two enforcement orders affirmed in one appellate judgment. Question One concerns the October 3 order's replacement of federally excluded retirement value. Question Two concerns whether the September 22 command compels protected veterans' payments to satisfy a separate property debt. The first addresses the value awarded; the second addresses the collection source. Question One independently warrants review.

The Final Judgment invoked the USFSPA and incorporated the MSA. Paragraph N(4) awarded 50% of “disposable military retired pay” without stating a dollar amount. Paragraphs N(6)–(8) implemented that percentage award through DFAS. Paragraph N(9) later required personal payment of “50% of disposable military retired pay,” credited each DFAS dollar, and asserted, “This amount is \$1,838.25 as of July 2022,” with COLA and indemnification. Pet. App. 35a–40a, 43a–46a. Section 1408 permits an award stated in dollars or as a percentage, but only of federally defined disposable retired pay. 10 U.S.C. § 1408(a)(2)(C), (a)(4), (c)(1). Because \$1,838.25 was privately calculated rather than a DFAS computation, enforcing any excess over the federal measure presents the preemption question.

At the July 8, 2025 hearing, Respondent’s counsel agreed that DFAS would not pay and that “the disposable retired pay is zero.” Pet. App. 72a. Petitioner testified that the DFAS letter indicated disability-based retired or retainer pay and “no funds available.” Pet. App. 79a–80a. On July 10, the court entered the *Howell* denial order. Pet. App. 33a–34a.

The court granted rehearing on July 24. Pet. App. 31a–32a. At the September 16 rehearing, it revisited the *Howell* denial order and asked whether “the parties [could] contract out of that” and find another way “to get around the Supreme Court ruling.” Pet. App. 51a–53a. Respondent called contractual indemnification “the narrow decision for the Court to make.” Pet. App. 56a–57a. Petitioner’s counsel invoked federal preemption; the court ruled: “I do not think that anything precludes me from enforcing

that agreement as we have here today.” Pet. App. 64a, 67a.

The September 22 order required payment of \$74,227.94, calculated through July 8, 2025, plus further interest, by October 6, 2025, and reserved enforcement sanctions. Pet. App. 25a–30a. Petitioner moved for rehearing that same day, invoking federal preemption and the veterans’ benefit exemption and asserting sole reliance on disability payments. Id. at 96a–101a. The amended denial supplied no reason. Id. at 17a–18a. Petitioner separately renewed the military-retirement objection in his September 25 memorandum. Id. at 94a–95a. The October 3 order enforced Paragraph N(9), entered a \$66,933.98 judgment, and stated that indemnification was not contingent on income from a source other than disability pay. Id. at 5a–16a, 9a–10a ¶ 5(E).

The Second District affirmed and denied rehearing. Pet. App. 1a, 49a. State high courts disagree whether contractual origin changes the federal limit. Petitioner seeks review of that conflict and the separate § 5301 collection-source question, leaving lawful independent debt and lawfully divisible retirement value intact.

STATEMENT OF THE CASE

A. The Parties Negotiated Against the Federal Framework.

On July 27, 2022—before entry of the Final Judgment—Petitioner sent Respondent an email whose subject line read “Here is the language.” Tr. July 8, 2025, p. 35; Pet. App. 82a. Respondent acknowledged receiving it. Id. p. 36; Pet. App. 83a. The email transmitted the federal definition of

disposable retired pay and the governing computation rule. Pet. App. 120a–123a. When the regulation excerpts were later offered, Petitioner confirmed that “the language is also in Exhibit 2.” Tr. July 8, 2025, p. 50; Pet. App. 86a.

The admitted February 2023 regulation excerpts define disposable retired pay by the deductions authorized in § 1408(a)(4), including Title 38 waivers and specified Chapter 61 disability amounts. DoD 7000.14-R, vol. 7B, ch. 29, ¶ 7.1; Pet. App. 138a–141a. They also direct the designated agent to use only authorized deductions and treat contrary computation terms as unenforceable. Id. ¶ 7.3; Pet. App. 147a–148a. The July 2022 email establishes the earlier disclosure; the later-dated excerpts are the regulatory material admitted at the 2025 hearing. State authority is governed by § 1408 itself.

At the July 8, 2025 evidentiary hearing, the court overruled Respondent’s objection and admitted the email. Tr. July 8, 2025, p. 38; Pet. App. 85a. The court admitted the regulation excerpts and then corrected the exhibit numbering on the record —“you’re correct. I did admit it”—marking the email as Petitioner’s Exhibit 2 and the regulation excerpts as Petitioner’s Exhibit 3. Id. pp. 50–52; Pet. App. 86a–88a.

The parties’ contemporaneous text exchange, also dated July 27, 2022, was admitted as Respondent’s Exhibit 9. Tr. July 8, 2025, pp. 13–14; Pet. App. 74a–75a. Respondent described her calculation: subtract the \$483.75 SBP premium from \$3,527.25, divide the \$3,043.50 remainder by two, and add \$316.50 as half of CRDP, producing \$1,838.25. Id. pp. 14–15; Pet. App. 75a–76a. Asked whether the figure came from

DFAS, she answered: "I calculated it based upon the information that you provided to me." Id. p. 37; Pet. App. 84a. That testimony establishes the figure's private origin. It does not establish that "taxable income" equaled statutory disposable retired pay, that the additional CRDP amount was separately divisible, or that DFAS adopted the result. Those questions require the statutory computation; the exhibit alone proves neither an improper SBP addition nor double counting of CRDP.

