No. 13-173

In the Supreme Court of the United States

OSCAR RENDA, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the decision of a contracting officer under the Contract Disputes Act of 1978, 41 U.S.C. 7103(a)(3), that a private contractor owes money to the United States, constitutes a "claim" for purposes of a statute giving priority to federal-government claims, 31 U.S.C. 3713, where "claim" is defined to include "any amount of funds or property that has been determined by an appropriate official of the Federal Government to be owed to the United States by a person, organization, or entity other than another Federal Agency," 31 U.S.C. 3701(b)(1).

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-25a) is reported at 709 F.3d 472. The memorandum of the district court adopting the report and recommendation of the magistrate judge to grant the government's motion to dismiss counterclaims and to strike affirmative defenses (Pet. App. 40a-41a) is available at 2010 WL 3810660, and the magistrate judge's report and recommendation (Pet. App. 26a-39a) is available at 2010 WL 3790818. The memorandum of the district court adopting the report and recommendation of the magistrate judge to grant the government's motion for summary judgment (Pet. App. 42a-43a) and the magistrate judge's report and recommendation (Pet. App. 43a-53a) are reported at 821 F. Supp. 2d 853.

JURISDICTION

The judgment of the court of appeals was entered on February 20, 2013. A petition for rehearing was denied on May 6, 2013 (Pet. App. 56a-57a). The petition for a writ of certiorari was filed on August 2, 2013. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. a. Petitioner was the president, sole shareholder, and sole director of Renda Marine, Inc., a company hired by the United States Army Corps of Engineers to dredge a portion of the Houston-Galveston navigation channel. Pet. App. 2a-3a, 52a. The dredging contract was governed by the Contract Disputes Act of 1978 (CDA), 41 U.S.C. 7101 *et seq.*[1] The CDA requires, *inter alia*, that disputes between the government and the contractor either be submitted by the contractor to a federal contracting officer for a decision (in the case of a claim by the contractor), 41 U.S.C. 7103(a)(1), or be the subject of a contracting officer's written decision (in the case of a claim by the government), 41 U.S.C. 7103(a)(3); see Pet. App. 2a.

Asserting that its dredging work had been more difficult and extensive than originally anticipated, Renda Marine submitted eight claims to the contracting officer. Pet. App. 2a. The contracting officer granted one claim, but constructively denied the oth-

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[1] In 2011, during the pendency of this case, Congress amended and recodified Title 41. Pub. L. No. 111-350, § 3, 124 Stat. 3677. The CDA was previously codified at 41 U.S.C. 601 *et seq.* The changes to the provisions of the CDA relevant to this case are not substantive. Compare, *e.g.*, 41 U.S.C. 605(b) (2006) with 41 U.S.C. 7103(g) (Supp. V 2011). Except where otherwise specified, this brief cites the current provisions.

ers by declining to address them within the required time period. *Ibid.*; see 41 U.S.C. 7103(f)(5). Petitioner challenged those denials by filing suit in the Court of Federal Claims (CFC). Pet. App. 3a; see 41 U.S.C. 7104(b).

While that challenge was pending, the contracting officer "issued a final decision (the 'Final Decision') on six counterclaims submitted by the government against Renda Marine for incomplete and deficient work." Pet. App. 3a; see *id.* at 58a-71a. In the Final Decision, which was issued directly to petitioner himself, the contracting officer "'determined that Renda Marine is indebted to the Government in the amount of $11,860,000,' plus interest, for the estimated completion costs." *Id.* at 3a (brackets omitted); see *id.* at 64a. Petitioner has acknowledged that he both received and read the Final Decision. *Id.* at 3a.

Renda Marine could have challenged the Final Decision either by filing an administrative appeal within 90 days, 41 U.S.C. 7104(a), or by filing suit in the CFC within a year, 41 U.S.C. 7104(b). See Pet. App. 3a n.1. Renda Marine did neither. *Id.* at 4a. Although the government informed Renda Marine of its appeal rights, see *Renda Marine, Inc.* v. *United States*, 509 F.3d 1372, 1381 (Fed. Cir. 2007), Renda Marine followed the erroneous advice of a lawyer who believed that the contracting officer's findings were void, that the government's counterclaims would be part of the action that Renda Marine had already commenced in the CFC, and that no separate challenge to the Final Decision was necessary. Pet. App. 4a. The CDA in fact provides, however, that when no "appeal or action is timely commenced" under the CDA, the decision of the contracting officer becomes "final and conclusive

and is not subject to review in any forum, tribunal, or Federal Government agency." 41 U.S.C. 7103(g).

