No. 26-449

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

SUPPLEMENTAL BRIEF OF PETITIONER

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SUPPLEMENTAL BRIEF OF PETITIONER

Petitioner respectfully requests that the Court hold this petition pending its decision in *Marschner v. Marschner*, No. 25-1349. On October 1, 2026, after this petition was filed on September 23, the Court granted certiorari in *Marschner*. Order List (U.S. Oct. 1, 2026). That grant is an intervening development properly brought to the Court's attention under Rule 15.8. The petition identified *Marschner* as pending. Pet. 20. The grant now provides a further reason to retain this petition for disposition in light of the Court's decision.

I. The Grant in *Marschner* Directly Bears on Question 1

The question presented in *Marschner* is: "Does the USFSPA require state courts to refuse enforcement of indemnification provisions in divorce settlement agreements?" Pet. i, *Marschner v. Marschner*, No. 25-1349 ("*Marschner* Pet.").

Question 1 here asks:

> 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.

Pet. i. Both questions concern whether contractual assent permits state-court enforcement of an obligation replacing military-retirement value excluded from division by federal law. The Court's answer in *Marschner*

should substantially inform the disposition of Question 1 here.

The overlap includes disability-based retirement. The *Marschner* petition identifies both the exclusion for pay waived to receive disability compensation and the exclusion for specified Chapter 61 disability-retirement amounts. *Marschner* Pet. i (citing 10 U.S.C. § 1408(a)(4)(A)(ii), (iii)). Richard Marschner was medically retired under Chapter 61 after the divorce. *Marschner* Pet. 9–10; *Marschner* Pet. App. 15a ¶ 3. Here, DFAS denied direct payment by letter stating: "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. 9; Pet. App. 118a–119a. The North Dakota opinion reports the same stated basis for DFAS's denial there. *Marschner v. Marschner*, 2026 ND 66, ¶ 5, 33 N.W.3d 9.

II. The October 3 Order Adopted the Contractual Distinction Under Review

The October 3, 2025 enforcement order defined "[t]he issue before the court" as whether it could "enforce a contract between the parties that was entered into knowingly and voluntarily, even if the contract provides one spouse with a benefit that the Court could not order absent the agreement of the parties," and held that "it can." Pet. App. 7a. It reasoned: "*Howell* does not prohibit a veteran from agreeing to use disability benefits as he chooses after receiving them, including paying a former spouse." Pet. App. 12a. The order relied on *Jones v. Jones*, 505 P.3d 224 (Alaska 2022); *Yourko v. Yourko*, 884 S.E.2d 799 (Va. 2023); and *In re Marriage of Tronsrue*, 2025 IL 130596. Those decisions also figure prominently in the *Marschner* petitioner's account of the conflict. *Marschner* Pet. 13–18.

The North Dakota Supreme Court adopted the contrary rule: "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." *Marschner*, 2026 ND 66, ¶ 14. It further explained: "Even if the parties' agreement obligated Richard to indemnify Roxane for waived retired pay, federal law renders the obligation unenforceable." *Id.* ¶ 13; *see* Pet. 16–17.

The October 3 order also invoked Florida's general rule that parties may agree to obligations a court could not otherwise impose. Pet. App. 12a (citing *Herbst v. Herbst*, 153 So. 3d 290, 292 (Fla. 2d DCA 2014)). That state-law principle does not independently resolve whether federal law preempts enforcement of the particular obligation. The contractual-enforcement rationale therefore depends on the federal question now before this Court in *Marschner*. The Second District affirmed without opinion; Petitioner does not attribute a particular rationale to that unexplained affirmance. Pet. App. 1a; Pet. 2, 21.

III. The Court Should Hold the Entire Petition

If the Court's decision in *Marschner* undermines a potentially outcome-determinative premise of the October 3 order, Petitioner requests that the Court grant the petition, vacate the judgment below, and remand for further consideration in light of that decision, as appropriate under *Lawrence v. Chater*, 516 U.S. 163, 167 (1996) (per curiam). A hold would permit the Court to assess the decision's effect, any record-specific differences, and the appropriate disposition after *Marschner* is decided.

This petition seeks review of a single appellate judgment affirming both the October 3 and September 22, 2025 enforcement orders. Pet. 1–2, 20; Pet. App.

1a. Question 2 presents the separate issue under 38 U.S.C. § 5301(a)(1) and remains presented. Petitioner requests that the entire petition, including Question 2, be held. He does not contend that *Marschner* will decide Question 2; the appropriate scope of any later disposition should be determined in light of the Court's decision and this record.

CONCLUSION

The petition should be held pending the Court's decision in *Marschner v. Marschner*, No. 25-1349, and then disposed of as appropriate in light of that decision.

Respectfully submitted,

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Dated: November 2, 2026