

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

Javier A. Carrillo, Mayra E. Farias: INDIVIDUALS,
Petitioners; Versus

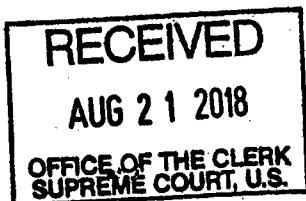
U.S. Bank National Association, as Trustee for the
Lehman XS Trust, Mortgage Pass-Through
Certificates Series 2006-16N; Et El. Respondent(s)

On Petition for a Writ of Certiorari against the Third
District Court of Appeal of Florida

PETITION FOR A WRIT OF CERTIORARI

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August 6, 2018



QUESTIONS PRESENTED

Borrowers exercised timely the right to rescind the transaction in satisfaction of the requirements of Section 1635 [1635(i)]. The creditor did not take possession of the property within 20 days after tender by the obligor as required by the Section 1635(b); and, other creditor holds of a lien for the total sum specified in the judgment.

The questions presented are:

- 1) Can three judges tribunal deny without opinion an Appellants' suggestion that the appeal would require immediate resolution by the Supreme Court of the state because is a) of great public importance; and b) will have a great effect on the administration of justice throughout the state based in a recent opinion unanimous of the U.S. Supreme Court?

- 2) Can three judges tribunal resolve Per Curiam Affirmed an appeal in which the issues presented have already resolved by the Supreme Court of the United States, known the Tribunal that the decisions without opinion are not reviewed by the Supreme Court of the state ?
- 3) Can three judges tribunal to affirm Per Curiam an order for Writ of Possession when the creditor did not take possession within of the requirements of the Section 15 U.S.C. 1635(b) and the holder-owner of the lien is other Bank as provided by the Judgment?
- 4) Can only three judges of a panel of 10-judges deny without opinion a Motion for Rehearing En Banc and Determination of Causa in the Appellate Court En Banc without the participation of the judges of the

panel accordance with a new opinion of the Supreme
Court of the United States?

PARTIES TO THE PROCEEDINGS

Petitioners Javier A. Carrillo and Mayra Elizabeth Jimenez aka Mayra E. Farias were the Defendants; Counter-Plaintiff; and, the Appellants in the proceedings below.

Respondent U.S. Bank National Association, as Trustee for the Lehman XS Trust, Mortgage Pass-Through Certificates Series 2006-16N, was the co-Plaintiff; Counter-co-Defendant; and, the Respondent in the proceedings below pursuant to the paragraph 2 of the judgment.

One West Bank, F.S.B., is other Plaintiff pursuant to the paragraph 4 of the judgment but U.S. Bank did not serve or jointed to One West Bank to the post judgment proceedings

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
PARTIES TO THE PROCEEDINGS	iv
TABLE OF AUTHORITIES	v
INTRODUCTION	1
OPINIONS BELOW	3
JURISDICTION	4
STATUTORY AND REGULATORY	
PROVISIONS INVOLVED	5
STATEMENT	6
A. Statutory and Regulatory Background	7
B. Factual Background	8
C. Relevant Proceeding Below	9
REASONS FOR GRANTING THE PETITION	12
I. Relief that Adversely Affect the Post Judgment Proceedings, the Sale, Certificate of Title & the Order for a Writ of Possession	12
II. The Transaction is rescinded on August 13, 2009; and, the Debt and the Judgment Were	

Satisfied 21-Days After	17
III. Rule 9.130 Proceeding to Review Non-Final Orders and Specific Final Orders	23
IV. Compulsory Counterclaim Does Not Have Final Judgment	28
V. Order to Vacate Judgment and to Vacate Judicial Sale	31
VI. Direct Appeal from Decisions of Three- Judge Court	36
VII. Florida Courts Have Unobserved the Binding Precedent of <i>Jesinoski</i> Opinion of The U.S. Supreme Court	38
CONCLUSION	41
APPENDIX, TABLE OF CONTENTS	
APENDIXES	

TABLE OF AUTHORITIES

CASE	Page
Arsali v. Chase Home Finance, LLC, 79 So. 3d 845, 848 (Fla. 4 th DCA 2012)	32, 34
<u>Beach v. Ocwen Fed. Bank</u> , 523 U.S. 410, 412 (1998)	7
Cicoria v. Gazi, 901 So. 2d 282, 287-288 (Fla. 5 th DCA 2005)	34
<u>Cooter & Gell v. Hartmarx Corp.</u> , 496 U.S. 384 (1990)	22
Daniels v. State, 712 So. 2d 765 (Fla. 1998)	23
Dragomirecky v. Town of Ponce Inlet, 891 So. 2d 633, 634-635 (Fla. 5 th DCA 2005)	23