b. More than seven months after the time to challenge the Final Decision had expired, Renda Marine filed a motion for leave to amend its complaint in the ongoing CFC litigation to include a challenge to the Final Decision. Pet. App. 4a; see *Renda Marine, Inc.* v. *United States*, 65 Fed. Cl. 152, 155-156 (2005). The CFC denied the motion, finding the challenge to the Final Decision to be "jurisdictionally barred," and noting that Renda Marine did "not dispute either that it [had] timely received the final decision or that it [had] declined to exercise its appeal rights" under the CDA. *Id.* at 156; see Pet. App. 4a. The CFC subsequently rejected several other attempts by Renda Marine to challenge the Final Decision at various points in the litigation. *Ibid.*

On the issues that it deemed to be properly before it, the CFC held a 19-day trial and ultimately entered judgment in favor of the government. Pet. App. 4a-5a. The Federal Circuit affirmed both the outcome of the trial and the CFC's denial of Renda Marine's motion to amend its complaint to challenge the Final Decision. *Id.* at 5a; see *Renda Marine*, 509 F.3d 1372 (Fed. Cir. 2007). The Federal Circuit concluded that the CFC "was not in a position to consider the validity of" the Final Decision "because [Renda Marine] did not timely appeal the decision and the government did not put it in issue." *Id.* at 1380. The Federal Circuit recognized that, under the CDA, the contracting officer's determination that Renda Marine owed $11.86 million became "final and conclusive and not subject to review" when Renda Marine failed to challenge it. *Ibid.* (quoting 41 U.S.C. 605(b) (2006)).

c. Following the conclusion of the CFC suit and the ensuing appeal, the government obtained a district-court judgment against Renda Marine for $22,060,392.78, including interest and penalties. Pet. App. 5a; see *United States* v. *Renda Marine, Inc.*, 750 F. Supp. 2d 755 (E.D. Tex. 2010). The court of appeals affirmed, *United States* v. *Renda Marine, Inc.*, 667 F.3d 651 (5th Cir. 2012), and this Court denied Renda Marine's petition for a writ of certiorari, *Renda Marine Inc.* v. *United States*, 133 S. Ct. 1800 (2013).

2. a. For more than two centuries, federal statutory law has prioritized the payment of claims to the federal government over the payment of claims to other creditors. See *United States* v. *Moore*, 423 U.S. 77, 80-81 (1975). The current version of the priority statute states that "[a] claim of the United States Government shall be paid first when," *inter alia*, "a person indebted to the Government is insolvent" and "the debtor without enough property to pay all debts makes a voluntary assignment of property." 31 U.S.C. 3713(a)(1)(A)(i). The statute gives "teeth" to the priority requirements by "making the administrator of any insolvent * * * personally liable for any amount not paid the United States because he gave another creditor preference." *Moore*, 423 U.S. at 81. Specifically, the statute provides that "[a] representative of a person or an estate (except a trustee acting under title 11) paying any part of a debt of the person or estate before paying a claim of the Government is liable to the extent of the payment for unpaid claims of the Government." 31 U.S.C. 3713(b). The terms "claim" and "debt" are defined to mean "any amount of funds or property that has been determined by an appropriate official of the Federal Government to be

owed to the United States by a person, organization, or entity other than another Federal agency." 31 U.S.C. 3701(b)(1).

Notwithstanding the priority statute, petitioner twice caused Renda Marine to make voluntary transfers of its assets to unsecured creditors after the Final Decision had been issued and while Renda Marine was insolvent. Pet. App. 4a-5a. First, approximately seven months after the Final Decision, petitioner caused Renda Marine to transfer substantially all of its assets, totaling more than $8.5 million, to himself, his brother Rudolph Renda, and their related companies, Oscar Renda Contracting, Inc. and Renda Environmental, Inc. *Id.* at 4a. Second, approximately 17 months later, petitioner caused approximately $2 million that Renda Marine had obtained from the settlement of a malpractice suit with its attorney to be transferred to Oscar Renda Contracting, Inc. *Id.* at 5a.

b. While in the process of obtaining the district-court judgment against Renda Marine, the United States filed a separate suit against petitioner for violating the priority statute. Pet. App. 5a-6a. The district court entered judgment against petitioner in the amount of $12,468,588.94, which represented the combined value of the two transfers petitioner had caused, plus interest. *Id.* at 6a.

