No. _____

In the Supreme Court of the United States

PAMELA M. TIMBES,

Petitioner,

v.

DEUTSCHE BANK NATIONAL TRUST COMPANY, as Indenture Trustee for American Home Mortgage Investment Trust 2005-3, OCWEN LOAN SERVICING, LLC, and ALDRIDGE PITE, LLP, f.k.a. Aldridge Conners,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

The Eleventh Circuit Order, **App. A**, squarely conflicts with the precedents of this Court. This Court's resolution of the circuit split is of national importance in light of the improved economy; if left unchecked the banks will continue the tactics which resulted in the foreclosure debacle of the past years. That the Eleventh Circuit Court of Appeals has applied vastly different legal standards with regard to application of the *Rooker-Feldman*[1] and *Younger*[2] doctrines when removal to federal court of state-court wrongful-foreclosure and fraud cases is initiated by the bank, as opposed to removal by the party alleging the wrongful foreclosure and fraud, demonstrates the inconsistency within the Eleventh Circuit, as well as inconsistency with the standards applied by other circuits.

I. Whether the federal court lacks jurisdiction under Article III of the Constitution over a state-filed, wrongful-foreclosure lawsuit removed to federal court under 28 U.S.C. Section 1441, which lawsuit challenges a state-regulated, non-judicial foreclosure as void for violation of Georgia law requiring that a valid assignment be filed prior to foreclosure, and/or for mortgage fraud under the Georgia RICO Act, and/or for violation of the Trust's PSA; and whether it can be considered exempt from 1) the *Rooker-Feldman* doctrine when reversal of the state-regulated

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[1] *Rooker v. Fid. Trust Co.*, 263 U.S. 413 (1923); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983).

[2] *Younger v. Harris,* 401 U.S. 37, 54 (1971).

foreclosure would be a necessary part of the relief requested, and 2) the *Younger* doctrine when the wrongful foreclosure proceeding itself is a "civil enforcement proceeding" of O.C.G.A. § 44-14-162 (b) of the type defined by this Court as being included under *Younger.*[3]

A. The important state issue which needs to be resolved by the state court and with which the federal court has interfered: Whether a borrower subject to Georgia law has standing to challenge an assignment of security deed which is void *ab initio* for mortgage fraud under the Georgia RICO Act and/or void *ab initio* for violation of the Trust's PSA and/or which is facially invalid for violation of a statutory protection, O.C.G.A. § 44-14-162 (b), and thereby injuring the borrower?

II. Whether Timbes' Fifth Amendment right to due process was violated by the federal court's failure to remand to state court the wrongful-foreclosure lawsuit, by taking jurisdiction over the case and dismissing the lawsuit on the basis that Timbes, the borrower, had no standing to challenge Assignment of the security deed?

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[3] *Sprint Commc'ns, Inc. v. Jacobs*, 134 S. Ct. 584, 187 L. Ed. 2d 505 (2013).

PARTIES

Petitioner is Pamela M. Timbes, citizen and resident of Glynn County, Georgia.

Respondents are:

Deutsche Bank National Trust Company, as Indenture Trustee for American Home Mortgage Investment Trust 2005-3, having its principal place of business at 1761 East St. Andrew Place, Santa Ana, GA 92705. Deutsche Bank National Trust Company is owned by Deutsche Bank Trust Corporation, which is owned by Deutsche Bank Holdings, Inc, which is owned Deutsche Bank Trust Corporation, which is owned by Taunus Corporation, which is owned by Deutsche Bank AG, a banking corporation organized under the laws of the Federal Republic of Germany.

Ocwen Loan Servicing, LLC, having its principal place of business at 1661 Worthington Road, Ste. 100, West Palm Beach, FL 33409, is a limited liability company whose sole member is Ocwen Mortgage Servicing, Inc., which is owned by Ocwen Financial Corporation, a publicly-traded company.

Aldridge Pite, LLP, f.k.a. Aldridge Conners, is a high-volume foreclosure law firm who has its principal place of business at 15 Piedmont Center, 3575 Piedmont Road, NE, Ste. 500, Atlanta, Georgia.

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The unpublished Order of the United States Court of Appeals for the Eleventh Circuit, No. 17-10556, denying petition for rehearing, was filed on November 28, 2017. [App. D].

The unpublished Order of the United States District Court for the Southern District of Georgia, Brunswick Division, No. CV 216-31, denying Plaintiff's motion to remand the Complaint which had been removed by Defendants from Superior Court of Glynn County, Georgia, No. CE16-00001-063, and granting Defendants' motions to dismiss the Complaint, was filed on January 13, 2017. [App. B].

Judgment of the United States District Court for the Southern District of Georgia, Brunswick Division, No. CV 216-31, was entered on January 20, 2017. [App. C].

JURISDICTION

The United States Court of Appeals for the Eleventh Circuit entered its Order Appeal No. No. 17-10556-CC on September 6, 2017, **App. A** ; Petition for Rehearing and Rehearing en Banc having been denied on November 28, 2017, **App. D.** This Court extended the time, No. 17A812, to file this Petition for Writ of Certiorari to April 27, 2018.

The jurisdiction of the Court is invoked under 28 U.S.C. Section 1254(1) and under Article III of the United States Constitution.

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const. Art. III, section 2:

> The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; to all Cases affecting Ambassadors, other public Ministers and Consuls; to all Cases of admiralty and maritime Jurisdiction; to Controversies to which the United States shall be a Party; to Controversies between two or more States; between a State and Citizens of another State; between Citizens of different States; between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects. In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the Supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the Supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

U.S. Const. Amendment V:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury,

except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

STATEMENT OF THE CASE

On June 23, 2005 Pamela M. Timbes entered into a mortgage agreement with American Home Mortgage Acceptance, Inc. The Security Deed with regard to the subject property at 304 Carnoustie, St. Simons Island, GA 31522 is recorded in Deed Book 1706, Page 178, Clerk's Office, Superior Court of Gynn County, Georgia.