Edason v. Cent., Farmers Trust Co., 129 So. 698, 700 (Fla. 1930)	14, 27
Elliot v. Albright, 209 Cal. App. 3d 1028, 1034 (1989)	4
Household Credit Servs. V. Pfenning, 541 U.S. 232, 238 (2004)	20
Ingorvaia v. Horton, 816 So. 2d 1256, 1258 (Fla. 2d DCA 2002)	32
Javier Carrillo, Et Al., v. U.S. Bank, 3DCA Case No.: 3D11-3188 consolidated to the Case.: 3D12-151	10, 31, 39
Javier Carrillo, Et Al., v. U.S. Bank, 3DCA Case No.: 3D15-2334	11, 39

Jesinoski v. Countrywide Home Loans, Inc., 135 S. Ct. 790 (2015)	4, 10, 18, 19, 31, 38, 40
Johnson v. Jones, 115 S. Ct. 2151, 132 L.Ed. 2d 238 (1995)	25
Katz v. NME Hosp., Inc., 791 So. 2d 1127 (Fla. 4 th DCA 2000)	23
Lovett v. Lovett, 93 Fla. 611, 612 So.768 (1927)	29
Maynard v. Household Finance Corp. III, 861 So. 2d 1204 (Fla. 2d DCA 2003)	29
Mayra E. Farias & Javier A. Carrillo v. U.S. Bank National Association, as Trustee For the Lehman XS Trust, Mortgage Pass- Through Certificates, Series 2006-16N; and, OneWest Bank, F.S.B. in the United States District Court, Southern District of Florida,	

x

Case No.: 15-21827-CIV-O'Sullivan 6

Mitchell v. Forsyth, 472 U.S. 511, 105 S. Ct.
2806, 86 L.Ed 2d 411 (1985) 25

Miller v. Fortune Ins. Co., 484 So. 2d
1221, 1223 (Fla. 1986) 23

Mourning v. Family Publ'ns Serv., Inc., 411
U.S. 356, 363-366 (1973) 7

Nationstar Mortgage, LLC. Vs. Vincent Diaz,
et al. 3DCA, Case #3D16-1927 15

Neil v. S. Fla. Auto Painters, Inc., 397 So.
2d 1160, 1164 (Fla. 3d DCA 1981) 29

Schupler v. Easterm Mortgage Co., 160
Fla. 72, 33 So. 2d 586 (1948) 30

<u>Shepheard v. Deutsche Bank Trust Co. Am.s,</u> 922 So. 2d at 345 (Fla. 5 th DCA 2006)	21
Sherzer v. Homestar Mortgage Service, Inc., et al, No. 11-4254, 2013 U.S. App. LEXUS 2486 (3d Cir. Feb 5, 2013), at p. 6	21
Sterling Factors Corp. v, U.S. Nat'l Ass'n, 968 So. 2d 658, 665 (Fla. 2d DCA 2007)	22
Tannenbaum v. Shea, 133 So. 3d 1056, 1061 (Fla. 4 th DCA 2014)	15, 22
Taylor v. Board of Pub. Instruction, 131 So. 2d 504 (Fla. 1 st DCA 1961)	28
Tucker v. Resha, 648 So. 2d 1187 (Fla. 1994)	24
U.S. Bank, N.A. v. Vogel, 137 So. 3d 491 (2014)	34

U-M Publishing, Inc. v. Home News Publishing, Inc., 279 So 2d 379, 381-382 (Fla. 3d DCA 1973)	32
United Companies lending Corporation v. Abercrombie, 713 So 2d 1017, 1019-1020 (Fla. 2d DCA 1998)	33

Constitution of the United States

Supreme Law in the Land	37
Article I	7, 20
Article II	7, 19
Article III	4, 6
Article VI.2	4, 9, 31
Amendment V	4
Amendment XIV.1	4

Rules Supreme Court of the United States

Rule 10(c)	4
Rule 13(5)	37

American Convention on Human Rights

Article 10	5
International Covenant on Civil and Political Rights (ICCPR)	5

Universal Declaration of Human Rights

Article 8 & 17(2)	5
-------------------------	---

Federal Statutes

28 U.S.C. §§§1253	4, 31
28 U.S.C. §§§1254	4

28 U.S.C. §§§1257(a)	4
28 U.S.C. §2403(a) & (b)	4, 31, 37
15 U.S.C. §1601 (1995)	5
15 U.S.C. §1631	7
15 U.S.C. §1632	7
15 U.S.C. §1635	4, 7
15 U.S.C. §1635(a)	9, 17, 19, 20
15 U.S.C. §1635(b)	8, 9, 10, 17, 19, 20
15 U.S.C. §1635(i)[1995].....	7, 16, 24
15 U.S.C. §1638	7
12 C.F.R. §226.23 (Reg. Z)[h]	4, 5, 7, 16, 20, 24
12 C.F.R. §226.23 (d)(1)(1996)	20
Federal Rules of Evidence	
Rule 201	2, 15, 40
Federal Rules of Civil Procedure	
Rule 41(a)(1)	30
Rule 41(2)	30
Rule 59	31
Rule 60	31
Rule 60(b)(4)	35