B. The Final Judgment Invoked the USFSPA.

The circuit court entered a Final Judgment incorporating the parties' Marital Settlement Agreement. Pet. App. 35a-40a, 43a-48a, 136a-137a. The military-retirement provisions expressly placed the court's jurisdiction over the Member "in accordance with the jurisdictional requirements of 10 U.S.C. Section 1408." Id. at 43a-44a. The Final Judgment separately declared "USFSPA Jurisdiction (10 U.S.C. 1408(c)(4))" and stated that it was intended to qualify under the USFSPA as a valid court order directing payment of Petitioner's retired pay to Respondent. Id. at 35a-38a.

The integrated agreement then defined the property being distributed. Paragraph N(4), captioned "Distribution to Former Spouse," awarded Respondent, "[a]s and for equitable distribution of the Member's military retirement," 50% of Petitioner's "disposable military retired pay, to include Concurrent Retirement and Disability Pay (CRDP) funds." Pet. App. 43a-44a. Paragraph N(5) immediately recorded that Petitioner retired in 2014, before execution of the Agreement. Ibid. Thus, with retirement already complete, the integrated

agreement nevertheless selected disposable military retired pay as the property category being divided.

Paragraphs N(6)–(9) operationalized that award within the federal framework: payments were to follow the DFAS retiree payment schedule; DFAS was ordered to deduct payments from disposable retired pay; Respondent was to apply to DFAS; and N(9) required Petitioner to pay “50% of disposable military retired pay” “in accordance with the military retiree pay schedule,” with a dollar-for-dollar reduction for every amount received directly from DFAS. Pet. App. 45a–46a. N(9) then asserted, “This amount is \$1,838.25 as of July 2022,” increased it by military COLA, and required indemnification for any reduction. Ibid. N(4) therefore states the property award as a percentage without a dollar amount; N(9) later supplies the private July 2022 dollar calculation. The agreement does not establish that \$1,838.25 was the statutory amount of disposable retired pay.

C. The Federal Payment Mechanism Delivered No Payment.

Respondent applied to DFAS for direct payment under the USFSPA. DFAS denied the application by letter dated September 13, 2022, which was admitted at the July 8 hearing, without objection, as Petitioner’s Exhibit 1. Tr. July 8, 2025, pp. 32–34; Pet. App. 118a–119a, 79a–81a. Respondent testified about DFAS’s response: “They said they could not directly pay me.” Id. p. 12; Pet. App. 73a. Her counsel confirmed: “we agree with Mr. Jenkins that DFAS will not pay directly.” Id. p. 9; Pet. App. 72a. Counsel also conceded that “the disposable retired pay is zero.” Pet. App. 72a. That concession is

evidence concerning the adjudicated dispute, not a substitute for classifying each benefit under the applicable statute. The September 13 letter gave a disability-based reason: "The entire amount of the member's retired/retainer pay is based on disability, thus there are no funds available for payment under the USFSPA." Pet. App. 118a-119a. That contemporaneous response and the zero-disposable-pay concession support examination of the original equivalence. They do not make every DFAS rejection a determination that no divisible retired pay exists: the stated reason and statutory calculation remain essential.

D. The Circuit Court Initially Applied *Howell*.

At the outset of the July 8 hearing, Respondent's counsel framed the retirement dispute: "It's an indemnification issue and its enforcement of indemnification." Tr. July 8, 2025, p. 7; Pet. App. 70a. She told the court: "The issue is that he was supposed to indemnify her and we're here to enforce that indemnification." Id. p. 9; Pet. App. 72a.

Counsel then asked whether the parties had established \$1,838.25 as the July 2022 amount. Petitioner answered: "No. I agreed that your client said that that was the amount that she calculated. That wasn't the amount she received from DFAS." Tr. July 8, 2025, p. 24; Pet. App. 77a. Counsel acknowledged that it was not the amount received from DFAS. Id. p. 24. Petitioner continued: "Any calculations that we make doesn't matter. DFAS makes the calculation when it comes to disposable retired pay by federal law," and asked: "Well, show me where DFAS says that's the amount." Id. pp. 24-25; Pet. App. 77a-78a.

On July 10, the court entered the *Howell* denial order after reviewing the file, hearing testimony, and “consider[ing] the documentary evidence admitted as exhibits.” It denied Respondent’s motion in full. Pet. App. 33a–34a.

E. Rehearing and Enforcement of the Same Obligation.

Respondent moved for rehearing on July 14, 2025. The Florida Circuit Court granted rehearing on July 24, 2025. Pet. App. 31a–32a.

At the September 16 rehearing, the court recalled that it had denied the motion “based upon the Supreme Court case that you all are familiar with.” Tr. Sept. 16, 2025, pp. 3–4; Pet. App. 51a–52a.

The court stated that it “clearly recognize[d] the Supreme Court case” and asked whether “the parties [could] contract out of that.” Id. p. 4; Pet. App. 52a. It then described “the only issue” as whether contract supplied “this sort of other way to get around the Supreme Court ruling.” Id. p. 5; Pet. App. 53a.

Counsel answered that the parties “can contract out of it and they did.” Id. p. 5. Counsel further argued that *Howell* did not apply “because the parties contracted around it.” Id. p. 5; Pet. App. 53a.

Respondent’s counsel next directed the court to Florida’s *Martin v. Martin*, 344 So. 3d 621 (Fla. 1st DCA 2022), stating that “once we get past *Howell*, we are going to have to look at *Martin*.” Counsel attempted to distinguish the decision because the servicemember there received a medical retirement after the divorce and did not complete twenty years of service. Id. p. 6; Pet. App. 54a.

