No. 17-1488

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 REHEARING

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PETITION FOR REHEARING

Pursuant to Supreme Court Rule 44, Petitioner, Pamela M. Timbes, "Timbes", respectfully requests rehearing of the Court's order dated June 25, 2018 denying the petition for a writ of certiorari in this case. It is unusual for this Court to grant rehearing and grant plenary review, but it is far more common for this Court to grant rehearing and then grant certiorari, vacate the judgment below, and remand (a "GVR order") for consideration of intervening developments. *E.g.*, *Melson v. Allen*, No. 09-5373 (June 21, 2010); *Hawkins v. United States*, 543 U.S. 1097 (2005); *Lauersen v. United States*, 543 U.S. 1097 (2005). See generally E. GRESSMAN ET AL., SUPREME COURT PRACTICE § 15.1, at 807 n.5, § 15.6(b) at 819 (9th ed. 2007) (citing additional cases). In *Lawrence v. Chater*[1], the Court stated that "[it] perceive[d] no textual basis for [. . .] limit[ing the GVR power]," explicitly or implicitly. Similarly, no statute or constitutional provision expressly limits the GVR power. In fact, the Supreme Court has claimed that its authority arises under the very broad grant of 28 U.S.C. § 2106, which allows:

> [t]he Supreme Court or any other court of appellate jurisdiction [to] affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and [to] remand the cause and direct the entry of such appropriate judgment, decree, or

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[1] *See Lawrence v. Chater*, 516 U.S. 163, 173 (1995) ("[A]ll are agreed that a wide range of intervening developments, including confessions of error, may justify a GVR order.").

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).

1. THIS COURT HAS THE POWER, IN LIGHT OF INTERVENING ORDERS AND IN THE INTERESTS OF JUSTICE, TO GRANT THIS PETITION.

This Court clearly has the power, in its discretion and in the interests of justice, to grant this timely Petition for Rehearing. See *United States v. Ohio Power Co.*, 353 U.S. 98 (1957) ("We have consistently ruled that the interests in finality of litigation must yield where the interests of justice would make unfair the strict application of our rules.").

A. Intervening Eleventh Circuit Order Regarding *Rooker-Feldman* Doctrine

On July 9, 2018 the Eleventh Circuit Court of Appeals entered an order affirming the District Court's dismissal of Plaintiffs' lawsuit challenging a state foreclosure judgment for lack of jurisdiction pursuant to the *Rooker-Feldman* doctrine. *Bedasee v. Ocwen Loan Servcing, LLC et al.*, 17-11556, (11th Cir., July 9, 2018). The Eleventh Circuit Court concluded:

> Here, the district court did not err by dismissing Plaintiffs' amended complaint for lack of subject matter jurisdiction because the claims raised were "inextricably intertwined" with the state court foreclosure proceeding: a proceeding that resulted in a ruling that Defendants were entitled to foreclose the property in question. In the amended complaint, Plaintiffs state that they brought this action based on wrongful foreclosure and "to compel Defendants to re-

> order, or require such further proceedings to be had as may be just under the circumstances.[2]

The current standard, identified by the majority in *Chater*, consists of a two-part test that finds a GVR to be appropriate when: (1) an intervening development raises a reasonable probability that the lower court decision "rests upon a premise that the lower court would reject if given the opportunity for further consideration," and (2) the equities of the case suggest that it would be fair to GVR.[3] Because of intervening decisions and circumstances, and because Timbes has been denied a full and fair opportunity to assert claims and defenses resulting in violation of her due process rights, GVR would be an appropriate disposition in this case. Timbes' wrongful foreclosure case should never have been removed from state court by Respondents. The District Court lacked jurisdiction under the *Rooker Feldman* and *Younger* doctrines[4]; therefore, the case should have been remanded to the state court, when Timbes' moved the District Court to do so. 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

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[2] 28 U.S.C. § 2106 (2007); *see Chater*, 516 U.S. at 166.

[3] *Chater*, 516 U.S. at 167,168.

[4] *Rooker v. Fid. Trust Co.*, 263 U.S. 413 (1923); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983). *Younger v. Harris,* 401 U.S. 37, 54 (1971).

> convey legal title to the . . . property involved . . . back to Plaintiffs." And notably, as to each of their claims, Plaintiffs sought declaratory relief whereby their rights to their former home would be restored. Indeed, they sought an order stating that they were entitled to exclusive possession of the property and that Defendants had no right, title, or interest in the property.

Timbes presented precisely the same argument to the Court. *See* Petition for Writ of Certiorari. Therefore, GVR would be appropriate, because the *Bedasee* Order raises a reasonable probability that the lower court decision "rests upon a premise that the lower court would reject if given the opportunity for further consideration".

B. Order Regarding *Younger* Abstention Doctrine

In February, 2018 the U.S. District Court for the Southern District of Georgia again refused to remand to the state court under the *Younger* doctrine and cited *Haynes v. McCalla Raymer, LLC*, 793 F.3d 1246, 1252-53 (11th Cir. 2015) as justification for not allowing a challenge to the validity of a void assignment. See *Smith v. HSBC Bank USA, N.A. et al.*, No. 2:15-cv-70, February 5, 2018 at page 5: "In Georgia, 'a person who is not a party to a contract, or an intended third-party beneficiary of a contract, lacks standing to challenge or enforce a contract under Georgia law.' *Haynes* [citation omitted].' As third parties to the security deed, Plaintiffs do not have standing to challenge its assignment.". This application of legal standard, which is possibly erroneous as set forth in the Petition, will continue as long as the federal court oversteps its

jurisdictional boundaries and does not allow important state issues to be resolved by the state. The Eleventh Circuit Court on September 6, 2017, in the present case, acknowledged that the question is unresolved, but still did not remand to the state in order for that issue to find resolution. Quoting from the Eleventh Circuit September 6, 2017 Order, **App. A**[5]:

> 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*

[5] Appendices referenced are attached to Petition for Writ of Certiorari and are incorporated herein.

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].

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

It would clearly be in the interest of justice for Pamela Timbes to be given an opportunity to present her wrongful-foreclosure case to the state court from which it was removed by Respondents. In fact, with no such opportunity, Timbes' Fifth Amendment right to due process has been denied.

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 an injustice which only this Court can set right.

CONCLUSION

For all the above reasons and those expressed in the petition for a writ of certiorari, the most expedient disposition would be for this Honorable Court to 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; or in the alternative, to GVR to United States Court of

Appeals for the Eleventh Circuit for reconsideration of its Order, No. 17-10556-CC, filed September 6, 2017, **App. A**, in light of its ruling in *Bedasee v. Ocwen Loan Servcing, LLC et al.,* 17-11556, (11th Cir., July 9, 2018).

However, the Court may wish to grant plenary review if it determines that there is an inconsistency of 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.

Respectfully submitted this 17th day of July, 2018.

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CERTIFICATE OF GOOD FAITH

Pamela M. Timbes hereby certifies that this petition for rehearing is presented in good faith and not for purposes of delay.

Respectfully submitted this 17th day of July, 2018.

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