Rule 60(b)(5)	35
Rule 60(b)(6)	35
Rule 60(d)(3)	35
Rule 61	31, 35
Florida Constitution	
Article V, Section 3	37, 40
Florida Rules of Appellate Procedure	
Fla. R. Appellate P. 9.030(b)(2)	28
Fla. R. Appellate P. 9.125	3, 38
Fla. R. Appellate P. 9.130	23, 24
Fla. R. Appellate P. 9.130(a)(3)(C)(ii)	4, 24, 36
Fla. R. Appellate P. 9.130(a)(3)(C)(vii)	24
Fla. R. Appellate P. 9.130(a)(3)(C)(viii)	24
Fla. R. Appellate P. 9.130(a)(5)	25
Fla. R. Appellate P. 9.331	3
Florida Statute	
§45.0315	13
§702.036 “Finality of Mortgage	
Foreclosure Judgment	5, 14
§702.036(1)(a)	15

§721.82(6)	13
Fla. R. Civ. P. 1.140(b)	23
Fla. R. Civ. P. 1.420(a)(2)	30
Fla. R. Civ. P. 1.420(c))	30
Fla. R. Civ. P. 1.540	25
Fla. R. Civ. P. 1.540(b)(4)	25, 35
Fla. R. Civ. P. 1.540(b)(5)	35

OTHER MATERIALS

Application # 17A1338 for an extension of time within which to file a petition for a writ of certiorari	4
---	---

Duplicate Final Judgment of Foreclosure recorded Bk 27925 Pgs. 1023-1026 CFN 2011 0833590 on 12/13/2011, Pages 1-4 Miami-Dade County, Florida	12
--	----

FDIC Web Site: https://www.fdic.gov/bank/ individual/failed/indymac.html	2
--	---

Judgment paragraph 4	4, 12, 14, 27, 35
Mortgage paragraphs (I); (P) and 16	4
Opinion of England, Chief Justice of the Florida Supreme Court, Amendment to the Article V, Section 3 (1980). http://www.Courtlistener.com/174217/jenkins*v*state/	40
Opinion of Adkins, J., dissented Justice of the Florida Supreme Court, Amendment to the Article V, Section 3 (1980). http://www.Courtlistener.com/174217/jenkins*v*state/	40
Rooker-Feldman Doctrine	6

Javier Alonso Carrillo Chaves other name used
Javier A. Carrillo, U.S. Citizen (hereinafter “Carri-
llo”); and, Mayra Elizabeth Jimenez other name used
Mayra E. Farias, U.S. Citizen (“Farias”) (hereinafter
collectively “Farias/Carrillo”) respectfully Petition
for a Writ of Certiorari to review the judgments of
the Third District Court of Appeal of Florida (herein
after “3DCA”).

INTRODUCTION

Indymac Bank, FSB originated the secured loan,
REFINANCING Petitioners’ primary home on
August 22, 2006. **Indymac Federal Bank, FSB**,
filed the foreclosure action on **January 28, 2009**;
without standing to sue; and, filed a fraudulent
Assignment of Mortgage executed on **July 7, 2009**.

On March 19, 2009, the FDIC completed the sale of Indymac Bank to One West Bank, F.S.B. Take the Court judicial notice of <https://www.fdic.gov/bank/individual/failed/indymac.html> pursuant to the Rule 201 of the Federal Rules of Evidence. When Farias/ Carrillo brought the First Affirmative Defense and an individual suit-Compulsory Counterclaim (A.9: 90a-134a)¹ to enforce the rescission rights, the Florida courts refused to recognize that Farias/ Carrillo had validly and timely rescinded the transaction. Trial court entered Duplicate Final Judgment of Foreclosure dated 12/12/2011.

¹ Unless otherwise stated, the reference to the evidence by Petitioners in support of this Petition will be reference as “Appendix #: Page to Page” attached herein.

OPINIONS BELOW

The 3DCA denied without opinion Appellants' suggestion pursuant to the Florida Rule of Appellate Procedure 9.125 (A.6 & A.7). The 3DCA denied without opinion Appellants' Motion to Strike against the untimely filed Appellee's response to Motion for Rehearing en Banc (A2 & A.3). 3DCA affirmed Per Curiam on January 10, 2018 (A.5); and, denied a Petition for Rehearing EN BANC and Determination of Cause in the Third District Court of Appeal EN BANC pursuant to the Rule 9.331 of Fla. R. App. Pro., without opinion by only the same 3 Judges, whom affirmed [Panel of 10-Judges] on 03/07/2018 (A2 & A4). Florida Supreme Court denied discretionary review on 04/11/2018 (A.1.)