Respondent's counsel stated: "*Howell*, I admit, would have precluded the Court from ordering this in the first place. But that's not what we have here." Id. p. 8, ll. 22-24; Pet. App. 56a. Counsel then explained: "It's indemnification" and identified that distinction as "the narrow decision for the Court to make." Id. pp. 8-9; Pet. App. 56a-57a.

The court then stated that what took the case "out of *Howell*" was that Petitioner entered the agreement while receiving disability benefits and "contracted into this indemnification." Id. p. 15; Pet. App. 63a.

Petitioner's counsel responded that the agreement was "unenforceable because it is preempted by federal law" and identified "the preemption by federal law" as the issue before the court. Id. p. 16; Pet. App. 64a.

The court then ruled from the bench: "The Court is going to grant the motion to enforce final judgment." It relied on Petitioner's receipt of disability pay when the agreement was negotiated and his participation in negotiating indemnification, concluding: "I do not think that anything precludes me from enforcing that agreement as we have here today." Tr. Sept. 16, 2025, p. 19; Pet. App. 67a. The court therefore adopted contractual origin and advance knowledge as the reason for enforcement; the relevant record is an actual ruling, not merely a question asked during argument.

Petitioner's September 25 memorandum renewed federal preemption and § 5301. Pet. App. 94a-95a. The October 3 order enforced Paragraph N(9), entered judgment for \$66,933.98, and reserved

jurisdiction over fees, costs, and enforcement. Pet. App. 5a–16a.

F. The September 22 Order Imposed a Separate Payment Command.

The MSA assigned Petitioner responsibility for 100% of the marital debt. The other assigned marital debts have been satisfied. See Pet. App. 22a–23a, ¶¶ 5(D)–(F). Three obligations remain outstanding or contested: the obligation concerning Respondent’s EFCU credit card, the \$30,000 cash payment to Respondent, and the parties’ 2018 joint federal income-tax debt. See Pet. App. 110a, 132a–135a.

Respondent received all \$175,469.46 remaining from the sale of the marital home after the closing payoffs. Pet. App. 23a, ¶ 5(G). Petitioner received none of that remaining cash. The order attributed that outcome to closing payoffs of debts assigned to Petitioner. Id. ¶¶ 5(D)–(F).

The July 8 hearing also addressed the cash-payment and marital-debt provisions. The court ruled on those obligations while the military-retirement issue remained under consideration. Tr. July 8, 2025, pp. 82–85; Pet. App. 89a–92a. The September 22 written order enforced Paragraph M’s \$30,000 cash obligation and Paragraph 34’s EFCU debt of \$29,689.83. The cash obligation was tied to receipt of the former wife’s retirement-account distribution or sale of the home; the debt provision directed use of QDRO proceeds. The court found the specified cash payment and EFCU obligation unpaid. Paragraph 6 found that Petitioner “had the ability to comply” because he received the QDRO funds in late 2022. The order does not find that those proceeds remained available in 2025 or identify another then-

available asset for payment. Pet. App. 21a–24a. When the court announced the payment deadline at the July 8 hearing, Petitioner stated: “I’m financially unable to do that.” The court left its ruling in place. Id. at 92a. That exchange records an inability objection, not a finding identifying the source of payment.

The underlying decree also commanded a specific transfer. Paragraph L(2) required a cash distribution of 100% of Petitioner’s share of the USAA 401(k), with taxes and penalties allocated to him; L(3) directed deposit into Kirkner Family Law Group’s escrow trust account; and L(4) required both parties to supply debt documentation within ten days after receipt. Pet. App. 41a–42a. MSA Paragraph 34 specified application to marital debts and made failure to abide by that provision punishable through contempt. Id. at 132a–135a. Those commands identify the original asset and acts required. They do not establish that the retirement-account proceeds were VA benefits or that the later personal-payment command may reach protected VA funds. The September 22 enforcement must be evaluated against its own terms and the source actually compelled.

The order stated \$37,306.83 and \$36,921.11 as the respective balances through July 8, 2025, totaling \$74,227.94. That total includes \$14,538.11 in the order’s stated interest calculations above \$59,689.83 principal; it is not the principal alone. Paragraph 12 required the total, plus interest after July 8, to be paid by 5 p.m. on October 6, 2025. Paragraph 13 awarded fee entitlement and reserved the amount. Paragraph 14 reserved enforcement and sanctions. Pet. App. 25a–30a. The order imposed no present

incarceration sanction and identified no particular VA account or asset for seizure.

Petitioner's motion filed September 22 directly challenged this order on federal grounds and asserted that he received only disability payments as income. Pet. App. 96a-101a. The September 29 amended denial simply denied the motion, with a footnote stating that the amendment corrected a scrivener's error. Id. at 17a-18a. Neither the denial nor the amendment states why the federal objection failed. The court's finding about past access to QDRO proceeds is distinct from whether present compliance requires benefits protected by § 5301.

G. Both Federal Objections Were Presented Below.

The military-retirement question was pressed and decided at rehearing. Petitioner's counsel asserted federal preemption in response to the court's contract question. Pet. App. 64a. The September 25 memorandum invoked § 5301 and *Howell* before the written order issued. Id. at 94a-95a. The October 3 order enforced the agreement on the contract theory despite that objection.

The September 22 rehearing motion separately identified that order, asserted the Supremacy Clause and § 1408, cited *Howell* and Florida's *Martin*, invoked the veterans' benefit exemption, and argued that disability payments were Petitioner's sole income. Pet. App. 96a-101a. The original notice of appeal identified both enforcement orders and the federal challenge. Id. at 102a-108a. The Amended Initial Brief likewise identified both orders, presented the federal issue first, and requested relief from both. Id. at 110a-111a, 112a-117a. The

benefits-exemption citation in the pro se rehearing motion mislabeled the title of the Code, but expressly identified Section 5301 and its protection against garnishment, levy, or seizure. *Id.* at 99a.