On November 19, 2010, filed on December 2, 2010, an Assignment of Security Deed, "Assignment", **App. E**, was allegedly executed by Mortgage Electronic Registration Systems, Inc., "MERS", as nominee for American Home Mortgage Acceptance, Inc. transferring the security deed to Deutsche Bank National Trust Company, as Indenture Trustee for American Home Mortgage Investment Trust 2005-3. The signatures on the Assignment are those of Elizabeth Boulton as Assistant Secretary for MERS and Michelle Halyard as Assistant Secretary for MERS; however, neither party was ever an Assistant Secretary for MERS and are, in fact, known "robo"

signers.[4] The Assignment was executed five (5) years after the closing, **App F**, of the referenced Trust in violation of the Trust's PSA.

On January 5, 2016 Deutsche Bank National Trust Company, as Indenture Trustee for American Home Mortgage Investment Trust 2005-3, wrongfully foreclosed on Pamela Timbes' home at 304 Carnoustie, St. Simons Island, GA in violation of O.C.G.A. § 44-14-162(b) which requires that a valid Assignment had to be filed prior to the foreclosure sale.[5]

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[4] Aldgridge Pite LLP utilized documents prepared by the now-notorious fraudulent, robo-signing affidavit mill Lender Processing Services, "LPS" (f/k/a as Fidelity National Foreclosure Solutions and several other names) out of Mendota Heights, MN and Jacksonville, FL. The Assignment of Security Deed recorded December 2, 2010 (**Dkt.1-1, .16**) was prepared and signed by Lender Processing Services (LPS). LPS is a known document fabricator for lenders and law firms. Michelle Halyard and Elizabeth Boulton signed as assistant secretary; they were employees of LPS with no authority. American Home Mortgage filed a lawsuit against LPS for robo signing. The FDIC also filed suit against LPS for other frauds.

[5] Consent Orders, including Cease and Desist Orders, were entered by Board Of Governors Of The Federal Reserve System; Federal Deposit Insurance Corporation; Officer Of Comptroller Of The Currency; and Office Of Thrift Supervision against MERS and all its members, including Respondent, pursuant to section 7(d) of the Bank Service Company Act (12 U.S.C. § 1867(d)), and Cease and Desist Orders, under section 8(b) of the FDI Act (12 U.S.C. § 1818(b)) following a federal investigation on April 13, 2011. The Cease and Desist Order found that MERS and others engaged in "unsafe and unsound banking practices," including exactly the type of actions complained of here, as a matter of routine practice. These Orders required MERS and the member banks to correct the violations, but none of those federal Orders were heeded in this case.

On January 7, 2016 Timbes filed in the Superior Court of Glynn County, Georgia her Amended Complaint, **Dkt. 1-3**.[6] Claims included, *inter alia,* Mortgage Fraud under the Georgia RICO Act, Fraud Upon the Court, Void Assignment of Deed to Secure Debt Filed in County Records.

On February 24, 2016 all Defendants filed Notice of Removal of the Superior Court Case CE16-00001-063 to the U.S. District Court Southern District of Georgia which was filed as Case CV216-31.

On February 29, 2016 Timbes filed Motion to Remand (**Dkt. # 5**) on the ground that the District Court lacked subject-matter jurisdiction under the *Rooker-Feldman* and *Younger* doctrines, and moved to stay ruling on Defendants' motions to dismiss pending ruling on the motion to remand.

On January 13, 2017 the District Court issued an Order, No. CV216-31, **App. B**, denying Pamela Timbes' Motion to Remand; granting Defendants' Motions to Dismiss; and ignoring Pamela Timbes' motion to stay ruling. Plaintiff's case was ordered closed. Judgment was entered on January 20, 2017, **App. C**.

On February 2, 2017 Timbes filed her timely Notice of Appeal to the Eleventh Circuit Court of Appeals, **Dkt. #24**, from the January 13, 2017 Order of Judge Lisa Godbey Wood.

On September 6, 2017, after briefing in Case 17-10556, a panel decision, **App. A**, was issued affirming

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[6] Docket Numbers referenced are those in U.S. District Court Case 2:16-cv-31 unless otherwise noted.

the U.S. District Court decision. The Eleventh Circuit Court of Appeals panel stated:

> *Rooker-Feldman* does not apply because there is no state-court judgment that could be reviewed, and *Younger* does not apply because there is no pending state-court or court-like proceeding with which the federal district court could interfere by exercising jurisdiction over the case. Order at p. 6.
>
> Because *Ames* does not cast doubt on *Haynes's* interpretation of Georgia state law, Timbes lacks standing to challenge the allegedly forged assignment. Order at p. 11.

On November 28, 2017 the Eleventh Circuit Court denied Timbes' Petition for Rehearing and Rehearing En Banc, **App. D.**

On February 5, 2018, No. 17A812, this Court granted an extension of time to file this Petition by April 27, 2018.

This timely Petition for Writ of Certiorari is presently before the Court.

REASONS FOR GRANTING THE PETITION FOR WRIT OF CERTIORARI

I. THE FEDERAL COURT LACKS JURISDICTION UNDER ARTICLE III OF THE CONSTITUTION OVER THE PRESENT STATE-FILED, WRONGFUL-FORECLOSURE LAWSUIT.

The constitutional limitations on federal jurisdiction make federal courts "courts of limited jurisdiction," *Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 374 (1978) (jurisdiction lacking), as opposed to state courts, which are generally presumed to have subject-matter jurisdiction over a case. This Court has made it clear that judgments must be vacated for lack of jurisdiction. See e.g., *Caterpillar, Inc. v. Lewis*, 519 U.S. 61, 76–77 (1996) ("....if, at the end of the day and case, a jurisdictional defect remains uncured, the judgment must be vacated."); See also *Ins. Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 701–03, 102 S. Ct. 2099, 2103–05, 72 L. Ed. 2d 492 (1982).