JURISDICTION

The transaction is governed by Federal Laws according to the ¶¶¶ (I); (P); and, 16 of the **Mortgage**. This Court has jurisdiction pursuant to Justice Thomas 06/5/2018 Order in Application #17A1338 (A.10: 135a-136a); Jesinoski v. Country-wide Home Loan, Inc., 135 S Ct. 790 (2015), Elliot v. Albright, 209 Cal. App. 3d 1028, 1034 (1989); and, the Rule 10(c) of this Court. This Court's jurisdiction also is invoked under the article III [Fla. R. App. P. 9.130(a)(3)(C)(ii)], VI.2 of the U.S. Constitution and its Amendments V and XIV.1; TILA; Reg. Z; paragraph 4 of the Judgment; and, the 28 U.S.C. §§§ 1253; 1254; 1257(a). The 28 U.S.C. §§ 2403(a) and (b) may apply in this case.

STATUTORY AND REGULATORY PROVISIONS INVOLVED

Relevant provisions of the Truth in Lending Act, 15 U.S.C. §1601 et seq., [1995]; its Federal Reserve Board's Regulation Z 61 FR 49247, September 19, 1996 (12 C.F.R §226.23); the International Covenant on Civil and Political Rights (herein after ICCPR); Articles 8 and 17(2) of the Universal Declaration of Human Rights; the Article 10 of the American Convention on Human Rights; Section 702.036, Florida Statutes, titled "Finality of Mortgage Foreclosure Judgment"; and, its Federal law sister in this last point are involved here.

STATEMENT

The Judgment was not served to Farias/Carrillo; and, it was erroneous served to Petitioners' Ex-counsel, who received an order granting him to withdraw on 08/08/2011. Farias/Carrillo filed a complaint against U.S. Bank, etc., and OneWest Bank to the United States District Court, Southern District of Florida, Case # 15-21827-CIV-O'Sullivan. One West Bank jointed to U.S. Bank's motion to dismiss in which they alleged Rooker-Feldman Doctrine and the Court dismissed the action because Florida courts had already entered judgments and only Florida courts or a best court can resolve this controversy, the U.S. Supreme Court pursuant to the article III of the U.S. Constitution.

A. Statutory and Regulatory Backgrounds

Pursuant to the Article I of the U.S. Constitution, Congress enacted the Truth in Lending Act (TILA) on 09/30/1995: RESCISSION RIGHT IN FORECLOSURE; and, **Regulation Z (12 C.F.R. §226.23)** was enacted on 1996 to promote the “informed use of credit” pursuant to the Article II of the U.S. Constitution. 15 U.S.C. §1601(a); see Mourning v. Family Publ’ns Serv., Inc., 411 U.S. 356, 363-366 (1973). The Act requires creditors to disclose to borrowers various terms of a credit transaction including “finance charges, annual percentage rates of interest, and the borrowers’ rights.” Beach v. Ocwen Fed. Bank, 523 U.S. 410, 412 (1998) (citing 15 U.S.C. §§1631, 1632, 1635, 1638). Furthermore,

the Subsection 1635(b) shows that: “If the creditor does NOT take POSSESSION of the property within 20 days after tender by the obligor, ownership of the property vest in the obligor without obligation on his part to pay for it.” Id.; and, Federal provisions as provided by the judgment’s paragraph 4: are involved here.

B. Factual Background

On August 22, 2006; Farias/Carrillo REFINAN CED the mortgage of their homestead property-primary residence in Miami-Dade, Florida, by executing an Adjustable Rate Note (hereinafter “NOTE”) for \$240,000; and, a Second Mortgage for \$48,000 (**Total \$288,000**). At closing of the transaction, the market value of the property was

\$320,000.00. The Compulsory Counterclaim's filing fee was paid by Carrillo to the trial court. **The creditor subsequently failed to take, within 20 days of receipt of the notice of rescission; any of the steps required by Subsections 1635(a) & (b).**

C. Relevant Proceedings Below

First, the Compulsory Counterclaim [**Count 1: Truth in Lending Act (Failure to Provide Disclosure) & Count 2: Truth in Lending Act (Rescission)**] was dismissed by trial court in violation to the Article VI.2, U.S. Constitution. **Second**, 3DCA denied without opinion the Farias/Carrillo appeal

against the Final Judgment of Foreclosure (Case No.: 3D11-3188 consolidated to the Case No.: 3D12-151) so as a Rehearing en Banc; and, the Supreme Court of Florida denied discretionary jurisdiction because the 3DCA's decision was without opinion.

Third, after more one-year of the previous Florida Supreme Court order, only U.S. Bank filed a motion to reset foreclosure sale, without joining nor serve to One West Bank. **Fourth**, within 10-days; Farias/ Carrillo filed objections to reset foreclosure sale because the unanimous decision of the Supreme Court of the United States in Jesinoski (January 13, 2015) over rescission rights mean that the **TRANSACTION is rescinded** on August 13, 2009; and, the judgment or debt is **satisfied**, §1635(b)

Fifth, Certificate of Sale was not served to Farias/Carrillo, it was incorrectly served to Farias/Carrillo's Ex counsel. **Sixth**, U.S. Bank UNTIMELY and time barred filed on July 15, 2015 opposition to Farias objections to sale which was incorrectly served to addresses unknowns by Farias/Carrillo.