These references identify where each federal claim was raised for purposes of Rule 14.1(g)(i). When the state court does not expressly address the federal question, Petitioner bears the burden of showing proper presentation under the applicable state procedures or why a procedural objection cannot supply an adequate and independent ground. *Adams v. Robertson*, 520 U.S. 83, 86–87 (1997). Petitioner relies on the order-specific rehearing motion and appellate presentation identified above; the unexplained denial does not itself establish timely preservation or a decision on the federal merits. Pet. App. 17a–18a, 96a–101a, 110a–111a, 112a–117a. The Second District affirmed on June 3, 2026 and denied rehearing and related relief on June 26, 2026. *Id.* at 1a, 49a.

On October 30, 2025, the Second District struck Petitioner’s earlier filings and permitted a replacement brief; the Amended Initial Brief was filed December 30, 2025. Pet. App. 2a–4a, 109a.

REASONS FOR GRANTING THE PETITION

Certiorari is warranted to resolve whether contractual assent permits enforcement of a retirement-replacement obligation that federal law would prohibit a State from imposing directly. Sup. Ct. R. 10. The October 3 court expressly adopted that distinction. Question Two presents a separate benefit-source objection to a companion order; the indemnification conflict does not itself resolve it.

The circuit court confined rehearing to the claimed contract exception, heard Petitioner's federal objection, and enforced on that basis. Tr. Sept. 16, 2025, pp. 8–9; Pet. App. 56a–57a, 64a, 67a. Its written order does not expressly invoke preclusion or procedural default. *Id.* at 5a–16a. The unexplained affirmance nevertheless requires scrutiny of applicable state grounds; the lack of an appellee appearance does not eliminate them.

The agreement defines Respondent's interest through § 1408 and guarantees the DFAS shortfall. Counsel conceded zero disposable retired pay; the order did not condition indemnification on other income. Pet. App. 9a–10a, 72a. Those record-specific facts support the federal issue. DFAS nonpayment alone does not establish statutory exclusion.

I. The States Are Divided on an Important Question of Federal Law.

A. The refusing line holds that assent cannot authorize restoration of federally excluded value.

Marschner v. Marschner, 2026 ND 66, ¶¶ 11–14, is the lead decision on the refusing side. The North Dakota Supreme Court considered enforcement requiring a veteran to replace retirement value excluded from divisible military retired pay. It held: “Any order of the court requiring indemnification of a veteran's former spouse for military retirement pay waived for disability pay is preempted by federal law and void.” *Id.* ¶ 14. Its legal rule did not turn on whether the parties had agreed to indemnification: “Even if the parties' agreement obligated Richard to indemnify Roxane for waived retired pay, federal law

renders the obligation unenforceable.” Id. ¶ 13. The pending certiorari briefing disputes the contractual source of the particular relief, as discussed below.

Michigan reached the same federal-merits result in *Foster v. Foster*, 505 Mich. 151, 156, 175, 949 N.W.2d 102 (2020). *Foster* arose from a consent judgment requiring the veteran to reimburse his former spouse for any reduction caused by his receipt of combat-related disability compensation. The Michigan Supreme Court unanimously held that federal law preempted the offset provision and overruled state precedent allowing the same retirement share to be recovered from any source.

Two years later, Michigan held that the preempted provision was nevertheless not subject to collateral attack because the divorce court possessed subject-matter jurisdiction and the consent judgment had become final. *Foster v. Foster*, 509 Mich. 109, 120–30, 983 N.W.2d 373 (2022), cert. denied, 144 S. Ct. 79 (2023). That finality ruling did not retreat from *Foster*’s federal-merits holding; it imposed a state-law res judicata barrier on the collateral posture before the court.

Marschner identified *Berberich v. Mattson*, 903 N.W.2d 233 (Minn. Ct. App. 2017), and *In re Marriage of Babin*, 437 P.3d 985 (Kan. Ct. App. 2019), as intermediate appellate authority supporting the refusing line. *Marschner*, ¶ 12.

B. The enforcing line treats voluntary agreement as a basis for enforcement.

In re Marriage of Tronsrue, 2025 IL 130596, ¶¶ 46–50, is the lead decision on the enforcing side. The Illinois Supreme Court treated the obligation as a

voluntary contractual promise to make payments after receipt of military benefits, rather than as a judicial division of excluded military pay.

Tronsrue also relied on the finality of the decades-old dissolution judgment and *res judicata*. *Id.* ¶¶ 47, 52–56. That alternative ground is acknowledged rather than hidden. But the opinion’s voluntary-agreement analysis directly conflicts with *Marschner*’s rule that assent does not cure the federal defect.

Alaska in *Jones v. Jones*, 505 P.3d 224, 230–31 (Alaska 2022), Nevada in *Martin v. Martin*, 520 P.3d 813, 817–20 (Nev. 2022), and Virginia in *Yourko v. Yourko*, 884 S.E.2d 799, 804–05 (Va. 2023), place three additional courts of last resort on the enforcing side. *Tronsrue*, ¶ 49. *In re Marriage of Weiser*, 475 P.3d 237 (Wash. Ct. App. 2020), and *Hammond v. Hammond*, 680 S.W.3d 269 (Tenn. Ct. App. 2023), are identified as intermediate appellate authority on the enforcing side. *Marschner*, ¶ 9.