A. THE FEDERAL COURT SHOULD HAVE ABSTAINED UNDER THE *YOUNGER* DOCTRINE.

A wrongful foreclosure lawsuit filed in the state court, and removed to federal court under 28 U.S.C. Section 1441, which challenges a state-regulated non-judicial foreclosure as void for violation of Georgia law requiring that a valid assignment be filed prior to foreclosure, and/or for mortgage fraud under the Georgia RICO Act, and/or for violation of the Trust's PSA, cannot be exempt from the *Younger* doctrine when the wrongful foreclosure proceeding itself is a

"civil enforcement proceeding" of O.C.G.A. § 44-14-162 (b) of the type defined by this Court as being included under *Younger*.[7]

1. The important state issue which needs to be resolved by the state court and with which the federal court has interfered: Whether a borrower subject to Georgia law has standing to challenge an assignment of security deed which is void *ab initio* for mortgage fraud under the Georgia RICO Act and/or void *ab initio* for violation of the Trust's PSA and/or which is facially invalid for violation of a statutory protection, O.C.G.A. § 44-14-162 (b), and thereby injuring the borrower?

The U.S. District Court erred in taking jurisdiction over the present case and the Eleventh Circuit erred in affirming, because this case is of important state interest, and under the *Younger* Doctrine, the federal Court must abstain from interference with state judicial proceedings. See *Middlesex County Ethics Comm. v. Bar Assn.*, 457 U.S. 423, 437, 102 S. Ct. 2515, 2524 (1982). Under the *Younger* doctrine, a federal District Court must abstain from hearing a federal case when that case interferes with state judicial proceedings. Courts have determined that cases involving property rights, particularly foreclosure actions and related matters, involve important state interests. See *Shaffer v. Heitner*, 433 U.S. 186, 207-208 (1977) (recognizing a state's "strong interests in assuring the marketability of property within its borders and in providing a procedure for peaceful resolution of disputes about the possession of that property."); *Gray v. Pagano*, 287 Fed.

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[7] *Sprint Commc'ns, Inc. v. Jacobs*, 134 S. Ct. 584, 187 L. Ed. 2d 505 (2013).

Appx. 155, 157-158 (3rd Cir. 2008) (affirming district court's abstention under *Younger* where state-court foreclosure action was pending and "[a]ny relief that could be granted by the district court would directly impact Pennsylvania's interest in protecting the authority of its judicial system"; *Doscher v. Menifee Circuit Court*, 75 Fed. Appx. 996 (6th Cir. 2003) (affirming district court's application of *Younger* abstention and finding important state interest in mortgage foreclosure); Wrongful foreclosure issues are considered important state interests; *Prindable v. Association of Apartment Owners of 2987 Kalakaua*, 304 F. Supp. 2d 1245, 1262 (D. Haw. 2003) (finding foreclosure and ejectment proceedings are important state interests under the Younger doctrine).

Courts in the Eleventh Circuit have abstained under *Younger:* See *e.g., Barberi v. New Century Mortg. Corp.*, No. 3:12cv435/MCR/EMT, 2013 WL 1197732, at *3 (N.D. Fla. Feb. 20, 2013) ("... Many courts recognize that state mortgage foreclosure actions implicate important state interests." (citation omitted)); *Sergeon v. Home Loan Center, Inc.*, No. 3:09-cv-01113-J-32JBT, 2010 ("Before proceeding with an analysis of the application of the *Younger* factors to this case, the Court notes that there are a multitude of federal cases recognizing that *Younger* abstention is appropriate when granting the relief requested in a federal court action would have the effect of interfering with an ongoing state court mortgage foreclosure action.").

In *Redner v. Citrus County, Florida,* 919 F.2d 646 (11th Cir. 1990) the Court stated:

> ....A state's trial and appeals process is considered "a unitary system," and *Younger*

> prevents a federal court from disrupting the process while a case is on appeal. *See New Orleans Public Service, Inc. v. Council of New Orleans,* 491 U.S. 350, ___, 109 S.Ct. 2506, 2518, 105 L.Ed.2d 298 (1989). Thus, as long as a federal challenge to a state statute or local ordinance "relate[s] to pending state proceedings, proper respect for the ability of state courts to resolve federal questions presented in state court litigation mandates that the federal court stay its hand." *Pennzoil Co. v. Texaco, Inc.,* 481 U.S. 1, 14, 107 S.Ct. 1519, 1527, 95 L.Ed.2d 1 (1987).

In *Sprint Commc'ns, Inc. v. Jacobs*, 134 S. Ct. 584, 187 L. Ed. 2d 505 (2013) the Court defined the civil proceedings to be included under *Younger*: "Circumstances fitting within the Younger doctrine..... 'civil enforcement proceedings,' and 'civil proceedings involving certain orders that are uniquely in furtherance of the state courts' ability to perform their judicial functions.' ." *Sprint*, at 588.

Enforcement of OCGA § 44-14-162 (b) is critical to ensure that only the record holders of deeds initiate foreclosure proceedings. As the Georgia Supreme Court noted in its recent decision, *Ames v. JP Morgan Chase Bank, N.A.*, 783 S.E. 2d 614 (Ga. 2016):

> [Footnote] 7 The legislature has indicated its desire to ensure that only the record holders of deeds initiate foreclosure proceedings. OCGA § 44-14-162 (b) requires that "[t]he security instrument or assignment thereof vesting the secured creditor with title to the security instrument shall be filed prior to the time of sale

> in the office of the clerk of the superior court of the county in which the real property is located," and the stated legislative purpose of this provision is to "require a foreclosure to be conducted by the current owner or holder of the mortgage, as reflected by public records," Ga. L. 2008, p. 624, § 1. Because Chase recorded its assignment as required and the Ameses have not brought a distinct challenge under this statute, we need not decide whether § 44-14-162 (b) could ever provide a debtor with standing to challenge a foreclosure based on an unrecorded or facially invalid assignment. [Emphasis added.]

Pamela Timbes has challenged under OCGA § 44-14-162 (b); therefore, the Georgia Supreme Court has left no question whether or not the present wrongful foreclosure case is of important state interest with regard to enforcement of O.C.G.A. § 44-14-162 (b). *Ames v. JP Morgan Chase Bank, N.A.*, supra. Consequently, there should also be no question as to the application of the *Younger* Doctrine to the present case. Upon removal of the complaint from state court, the District Court, therefore, should have abstained under *Younger* and should have remanded the complaint to the state court, because 28 U.S.C. Section 1441 is to be strictly construed against removal. In the context of actions removed from state court, the removing party bears the burden of demonstrating the federal court's jurisdiction and that removal was proper. *Triggs v. John Crump Toyota, Inc.*, 154 F.3d 1284, 1287 n.4 (11th Cir. 1998). In *Russell Corp. v. Am. Home Assur. Co.*, 264 F.3d 1040, 1050 (11th Cir. 2001) the Court held:

> Federal courts are courts of limited jurisdiction, and there is a presumption against the exercise of federal jurisdiction, such that all uncertainties as to removal jurisdiction are to be resolved in favor of remand. *Burns v. Windsor Ins. Co.*, 31 F.3d 1092, 1095 (11th Cir. 1994).