Seventh, the subject property is in Farias/Carrillo family's possession but the title has illegally been put at U.S. Bank's name. **Eighth**, Notice of Appeal to the 3DCA, Case #3D15-2334 was filed. **Ninth**, an Order granting a Writ of Possession was entered and it is the appealed order herein. Farias/Carrillo had made a bona fide effort extraordinary to seek a declaration of rescission, remedies of rescission and damages in the Florida State Courts.

REASONS FOR GRANTING THE PETITION

I. RELIEF THAT ADVERSELLY AFFECTS THE POST JUDGMENT PROCEEDINGS, THE SALE, CERTIFICATE OF TITLE & THE ORDER FOR WRIT OF POSSESSION

1) Duplicate Final Judgment of Foreclosure dated 12/12/2011 and recorded at Bk 27925 Pgs. 1023-1026 CFN 20110833590 on 12/13/2011, Pages 1-4 Miami-Dade County, Florida; ordered and adjudged at paragraph 4 that **ONEWEST BANK, FSB**, hold a lien for the total sum specified in the Paragraph 2 therein. **The lien of the plaintiff is superior in dignity to any right, title, interest or claim of all persons, corporations, or other entities.**

2) Two Plaintiffs are not permitted in same Final Judgment of Foreclosure of a mortgage except that the judgment orders that Plaintiffs have an interest in both the mortgage and the lien because Mortgagee refers to the secured party or holder of the mortgage lien. §721.82 (6), Fla. Stat. To foreclosure the mortgage lien and extinguish equities of redemption, Secured parties must file a civil action. §45.0315, Fla. Stat. Plaintiff must be the owner and holder of the note and mortgage. Edason v. Cent. Farmers Trust Co., 129 So. 698, 700 (Fla. 1930).

Therefore, an UNSECURED PARTY cannot take **possession** of the subject property in a foreclosure action against THE SECURED PARTY.

3) U.S. Bank improperly filed the Post Judgment Proceedings without joining or notify to One West Bank; and sold-purchased the property, obtaining illegally a Certificate of Sale that says "Having received no money, the amount bid was credited to" [U.S. Bank], violating the "Finality of Mortgage Foreclosure Judgment, s. 702.036, F.S. Certificate of Title illegally says that no objections to the sale have been filed within the time allowed for filing objections.

4) Order to Reset Foreclosure Sale and Order on Emergency Motion to Cancel Sale violated the **due process that guarantees of notice and an opportunity to be heard**; and, violated the "Finality" AS provided by the judgment's ¶ 4 be-

cause were entered without hearing. Tannenbaum v. Shea, 133 So. 3d 1056, 1061 (Fla. 4th DCA 2014).

5) The Third District Court of Appeal, Case #3D16-1927, Opinion filed on September 20, 2017 in Nationstar Mortgage, LLC, vs. Vincent Diaz, et al., [www.3dca.flcourts.org/opinions/3D16-1927.op.pdf-96k, Rule 201 Federal Rules of Evidence] has held that Section 702.036(1)(a), Florida Statutes, titled “Finality of Mortgage Foreclosure Judgment”, which protects a purchaser of foreclosed property under certain circumstances and in a limited manner, when a party challenges **the validity of a final judgment of foreclosure of a mortgage**. The section 702.036(1)(a) does not apply to U.S. Bank.

6) In the instant case, it is undisputed that FARIAS/CARRILLO timely sent to the first Plaintiff's counsel a **Notice of Rescission in the Compulsory Counterclaim's paragraph 78**, within 3-years of the consummation of the transaction (A.9: 131a), 15 U.S.C §1635(i)[1995]; and, 12 C.F.R. §226.23 (Reg. Z)(h)[1996]. The property was not acquired for value pursuant to Certificate of Sale by a person affiliated with U.S. Bank; and, OneWest Bank holder-owner of the lien was not joining neither was served of the Post Judgment Proceedings. Therefore, this Court can treat Farias/Carrillo's request to vacate the Final Judgment of Foreclosure, the Post Judgment proceedings; the Writ of Possession; furthermore, as a claim for monetary relief.

7) Florida courts lacked of jurisdiction-authority to enter the final judgment of foreclosure because as a matter of Federal law, the transaction became void as a result of the Notice of Rescission on **August 13, 2009** [§1635(a)]; and, the loan or judgment became to be satisfied in accordance with §1635(b). The Judgment is to set aside in these circumstances, as just as it is the Post Judgment Proceedings; the Certificate of Sale, Certificate of Title; and, the Writ of Possession's order.

II. THE TRANSACTION IS RESCINDED ON AUGUST 13, 2009; AND, THE DEBT AND THE JUDGMENT WERE SATISFIED 21-DAYS AFTER

8) This transaction was consummated on August 22, 2006; and, the Notice of Rescission was filed on August 13, 2009; within 3-years of the loan's consu-

mimation as Jesinoskis made in their case; both rescissions are timely.