Alaska has since reaffirmed that position. *Million v. Hubert*, No. S-19094, Op. No. 7802, slip op. 16 (Alaska Feb. 20, 2026), recognized that the USFSPA prohibits direct division of disability pay and CRSC as marital property, yet stated that allocation of those benefits at divorce may be legally permissible when the servicemember agrees to divide them as part of a valid contract. *Million* arose on a Rule 60 collateral attack and therefore does not present this case’s direct-review posture; its contract analysis nevertheless confirms Alaska’s continued adherence to the enforcing rule.

The circuit court’s reasoned ruling below followed the enforcing line. The court first denied

enforcement under *Howell*. On rehearing, Respondent relied on *Jones*, Nevada's *Martin*, *Yourko*, and *Tronsrue*, argued that the parties had "contracted around" *Howell*, and acknowledged the same direct-order baseline. Tr. Sept. 16, 2025, p. 5; p. 8; Pet. App. 53a–56a. The court accepted the contract theory; *Marschner* has since rejected it.

C. The decisions conflict over contractual enforcement, with distinct procedural settings.

North Dakota rejects agreed replacement on the federal merits. Illinois, Alaska, Nevada, and Virginia permit agreed obligations in the circumstances discussed above. Michigan's initial preemption ruling was followed by enforcement of finality. The disagreement concerns the legal effect of assent, but the instruments and procedural grounds differ: *Tronsrue* involves agreed benefit sharing under § 5301 and preclusion; *Marschner* reviews an amended judgment. Those distinctions require analysis rather than a numerical division of interchangeable cases.

The choice matters to the stated rationale below: the court enforced because the obligation was voluntarily assumed, without finding that the substitute qualified as disposable retired pay. Whether an independent state ground sustains affirmance remains a separate vehicle question.

Florida's *Martin* held that *Howell* barred indemnification from other assets. 344 So. 3d 621. Respondent distinguished it by retirement timing and length of service. Tr. Sept. 16, 2025, p. 6; Pet. App. 54a. The Second District's unexplained affirmance here supplies no precedential intra-Florida conflict. The asserted conflict rests on the reasoned decisions above; this case presents

enforcement based on the disputed contract exception.

D. Prior denials do not diminish the need for review.

The Court denied review in *Foster*, No. 22-1089, 144 S. Ct. 79 (2023); *Martin*, No. 23-605, 145 S. Ct. 135 (2024); *Yourko*, No. 23-999, 145 S. Ct. 137 (2024); and *Tronsrue*, No. 25-500 (U.S. Jan. 12, 2026). *Marschner* was decided March 4, 2026, after those denials, and adds a reasoned state-high-court rejection of contractual replacement. The prior denials create no merits precedent.

Marschner v. Marschner, No. 25-1349, remains pending. The opposition disputes whether the operative indemnification was agreed or court-added; the September 8 reply contests that characterization. The case was distributed September 9 for the September 28 conference. Those competing positions remain advocacy. Here, N(9) was agreed and expressly enforced on a contract theory, subject to the finality and appellate-record issues addressed below.

II. This Case Presents Question One for Independent Review.

A. The Petition Challenges the 2025 Enforcement Orders.

Petitioner seeks review of the final appellate judgment affirming the September 22 and October 3 enforcement orders, rather than untimely direct review of the August 18, 2022 decree. The orders imposed present payment obligations, interest, and fee exposure. The October 3 order enforced

Paragraph N(9); the September 22 order imposed a date-certain command to satisfy the separate cash-payment and marital-debt obligations. Pet. App. 5a-16a, 19a-30a.

Petitioner raised federal preemption before the 2025 military-retirement enforcement judgment and directly appealed it. That posture does not itself defeat finality of the 2022 decree. Respondent expressly invoked *Foster's* res judicata rationale in her July 14, 2025 rehearing motion, p. 6, ¶ 14(E) (Filing No. 227179830). *Mansell* left the availability of reopening to state law. 490 U.S. at 586 n.5. The federal objection therefore does not automatically render the original decree void or eliminate an otherwise adequate state bar.

The October 3 order nevertheless decided that contractual assent permits the challenged remedy; it did not expressly rest on preclusion. Pet. App. 5a-16a. That federal-dependent rationale differs from a rule foreclosing review irrespective of the federal answer. The PCA identifies neither rationale. The September 22 rehearing denial is also unexplained, and Petitioner does not attribute the retirement ruling's reasoning to the separate property claim.

N(9)'s asserted \$1,838.25 figure presents a computation and preemption issue without requiring a finding of fraud. Pet. App. 45a-46a, 77a-78a. Alleged false disclosures or undisclosed assets require separate proof and procedural grounds. The July 8 court treated the agreement as binding. *Id.* at 89a. Petitioner challenges the federal permissibility of enforcing that privately calculated figure beyond the federally defined share even assuming a valid agreement; he seeks no freestanding rescission here.

B. The Rehearing Framed the Precise Federal Question.

The July 10 *Howell* denial order controlled initially. At the September 16 rehearing, the Florida Circuit Court confined the dispute to whether contract permitted a different result. Tr. Sept. 16, 2025, pp. 4–5; Pet. App. 52a–53a.

Respondent presented Florida's *Martin* and distinguished it because medical retirement followed divorce and the member lacked twenty years of service. Tr. Sept. 16, 2025, p. 6; Pet. App. 54a. The court thus confronted the federal enforcement limit and the asserted contractual exception.

The contract exception adopted below depends on federal law: it asserts that agreement changes what *Howell* permits. Pet. App. 5a–16a. A separate finality or procedural bar could operate independently. If the PCA leaves the controlling ground uncertain, Petitioner alternatively requests vacatur and remand for clarification. *Capital Cities Media, Inc. v. Toole*, 466 U.S. 378, 378–79 (1984), used that disposition where an unexplained denial obscured whether federal claims or an adequate independent state ground controlled. The analogy is procedural; clarification cannot manufacture preservation or overcome an established state bar.