The court of appeals affirmed. Pet. App. 1a-25a. The court concluded, *inter alia*, that petitioner had received notice of the Final Decision, *id.* at 18a-21a; that the erroneous advice of Renda Marine's attorney had not nullified the legal effect of that notice, *ibid.*; and that the Final Decision was a "claim" for purposes of the priority statute, *id.* at 11a-18a, because the

statutory definition of that term "encompasses a [contracting officer's] determination that a government contractor is indebted to the government," *id.* at 18a.

With respect to its determination that the Final Decision was a "claim," the court of appeals observed that, "[o]n its face, the statutory definition of 'claim'—'any amount of funds or property that has been determined by an appropriate official of the Federal Government to be owed to the United States by a person, organization, or entity other than another Federal agency'—captures within its scope a [contracting officer's] decision on a claim relating to a government contract." Pet. App. 12a (quoting 31 U.S.C. 3701(b)(1)). The court explained that, "as the official statutorily designated to make decisions with respect to claims relating to government contracts, 41 U.S.C. § 7103, a [contracting officer] surely qualifies as 'an appropriate official of the Federal Government.'" *Ibid.* The court also noted that the "language of the Final Decision tracks the definition of claim: it includes a determination—'I hereby determine'—that a person, organization, or entity—'Renda Marine, Inc.'—owes an amount of funds to the United States—'is indebted to the Government in the amount of $11,860,000.00.'" *Ibid.*

The court of appeals acknowledged that the term "claim" was not "boundless in scope" because, for example, it would not include contingent claims that do not yet exist at the relevant time. Pet. App. 13a. The court observed, however, that the term had been "interpreted expansively." *Id.* at 14a. The court of appeals took note of this Court's directive that the statute be given "'a liberal construction,'" *id.* at 13a, (quoting *United States* v. *State Bank*, 31 U.S. 29, 39

(1832)), in order to effectuate its purpose "'to secure an adequate revenue to sustain the public burthens and discharge the public debts,'" *ibid.* (quoting *Moore*, 423 U.S. at 81) (alteration omitted).

The court of appeals rejected petitioner's contention that, because the first set of transfers had occurred before the period for seeking review of the Final Decision had expired, the Final Decision was not a "claim" at the time those transfers were made. Pet. App. 14a-18a. The court observed that "the word 'final' is conspicuously absent from the statutory definition of 'claim.'" *Id.* at 15a. The court also found that petitioner's argument was inconsistent with this Court's decision in *United States* v. *Moore*, *supra*, which had applied a previous version of the priority statute to an unliquidated debt, notwithstanding that "no government official or court had made an official determination of indebtedness." *Id.* at 15a-17a. The court further explained that acceptance of petitioner's theory would "undermine the purpose" of the priority statute by inviting a debtor to "circumvent" federal priority by appealing a contracting officer's decision and "transferring all of its assets to inside creditors" during the pendency of that appeal. *Id.* at 17a.

The court of appeals also rejected several "collateral" arguments raised by petitioner, on issues the court concluded were "not pertinent to [petitioner's] liability under the Priority Statute." Pet. App. 21a-25a. As relevant here, the court of appeals first reasoned that, "because the validity of the government's claim against Renda Marine had been resolved with finality before the government brought" its suit under the priority statute, the district court had not abused its discretion in declining to allow petitioner to attack

the merits of the Final Decision as a defense to liability under the priority statute. *Id.* at 21a-22a. The court acknowledged that petitioner had not had an opportunity to challenge the Final Decision in his personal capacity. *Id.* at 22a. The court noted, however, that petitioner's personal liability "is not derivative of the Final Decision itself," but instead "stems from his own actions in transferring assets in knowing disregard of the government's claim." *Ibid.*

The court of appeals also rejected petitioner's contention that the CDA, by providing that a contracting officer's findings of fact "are not binding in any subsequent proceeding," 41 U.S.C. 7103(e), barred the use of the Final Decision to establish the government's claim against Renda Marine. Pet. App. 22a. The court found that CDA provision to be inapplicable here. *Ibid.* The court explained that the government in this case was simply relying on the existence of the Final Decision as proof "that the government had a claim, within the meaning of the Priority Statute, against Renda Marine at the time of the transfers," and was not relying on any of the specific factual findings that the Final Decision contained. *Ibid.*

Finally, the court of appeals noted that petitioner had identified "no case" holding that the use of the Final Decision as proof of the government's claim violated the Due Process Clause or the doctrine of collateral estoppel. Pet. App. 23a-24a. The court concluded that requiring the government to prove the merits of the claim through "independent evidence * * * would not only be unnecessary and impractical, but also is not required by the plain language of the Priority Statute or the case law interpreting it." *Id.* at 23a-24a.

