No. _____

IN THE

Supreme Court of the United States

JOHN BARONE,

Petitioner,

v.

WELLS FARGO BANK N.A.,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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Pro Se Petitioner

QUESTIONS PRESENTED

The third request of this Court to rectify numerous wrongs committed by Wells Fargo and assisted by and/or ignored by Courts against petitioner, his family and millions of unsuspecting homeowners. With clear direction to prevent manifest injustice, there is no excuse for failures engulfing the justice system for over a decade in favor of habitual wrongdoer Wells Fargo violating millions of Americans Constitutional rights.

The government Totally Controls Fannie Mae, financially benefiting from millions of wrongful foreclosures. Treasury documents show Fannie as "financial agent for the government", and *de-facto* State-actor. This mass wrongful taking of Constitutionally protected properties is unlawful, immoral, inhumane, and has led to record poverty and homelessness. Along with spikes in anxiety, depression, PTSD and suicides.

Wells Fargo and others commit mass Fraud on the Courts with lack of standing, wrong venue and fabricated documents for unjust judgements. Unlawful MBS securitization and rehypothecation forced millions into default through modification and foreclosure fraud, and many into bankruptcy. All while Wells Fargo and accomplices collected monies well in excess of the mortgage notes utilizing the properties without disclosure, consent, authority or applying the monies to the note balances. Wells Fargo and Fannie are not Legal Owners and had no right to "sell" and/or "pledge" the homeowners rights under NEMO DAT QUOD NON HABET.

This case raises vital issues of federal jurisdiction of federal RICO claims and *de facto* State-actors. It raises questions over Constitutional property rights, fraudulent seizure, securities laws over undisclosed mortgage securitization (RMBS), rehypothecation, default derivatives and foreclosure and modification fraud. It raises Constitutional questions of Due Process and treatment of *Pro Se* parties. Thus, the questions presented are:

1. Whether U.S. Government's unconstitutional involvement in millions of foreclosures through FHFA and *de facto* and *entwined* State-actor Fannie Mae subject it to federal Court jurisdiction and the property "takings" clause of the U.S. Constitution?

2. Whether securitization and rehypothecation of mortgage notes utilizing and "selling" and/or "pledging" homeowners' property as collateral without consent or knowledge is unlawful, unconstitutional and violate the basic legal principle of NEMO DAT QUOD NON HABET? and Whether this non-disclosure, participation and collection of financial benefits not applied to and well in excess of mortgage note debt owed is unlawful, unconstitutional and violate SEC securities laws?

3. Whether *pro se* litigants should be held to unfair pleading standards not regularly enforced upon attorneys or utilized in the same manner by other federal Courts? and Whether forcing a *pro se* litigant to remove claims that are not barred by Void state Court judgements violates the guarantee of a Fair Legal Process and fosters manifest injustice in defiance of the Constitution and this Court's direction?

4. Whether recusal or disqualification under 28 U.S.C. § 455 is warranted to satisfy the Constitutional guarantee of a Fair Legal Process, when a district judge has a relationship with a litigant, and his impartiality through his actions and non-action are reasonably questioned by some citizens and legal professionals?

PARTIES TO THE PROCEEDING

Petitioner, John Barone was plaintiff in the District Court, and appellant in the Eleventh Circuit Court of Appeals. He is also a petitioner to this Court in No. 18-783, and his spouse Nicole had a petition in front of this Court, No. 17-1601.

Respondent, Wells Fargo Bank N.A. was a party throughout litigation. Wells Fargo is alleged servicer for the U.S. Government's exclusive interest in FNMA.

RULE 29.6 STATEMENT

None of the petitioners is a nongovernmental corporation, has a parent corporation or shares held by a publicly traded company.

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John Barone respectfully petitions for a Writ of Certiorari to review the order of United States Eleventh Circuit Court of Appeals.

DECISIONS BELOW

The Eleventh Circuit Court of Appeals orders on dismissal (App. 1), District Court orders on reconsideration, recusal and/or vacatur (App. 13), dismissal of amended complaint (App. 16) final dismissal (App. 10) and final judgement (App. 12) are attached hereto.

JURISDICTION

The order of Eleventh Circuit Court of Appeals was entered on December 10th, 2018, so this petition is timely filed. This Court's jurisdiction rests on 28 U.S.C. § 1254(1).

CONSTITUTIONAL, STATUATORY & RULING PROVISIONS INVOLVED

U.S. Const. amend. V, cl. 3 & 4, state: "...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." Accordingly, U.S. Const. amend. XIV, §1, cl. 2, provides in part: "nor shall any State deprive any person of life, liberty, or property, without due process of law."

U.S. Const. Article III, § 2, cl. 1: "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 Controversies to which the United States shall be a Party...". Concurring, 28 U.S.C. § 1345

states: "the district courts shall have original jurisdiction of all civil actions, suits or proceedings commenced by the United States, or by any agency or officer thereof expressly authorized to sue by Act of Congress." (June 25, 1948, ch. 646, 62 Stat. 933.).

U.S. Const. art. VI, cl. 2: "the Laws of the United States . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

17 CFR § 240.10b-5 Employment of manipulative and deceptive devices.
It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange, **(a)** To employ any device, scheme, or artifice to defraud, **(b)** To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or **(c)** To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security. (Sec. 10; 48 Stat. 891; 15 U.S.C. 78j) [13 FR 8183, Dec. 22, 1948, as amended at 16 FR 7928, Aug. 11, 1951]

INTRODUCTION

Wells Fargo has been outed for countless wrongs, but all has fallen short of holding them accountable for the millions of atrocities it has inflicted upon American homeowners while it sat perched atop the mortgage

business for much of the past decade.[1] Others were involved, along with Wells Fargo, in forwarding proceeds from millions of wrongful foreclosures to Fannie and ultimately taken by the government through its quarterly NWS. The unpopular Foreclosure Crisis has destroyed the American dream at such a pace that record poverty and homelessness have created one of the greatest disconnects between wealth classes in American history. Leadership is far disconnected from the realities of the Foreclosure Crisis on average Americans struggling to survive and protect their families from predators like Wells Fargo who act with no fear of prosecution.