C. The federal rule can be resolved without fixing every accounting consequence.

At the July 8 hearing, Respondent's counsel agreed that DFAS would not pay directly and that "the disposable retired pay is zero." Pet. App. 72a. The admitted DFAS response likewise reflected disability-based retired or retainer pay and no funds

available. Pet. App. 79a–80a. Petitioner relies on that record-specific concession and evidence, not an assumption that every DFAS nonpayment establishes statutory exclusion for every period.

The October 3 order found that the indemnification obligation “was not contingent on [Petitioner’s] receipt of income from a source other than disability pay.” Pet. App. 9a–10a, ¶ 5(E). That finding identifies the breadth of the remedy; it does not itself classify every benefit dollar. The federal objection concerns enforcement to replace retirement value excluded by § 1408.

The legal issue precedes the accounting. Section 1408 permits a property award stated in dollars or as a percentage, but the divisible property remains federally defined “disposable retired pay.” 10 U.S.C. § 1408(a)(2)(C), (a)(4), (c)(1). N(4) states the award as 50% and gives no dollar amount; N(9) later asserts \$1,838.25 “as of July 2022.” Pet. App. 43a–46a. Respondent testified that she calculated the figure; DFAS did not adopt it. Pet. App. 75a–78a, 84a. The issue is therefore not use of a dollar figure, but judicial enforcement of a private calculation beyond the statutory amount. To the extent the shortfall represents federally excluded retirement value, enforcement substitutes the contractual measure for the federal one. The Court can decide that rule and leave period-specific allocation and calculation on remand.

D. The Existing Payment Command Presents the Second Question.

The September 22 order already commanded full payment by a fixed date and reserved sanctions. Pet. App. 29a–30a. Petitioner raised the benefits

objection to that order itself, and appealed its denial. The challenge to that existing command differs from a challenge to a future writ, levy, contempt finding, or confinement order that has not issued. Whether the present command actually requires protected benefits is the necessary substantive inquiry; the amount of the debt and Petitioner's assertion of disability income do not alone answer it.

III. The State Cannot Invoke Congress's Grant and Disclaim Congress's Boundary.

A. *McCarty* established the federal baseline.

In *McCarty v. McCarty*, 453 U.S. 210 (1981), this Court held that federal military-retirement law precluded state community-property division of military retired pay. Congress responded by enacting the USFSPA. *McCarty* rejected making state characterization dispositive: the federal conflict existed regardless of whether retired pay was described as current or deferred compensation. *Id.* at 223–24. It also fixed who may alter that baseline: Congress, not state courts. *Id.* at 235–36.

B. *Mansell* makes the statutory limitation controlling.

Mansell held that the USFSPA does not authorize state courts to treat as divisible property military retirement pay waived to receive veterans' disability benefits. 490 U.S. at 594–95.

Mansell itself arose from a property settlement in which the parties agreed that the member would pay 50% of total military retirement pay, including the portion waived for disability benefits. 490 U.S. at

585–86. The parties’ assent did not enlarge the category Congress authorized States to divide.

Mansell characterized § 1408(c)(1)’s affirmative grant as “precise and limited.” 490 U.S. at 588–89. It rejected the view that § 1408 merely regulates the federal payment mechanism: the section’s substantive limitations have “pre-emptive effect of [their] own.” *Id.* at 589–91. Congress chose a defined category and excluded specified amounts; state authority ends where that definition ends.

C. *Howell* supplies the conceded baseline.

Howell applied *Mansell* to a state remedy requiring a veteran to reimburse a former spouse for military-retirement value excluded by a disability waiver. This Court held the remedy preempted.

Howell rejected form over substance: “The difference is semantic and nothing more.” 581 U.S. at 222. Reimbursement and indemnification orders that restore excluded value are preempted “[r]egardless of their form.” *Ibid.*

Justice Thomas concurred in the judgment while declining to join the majority’s purposes-and-objectives analysis, explaining that the framework was unnecessary to support the Court’s judgment. 581 U.S. at 223 (Thomas, J., concurring in part and concurring in the judgment). The practical-effect inquiry here addresses the narrower question whether changing the state-law label changes what § 1408 permits.

D. The Federal Limit Concerns State Authority to Divide the Property.

Petitioner does not contend that the circuit court lacked subject-matter jurisdiction over the dissolution or lost jurisdiction when DFAS declined payment. The defect is substantive, not adjudicatory. General jurisdiction permits the court to hear an enforcement motion; it does not authorize relief federal law forbids. Accord *Parish v. Parish*, 314 Neb. 370, 378–80, 991 N.W.2d 1 (2023) (distinguishing want of jurisdiction from an erroneous exercise of jurisdiction in this precise setting).

E. The federal grant and federal definition travel together.

Section 1408(c)(1)'s grant is subject to the section's limitations. The MSA expressly invoked § 1408 jurisdiction, and the Final Judgment stated its USFSPA purpose. Pet. App. 35a–40a, 43a–44a. Contractual survival does not permit judicial enforcement to restore retirement value excluded from the federally defined interest.

F. A private promise does not exempt judicial enforcement from federal law.

Private parties may create contractual duties. But an agreement is not self-executing, and judicial enforcement is state action subject to the Supremacy Clause.

Respondent obtained a judgment requiring payment with interest, awarding fee entitlement, and reserving sanctions. Pet. App. 5a–16a. The obligation was not conditioned on non-disability

income. Pet. App. 9a–10a, ¶ 5(E). Judicial enforcement made the obligation coercively enforceable; its contractual origin does not answer whether the remedy replaces value excluded by federal law.