See also *Acuna v. Brown & Root, Inc.*, 200 F.3d 335, 339 (5th Cir. 2000). *Samuel-Bassett v. KIA Motors Am., Inc.*, 357 F.3d 392, 396 (3d Cir. 2004).

Instead the District Court denied Timbes' motion to remand, assumed jurisdiction, and dismissed the complaint; and the Eleventh Circuit panel affirmed the decision; thereby interfering with the important state issue presented in *Ames* which needs to be resolved by the state court:

Whether § 44-14-162 (b) could ever provide a debtor with standing to challenge a foreclosure based on a facially invalid assignment.

The Eleventh Circuit Court stated in *Timbes v. Deutcshe Bank National Trust Co. et al*:

> Turning to Timbes's challenge to the validity of the assignment, we agree the district court that she lacks standing to contest the assignment. [Order at p. 7].
>
> .....
>
> Timbes points out that Georgia courts have not gone quite so far as *Haynes*. In *Ames*, the Supreme Court of Georgia adopted the general rule that a borrower lacks standing to challenge an assignment of his or her security deed. 783 S.E.2d at 619-20. But the Court left open the

possibility that a debtor could have standing to challenge the validity of an assignment indirectly, if the invalid assignment violated a statutory protection and thereby injured the debtor. *Id.* At 621. One question left unresolved by *Ames* is whether O.C.G.A. § 44-14-162 (b) "could ever provide a debtor with standing to challenge a foreclosure based on an unrecorded or facially invalid assignment." *Id.* At 622 n.7. Section§ 44-14-162 (b) "requir[es] foreclosures to be conducted by the current owner of the mortgage, as shown by public records." *Duke Galish LLC v. SouthCrest Bank*, 726 S.E.2d 54,56 (Ga. Ct. App. 2012). Thus, *Ames* left open a possibility—that a debtor could have standing to challenge an unrecorded or facially invalid assignment under § 44-14-162 (b)—that *Haynes* appears to foreclose. Compare *Ames*, 783 S.E.2d at 622 n.7 (noting *Haynes*), with *Haynes*, 793 F.3d at 1252-53. [Order at p. 9].

Furthermore, as acknowledged in *Ames* at n.8, **other Courts of Appeal have held that a debtor has standing to challenge a void assignment.**

A third party generally lacks standing to challenge the validity of an assignment; however, a borrower may raise a defense to an assignment, if that defense renders the assignment void. *See* e.g., *Bank of American Nat'l Assoc. v. Bassman FBT, L.L.C., et al.*, 981 N.E.2d 1, 7 7 (Ill. App. Ct. 2012); *Culhane v. Aurora Loan Services of Nebraska,* 708 F.3d 282, 291 (1st Cir. 2013); *Livonia Properties Holdings, LLC v. 12840-12976 Farmington Rd. Holdings, LLC,* 399 Fed. Appx. 97, 102 (6th Cir. 2010); *Vasquez v. Deutsche*

Bank National Trust Company, N.A., 441 S.W.3d 783 (Tex. App.-Houston [1st Dist.] 2014, no pet.).

Under Georgia law, *Brown v. Freedman*, 474 S.E.2d 73, 75 (Ga. Ct. App 1996) ("A claim for wrongful exercise of a power of sale under [O.C.G.A.] § 23-2-114 can arise when the creditor has no legal right to foreclose [such as where they do not possess a valid security deed]". In *Egana v. HSBC Mortg. Corp.*, 669 S.E.2d 159, 161 (Ga. Ct. App. 2008) the case involved an allegedly fraudulent security deed. Id. The Georgia Court of Appeals distinguished between defendants challenging plaintiff's ownership of the property and defendants claiming defects in title. Id.

In *You v. JP Morgan Chase Bank, N.A.*, 293 Ga. 67, 74 (2013) the Court held that the holder of a deed to secure debt is authorized to exercise the power of sale. However, the Assignment of the deed to secure debt must be a facially valid one.

In *Ames v. JP Morgan Chase Bank, N.A.*, 783 S.E. 2d 614 (Ga. 2016) the Court actually left open the distinct possibility of a challenge to a facially invalid Assignment under §44-14-162(b) as set forth above.

The panel relied on *Haynes v. McCalla Raymer, LLC*, 793 F.3d 1246, 1252 (11th Cir. 2015): "Georgia law is clear that borrowers do not have standing to attack a forged assignment of their security deed." Order at p.10. In the present case, not only is the assignment facially invalid, it is void *ab initio* for fraud under the Georgia RICO Act and void *ab initio* for

violation of the Trust's PSA[8] as set forth in the complaint[9] and in Timbes' Appellant's Brief :

Fraud Was Used to Obtain the Judgment.

As set forth with specificity in the Amended Complaint, **Dkt. 1-3,** Appellees committed documented fraud upon the Court. The Assignment of Deed to Secure Debt (**Dkt 1-1. p.16**) was the fabrication of Lender Processing Services (LPS). LPS is a known document fabricator and the Assignment was signed by known robo signers. See Footnote 1 above. See also *American Home Mortgage Servicing, Inc. v. Lender Processing Services, Inc.,* 11-10440, District Court of Dallas County, TX, 2011. Petitioner's Complaint, August, 2011: American Home Mortgage sued LPS for robo signing and violation of the Trust's PSA. American Home Mortgage admitted that assignments were done illegally by unauthorized parties; that filings were not done in compliance with the PSA; and

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[8] **App. F** (Dkt. 1-3, p. 24): Summary of Prospectus Supplement showing Closing Date of the trust to have been on or about September 20, 2005. The Assignment, **App. E**, was not filed until 12/2/2010 in contravention to the PSA which required filing and recording by closing date.