When millions are affected by acts inflicted by Wells Fargo and others for the ultimate benefit of the government, this Court must step in to ensure the Constitution is upheld and the perpetrators are held accountable, especially when lower Courts have failed. It is no secret *Pro Se* litigants are treated unfairly by some Courts, as noted publicly by some federal judges, especially when involving major corporate influences like Wells Fargo. Wells Fargo and its counsel have gone unpunished for deliberate acts against the *Pro Se* Petitioner and his family in state and federal Courts. This is a pattern of activity, as other customers have shared similar stories. Many having issues with social media accounts being censored for releasing such information. This Court is ultimate protector of Constitutional rights and for over a decade or so Wells Fargo and its

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[1] *See* Press Release, "*Responding to widespread consumer abuses and compliance breakdowns by Wells Fargo, Federal Reserve restricts Wells' growth until firm improves governance and controls. Concurrent with Fed action, Wells to replace three directors by April, one by year end*", February 2nd 2018, Board of Governors of the Federal Reserve System, Available at https://www.federalreserve.gov/newsevents/pressreleases/enforcement20180202a.htm

associates have profited off of the demise of the American homeowners. This is completely misaligned with the Constitution, morality, ethics and basic humanity.

The facts show Wells Fargo and others fraudulently utilized the government HAMP modification program to force defaults to unjustly enrich themselves from numerous default derivatives and insurance bets taken against their customers interests. These bets included utilization of millions of Americans homes as collateral to "sell" and/or "pledge" the properties thru undisclosed, unconsented and unauthorized MBS securitizations and rehypothecations, in violation of NEMO DAT QUOD NON HABET, and without applying the monetary benefits to the note balances as required by the contracts. Wells Fargo's intent to securitize and rehypothecate properties they were not Legal Owners of started before contracts were signed through the utilization of proprietary software patents. These are not traditional mortgages as millions were misled to believe, they are undisclosed securities transactions, and Americans did not give consent to gamble their homes in the volatile securities markets. Nor was consent given to collect monetary benefits utilizing the properties that was not applied to the note balances.

This malfeasance must be corrected to preserve the Constitution and American way of life. Wells Fargo and others must be held accountable to millions of victims by paying restitution directly thereto. Homeowners' Constitutional rights are violated by collecting Billions in fines for the wrongdoings while homeowners get injustice and no restitution. Furthermore, the NMS was utilized in Florida to fund the infamous *Rocket-Docket* in which hundreds of cases per day were being closed through unlawful proceedings without mandatory

court reporters or recording devices violating homeowners Constitutional Rights of Due Process. Millions of victims will not forget the atrocities leaving so many poverty stricken and this Court cannot accept these failures as promoting a system of justice.

Courts must uphold the law, even more so federal Courts are instructed to prevent manifest injustice and work toward settlement of grievances, not find excuses to prevent victims from obtaining justice from habitual wrongdoers like Wells Fargo. When average citizens and some legal professionals question the actions of Courts, including a judge with connections to Wells Fargo, its time for this Court to correct the injustices to rebuild the public's trust in the judicial system.

Petitioner, his family and millions of victims pray this Court upholds the Constitution and rectifies the numerous injustices herein with restitution. Especially because giving Billions wrongfully taken back to millions of victims as restitution would immediately spike the economy to record levels, create jobs, confidence in banks, government and Courts, increase personal and business income raising tax receipts to pay down the massive deficit. Wells Fargo and peers would transfer unjust monies from the proprietary side of their balance sheets back to the customer side and will be immediately making money servicing accounts. It's a No-Brainer, major financial positive for everyone, including the wrongdoers. There is no excuse for not doing it, it promotes justice and return of the American dream.

STATEMENT OF THE CASE

This RICO litigation was brought for Wells Fargo's and the 17th Judicial Circuit of Broward County's years

of unlawful and unfair actions against Petitioner, especially foreclosure. He filed his state RICO action (petition 18-783)[2] in late 2015, due to the Courts ignoring Wells Fargo's wrongful acts and for bias, in furtherance of years of injustice. Multiple acts of Fraud on the Court have been ignored while assisting in concealing wrongdoings and documents. Numerous victims have shared similar ordeals litigating Wells Fargo and others over the past decade. Millions of Americans were violated of their Due Process rights and property "taken", financially benefiting the government through the NWS.

Wells Fargo has filed documents with false statements, sent emails with false misrepresentations, committed perjury, set hearings without consent of the *Pro Se* litigants, orchestrated unlawful property sales in violation of federal law and state law while under appeals court jurisdiction. Wells Fargo served its appeals appendix herein in a makeshift box much bigger than the contents with no sender information and with the original writing on the box scratched out. This method is unacceptable and has been used throughout history as a scare tactic by wrongdoers. Wells Fargo sent notice the foreclosure was CANCELLED, but failed to inform this Court and multiple state and federal Courts of such action. It has also failed to address the notice in the Barone's multiple attempts for information. Wells Fargo's initial answer to Mr. Barone's claims was to defame/slander him by trying to label him a "conspiracy theorist" for unlawful acts it has since acknowledged and/or have been publicly outed. Wells Fargo's unlawful actions substantiate the claims herein and completely contrast with its promises and intentions within "The Vision and Values of Wells Fargo".

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[2] *Barone v. Wells Fargo Bank N.A*, SCOTUS No. 18-783, 17th Circ. No. CACE 15-21684, 4th DCA No. 4D17-2531 (state RICO action)

The state Court ignored claims that the Barone's property was utilized by Wells Fargo's FHA scheme in which it admitted and accepted responsibility for defrauding the taxpayers with default insurance claims.[3] On the day it reached this agreement, Wells Fargo filed its insufficient state RICO discovery answer 5 days late, the Court again ignored this issue.

The unwillingness of the state Court to afford a fair litigation led to this RICO filing. Wells Fargo and its elite counsel immediately attempted trickery by not serving its filings. Petitioner found the unserved filings by doing an internet search. This was too easily excused and unpunished by the Court, as elite counsel know better than to expect the federal clerk to serve its filings unto *Pro Se* litigant. Wells Fargo influenced the wrongful dismissal of the initial complaint, as it was eerily similar to its motion to dismiss. The dismissal was overturned by the Eleventh Circuit, but excuses were made for the district judge's erroneous findings. On appeal, a few months after the initial complaint filing, Petitioner brought the judge's relationship to Wells Fargo and his influenced erroneous dismissal to the attention of the Court for recusal and/or disqualification. The appeals Court stated that the district Court could address the recusal upon remand. The Court failed to do so, and later on motion to recuse twisted the appeals Court order as putting the onus on Mr. Barone to address. The district judge erroneously opined that Mr. Barone had not had an issue with his Wells Fargo relationship and is bringing it up for the first time after a few years had passed, clearly ignoring the fact he raised the issue only a few months into proceedings in the appeals Court.