9) **65-months after of the notice of rescission;** the Supreme Court of the United States entered its binding precedent opinion in Jesinoskis v. Countrywide Home Loans, Inc., 135 S.Ct. 790 (**January 13, 2015**) which it was alleged in the objections to the Motion to Reset Sale filed on January 2015; it also implied that **the transaction is rescinded**.

10) The LIEN was automatically void as a matter of Federal Law when Farias/Carrillo sent to initial Plaintiff the Notice of Rescission ² because U.S.

² Jesinoski v. Countrywide Home Loans, Inc., 135 S.Ct. 790 (2015).

Supreme Court in *Jesinoski* held the import of the §1635(a) and the alteration of the §1635(b) to the traditional process of rescission [**See A.4: 39a-49a**]

11) This case involves matters of general application because the Subsection 1635(b) ordered that:

“If the creditor does **NOT** take **POSSESSION** of the property **within 20 days after tender by the obligor**, ownership of the property vest in the obligor **without obligation on his part to pay for it.**” (Emphasis added)

12) The Notice of Rescission sent to Plaintiff’s Attorney triggers the Farias/Carrillo’s rescission right. Official Staff Commentary (O.S.C.) to Reg. Z 226.2(a)(22)-2 issued by the Federal Reserve Board pursuant to the **Art. II, U.S. Constitution**; and, this Court Rules. When Plaintiff’s Attorney firm

received the notice, the lien is automatically void.

See: 15 U.S.C. §1635(a) & (b); Reg. Z § 226.23 (d)(l).

13) The Consumer Financial Protection Bureau (C.F.P.B.) is “the primary source for interpretation and application of truth-in-lending law”. Household Credit Servs. v. Pfennig, 541 U.S. 232, 238 (2004). Dodd-Frank Wall Street Reform and Consumer Protection Act transferred exclusive authority to interpret and promulgate rules regarding TILA from the Board of Governors of the Federal Reserve System to the Bureau on July 21, 2011; **Article I of the U.S. Constitution.** The Bureau, exercising this authority, held that:

“In the view of the Bureau, the interpretation of TILA adopted by the majority of court, erroneously

restricts consumers' right of rescission"; as just as it has been on Florida courts in this case.

14) CFPB also held that rescission of the loan agreement occurs when a valid notice of rescission is sent, not when a court enters an order, and that any subsequent legal action simply determines whether a valid rescission had occurred and the respective obligations of the parties. Sherzer v. Homestar Mortgage Services, Inc., et al, No. 11-4254, 2013 U.S. App. LEXUS 2486 (3d Cir. Feb 5, 2013), at p. 6. (Emphasis added).

15) Furthermore, “**VOID JUDGMENT** is a nullity that cannot be validated by the passage of time and may be attacked at any time” Shepheard v. Deutsche Bank Trust Co. Am.s, 922 So. 2d at 345 (Fla. 5th DCA 2006).

16) The U.S. Supreme Court's commentary ordered that: "if judgment or decree is void as a matter of law, no discretion would exist but to give proper relief." Cooter & Gell v. Hartmarx Corp., 496 U.S. 384 (1990) (All emphasis added).

17) Finally, "A void judgment is so defective that it is deemed never to have had legal force and effect." Sterling Factors Corp. v. U.S. Nat'l Ass'n, 968 So. 2d 658, 665 (Fla. 2d DCA 2007). A judgment is void if the Trial court lacks subject matter jurisdiction, Trial court lacks personal jurisdiction over the party; or if, in the proceedings leading up to the judgment, there is a violation of the due process guarantee of notice and an opportunity to be heard. Tannenbaum v. Shea, 133 So. 3d 1056, 1061 (Fla. 4th DCA 2014).

18) "However, an order entered without jurisdiction is a nullity, and cannot be considered harmless error." Dragomirecky v. Town of Ponce Inlet, 891 So. 2d 633, 634-635 (Fla. 5th DCA 2005) (citing Katz v. NME Hosp., Inc., 791 So. 2d 1127 (Fla. 4th DCA 2000)). Any ground showing that the court lacks jurisdiction of the subject matter may be made at any time in accordance with the Rule 1.140(4)(b) of the Fla. R. C. P.. See Miller v. Fortune Ins. Co., 484 So. 2d 1221, 1223 (Fla. 1986). The Supreme Court held that an order entered without jurisdiction is a nullity. Daniels v. State, 712 So. 2d 765 (Fla. 1998).

**III. RULE 9.130 PROCEEDING TO REVIEW
NON-FINAL ORDERS AND SPECIFIC FINAL
ORDERS**

19) Notice of Appeal shows that the nature of the appealed orders are on Purchaser, U.S. Bank-Co- Plaintiff's Motion for an Order directing Clerk to Issue a Writ of Possession properly viewed as an appealable, non-final order determining the right to immediate possession of property (Writ of Possession); and, Order denying Defendants' Motion to Stay Writ of Possession [9.130(a)(3)(C)(ii)][A. 8: 86a].