[9] **Dkt.1-3, p. 8**: "If the trust is expressed in the instrument creating the estate of the trustee, every sale, conveyance or other act of the trustee in contravention of the trust, except as authorized by this article and by any other provision of law, is void." N.Y. Est. Powers & Trusts Law §7-2.4....*Wells Fargo Bank, N.A. v. Erobobo, et al.*, 2013 WL 1831799 (N.Y. Sup. Ct. April 29, 2013)....*Erobobo* court held that under §7-2.4, any conveyance in contravention of the PSA is void.

that LPS had caused American Home Mortgage Servicing Inc. potential liability.

Claims cannot be barred where fraud was involved; and new evidence should be allowed in the advancement of truth. *Brown v. Felsen*, 442 U.S. 127, 132 (1979).

The Supreme Court has also held that if a party has used fraud to obtain a judgment, the party should be deprived of the benefit of the judgment. See *Marshall v. Holmes*, 141 U.S. 589 at 599 (1891), quoting *Johnson v. Waters*, 111 U.S. 640, 667, 28 L. Ed. 547, 4 S. Ct. 619 (1884). See also *Chambers v. NASCO, Inc., 501 U.S. 32,* 44.

Violations of the Georgia RICO Act are of Important State Interest.

As set forth in the Complaint with specificity all Defendants have violated one or more of the Georgia RICO statutes listed below.

135. Georgia defines Mortgage Fraud as when a person "[k]nowingly makes a deliberate misstatement, misrepresentation, or omission during the mortgage lending process with the intention that [the false information] be relied on by a mortgage lender, borrower, or any other party to the mortgage lending process [including negotiation and servicing]."[10]

136. Further, a violation of the statute occurs when a person uses or facilitates the use of such false information with the intent that

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[10] O.C.G.A. § 16-8-102(1).

> the false information be used by anyone during the mortgage lending process.[11]
>
> 137. Violation of the statute occurs when any written instrument that contains a deliberate misstatement, misrepresentation, or omission is recorded in the real estate records of any Georgia county.[12]

Attorneys and others who take part in the mortgage lending process are subject to separate prosecution for conspiracy,[13] should the party conspire with others to violate the statute.[14]

Aldridge Pite LLP is a high-volume foreclosure mill who has a history of fraudulent activity as set forth in the Complaint.[15] Fraud upon the Court as set forth

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[11] O.C.G.A. § 16-8-102(2).

[12] O.C.G.A. § 16-8-102(5).

[13] O.C.G.A. § 16-4-8 (2003).

[14] O.C.G.A. § 16-8-102(4).

[15] Aldgridge Pite LLP utilized documents prepared by the now-notorious fraudulent, robo-signing affidavit mill Lender Processing Services, "LPS" (f/k/a as Fidelity National Foreclosure Solutions and several other names) out of Mendota Heights, MN and Jacksonville, FL. The Assignment of Security Deed recorded December 2, 2010 (**Dkt.1-1,p.16**) was prepared and signed by Lender Processing Services (LPS). LPS is a known document fabricator for lenders and law firms. Michelle Halyard and Elizabeth Boulton signed as assistant secretary; they were employees of LPS with no authority. American Home Mortgage filed a lawsuit against LPS for robo signing. The FDIC also filed suit against LPS for other frauds.

with specificity in the Complaint is not subject to a statute of limitation. FRCP 60.

Regardless, the federal Court should have abstained under the *Younger* doctrine to allow the state court to resolve the important state issues.

B. THE FEDERAL COURT SHOULD HAVE REMANDED UNDER THE *ROOKER-FELDMAN* DOCTRINE.

A wrongful foreclosure lawsuit filed in the state court, and removed to federal court under 28 U.S.C. Section 1441, which challenges a state-regulated, non-judicial foreclosure as void for violation of Georgia law requiring that a valid assignment be filed prior to foreclosure, and/or for mortgage fraud under the Georgia RICO Act, and/or for violation of the Trust's PSA, cannot be considered exempt from the *Rooker-Feldman* doctrine when reversal of the state-regulated foreclosure would be a necessary part of the relief requested.

The Rooker-Feldman doctrine has strictly limited federal district courts' authority to review state court judgments and related claims. See generally *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280 (2005); *Dist. of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983); *Rooker v. Fid. Trust Co.*, 263 U.S. 413 (1923). Because the doctrine involves subject matter jurisdiction, it predominates over other issues because, where it applies, the court cannot consider the merits of the case. See *Powell v. Powell*, 80 F.3d 464, 466-67 (11th Cir. 1996); *Garry v. Geils*, 82 F.3d 1362, 1365 (7th Cir. 1996). The *Rooker-Feldman* doctrine generally recognizes that federal district courts do not

have jurisdiction to act as appellate courts and precludes them from reviewing state court decisions. *Ware v. Polk Cnty. Bd. of Cnty. Comm'rs*, 2010 WL 3329959, at *1 (11th Cir. Aug. 25, 2010) (citation omitted). "The doctrine applies to both federal claims raised in the state court and to those 'inextricably intertwined' with the state court's judgment." *Casale v. Tillman*, 558 F.3d 1258, 1260 (11th Cir. 2009).

The Eleventh Circuit Court and many district courts in the Eleventh Circuit have applied *Rooker-Feldman* where plaintiffs were, in reality, challenging state-foreclosure judgments. *See*, e.g., *Parker v. Potter*, 368 F. App'x 945, 947–48 (11th Cir. 2010) (rejecting under Rooker-Feldman a federal claim under the Truth in Lending Act ("TILA") that sought rescission of a state foreclosure judgment); *Velardo v. Fremont Inv. & Loan*, 298 F. App'x 890, 892–93 (11th Cir. 2008) (holding that Appellant's federal TILA claims were inextricably intertwined with a state-court foreclosure judgment and thus barred by Rooker-Feldman); *Harper v. Chase Manhattan Bank*, 138 F. App'x 130, 132–33 (11th Cir. 2005) (dismissing federal TILA, Fair Debt Collection Practices Act ("FDCPA"), and Equal Credit Opportunity Act ("ECOA") claims under *Rooker-Feldman* because they were inextricably intertwined with a state-court foreclosure proceeding); *Aboyade-Cole Bey v. Bank Atl.*, No. 6:09-cv-1572-Orl-31GJK, 2010 WL3069102, at *2 (M.D. Fla. Aug. 2, 2010) (finding the court had no jurisdiction to hear plaintiff's case under *Rooker-Feldman* because the case was, "at its core," an attempt to revisit a state-court foreclosure judgment); *Distant v. Bayview Loan Servicing, LLC*, No. 09-61460-CIV, 2010 WL 1249129, at * 3 (S.D. Fla. Mar. 25, 2010) ("Although plead as conspiracy claims