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[3] *United States v. Wells Fargo Bank, N.A., et. al.*, 12-cv-7527, U.S. D.C. (S.D. N.Y. 2016)

Upon remand, the judge gave a short time to file an Amended Complaint, which was shortened and simplified for a lay person to understand and comprehend the notice of claims. Although some reasonable persons and legal professionals easily understood the allegations and claims, Wells Fargo ridiculously claimed confusion and the Court obliged. The AC raised questions over a void state foreclosure judgement, of which the district judge failed to properly address, and instead attempted to force Mr. Barone to forfeit valid claims not barred by that void judgement. Even though state judgements are usually given respect, when it is clear a judgement is void it can be attacked at any time, especially when attempting to bar valid claims and the federal Courts responsibility is to prevent manifest injustice. The district judge and the 11th Circuit followed suit with multiple state Courts and failed to address the vital questions of void judgements, federal jurisdiction and unconstitutional involvement of the government in millions of wrongful foreclosures. Failing to address these issues at the cost of proffering manifest injustice is completely against the direction of this Court and the Constitution, this must be rectified.

Moreover, the district judge was aware the state Court was unwilling to entertain the federal and foreclosure claims, advising in response to his state AC, to *"leave the federal claims to the federal Court and foreclosure claims to the foreclosure Court."* This direction was clearly prejudicial, as it would have forced Mr. Barone to forfeit valid claims. The state judge was more concerned if Mr. Barone's intention was to put Wells Fargo out of business, than to properly prepare for the hearing, as he was unaware of Mr. Barone's response

to the motion to dismiss.[4] Due to these issues, Mr. Barone filed a motion to stay. Wells Fargo sent a curious package to the judge a day or so before the hearing and failed to supply a copy of Mr. Barone's reply. Then Wells Fargo refused to postpone to properly prepare the Court. Wells Fargo filed to appear telephonically, but after Mr. Barone questioned the package issues, in complete surprise to him and the Court, its elite counsel showed. This was the first time its elite counsel appeared instead of an unknown understudy. This led to appeal and a request to this Court in petition (18-783).

Wells Fargo violated federal laws throughout litigation, including foreclosure where it filed a fraudulent Notice of Fair Debt Collections Practices Act, 15 U.S.C § 1692, *et seq.* It failed at Due process with questionable Affidavits of Lost Original Summonses filed months after the alleged service by fraudulent servicer ProVest LLC. There were issues with *Robo-signing* and an ignored request for mediation, violating Administrative Order 2011-13-Civ. Wells Fargo violated FDIC Section 10.1 Suspicious Activity and Criminal Violations by failing to report an unauthorized bank withdrawal, and later advised it committed the act. An unlawful act the foreclosure Court refused to hear forcing a fraudulently induced judgement misrepresented as 4-6 month extension for modification.[5] This wrongful judgement inducement through misrepresentation is still being utilized by Wells Fargo as it attempted to coerce Mr. Barone's father-in-law into accepting it last summer. After his father-in-law denied the offer, the foreclosure Court continued its wrongful acts by assisting Wells Fargo's

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[4] Under this Court's direction in *Younger v. Harris*, 401 U.S. 37, 91 S.Ct. 746, 27 L.Ed.2d 669 (1971), the district judge should have stepped in to protect the federal Plaintiff and his federal claims.

[5] The Barone's never signed a Final Judgement.

unlawful foreclosure of his HELOC, in violation of § 673.1041(1) Fla. Stat. (2012). An unlawful sale was later orchestrated while under Fla. 4th DCA appeal.[6]

Wells Fargo used Dual-tracking throughout foreclosure by fraudulently utilizing the government HAMP program, wrongfully advising customers to stop making payments, as they needed to be behind to file for HAMP. It failed to supply updates and dragged out the process. *See* ex-S.I.G. TARP, Neil Barofsky, BAILOUT, Chapter 8, Foaming the Runway.[7] *See* also *Kuehlman v. Bank of America*, 177 So3d 1282 (Fla.5th DCA 2015); *Nowlin v. Nationstar Mortg.*, LLC, 193 So.3d 1043 (2016). Treasury Making Home Affordable Reports showed Wells Fargo was only complying with its legal obligations under HAMP less than 10% of the time, denying HAMP modifications in order to seek "lucrative fees on delinquent loans", it only provided 9,761 HAMP trial modifications out of the 110,807 required. This scheme forced its customers into default, so it could collect on its lucrative and unjust default derivatives and policies. Wells Fargo would then Bait & Switch customers into a secondary mod that clearly benefitted itself and its "Investor" instead of a HAMP modification that was substantially more beneficial to the customers. Wells Fargo concealed the identity of the investor

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[6] *Wells Fargo v. Nehrke*, No. 4D18-2368, 17th Circ. CACE14006978

[7] - *"One particularly pernicious type of abuse was that servicers would direct borrowers who were current on their mortgages to start skipping payments, telling them that they would allow them to qualify for a HAMP modification. The servicers thereby racked up more late fees, and meanwhile many of the borrowers might have been entitled to participate in HAMP even if they had never missed a payment. Those led to some of the most heartbreaking cases. Homeowners who might have been able to ride out the crisis instead ended up in long trial modifications, after which the servicers would deny them a permanent modification and then send them an enormous "deficiency" bill."* (emphasis added). -

FNMA, and was not forthcoming with information as to the higher "Investor" mod payment included forced Lender Placed Insurance (LPI). Wells Fargo blatantly supplied wrong HAMP calculations to push unknowing customers into its secondary "investor" modification, and is trying to excuse this as a "glitch". Wells Fargo wrongfully forced unsuspecting customers to pay for its forced LPI policies to qualify for the trial payments, while it was receiving secret "kickbacks" and/or incentives.[8] Wells Fargo manipulated LPI premiums with insurers with back door deals that led to its extensive control over LPI policies that it placed on its customers. In order for customers to utilize their own insurance they would have to decline and resubmit another modification package dragging them further into default with little hope to recover. This was advised as Fannie policy, but Wells Fargo refuses to substantiate with the guidelines outlining this unethical policy. In continuing its schemes, Wells Fargo declined acceptance of a flood policy Petitioner submitted to be paid and charged to escrow, in favor of its own LPI policy with more than a 300% higher premium. Not long after their property east of Federal Hywy near the intracoastal and canals, was questionably removed as a mandatory flood zone.

Wells Fargo has on multiple occasions wrongfully redirected correspondence meant for the Legal Dept, Board of Directors and Executive Offices, to the mortgage department to conceal its mortgage wrongdoings. Wells Fargo has a 150 page foreclosure handbook outlining how to produce fraudulent documents utilized to commit mass Fraud on the Courts.[9] The handling of

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[8] ***See*** *Simpkins v Wells Fargo Bank, N.A.*, 2013 WL 4510166, at *7 (S.D. Ill. Aug 26, 2013)

[9] *See* Danielle Douglas, "Wells Fargo foreclosure manual under fire", March 17, 2014, The Washington Post, *Available at*

requests for documentation (RFPs & discoveries) has been problematic, as it continually works to conceal vital documents, including hiding behind federal regulations. It allowed clear conflicts with magistrate Judge Eiss, a former peer of JP Morgan Chase and Judge Rosenthal, who mishandled the foreclosure RFP while under criminal investigation, and not long after resigned amidst an ethics investigation. Like it did with millions of customers, Wells Fargo violated the Barone's with an unauthorized credit application and earned unjust fees on numerous occasions by charging fees to transfer funds to another customer's account, which it did not charge to non-customers.