20) As a matter of law, Farias is entitled to absolute and qualified immunity in a civil rights claim arising under TILA and Reg. Z pursuant to the Subdivision 9.130(a)(3)(C)(vii). Subdivision 9.130 (a) (3) (C) (viii) was added in response to the supreme court's request in Tucker v. Resha, 648 So.2d 1187 (Fla. 1994). The Court directed the committee to propose a new

rule regarding procedures for appeal of orders
denying immunity in federal civil rights cases
consistent with federal procedure [this Court
Rules]. Compare Johnson v. Jones, 115 S. Ct. 2151,
132 L.Ed.2d 238 (1995), with Mitchell v. Forsyth,
472 U.S. 511, 105 S. Ct. 2806, 86 L.Ed.2d 411 (1985).
The Florida Supreme Court held that such orders
are “subject to interlocutory review to the extent that
the order turns on an issue of lawof Federal laws (Emphasis added).

21) Subdivision 9.130(a)(5) grants a **right of review**
of orders on motions seeking relief from a previous
court order on the grounds of mistake, fraud,
satisfaction of judgment, or other grounds listed in
Fla. R. C. P. 1.540. Subdivision 9.130(a)(5) is

intended to authorize appeals from orders entered on motions for relief from judgment that are specifically contemplated by a specific rule of procedure. See complete Committee Notes to the Rule 9.130 Amendments.

22) Farias/Carrillo filing multiple post-judgment motions including the Emergency Quiet Title Motion, Emergency Response in Opposition to the Motion for Writ of Possession; Motion to Stay the Motion for a Writ of Possession, etc, seeking to set aside the Final Judgment of Foreclosure because the transaction is timely rescinded, the judgment is void-avoidable; the judgment was satisfied; and, U.S. Bank lacks of law capacity to file the post judgment proceedings and to be the subject property's purchaser as provided by

the paragraph 4 of the Judgment. "Plaintiff must be the owner and holder **of the note and mortgage**".

Edason v. Cent. Farmers Trust Co., 129 So. 698, 700 (Fla. 1930).

23) This is a case extremely rare and complex, Farias/Carrillo respectfully require to this Honorable Court review this case which is of great public importance and will have a great effect on the administration of justice throughout Florida state.

The Committee Notes 1977 Amendment shows that:

"This rule replaces former rule 4.2 and substantially alters current practice. The advisory committee was aware that the common law writ of certiorari is available at any time and did not intend to abolish that writ. However, because that writ provides a remedy only if the petitioner meets the heavy burden of showing that a clear departure from the essential

requirements of law has resulted in otherwise irreparable harm (Writ of Possession), it is extremely rare that erroneous interlocutory rulings can be corrected by resort to common law certiorari. It is anticipated that because the most urgent interlocutory orders are appealable under this rule, there will be very few cases in which common law certiorari will provide relief. See *Taylor v. Board of Pub. Instruction*, 131 So.2d 504 (Fla. 1st DCA 1961) [Rule 9.030 (b)(2)].

IV. COMPULSORY COUNTERCLAIM DOES

NOT HAVE FINAL JUDGMENT

24) Farias' Motion to entrance a Judgment for Compulsory Counterclaim; and, Carrillo required a Judgment for Compulsory Counterclaim were denied on September 14, 2011 and docketed one day after (See Trial court's docket).

25) Trial court not entered a **Counterclaim's Final Judgment.** The recoupment claim has been replaced by the compulsory counterclaim. In Maynard v. Household Finance Corp. III, 861 So. 2d 1204 (Fla. 2d DCA 2003). See also Neil v. S. Fla. Auto Painters, Inc., 397 So. 2d 1160, 1164 (Fla. 3d DCA 1981).

26) A “Counterclaim” is a cause of action that seeks affirmative relief while an affirmative defense defeats the Plaintiff's cause of action by a denial or confession and avoidance. See Schupler v. Easterm Mortgage Co., 160 Fla. 72, 33 So. 2d 586 (1948), Lovett v. Lovett, 93 Fla. 611, 612 So. 768 (1927).

27) In accordance with the Rules 1.420(a)(2) and 1.420(c) of Fla. R. C. P.; and, the **Federal Rules of Civil Procedure, Rule 41(2)** show that:

“Except as provided in Rule 41(a)(1), an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper. If a defendant has pleaded a counterclaim before being served with the plaintiff's motion to dismiss, the action may be dismissed over the defendant's objection ONLY IF THE COUNTERCLAIM CAN REMAIN PENDING FOR INDEPENDENT ADJUDICATION. Unless the order states otherwise, a dismissal under this paragraph (2) is WITHOUT PREJUDICE” (Emphasis added).

28) The 3DCA denied without opinion the Farias/Carrillo appeal against the Final Judgment, Case #3D11-3188 consolidated to the Case #3D12-151; and, the SC of Florida denied discretionary jurisdiction because the 3DCA's decision was without opinion; BUT, the U.S. Supreme Court's opinion in Jesinoskis was entered until January 13, 2015. Therefore, this Court may relief these reversible errors in complying to **TILA** and **Reg. Z** pursuant to the **Article VI.2**, U.S. Constitution, **Rules 59, 60 and 61** of the Federal Rules of Civil Procedures; and, **28 U.S.C. §§§1253**. The **28 U.S.C. §§2403(a) and (b)** may apply in this case.