. . ., Plaintiff is clearly asking this Court to invalidate the state court action by ruling that the state court foreclosure judgment is somehow void. Under the Rooker-Feldman doctrine, [defendant] is correct that this Court lacks subject matter jurisdiction, Plaintiff seeks a de facto appeal of a previously litigated state court matter.").

Federal courts in other circuits have also consistently rejected cases seeking to attack state-court foreclosure judgments. See, e.g., *Tropf v. Fidelity Nat'l Title Ins. Co.*, 289 F.3d 929, 937–38 (6th Cir. 2002) (affirming dismissal of a RICO action under *Rooker-Feldman* where plaintiffs were alleging various frauds in connection with a state-court foreclosure judgment that allegedly allowed banks to "wrongfully" take their home); *Rene v. Citibank NA*, 32 F. Supp. 2d 539, 543 (E.D.N.Y. 1999) (finding that subject-matter jurisdiction did not exist under *Rooker-Feldman* to adjudicate Plaintiff's RICO and § 1983 claims because plaintiffs asked the court "to review the state court's judgment of foreclosure and eviction, by seeking damages for the loss of their property . . . ."); *Simpson v. Putnam Cnty Nat'l Bank of Carmel*, 20 F. Supp.2d 630, 633 (S.D.N.Y. 1998) ("[P]laintiff claims that defendants' actions caused him injury through the (1) loss of his real property; (2) loss of his residence; (3) loss of business relationships, esteem, and respect of some who dealt with him; and (4) damage to his creditworthiness . . . [Plaintiff] seeks to require this Court to revisit the State Court's foreclosure judgment that resulted in the loss of his property, and to declare that judgment invalid on account of the defendants' allegedly fraudulent actions. Under Rooker-Feldman, however, this Court has no authority to review the . . .

judgment. Nor does the fact that plaintiff alleges that the . . . foreclosure judgment was procured by fraud and conspiracy change that result."); *Smith v. Wayne Weinberger, P.C.*, 994 F. Supp. 418, 424 (E.D.N.Y. 1998) (rejecting a federal claim that, in reality, attacked a state-court foreclosure judgment: "The fact that the plaintiff alleges that the State Court judgment was procured by fraud does not remove his claims from the ambit of Rooker-Feldman. . . . Smith's claims for conversion are merely a thinly-veiled effort to invalidate the State Court's foreclosure judgment, in contravention of Rooker-Feldman."); *Zipper v. Todd,* No. 96 Civ. 5198 (WK), 1997 WL 181044, at *3 (S.D.N.Y. Apr. 14, 1997) ("While it is true that plaintiffs never actually raised the federal claims of Section 1983, RICO and SLAPP violations before the state court, Rooker-Feldman precludes district court review of claims 'inextricably intertwined' with state court determinations. The fact that plaintiffs raise new claims under federal statutes does not preclude a finding that they are barred by the Rooker-Feldman doctrine.") (internal citation omitted); *In re Rusch*, No. 09-44799, 2010 WL 5394789, at *3 (Bankr. D.N.J. Dec. 28, 2010) ("[T]he Courts in this Circuit have consistently found Rooker-Feldman to be applicable and a bar to plaintiff's relief in a federal district court in the context of state foreclosure actions.").

Although fraud is an exception in certain cases to the Rooker-Feldman doctrine, **the Eleventh Circuit and other circuits have held that attempts to challenge state-court foreclosure judgments in federal court by alleging lenders' fraud in pursuing the foreclosure judgment is *not* an**

exception to Rooker-Feldman. Quoting from The Federal Courts Law Review:

> The Fraud Exception to the Rooker-Feldman Doctrine:
>
> Second, a fraud exception often removes a case that was, at its inception, a matter of state law and makes it one of federal law. This consequence is especially significant in cases of quintessential state interest; a timely example is the recent trend of challenging state-court foreclosure judgments in federal court. 16 There can be little doubt that a federal district court should not be the primary place to sort out the thorny issues arising under the fifty states' foreclosure laws or lenders' alleged fraud in pursuing foreclosure judgments. Taking these issues from state to federal court deprives the states of the opportunity to apply and further refine their common law in these areas of quintessential state interest.
>
> 16 Most courts have consistently applied Rooker-Feldman to these cases, rejecting Plaintiff's attempts to challenge state-court foreclosure judgments in federal court. While this is true across several jurisdictions, the following cases from the Eleventh and Seventh Circuits provide adequate illustration. See, e.g., Parker v. Potter, 368 F. App'x 945, 948 (11th Cir. 2010); Stanley v. Hollingsworth, 307 Fed. App'x 6, 8 (7th Cir. 2009); Velardo v. Fremont Inv. & Loan, 298 F. App'x 890, 892-93 (11th Cir. 2008); Harper v. Chase Manhattan Bank, 138 F. App'x 130, 133 (11th Cir. 2005); Taylor v. Fannie