Throughout years of litigation in multiple Courts, Wells Fargo committed numerous acts of Fraud on the Court by filing documents with false statements and procedural violations. Wells Fargo set hearings and changed hearing times without contacting the *Pro Se* litigants, committed perjury, and ignored a conciliation order for months. Wells Fargo attempted to coerce Petitioner's in-laws into submitting a statement blaming he and his wife for their financial situation to assist in modification approval. Wells Fargo's Greg Nichols attempted to scare Petitioner's wife by claiming to be an attorney in the legal department. Wells Fargo has yet to produce evidence to substantiate his claim. While Petitioner's mother-in-law was dying in August 2015, Wells Fargo wrongfully coerced a family friend, a highly respected community figure, to not do a business deal with Mr. Barone by defaming the Barone's and

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https://www.washingtonpost.com/business/economy/wells-fargo-foreclosure-manual-under-fire/2014/03/17/25cd383c-ae00-11e3-96dc-d6ea14c099f9_story.html?utm_term=.521cbb6119dc ; and manual *Available at* https://apps.washingtonpost.com/g/documents/business/wells-fargo-foreclosure-manual/879/

threatening his ongoing commercial projects. This quashed the deal and irreparably damaged a 50+ year friendship. The Courts did not reprimand Wells Fargo for its unethical and unlawful actions, they were either ignored or excused away.

The foreclosure Court allowed numerous wrongs by Wells Fargo and its counsel, and failed to hold it accountable. The Broward foreclosure Court was allowed to operate for years without any mandatory court reporters and/or recording devices to protect homeowners' Constitutional rights, especially *Pro Se* litigants. Broward foreclosure Judges have aided Wells Fargo and others by often ruling in their favor no matter the evidence against them, including open Court assertions that they do not want to hear it. One in particular, Judge Lazarus went so far to advise Mrs. Barone to not file ethics charges against Judge Rosenthal, in a questionable encounter in the courthouse. He advised instead to revisit the RFP which later at the hearing he said he needed time to review and get back to the parties, but he failed to address. Lazarus allowed Wells Fargo's counsel to play games in avoiding the RFP for over a month, while lashing out at him while not present. When McDonough finally appeared the day before the sale date, Lazarus' tone changed, as he assisted Wells Fargo in its fraud and forced Mrs. Barone to file for bankruptcy to stop the unlawful seizure of their home. Lazarus was unprepared for the hearing, as he had to ask for a copy of their motions and then immediately scrolled to the back of the filing and ruled a technicality, while blatantly ignoring Wells Fargo's notice of sale deficiency, and without McDonough having to say a word. Before the hearing, McDonough unethically defamed the Barone's by yelling across the courtroom to a colleague and by showing and discussing their file

with a lawyer unconnected to the case, while Mrs. Barone sat a few feet away.

In continuation of its Fraud on the Court, Wells Fargo filed a motion and a hearing to cancel and reset a sale date after it was already canceled by Mrs. Barone's bankruptcy filing, and in violation of the automatic stay. Wells Fargo forced Mrs. Barone in front of Judge Stone who, like Lazarus, aided Wells Fargo's Fraud on the Court by refusing to hear the Barone's bankruptcy stay arguments and granting the motion in violation of federal bankruptcy law. Wells Fargo's counsel was made aware of the unlawful issues before the hearing, pushed forward without mentioning the bankruptcy filing, and perjured the Court by falsely claiming there was a mod package submitted. This blatant Fraud on the Court was submitted with documented proof to FL Atty. Gen. Pam Bondi and then U.S. Atty. Preet Bharara, but went unaddressed by both parties along with numerous unreturned phone calls. The clerk in doing the right thing later advised that he was unaware of what Wells Fargo was attempting, it was completely against procedure, so he re-cancelled the sale. This prompted their motion to vacate final judgement and sanctions, and a motion for clarification of Wells Fargo's counsel and the Court's jurisdiction over Wells Fargo. Lazarus denied the motions while completely ignoring the clarification motion and the arguments set forth in *Parker v. Parker*, 950 So.2d 388 (Fla.2007); *Cox v. Burke,* 706 So. 2d 43, 47 (Fla. 5th DCA 1998); *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 64 S.Ct. 997 (1944) and *In re Intermagnetics America, Inc.*, 926 F.2d 912, 916 (9th Cir.1991). Lazarus stonewalled them when they attempted to bring up Wells Fargo's admitted FHA fraud and its unauthorized ac-

count scandal and tried to bait Petitioner into an argument, while he blatantly avoided addressing the issues, most especially jurisdiction over Wells Fargo.

In another federal stay violation, Wells Fargo blatantly violated 28 U.S.C. § 1446 after they filed to remove the foreclosure to Federal Court on the federal jurisdiction questions. The clerk wrongfully advised that only bankruptcy automatically stays proceedings, but Florida appeals Courts direct in contrast.[10] They were forced to pay for and file a moot motion to cancel the sale in contrast to the clear wording in § 1446. Lazarus and Wells Fargo's counsel forced a hearing for the next morning, coincidently the same day as the sale date, and proceeded to violate § 1446, deny the cancellation motion and ordered their home sold.[11] This federal violation forced the Barone's to incur unnecessary costs to remove their belongings from the property that must be righted and reimbursed.[12] Wells Fargo's leadership was informed of its unlawful actions, as Sr. Nora Nash of the Sisters of St. Francis advised she was communicating the issues to Wells Fargo executives, including board members, but no corrective action was taken. Additionally, Wells Fargo was well aware of its federal violations of 28 U.S.C. § 1446. *See Musa v. Wells Fargo*

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[10] *See Reyes v. Aqua Life Corp.*, 41 Fla. L. Weekly D2768 (Fla. 3rd DCA December 14, 2016) "Because removal results in an *automatic stay* of the proceedings in state court, no further activity or action is permissible or may be conducted in the circuit court, and the notice informs the circuit court that it may not proceed unless and until the case is remanded." (emphasis added).

[11] *See Bulloch v. United States*, 763 F.2d 1115, 1121 (10th Cir. 1985) (fraud upon the court exists "where the judge has not performed his judicial duties"); *Trans Aero Inc. v. LaFuerga Area Boliviana*, 24 F.3d 457 (2nd Cir. 1994)

[12] Some costs are accruing monthly and all costs were added to relief requested in the AC.