ARGUMENT

The court of appeals correctly held that petitioner violated the priority statute, 31 U.S.C. 3713(b), when he caused Renda Marine to transfer substantially all of its assets to non-government creditors at a time when Renda Marine was insolvent, the Final Decision had been issued, and petitioner had received notice of that decision. That holding does not conflict with any decision of this Court or any other court of appeals. Further review is not warranted.

1. The priority statute protects the revenues of the federal government by specifying that "[a] claim of the United States Government shall be paid first when," *inter alia*, "a person indebted to the Government is insolvent" and "the debtor without enough property to pay all debts makes a voluntary assignment of property." 31 U.S.C. 3713(a)(1)(A)(i); see *United States* v. *Moore*, 423 U.S. 77, 80-81 (1975). As a mechanism for enforcing that requirement, the statute further provides that, when "[a] representative of a person or an estate (except a trustee acting under title 11) pay[s] any part of a debt of the person or estate before paying a claim of the Government," that representative "is liable to the extent of the payment for unpaid claims of the Government." 31 U.S.C. 3171(b); see *Moore*, 423 U.S. at 81.

The facts of this case satisfy all of the prerequisites for imposing personal liability on petitioner under the priority statute. First, petitioner does not dispute that he was a "representative" of Renda Marine within the meaning of the statute. Pet. App. 11a. Second, he does not dispute that Renda Marine, while insolvent, twice paid "part of a debt," by transferring more

than $10 million in total assets to petitioner, his brother, and related companies. *Id.* at 4a-5a, 11a.

Third, the court of appeals correctly concluded that petitioner made those transfers "before paying a claim of the Government," because the transfers occurred after the contracting officer had issued his Final Decision determining that Renda Marine owed the United States $11.8 million. Pet. App. 3a-5a, 11a-18a. For purposes of the priority statute (as well as certain other debt-collection statutes), the term "claim" (as well as the term "debt") is expansively defined to include "any amount of funds or property that has been determined by an appropriate official of the Federal Government to be owed to the United States by a person, organization, or entity other than another Federal agency." 31 U.S.C. 3701(b)(1). Here, the $11.8 million is "any amount"; the Final Decision expressly "determined" that Renda Marine owed that amount to the federal government, Pet. App. 64a ("I hereby determine that Renda Marine, Inc., is indebted to the Government in the amount of $11,860,000.000.") (emphasis omitted); and the CDA makes the contracting officer an "appropriate official of the Federal Government" to make that determination, 41 U.S.C. 7103(a)(3) ("Each claim by the Federal Government against a contractor relating to a contract shall be the subject of a written decision by the contracting officer.").

Finally, the government still has "unpaid claims" that would provide the basis for petitioner's liability. The Final Decision remains on the books and was rendered "final and conclusive" by operation of the CDA when Renda Marine failed to challenge it. 41 U.S.C. 7103(g) ("The contracting officer's decision on

a claim is final and conclusive and is not subject to review by any forum, tribunal, or Federal Government agency, unless an appeal or action is timely commenced as authorized by this chapter."). And no one contends that any part of the $11.86 million that Renda Marine owes to the government has been paid.

2. a. Petitioner contends (Pet. 16-25) that the lower courts erred in imposing liability without making an independent determination of the "validity" of the United States' claim against Renda Marine. That contention lacks merit. Petitioner identifies nothing in the statute that would require an independent assessment of "validity" above and beyond what the text of the statute defining "claim" expressly requires: namely, that "an appropriate official of the Federal Government" has "determined" that an "amount" is "owed to the United States." 31 U.S.C. 3701(b)(1).[2] This Court has previously recognized that the priority statute "is not to be defeated by unnecessarily restricting the application of the word 'debts' within a narrow or technical meaning," *Moore*, 423 U.S. at 85 (quoting *Price* v. *United States*, 269 U.S. 492, 500 (1926)), and it follows *a fortiori* that courts should not narrow the statute by adding extra-textual limitations.