> Mae, 374 F.3d 529, 534 (7th Cir. 2004); GASH Assocs. v. Rosemont, 995 F.2d 726, 727 (7th Cir. 1993); Bryant v. Citimortgage, No. 6:10-cv-1206-Orl-28KRS, 2010 U.S. Dist. LEXIS 92384, at *2 (M.D. Fla. Aug. 13, 2010); J.P. Morgan Chase Bank v. Schneider, No. 10 C 4856, 2010 U.S. Dist. LEXIS 79728, at *3 (N.D. Ill. Aug. 4, 2010); Aboyade-Cole Bey v. BankAtlantic, No. 6:09-cv-1572-Orl-31GJK, 2010 U.S. Dist. LEXIS 90188, at *5-6 (M.D. Fla. Aug. 2, 2010); Moore v. Chase Home Fin., LLC, No. 06 C 3202, 2007 U.S. Dist. LEXIS 27555, at *2 (N.D. Ill. Apr. 11, 2007); Spencer v. Mortg. Acceptance Corp., No. 05 C 356, 2006 U.S. Dist. LEXIS 31668, at *13 (N.D. Ill. May 4, 2006); Thompson v. Ameriquest Mortg. Co., No. 03 C 3256, 2003 U.S. Dist. LEXIS 14700, at *7 (N.D. Ill. Aug. 19, 2003); Bounds v. Wells Fargo Bank Minn., No. 02 C 9010, 2003 U.S. Dist. LEXIS 10741, at *7 (N.D. Ill. June 24, 2003); Smith v. Bank One, No. 02 C8204, 2002 U.S. Dist. LEXIS 22423, at *5 (N.D. Ill. Nov. 18, 2002); Elysee v. Chi. Trust Co., No. 01 C 8839, 2001 U.S. Dist. LEXIS 20313, at *4 (N.D. Ill. Dec. 5, 2001).

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The Eleventh Circuit has held that the Rooker-Feldman doctrine bars federal court review of state-court orders authorizing a writ of execution:

> Further, [plaintiff] sought a declaration from the district court, and now this Court, that the state court orders authorizing the execution sale of his

> properties were void . . . . In other words, [plaintiff's] request for declaratory judgment 'complains of injuries caused by state-court judgments' and 'invites district court review and rejection of those judgments.' The Rooker-Feldman doctrine precluded the district court from engaging in such a review.

Paletti v. Yellow Jacket Marina, Inc., 2010 WL 3402271, at *4 (11th Cir. Aug. 31, 2010).

See also: *Cavero v. One West Bank FSB*, 14-14369, 2015 WL 3540388 (11th Cir. 2015) (Because the claims in the plaintiff's complaint attacked the validity of the debt and propriety of foreclosure, the Eleventh Circuit found that such claims were "inextricably intertwined" with the foreclosure judgment. Accordingly, the claims could not be heard by a federal district court under the Rooker-Feldman doctrine.); *Magor v. GMAC Mortg., L.L.C.*, 456 F. App'x 334, 336 (5th Cir. 2011) (Rooker–Feldman bars a claim that a state foreclosure judgment was procured through fraud because "reversal of the state court's foreclosure judgment would be a necessary part of the relief requested").

Other circuits have held that a sheriff's sale is final and, therefore, not reviewable in federal district court nor subject to a constitutional attack based on procedures that the state court either ordered or found satisfactory. See *Ash v. Redevelopment Auth. of Philadelphia,* 143 F. App'x 439, 442 (3rd Cir. 2005) ("To the extent [plaintiff's] complaint seeks to challenge on equal protection grounds the Court of Common Pleas order allowing the property . . . to be sold at sheriff's sale, he is barred by the Rooker-Feldman doctrine."); *In re Knapper*, 407 F.3d 573, 579-580 (3rd

Cir. 2005) (holding that Rooker-Feldman prevented the bankruptcy court from exercising jurisdiction over plaintiff's due process claims alleging that the sheriff's sale in question was based on invalid service); *Saker v. Nat'l City Corp.*, 90 F. App'x 816, 818-19 (6th Cir. 2004) (remanding a case to district court with instructions to dismiss plaintiff's claim under Rooker-Feldman where plaintiff's federal claim could only be predicated on a finding that the state court's order to proceed with the sale of property constituted an improper interpretation of state law).

In the present case, on January 5, 2016 Defendant, Deutsche Bank National Trust Company, as Indenture Trustee for American Home Mortgage Investment Trust 2005-3, foreclosed on the subject property. The present Amended Complaint requests that the non-judicial foreclosure be set aside for violation of Georgia state law. Jurisdiction over any action to set aside the foreclosure sale and those claims inextricably intertwined lies with the Superior Court, Glynn County, GA. See, e.g., *In re Porovne*, 436 B.R. 791, 799 (Bankr.14W.D. Pa. 2010) ("Debtor attempted to distinguish [binding case law] on the basis that she was only attacking the sheriff's sale itself rather than the judgment originally giving rise to the sheriff's sale. This is a distinction without a difference."); see also *Robinson v. Porges*, 382 F. App'x 133, 135 (3rd Cir. 2010) (affirming district court's dismissal of plaintiff's claim where plaintiff asserted equal protection violations based on the procedures of the sheriff's sale but demanded "the return of his home as his own property with free and clear deed and title," which could only be accomplished by rejecting the sheriff's sale).

Other Circuits Have Held Rooker-Feldman Doctrine Applies to All judgments by a State Court, Including Default Judgments and Judgments by Confession.

See *Perkins v. Beltway Capital, LLC,* 773 F. Supp. 2d 553, 559 (E.D. Pa. 2011) (holding that *Rooker-Feldman* bars lower federal courts from exercising jurisdiction over a plaintiff's claim for rescission under TILA when such claim is asserted after the entry of a **default judgment** in mortgage foreclosure; and granting plaintiff's motion to remand after removal from state court by defendant).

The doctrine's application to default judgments derives from the more general precept that state court default judgments and confessed judgments are treated by federal courts as judgments on the merits. *See*, e.g., *In re James*, 940 F.2d 46, 52–53 (3d Cir. 1991); *Conte v. Mortg. Elec. Registration Sys.*, Civ. A. No. 14-6788, 2015 WL1400997 (E.D. Pa. Mar. 27, 2015) (barring claims arising out of state court default judgment based on Rooker-Feldman). As to the argument that non-judicial foreclosures should be treated differently with regard to Rooker-Feldman, as Appellees contend in the present case, a District Court in Pennsylvania replied:

> This Court is unpersuaded. First, Plaintiffs do not define the term non-judicial judgment. To the extent Plaintiffs seek to create a class of judgments entitled to less weight than judicial judgments, the Court rejects that argument. *Schraven v. Phelan, Hallinan Diamond & Jones, LLP,* No. 15-3397, E.D. Pa. Feb. 1, 2016.