Delaware Trust Company (Case No. 1D15-0937, 1st DCA, FL. Dec. 2015).[13] The removal filing contained close to a thousand pages to be reviewed and the costs incurred for copies and the filing fee should have warranted a thorough review, but the federal judge found it necessary to file a remand order the next day. The remand was filed after they unlawfully orchestrated the cancelation hearing and the sale of the Barone's home. Notice of remand was not filed with the foreclosure Court for days after the unlawful actions.

Not long after Wells Fargo's unlawful sale, the Broward Sherriff's office was summoned to the property for trespassing, vandalism and theft. On multiple occasions a gate on the property had been broken by forced entry. The Barone's social media accounts have had posts regarding Wells Fargo and litigation deleted without notice and reasoning, and have proof their accounts are shadow-banned. Their tax refund was held in limbo for over a year, with an alleged and unsubstantiated identity theft issue. They did not have these issues prior to litigating Wells Fargo.

The Barone's appealed to the 4th DCA which proved useless as it ignored addressing the issues, including the vital federal jurisdiction questions. The 4th DCA filed questionable non-opinioned orders in both the foreclosure and state RICO appeals, so neither state decision has been backed up with any substantiated case law and a request for written opinion was denied. The foreclosure and state RICO were brought to this Court as Case No. 17-1601 and No. 18-783 respectively.

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[13] *"As a court of the United States, we must, under the Supremacy Clause, give force to the express language of 28 U.S.C.A. § 1446 (West 2015)."* (emphasis added).

The media silence regarding these foreclosure issues must end. Fox News fell silent on a Broward foreclosure Court story involving Judge Lazarus after a local producer substantiated the wrongdoings by visiting the courtroom. The ACLU fell quiet after last advising it was still researching. A once prominent Fort Lauderdale attorney tried to settle this, but his practice and life have been in turmoil since an attempted settlement meeting in Palm Beach one Friday in August of 2014.

REASONS FOR GRANTING THE WRIT

Although this Court has denied the first 2 petitions set forth by Petitioner and his wife allowing manifest injustice to prosper, these questions will be raised until properly addressed, as these void judgements can and will be attacked until rule of law prevails. Our children's future and that of future generations hangs in the balance and our steadfastness to correct these Constitutional violations and atrocities against our family will continue until settled and restitution is made by Wells Fargo. Rule of law directs that void judgements are a nullity and have no standing, and no Court or judge can make valid that which is not valid. As *Pro Se* litigants we have witnessed the injustice that plagues our Courts in favor of corporate and political interests. It's time for Constitutional rights of due process, fairness and justice in the Courts to prevail as it was meant to be when created by our founding fathers.

Fannie Mae is a State-actor funneling monies to the Treasury from millions of wrongful foreclosures, which is a Constitutional issue and thereunder demands exclusive federal jurisdiction. Wells Fargo has committed unconscionable acts against millions of Americans in furtherance of these unlawful foreclosures that the government has an undeniable financial interest in. These

are far reaching issues of great public importance which affect the lives of all Americans. These issues can no longer be ignored and/or mis-adjudicated as they have plagued this nation for close to a decade in the largest heist of American property and wealth in our Country's history. State records divisions contain a plethora of corrupted land titles while secret securitizations, rehypothecations, default policies and multiple derivative hedges have allowed Wells Fargo as others to gain unjust monies from mass foreclosure fraud on millions of Americans. Fannie asserts it always owns the notes whether in its portfolio or as trustee for securitized trusts, even though it sold and pledged interest in such securitizations and rehypothecations to investors and third parties. These unlawful and undisclosed securities transactions were misrepresented to unsuspecting victims as traditional mortgages. Billions in fines for numerous frauds substantiate the need for homeowner restitution, as unlawful benefits well above the note balances owed were syphoned from each property by non-legal owners like Wells Fargo. Wells Fargo has evaded its numerous unlawful acts against Petitioner, his family and millions of victims for too long. These questions are ripe for review and addressing by the Court to set rightful Constitutional precedent.

I. This Court Should Grant Certiorari To Address The Jurisdiction Of The U.S. Government, Fannie Mae as *de facto* State-actor And The *Real-Party-In-Interest* Doctrine

Since the 2nd petition was filed (18-783), a district Court correctly followed this Court's State-actor direction set in *Lebron v. National Railroad Passenger Corp.*, 513 U.S. 374, 115 S. Ct. 961, 130 L. Ed. 2d 902 (1995), and later clarified in *Dept. of Trans. v. Assoc. of*

American Railroads, 135 S. Ct. 1225, 191 L. Ed. 2d 153 (2015), where it directed Courts to not just rely on Congressional labels, but to assess the "practical reality" of an entity's operating status *in fact. See Sisti v. Federal Housing Finance Agency,* 2018 WL 3655578 (D.R.I. Aug. 2, 2018). This decision substantiates the arguments herein and within the previous petitions. Additionally, Treasury agreements entered into with Wells Fargo assert Fannie Mae as acting "financial agent for the government", solidifying its *de-facto* State-actor status. Moreover, the government asserts the authority to sue on Fannie's behalf.[14]

Federal jurisdiction of the government's interests is outlined in Article III § 2 Cl. 1 of the Constitution and 28 U.S.C. § 1345. This Court set precedent in *United States v. Texas,* 143 U.S. 621 (1892) the federal judicial power exclusive to the Supreme Court included *"cases in which the United States was a party,"* (emphasis added). It is undeniable that Fannie is acting in the sole interest and financial benefit of the government. This warrants federal jurisdiction of millions of Americans foreclosures wrongfully brought by Wells Fargo and others in the improper state venues, rendering these judgements *void ab initio.*

The FHFA IG substantiated the governments non-temporary Total Control over Fannie when he stated, as time passes it has become *"more obvious that the conservatorships would not be temporary."*(emphasis added).[15] FNMA's 8-k filed after the seizure concurred, *"[t]he delegation of authority [would] remain in effect*

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[14] See *United States of Amer. Ex. Rel. Peter D. Grubea v. Rosicki, Rosicki & Assoc., P.C., et al.,* No. 1:12-cv-07199 (S.DN.Y. 2012).
[15] Fed. Hous. Fin. Agency, Office of the Inspector Gen., *Enterprise Reform,* 2, 5 https://perma.cc/3EDX-CYXX

until modified or rescinded by FHFA", and *"[the] conservatorship has no specified termination date."* (emphasis added).[16]