IV. Contractual Origin Does Not Exempt Judicial Enforcement from the Supremacy Clause.

A. The trial court’s advance-knowledge distinction has no textual basis in § 1408.

The October 3 military-retirement enforcement order relied on Petitioner’s disclosed disability status. Pet. App. 9a–16a. But § 1408(a)(4) contains no exception for knowledge, timing, sophistication, or risk allocation.

Mansell also forecloses making advance knowledge dispositive. Major *Mansell* was already receiving retirement pay and disability benefits under a waiver when the spouses executed their settlement, yet this Court held that the agreed division beyond disposable retired pay was unauthorized. 490 U.S. at 585–86, 594–95.

B. Contract Enforcement Must Comply With the Same Federal Limit.

At rehearing, the court addressed Ms. Kirkner’s involvement at the drafting of the MSA and Petitioner’s known disability status at that time. Pet. App. 62a–63a. Counsel expressly asserted the claimed contractual exception: “it’s our position that *Howell* does not apply because the parties contracted around it.” Tr. Sept. 16, 2025, p. 5; Pet. App. 53a. The court adopted that distinction in its ruling,

enforcing the negotiated indemnification despite known disability status. *Id.* p. 19; Pet. App. 67a. The question is whether that asserted exception exists under federal law; identifying the agreed obligation does not answer it.

Voluntary spending after receipt differs from judicial compulsion. *Mansell* itself involved a settlement. The question is whether agreement permits a judgment replacing federally excluded retirement value, not whether every voluntarily assumed payment duty is invalid.

Congress's own definition reinforces that conclusion: a "court order" includes a court-approved property settlement incident to a divorce decree. 10 U.S.C. § 1408(a)(2); Pet. App. 150a. Because the Final Judgment incorporated the MSA, its contractual origin and survival without merger do not remove Paragraph N(9) from the federal statutory frame.

The state-law survival provisions do not supply a federal exception. The Final Judgment states that the MSA does not merge but survives the Final Judgment. Pet. App. 39a-40a. Paragraph 66 provides: "The obligations and covenants of this Agreement shall survive any judgment of dissolution of marriage and shall not merge therein, and this Agreement may be enforced independent of such judgment." Pet. App. 136a-137a. Those terms preserve a state-law enforcement route; they do not authorize division of federally excluded retirement value. Enforcement of the surviving agreement still requires a state-court remedy subject to federal law. *Howell* applies "[r]egardless of their form," 581 U.S. at 222; *Marschner* ¶ 13 applies the rule to agreed

indemnification; and *Mansell* arose from an agreed property settlement incorporated into a decree. 490 U.S. at 585–86. Invoking the USFSPA while preserving independent contract enforcement cannot enlarge the property Congress made divisible. Contract law does not exempt a state-court judgment from the Supremacy Clause.

C. *Rose* does not authorize equitable-distribution indemnification.

Rose concerned support. Paragraph N(9) is expressly an equitable-distribution obligation measured by “50% of disposable military retired pay”; it then asserts \$1,838.25 as the July 2022 amount, adds COLA, and requires payment regardless of remarriage or need. Pet. App. 45a–48a.

Paragraph N(10) confirms that the payments are a distribution of marital assets, “not alimony.” Pet. App. 45a–46a.

Section 5301(a)(1) supplies a distinct protection when payment enforcement reaches benefits administered by the Secretary of Veterans Affairs. The September 22 motion and appellate brief raised that protection separately from the military-retirement calculation. Pet. App. 99a–100a, 110a–111a, 112a–115a. Question Two presents that source-based claim, subject to the preservation and vehicle limits described above. It does not treat every Title 10 retirement payment as a Title 38 benefit or enlarge § 1408’s exclusions.

D. Section 1408(e)(6) preserves collection of otherwise lawful obligations; it does not enlarge the divisible property category.

Mansell rejected the same attempt to use § 1408(e)(6) as authority for state recovery beyond the federal category. The savings clause preserves alternative enforcement of otherwise lawful obligations; it does not override § 1408(c)(1)'s substantive limitation on divisible military-retirement property. 490 U.S. at 589-91.

Petitioner does not contend that every failure of direct payment by DFAS creates a federal defense. He challenges only the requirement that he personally guarantee the privately stated dollar measure beyond whatever amount qualifies as disposable retired pay. Any amount within that federal category remains enforceable.

E. The Court can preserve legitimate contracts without permitting prohibited remedies.

Question One would bar remedies calibrated to replace federally excluded retirement value without invalidating genuine support, independent consideration, or lawful property duties. Question Two would preserve the exemption of covered benefit payments when collecting such a duty. The continued existence of an independent debt and the availability of a particular payment source are different matters.

The judgment distinguishes other fallback arrangements. N(11) secures Respondent's retirement share through SBP, but if she cannot collect that benefit, it permits private life insurance at her expense and requires Petitioner's cooperation.

Pet. App. 47a-48a. That separately purchased fallback differs from N(9)'s personal guarantee of the retirement shortfall. This petition does not treat SBP premiums as automatically recoverable or all federally administered benefits as identically protected.

MSA Paragraphs 29-31 preserve third-party creditor rights and allocate responsibility for independently incurred or assumed debts. Pet. App. 129a-131a. N(9), by contrast, generates liability from the difference between the guaranteed retirement figure and federal payment. The federal question concerns that replacement measure, while independent debt remains subject to lawful collection remedies.