II. THE COURT SHOULD REVERSE THE DECISION BELOW BECAUSE IT SQUARELY CONFLICTS WITH CONTROLLING PRECEDENT.

As established above, the Eleventh Circuit Order, **App. A**, squarely conflicts with the precedents of this Court. This Court's resolution of the circuit split is of national importance. That the Eleventh Circuit Court of Appeals has applied vastly different legal standards with regard to application of the *Rooker-Feldman* and *Younger* doctrines when removal to federal court of state-court wrongful foreclosure and fraud cases is initiated by the bank, as opposed to removal by the party alleging the wrongful foreclosure and fraud, demonstrates the inconsistency within the Eleventh Circuit, as well as inconsistency with the standards applied by other circuits. Furthermore, other circuits have held that a borrower may raise a defense to an assignment, if that defense renders the assignment void. Applying different standards can result in a different outcome. This is made clear in the instant case. It would be a great waste of judicial resources to allow courts to continue applying vastly different, and perhaps erroneous legal standards.[16] Furthermore,

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[16] See *Smith v. HSBC Bank USA, N.A. et al.,* No. 16-11045 (11th Cir. Feb. 13, 2017) where the Eleventh Circuit affirmed another ruling of Judge Lisa G. Wood, U.S. District Court for the Southern District of Georgia, that *Rooker-Feldman* did not apply with regard to the removal of a wrongful foreclosure case pursuant to O.C.G.A. § 44-14-162 (b). Rulings such as these by the Eleventh Circuit Court of Appeals have emboldened the banks to continue their removal tactics to federal court to evade rulings on the merits with regard to wrongful foreclosure and fraud upon the state court, important state issues; thereby, depriving the state courts of the opportunity to resolve these important state issues.

this Court has also made it clear that fraud upon the court cannot be condoned. As this Court stated: "tampering with the administration of justice in [this] manner . . . involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public." *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44 (1991).

III. TIMBES' FIFTH AMENDMENT RIGHT TO DUE PROCESS WAS VIOLATED.

The Fifth Amendment of the Constitution requires "due process of law" before any person can be "deprived of life, liberty, or property" and the concept of property includes statutory entitlements. *Johnson v. U.S. Dep't of Agric.*,734 F.2d 774 (11th Cir. 1984). Timbes has a statutory entitlement to challenge the Assignment of security deed under O.C.G.A. § 44-14-162 (b), which requires that a valid Assignment be filed prior to the foreclosure sale. Furthermore, proof from the record of Constitutional standing under Article III and the court's subject-matter jurisdiction was incumbent upon Respondents upon removal from the state court. Because federal courts are courts of limited jurisdiction, 28 U.S.C. Section 1441 is to be strictly construed against removal. *Triggs v. John Crump Toyota, Inc.*, 154 F.3d 1284, 1287 n.4 (11th Cir. 1998); *Russell Corp. v. Am. Home Assur. Co.*, 264 F.3d 1040, 1050 (11th Cir. 2001); *Burns v. Windsor Ins. Co.*, 31 F.3d 1092, 1095 (11th Cir. 1994); *Acuna v. Brown & Root, Inc.*, 200 F.3d 335, 339 (5th Cir. 2000); *Samuel-Bassett v. KIA Motors Am., Inc.*, 357 F.3d 392, 396 (3d Cir. 2004).

By the federal court's failure to remand to the state court the wrongful-foreclosure lawsuit, by taking

jurisdiction over the case and dismissing the lawsuit on the basis that Timbes, the borrower, had no standing to challenge the Assignment of security deed, the federal court has not only deprived the state of Georgia of the opportunity to resolve important state issues, it has deprived Timbes of her due process right under the Fifth Amendment. Respondent has foreclosed on the subject property utilizing a fabricated, fraudulent Assignment of Deed by known robo signers, **App. E**, filed several years after the closing of the subject trust in contravention to the trust's PSA, all of which constitutes "injury in fact" to Timbes. However, Respondents have not established any Article III "injury in fact" to have invoked federal jurisdiction upon removal from the state court.

The Eleventh Circuit Order is void for want of jurisdiction. Allowing the Eleventh Circuit Order to stand deprives Pamela Timbes of her due process right to challenge the wrongful foreclosure of her home by Respondent, Deutsche Bank National Trust Company, as Indenture Trustee for American Home Mortgage Investment Trust 2005-3, who has provided absolutely no proof of ownership of the Deed to Secure Debt or ownership of the subject property at 304 Carnoustie, St. Simons Island, Ga. 31522; proof which is incumbent upon Respondent. Article III of the United States Constitution limits the jurisdiction of all federal courts to "cases and controversies". A person with no ownership interest has no constitutional standing because a non-owner cannot establish "injury in fact" traceable to the acts of the opposing party. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). When standing is absent, a district court lacks subject-matter jurisdiction. *See D'Lil v. Best Western Encina Lodge &*

Suites, 538 F.3d 1031, 1036 (9th Cir. 2008) (a party invoking federal jurisdiction has the burden of establishing that it has satisfied the 'case-or-controversy' requirement of Article III of the Constitution; standing is a 'core component' of that requirement.") (internal citations omitted); *Medina v. Clinton*, 86 F.3d 155, 157 (9th Cir. 1996) (linking Article III standing with subject-matter jurisdiction of federal courts). And a federal court cannot hypothesize subject- matter jurisdiction for the purpose of deciding the merits. *Ruhrgas A.G. v. Marathon Oil*, 526 U.S. 574 (1999).

Loss of one's home without due process would clearly cause irreparable harm; and under these circumstances is clearly an injustice which only this Court can set right.

CONCLUSION

For the foregoing reasons, Petitioner, Pamela Timbes, requests this Honorable Court to grant certiorari to the Order of the United States Court of Appeals for the Eleventh Circuit, No. 17-10556-CC, filed September 6, 2017, **App. A**; or in the alternative, summarily reverse the decisions below for lack of jurisdiction and remand to the Glynn Country Superior Court of Georgia, Case CE16-00001-063, from which the wrongful-foreclosure Complaint was removed.

Respectfully submitted this 25th day of April, 2018.

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