Petitioner asserts (Pet. 22) that the priority statute's reference to "unpaid claims" (and similar lan-

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[2] In another debt-collection statute that incorporates the same definition of "claim," Congress has specifically provided that the "head of an agency" shall make a determination about whether the "claim is valid" before reporting an overdue claim to a credit reporting agency. 31 U.S.C. 3711(e)(1)(B); see 31 U.S.C. 3701(b)(1). The priority statute, by contrast, does not require any independent administrative or judicial determination of validity as a prerequisite to liability.

guage in a prior version of the statute) implicitly requires a de novo trial on the merits of the underlying debt obligation. The statutory text imposes no such requirement. In specifying that someone who violates the priority statute "is liable to the extent of the payment for unpaid claims of the Government," the statute simply provides a measure of liability, while limiting that liability to claims that are still in existence at the time of judgment and have not yet been satisfied. If, for example, a particular individual had transferred away assets that were at the time subject to a governmental claim, but the claim had since been successfully challenged through an administrative appeal or judicial review, the individual would not be subject to liability under the priority statute. See Pet. 18.[3] But nothing in the terms "claims" and "unpaid" suggests that a defendant in a suit under the priority statute is entitled to collaterally attack the earlier determination made by an "appropriate official of the Federal Government," 31 U.S.C. 3701(b)(1), that a debt was owed to the United States.

b. Petitioner primarily argues (Pet. 16-19) that interpreting the priority statute to impose liability in

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[3] Petitioner contends that a situation could arise in which the government's claim was "determined to be invalid *after* a representative has already been held liable." Pet. 18. Because the Final Decision is no longer subject to review under the CDA, that sequence of events will not occur in this case. In any event, the government's general practice is not to sue under the priority statute while the underlying claim remains subject to challenge. See *United States* v. *Suntip Co.*, 82 F.3d 1468, 1477 n.12 (9th Cir. 1996), cert. denied, 519 U.S. 1108 (1997). And if the government were to do so, the court could stay the action brought under the priority statute pending final resolution of any challenge to the claim's validity. *Ibid.*

cases like this would be "absurd." But it is not absurd for Congress to impose liability on persons who, notwithstanding an appropriate official's determination of an obligation to the federal government, nevertheless show preference to non-government creditors. Even in situations where the government's claim might be subject to further administrative or judicial review, Congress could—and evidently did—deem it important to restrict the ability of debtors to dispose of assets that could be used to pay the government's claim if it is upheld (and to impose a penalty on individuals who violate that restriction). As the court of appeals observed (Pet. App. 17a), in the absence of such a restriction, a contractor like Renda Marine could respond to a contracting official's adverse decision by challenging the decision and then transferring away all of its assets during the pendency of that challenge. Permitting such a maneuver would undermine the priority statute's purpose and function to provide special protection to the federal government, above and beyond the protections afforded to other creditors. See *Moore*, 423 U.S. at 80-81.

Petitioner provides no meaningful support for his suggestion (Pet. 19) that the Due Process Clause entitles a defendant to collaterally attack a governmental claim before the defendant can be held liable for transferring away assets that could potentially have been used to satisfy that claim. As the court of appeals recognized (Pet. App. 22a), petitioner's liability in this case "stems from his own actions in transferring assets in knowing disregard of the government's claim." Petitioner had a full and fair opportunity in district court to contest the government's contention that he transferred assets notwithstanding

his awareness of the contracting officer's decision. The Due Process Clause does not prohibit the imposition of liability on petitioner as a penalty for authorizing those transfers.

c. This would be a particularly inappropriate case for conducting a judicial inquiry into the validity of the government's claim, because that inquiry is foreclosed by the CDA. As the court of appeals correctly recognized (Pet. App. 22a), "the validity of the government's claim [was] resolved with finality before the government brought" the present suit against petitioner. See *Renda Marine, Inc.* v. *United States*, 509 F.3d 1372, 1380 (Fed. Cir. 2007) (concluding that the CFC "was not in a position to consider the validity of" the Final Decision "because Renda [Marine] did not timely appeal the decision and the government did not put it in issue"). Under the CDA, an unchallenged determination by a contracting officer "is final and conclusive and is not subject to review by any forum, tribunal, or Federal Government agency." 41 U.S.C. 7103(g). The CDA thus specifically prohibited the courts below from engaging in the collateral review that petitioner advocates.