**V. The September 22 Payment Command
Requires Separate Analysis Under Section
5301.**

**A. The Statute Protects Benefit Payments From
Legal Process.**

Section 5301(a)(1) protects payments made under laws administered by the Secretary of Veterans Affairs from creditors' claims and from attachment, levy, or seizure through legal or equitable process, before or after receipt. Pet. App. 155a. The question is what the challenged command requires the beneficiary to surrender. A property-debt label does not authorize seizure of exempt payments; nor does a veteran's receipt of those payments immunize every asset or extinguish every debt.

Porter v. Aetna Casualty & Surety Co., 370 U.S. 159, 161-62 (1962), illustrates the distinction. A creditor had obtained a judgment, but deposited

veterans' benefits retained their exemption where they remained readily available for support and maintenance and retained the qualities of money rather than permanent investments. *Porter* protects qualifying funds despite the judgment. It does not hold that the underlying debt disappears. Tracing and the character of the particular funds matter; property purchased with benefits does not automatically inherit their exemption.

Washington State Department of Social & Health Services v. Guardianship Estate of Keffeler, 537 U.S. 371, 384–86 (2003), interpreted “other legal process” in § 407 to require a judicial or similar mechanism transferring control of property to satisfy a liability. It did not construe § 5301 or decide this kind of payment order. Unlike the representative-payee administration there, Petitioner challenges a judicial command to satisfy an enforceable debt. Still, entry of a money judgment alone does not identify exempt funds as its source. Petitioner must show that this command requires surrender of covered payments; if it permits payment only from nonexempt property, the exemption remains available against later prohibited process.

B. The Order's Operation Must Be Examined Separately From Its Label.

Here, Paragraph 12 demanded payment in full by a fixed date, Paragraph 13 imposed fee entitlement, and Paragraph 14 reserved sanctions to compel compliance. Pet. App. 29a–30a. Petitioner's rehearing motion asserted both the federal exemption and inability to comply because of sole reliance on disability payments. *Id.* at 99a–100a. His appellate brief renewed the federal challenge to both

enforcement orders. *Id.* at 110a-111a, 112a-117a. Petitioner contends that an unconditional command cannot lawfully require surrender of exempt benefit money simply because it is expressed as personal compliance with a divorce agreement.

The retirement ruling establishes the contract rationale but does not make the separate cash and EFCU debts retirement replacement. Those obligations arose from QDRO and home-sale provisions. *Pet. App.* 21a-24a. Their enforcement implicates § 5301 only insofar as it operates against covered payments; the shared decree and judge do not establish that result.

Howell's practical-effect analysis governs replacement of excluded retirement value. 581 U.S. at 222. Section 5301 independently governs protected payment sources. The Court can enforce both limits without treating every property debt owed by a veteran as preempted.

C. The Present Claim Has Limits That the Remedy Should Preserve.

The existing order and rehearing denial identify the payment command being challenged. They do not, by themselves, establish that compliance necessarily required protected VA funds. Reserved sanctions are not an adjudication of contempt, and this petition does not ask the Court to decide the validity of an unidentified future attachment or confinement order. The source-based claim succeeds only to the extent the existing record establishes that the command compels protected benefits. The underlying 401(k) escrow provisions identify a different asset and do not supply that showing merely because they required liquidation and

transfer. Pet. App. 29a–30a, 17a–18a, 41a–42a, 132a–135a.

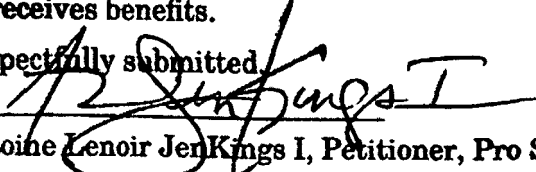
The order's only expressly stated basis for the finding that Petitioner "had the ability to comply" was receipt of QDRO proceeds in late 2022. Pet. App. 21a–24a, ¶¶ 5(B), 6. It made no finding that those funds remained available in September 2025 and identified no other then-available asset from which Petitioner could satisfy the October 6 payment deadline. *Id.* at 19a–30a. Petitioner's rehearing motion asserted that disability payments were his only income and that sole reliance on those payments left him unable to comply. *Id.* at 98a, 100a. Historical receipt does not itself establish a present payment source. The absence of a current-source finding is not itself proof that every nonexempt asset was exhausted; the federal question concerns whether this command operates against protected benefit money. An otherwise lawful debt does not authorize resort to funds protected by federal law. Section 5301 protects covered veterans' payments; it does not classify all Chapter 61 or concurrent retired pay as VA compensation. Question One separately addresses the amounts excluded by § 1408.

The September 22 command enforces equitable distribution, not support. The orders concern property and debt obligations. Pet. App. 21a–30a, 45a–46a. Congress expressly excludes transfers of property or its value pursuant to equitable distribution from the definition of alimony in the federal support-garnishment statute. 42 U.S.C. § 659(i)(3)(B)(ii); Pet. App. 156a–157a. That support exception therefore does not itself authorize collection of this property debt from protected benefits. *Rose v. Rose*, 481 U.S. 619 (1987),

CONCLUSION

The Court should grant both questions, or Question One independently, and reverse or vacate insofar as the judgment sustains replacement of federally excluded retirement value or compels protected veterans' payments. Alternatively, it should vacate and remand for clarification of any adequate and independent state ground. Petitioner seeks lawful allocation and enforcement on remand, not cancellation of independent debt merely because he receives benefits.

Respectfully submitted,


Antoine Lenoir JenKings I, Petitioner, Pro Se

P.O. Box 340427, Tampa, Florida 33694

(847) 722-9528, | toine.jenk@yahoo.com

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