Under Brentwood Academy v. Tennessee Secondary School Athletic Ass'n, 531 U.S. 288, 297, 121 S.Ct. 924, 148 L.Ed.2d 807 (2001), Fannie is a *de-facto* State-actor utilizing this Court's "entwinement test". Fannie's actions are clearly entangled with State-action as this Court found in *Brentwood*. This test addresses instances in which the government assists and/or a State-actor "affirmatively authorizes, encourages, or facilitates private conduct that violates the Constitution."[17] Accordingly, an American's Constitutional ("right to maintain control over his home . . . is a private interest of historic and continuing importance"). *United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 53–54, 114 S. Ct. 492, 126 L. Ed. 2d 490 (1993). Furthermore, this Court outlined the agency test in *Hollingsworth v. Perry*, 133 S. Ct. 2652, 186 L. Ed. 2d 768, 2013 U.S. LEXIS 4919 (2013), which is substantiated by the aforementioned Treasury documents, in which the government is the sole beneficiary with right of Total Control over Fannie's operations and finances. *("An essential element of agency is the principal's right to control the agent's actions.")* (emphasis added).[18] Under these holdings Fannie is a *de-facto* State-actor, subjecting it to federal jurisdiction.[19] Accordingly, this Court has

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[16] *See* Fannie Mae, Form 8–K filed with the SEC (Dec. 24, 2008), https://perma.cc/89H9-AK3W (showing no specified termination date).

[17] See *Erwin Chemerinsky*, Constitutional Law: Principles and Policies, at 539 (4th ed. 2011).

[18] *See* RESTATEMENT (THIRD) OF AGENCY § 1.01 cmt. f (1)(2006).

[19] *See* Brian Taylor Goldman, "The Indefinite Conservatorship of Fannie Mae and Freddie Mac is State-Action", 17 J. Bus. & Sec. L.

long held that the federal Court shall decide arguments over how to interpret the Constitution and federal law. (*See Marbury v. Madison*, 5 U.S. 137 (1803)).

Additionally, Wells Fargo is prohibited from asserting the rights of another by long standing doctrine. Presumptions of standing are unconstitutional and play no role in other types of litigation. See *In re Lehman Brothers Holdings Inc.*, 08-13555, U.S. Bankruptcy Court, S.D.N.Y (Manhattan); *Saccameno v. Ocwen Loan Servicing, LLC, et al*, No. 1:2015cv01164 (N.D. Ill. 2018). [20] This Court set precedent for third-party actions in *Valley Forge Christian Coll. v. Americans United for Separation of Church & State, Inc.*, 454 U.S. 464, 474 (1982).[21] The Florida Supreme Court holding in *Smith v. Kleiser*, 91 Fla. 84 (Fla. 1926) concurs, (*"In a suit to foreclose a mortgage...it should be in the name of the real owner of the debt secured."*) (emphasis added). The *Real-Party-In-Interest* Doctrine and Fed. R. Civ. P 17 also concur, (*"An action must be prosecuted in the name of the real party in interest."*) (emphasis added). Moreover, Rule 19 requires parties to a suit when the Court cannot accord complete relief among existing parties. Wells Fargo is not the debt owner and cannot legally surrender any of the true note owner's rights. Through multiple transfers and pledges in undisclosed securitizations and rehypothecations, the titles to millions of properties are clouded. Fannie claims, "Fannie Mae is

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11 (2017), Michigan State Univ. College of law, *Available at* http://digitalcommons.law.msu.edu/jbsl/vol17/iss1/1

[20] *See* Emily Flitter, The Former Khmer Rouge Slave Who Blew the Whistle on Wells Fargo, The New York Times Available at: https://www.nytimes.com/2018/03/24/business/wells-fargo-whistleblower-duke-tran.html

[21] (*"real party in interest must assert its own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties."*)(emphasis added).

at all times the owner of the mortgage note, whether the note is in Fannie Mae's portfolio or whether owned as trustee..."[22] If true, it never relinquishes ownership in the mortgage notes, even though rights were sold and pledged through multiple securitizations and rehypothecations. Why would an investor buy a mortgage note without the right to foreclose? In this scenario Wells Fargo and FNMA have incentive to sell and pledge the notes and push for default so they could unethically double benefit from foreclosure.

Clear chain of title must be proffered to seek foreclosure, but it does not exist. Without this vital information Wells Fargo cannot further wrongful foreclosure rendering millions of foreclosure judgements void.

II. This Court Should Grant Certiorari To Address The Vital Issues Of Undisclosed Derivatives, Securitization & Rehypothecation Violating NEMO DAT QUOD NON HABET, SEC Securities Laws And The Contracts

The maxim of NEMO DAT QUOD NON HABET proffers that *"no one gives what they don't have"* (emphasis added), which in this case means that a non-legal owner of property CANNOT "sell and/or pledge" that property. The legal owner is the only party that holds the right to the property until that right is legally transferred. That right does not transfer upon foreclosure until a VALID Constitutional proceeding, judgement, sale and a new title is issued. Wells Fargo and others unlawfully sold and/or pledged the properties through multiple securitizations and rehypothecations well before any foreclosure proceedings and wrongful

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[22] Servicing Guide, Part I, Chapter 2, Section 202.06, Note Holder Status for Legal Proceedings Conducted in the Servicer's Name.

transfer of titles took place in clear violation of NEMO DAT.

Additionally, SEC Rule 10b-5 is an important rule targeting securities fraud authorized under § 10(b) of the Securities Exchange Act of 1934, and codified at 17 C.F.R § 240. 10b-5 *Employment of manipulative and deceptive devices.* The Act was adopted to provide more transparency in secondary securities markets, like the MBS markets, in response to the stock market crash of 1929. Wells Fargo and others violated this rule by *employing a scheme to defraud* homeowners, by *making untrue statements or omitting material facts* and by *engaging in any act, practice or course of business which operates as a fraud or deceit.* Millions of securitized and rehypothecated loans were presented to Americans as traditional mortgages and not disclosed as securities transactions. The intent before execution of the contracts was to securitize and rehypothecate the notes. They accomplished this through packaged MBS securities and trading with third parties in the open market. Petitioner and millions of Americans did NOT give Wells Fargo and others the authority to sell, pledge or gamble their properties in the securities markets. These securities transactions were not disclosed to unsuspecting homeowners, nor were the proceeds collected utilizing the properties applied to the note balances as required by the contracts. Wells Fargo also utilized secret default policies, including fraudulent FHA policies, CDS, CDOs, and similar derivatives to profiteer from foreclosures, giving it an incentive to push its customers into default and drag it out to make it next to impossible to cure. Through these secret benefits Wells Fargo has collected sums far in excess of the legal debt owed while not crediting these ill-gotten gains to

the debt balance. Another issue with the unlawful securitizations and rehypothecations is that the Fannie uniform note does not fit the definition of a negotiable instrument prohibiting it from being traded between parties. *See* Ice, Thomas Erskine, *Negotiating the American Dream: A Critical Look at the Role of Negotiability in the Foreclosure Crisis*, The Florida Bar, Vol. 86, No. 10 (December 2012), at pg. 8.[23] These actions and omissions are clearly in violation of Rule 10b-5.