Petitioner's attempt to reconcile his proposal with the CDA lacks merit. Petitioner identifies (Pet. 21) a case in which the Federal Circuit stated that, "*in the event of an appeal*," a contracting officer's decision is "deemed vacated and enjoy[s] no presumptive validity." *Wilner* v. *United States*, 24 F.3d 1397, 1402 n.8 (1994) (internal quotation marks omitted; emphasis added). But where, as here, the contracting officer's decision is not challenged within the statutory period for seeking review, the decision is "final and conclusive." 41 U.S.C. 7103(g). Petitioner also points out

(Pet. 21) that, if a contracting officer makes factual findings (which he is not required to do) in the course of rendering a decision, then those findings "are not binding in any subsequent proceeding." 41 U.S.C. 7103(e). But as the court below recognized (Pet. App. 22a-23a), the contracting officer's decision *itself*—in this case, the determination of an amount owed to the United States—has binding effect even though individual factual findings do not. Were it otherwise, the CDA dispute-resolution procedures would be pointless because, *inter alia*, the United States could never use a contracting officer's decision to obtain a judicially enforceable money judgment.

3. Petitioner identifies no decision of any other court of appeals that conflicts with the decision below. One of the two circuit decisions on which he relies—*Ruthardt* v. *United States*, 303 F.3d 375 (1st Cir. 2002), cert. denied, 538 U.S. 1031 (2003) (cited at Pet. 24 n.7)—did not directly involve the priority statute, but simply stated in passing that a representative "can be held personally liable under federal law for ignoring proper claims of the United States." *Id.* at 379. Nothing in the opinion suggests that the First Circuit would treat the unappealed decision of a contracting officer under the CDA as anything other than a "proper claim[]," or that it would allow a collateral attack on such a decision to be asserted in a suit brought under the priority statute.

The other court of appeals decision on which petitioner relies, *In re Gottheiner*, 703 F.2d 1136 (9th Cir. 1983) (cited at Pet. 23-24), also does not involve a decision by a contracting officer. In that case, the government alleged that, between 1968 and 1970, the defendant had caused an insolvent company that owed

money to the United States to make payments to non-government creditors. *Id.* at 1138. The court of appeals noted that "[t]o prove its case, the government had to show, among other things, that there was in fact a debt owed the United States" at the time of the allegedly unlawful transfers. *Id.* at 1139.

The government satisfied that requirement in *Gottheiner* not with direct evidence of the indebtedness (such as a decision by a contracting officer), but instead through a form of offensive collateral estoppel, based on a district-court judgment the government had obtained against the defendant's company roughly a decade after the allegedly illegal transfers were made. 703 F.2d at 1139. The court of appeals concluded that the after-the-fact judicial judgment could properly be treated as "controlling" on the relevant issue, because it represented a "prior determination of the indebtedness" of petitioner's company at the time of the illegal transfers and because collateral estoppel barred the defendant from challenging that prior determination. *Id.* at 1139-1140. Nothing in the Ninth Circuit's decision in *Gottheiner*—which, like the decision below, upheld liability under the priority statute—suggests that the Ninth Circuit would refuse to treat the contracting officer's decision here as a "claim," that it would engraft issue-preclusion principles onto the statutory definition of "claim," or that it would otherwise allow petitioner to avoid liability in this case. See Pet. App. 23a n.17 (discussing *Gottheiner* and concluding that, "[a]lthough the government used different methods of proof, in both cases the underlying claim against the company had been resolved with finality and was not subject to collateral attack").

Other decisions cited by petitioner (Pet. 23-24 & nn.6-7) are not decisions by federal courts of appeals or state courts of last resort, and any conflict between those decisions and the decision below would accordingly provide no basis for further review by this Court. See Sup. Ct. R. 10. In any event, none of those decisions holds that the decision of a contracting officer under the CDA is not a "claim" for purposes of the priority statute, or that a defendant may collaterally attack the "validity" of such a decision as a defense to a governmental suit under the priority statute. Indeed, petitioner has not identified any decision of any court, other than the decision below, that has ever addressed those issues. There is no need for this Court to address them in this case.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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