III. This Court Should Grant Certiorari To Address Unfair Treatment Of *Pro Se* Litigants And Void State Judgements That Do Not Bar Claims From Proceeding In Federal Court

The lower Courts unfairly held the *Pro Se* Petitioner's RICO and fraud complaint to standards not regularly utilized on legal professionals. It is clear that the Ac was significantly reduced in size and simplified to outline the allegations and claims so a lay person could understand the notice therein. The allegations were segregated to the claims and both were segregated as to Post and Prejudgment for easy removal if needed. The Court failed to address void judgement.[24] Instead the Court dismissed the whole case unfairly prejudicing the *Pro Se* Plaintiff's valid claims, without an evidentiary hearing into the vital jurisdiction matter. This Court directs that *"A document filed pro se is to be liberally construed, and a pro se complaint, however in-*

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[23] (pointing out that the form Fannie Mae/Freddie Mac Uniform Instrument Note does not meet the definition of a negotiable instrument and was never intended to)

[24] The 11th Circuit, and the district Court followed the state Courts in ignoring the vital jurisdiction arguments that render the foreclosure judgement *void ab initio* and no bar to claims.

artfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers." Erickson v. Pardus, 551 U.S. 89, 94, 127 S. Ct. 2197, 167 L. Ed. 2d 1081 (2007) (citations and internal quotation marks omitted)(emphasis added). The AC was corrected so as not all counts adopted the allegations of the preceding counts to render a shotgun pleading, in contrast to the judge's assertions. However, it is common practice for legal professionals to have all counts encompass all of the preceding paragraphs, so as they don't make a mistake and overlook allegations that may be vital to another count. These professional complaints are not regularly scrutinized as the *Pro Se* Complaint herein. The AC being liberally construed is not a shotgun pleading as defined in *Weiland v. Palm Beach Cty. Sheriff's Office,* 792 F.3d 1313, 1321–23 (11th Cir. 2015). A look at the dismissal order shows the judge's erroneous claims, including confusion, as that anyone can clearly see the AC is far from confusing, it was specifically simplified and segregated for this reason.

This Court holds, "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal,* 556 U.S. 662, 129 S. Ct.1937, 173 L. Ed. 2d 868, 2009 U.S. LEXIS 3472 (2009), A claim is facially plausible "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Id. at 1949. *Bell Atlantic Corp v. Twombly,* 550 U.S. 544, 555, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007), "Factual allegations must be enough to raise a right to relief above the speculative level..., on the assumption that all the allegations in the complaint are true (even if doubtful in fact). 127 S. Ct. at 1965 (citations omitted). However, a complaint for fraud and

RICO "must state with particularity the circumstances constituting fraud or mistake." Fed. R. Civ. P. 9(b). Unfortunately, the *Pro Se* Petitioner has been wrongfully chastised for supplying too much information under Fed. R. Civ. P Rule 8(a) in what appears to be a concerted effort to stifle his valid fraud and RICO claims. It is well settled that when ruling on a defendant's motion to dismiss, a judge must accept as true all of the factual allegations contained in the complaint. *Bell Atlantic Corp.*, supra, at 1955, 127 S.Ct. 1955 (slip op., at 8-9) (citing *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 508, n. 1, 122 S.Ct. 992, 152 L.Ed.2d 1 (2002). Any ambiguities the same *Ossman v. Diana Corp.*, 825 F. Supp. 870, 879-80 (D. Minn. 1993), and the Court must look beyond the complaint to other papers. See *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983). Federal Courts hold that dismissal is inappropriate unless the facts don't rise to any relief, See *Frey v. City of Herculaneum*, 44 F.3d 667, 671 (8th Cir. 1995); *Sec. Investor Protection Corp. v. BDO Seidman, LLP,* 222 F.3d 63, 68 (2d Cir.2000); *Jaghory v. New York State Dep't of Educ.,* 131 F.3d 326, 329 (2d Cir.1997). Clearly the AC, sufficiently raises enough right to relief to survive a motion to dismiss. Under this direction, the district Court failed to hold true the allegations citing the foreclosure judgement as void and no bar to any claims therein. Additionally, the Court failed to follow this Court's direction in *Old Wayne Mut L. Assoc. v McDonough*, 204 U.S. 8, 27 S.Ct. 236, 51 L.Ed. 345 (1907) (*"It is clear and well established law that a void order can be challenged in any court."*) and (*"A court cannot confer jurisdiction where none existed and cannot make a void proceeding valid).* (emphasis added). Accordingly, *Rooker-Feldman* does not apply to a void judgement. *See United States v. Shepherd*, 23 F.3d 923, 925 (5th Cir. 1994) and *Mosley v. Bowie Cty. Tex.*, 275 Fed.Appx. 327, 329 (5th Cir.

2008) (unpublished) (citing Shepherd for the proposition that, "[u]nder some circumstances, a federal court may review the state court record to determine if the judgment is void"). The Court failed, at a minimum, to look into the matter and/or hold an evidentiary hearing.

Moreover, *Rooker-Feldman* does not bar independent claims that state Court judgements were precured by wrongful means. See *McCormick v. Braverman*, 451 F.3d 382, 393 (6th Cir. 2006) (holding that the *Rooker-Feldman* doctrine does not bar "*independent claims* that . . . state court judgements were procured by certain Defendants through fraud, misrepresentation, or other improper means"); *Truong v. Bank of Am. N.A.*, 717 F.3d 377, 388(5th Cir. 2013) and *Great Western Mining & Mineral Co. v. Fox Rothschild LLP*, 615 F. 3d 159, 166 (3d Cir. 2010). Accordingly, *Rooker-Feldman* may bar federal Courts from some state court judgements, but it is unconstitutional, in defiance of *Younger*'s bad faith direction and defies this Court's direction to prevent manifest injustice to allow a void judgement to bar claims. Most especially, when the state Courts are clearly showing bad faith and unwillingness to rectify manifest injustice. Additionally, the claims occurring post judgement are clearly labeled and could not have been brought prior, and any allegation or claim could have been easily removed by the Court. Instead it decided to show bias in its wrongful dismissal Order erroneously claiming a shotgun pleading and *Rooker-Feldman* to stifle Petitioner's valid AC claims, especially RICO.

Furthermore, the Court failed to act when fully advised of the wrongful prejudicial acts of multiple state Courts against the *Pro Se* Petitioner and his family. In *Allen v. McCurry*, 449 U.S. 90, 101 S. Ct. 411, 66 L. Ed.

2d 308 (1980) (quoting *Monroe v. Pape*, 365 U.S. 167, 81 S. Ct. 473, 5 L. Ed. 2d 492 (1961)) this Court directed that (In short, the federal courts could step in where the state courts were unable or unwilling to protect federal rights. *Id.* at 365 U. S. 176. Additionally, this Court elaborated in *Younger* that the Federal Court should interfere with a State action "in certain exceptional circumstances — where irreparable injury is `both great and immediate,' where the state law is `flagrantly and patently violative of express constitutional prohibitions,' or where there is a showing of `bad faith, harassment, or . . . other unusual circumstances that would call for equitable relief.'" *Mitchum v. Foster*, 407 U.S. 225, 230, 92 S.Ct. 2151, 32 L.Ed.2d 705 (1972) (quoting *Younger*, 401 U.S. at 46-54, 91 S.Ct. 746). The state Courts, especially foreclosure have shown clear unwillingness to protect Constitutional rights, have acted in bad faith and the injuries are certainly irreparable. The state Courts lack written legal opinions to substantiate its orders and judgements. Prejudicial direction and unwillingness to entertain federal claims is a clear act of bad faith and a violation of Constitutional rights, requiring the district Court to act. *See* (Generally, public interest concerns are implicated when a constitutional right has been violated, because all citizens have a stake in upholding the Constitution) *Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005).

IV. This Court Should Grant Certiorari To Address Recusal Or Disqualification Under 28 U.S.C. § 455 When A Federal Judge Has A Relationship With A Litigant And His Actions Are Questioned By Reasonable Persons

Under direction of this Court and 28 U.S.C. § 455(a) and/or (b)(4) the district Judge had the Constitutional

responsibility to recuse or disqualify himself for his close relationship to Wells Fargo.[25] He is a customer of Wells Fargo Mortgage, which plays a major role in this RICO litigation, and his actions and participation have been questioned by reasonable persons, including legal professionals. In *Ward v. City of Monroeville*, 409 U.S. 57, 61-62 93 S.Ct. 80, 34 L.Ed.2d 267 (1972) this Court held that (The right to a "neutral and detached judge" in any proceeding is protected by the Constitution and is an integral part of maintaining the public's confidence in the judicial system.). See *Scott v. United States*, 559 A.2d 745, 750, at 748 (D.C. 1989) (en banc) quoting *United States v. Quattrone*, 149 F. Supp. 240, 242-43 (D.D.C. 1957) (Youngdahl, J.) (It is beyond dispute that the trial judges perform a unique and pervasive role in that system: "confidence in the judiciary is essential to the successful functioning of our democratic form of government."), quoting *Byrd v. United States*, 377 A.2d 400, 404 (D.C.1977) ("The essence of the judicial role is neutrality."). In *Scott* at 748, *"[a]n independent and honorable judiciary is an indispensible condition of justice in our society."* Judicial Disqualification: Hearings on S. 1064 Before the Subcomm. on Improvements in Judicial Machinery of the Senate Comm. on the Judiciary, 93d Cong., 1st Sess. 80 (1973) (emphasis added). Accordingly, (A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned. . . .) *ABA Code Of*

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[25] *28 U.S.C. § 455*: (a) *Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.*; (b) *He shall also disqualify himself in the following circumstances: (4) He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding.* (emphasis added).

Judicial Conduct Canon 3(C)(1). This Court holds a judge must recuse in any case in which there is "an ***appearance*** of bias or prejudice sufficient to permit the average citizen reasonably to question [the] judge's impartiality." *United States v. Heldt*, 215 U.S.App.D.C. 206, 239, 668 F.2d 1238, 1271 (1981), cert. denied, 456 U.S. 926, 102 S. Ct. 1971, 72 L. Ed. 2d 440 (1982) (footnote and citations omitted)(emphasis added). It is well settled by this Court that (what matters is not the reality of bias or prejudice but its appearance) *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 864 (1988). In concurrence, *United States v. Balistrieri*, 779 F.2d 1191 at 1202 (7th Cir. 1985) Section 455(a) ("is directed against the appearance of partiality, whether or not the judge is actually biased.") ("Section 455(a) of the Judicial Code, 28 U.S.C. §455(a), is not intended to protect litigants from actual bias in their judge but rather to promote public confidence in the impartiality of the judicial process.") and "We think that this language [455(a)] imposes a duty on the judge to act sua sponte, even if no motion or affidavit is filed." The 7th Circuit concurred in *Taylor v. O'Grady*, 888 F.2d 1189 (7th Cir. 1989) Section 455(a) "requires a judge to recuse himself in any proceeding in which her impartiality might reasonably be questioned." and "Recusal under Section 455 is self-executing; a party need not file affidavits in support of recusal and the judge is obligated to recuse herself sua sponte under the stated circumstances."

This Court made it clear the district judge must be disqualified in *Liteky v. U.S.*, 114 S.Ct. 1147, 1162 (1994), "Disqualification is required if an objective observer would entertain reasonable questions about the judge's impartiality. If a judge's attitude or state of mind leads a detached observer to conclude that a fair and impartial hearing is unlikely, the judge must be

disqualified." [Emphasis added]. This is because it is of great Constitutional importance that "justice must satisfy the appearance of justice", *Levine v. United States*, 362 U.S. 610, 80 S.Ct. 1038 (1960), citing *Offutt v. United States*, 348 U.S. 11, 14, 75 S.Ct. 11, 13 (1954). The 8th Circuit concurred in *Pfizer Inc. v. Lord*, 456 F.2d 532 (8th Cir. 1972), "It is important that the litigant not only actually receive justice, but that he believes that he has received justice." The U.S. Constitution guarantees the right to a fair legal process, which is essential in satisfying Due Process. *See United States v. Sciuto*, 521 F.2d 842, 845 (7th Cir. 1996) ("The right to a tribunal free from bias or prejudice is based, not on section 144, but on the Due Process Clause.").

CONCLUSION

For all these reasons, the Court should grant this petition.[26]

Dated: March 3rd, 2019

By: _____

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[26] Alternatively, a denial of certiorari does not limit this Supreme Court's power to right the numerous wrongs against the Petitioner and his family by vacating the judgements herein and therein the state RICO action by ordering a stay on the state proceedings and allowing the federal Court to proceed with a district judge unconnected to Wells Fargo and with prior claim experience. Additionally, ordering vacatur of the wrongful foreclosure judgement and dismissing with prejudice as sanction for Wells Fargo's numerous atrocious acts of Fraud on the Court, the Petitioner and his family.