V. ORDER TO VACATE JUDGMENTS AND TO VACATE A JUDICIAL SALE.

29) Florida jurisdiction had recently ruled that the grounds of surprise, accident mistake or irregularity in the sale price can independently serve as grounds for vacating a judicial sale, even without a showing of inadequate sale price. See, Arsali v. Chase Home Finance, LLC, 79 So.3d 845, 848 (Fla. 4th DCA 2012). See also, Ingorvaia v. Horton, 816 So.2d 1256, 1258 (Fla. 2d DCA 2002).

30) Florida law has determined that when considering an objection to the sale/motion to vacate Final Judgments, Motion to vacate a foreclosure sale; Order for a Writ of possession, the court must:

**“VIEW THE PROCEEDINGS IN
THEIR TOTALITY”. See U-M Pu-
blishing, Inc. v. Home News Publis-**

hing, Inc., 279 So.2d 379, 381-382 (Fla. 3d DCA 1973). If the **errors** appearing of record have accumulated to such an extent to result in the necessity for **reconsideration of the entire matter, the judgment, should be vacated.** Id., at 382 (Emphasis added).

31) Florida law had also determined that the trial court has wide discretion to weigh the equities of individual cases in determining whether a foreclosure sale (and/or foreclosure judgment) should be set aside. See United Companies Lending Corporation v. Abercrombie, 713 So.2d 1017, 1019-1020 (Fla. 2d DCA 1998). Such equities can include the unilateral mistake or error of the party making the objection to the sale. Id., at 1019. Such equities and also include,

specifically, the **unethical conduct of the plaintiff in obtaining a final judgment of foreclosure (and/or to reset foreclosure sale; sale; purchase and take possession of the subject property).** Cicoria v. Gazi, 901 So.2d 282, 287-288 (Fla. 5th DCA 2005).

32) The Court stated in U.S. Bank, N.A. v. Vogel, 137 So.3d 491 (2014) In light of the Supreme Court's decision in Arsali II, it is now abundantly clear that proof of an inadequate bid price is not a necessary requirement in an action to set aside a judicial foreclosure sale. **Instead, a judicial sale may be vacated on a showing of any equitable ground.**

33) U.S. Bank lacked authority of law to file the post judgment proceedings, Motion to Reset Foreclosure

Sale, requiring the sale; and, to purchase the subject property as it was done “having received no money, the amount Bid was accredited to Plaintiff” (U.S. Bank); without joining or serve to One West Bank pursuant judgment’s paragraph 4.

34) That the allegations, viewing the proceedings in their totality, should cause this Honorable Court to reverse the entire matter. The record supports the rules 60(b)(4), (5) & 6, (d)(3): and 61 of the Fed. Rules of Civil Procedure; and, the Fla. R. C. P. 1.540(b)(4) & (b)(5); in which, they give relief from final judgments, decrees or orders if there is merit to the case, which there is in this case.

**VI. DIRECT APPEAL FROM DECISIONS OF
THREE-JUDGE COURTS**

35) Farias/Carrillo timely filed the Notice of Appeal, Case No.: 3D17-1281 on **June 05, 2017**; in which, the nature of the appealed order is on Purchaser-co- Plaintiff's Motion for an order directing Clerk to issue a Writ of Possession properly viewed as an appealable, non-final order determining the right to immediate possession of property (Order for Writ of Possession entered on **May 18, 2017**). Rule **9.130(a)(3)(c)(ii)** of Fla. R. App. P.

36) The 3DCA affirmed Per Curiam on **January 10, 2018**; and, the timely filed on **January 25, 2018** Motion for Rehearing en Banc and Determination of Cause in the 3DCA en Banc (hereinafter only cited

as "Motion for Rehearing en Banc"), **SUSPENDED RENDITION**. Motion for Rehearing en Banc was denied on **March 07, 2018**. On **May 25, 2018** was **timely** entered Application to Extend Time to file this Petition in accordance with the Rule 13(5) of this Court. Therefore, **ALL 3DCA's Orders can be reviewed by this Court.**

37) Farias/Carrillo appealed to the Supreme Court of Florida; and, it was denied on 04/11/2018; for which, it can be also reviewed by this Court pursuant to the **28 U.S.C. §§2403(a) and (b) versus the Supreme Law in the Land** because the Amendment to the **Article V, Section 3 of the Florida Constitution is Unconstitutional**; and, it is affecting the public

interest on the administration of justice throughout the Florida state.

**VII. FLORIDA COURTS HAVE UNOBSERVED
THE BINDING PRECEDENT OF JESINOSKI
OPINION OF THE U.S. SUPREME COURT**

38) Petitioners' suggestion pursuant to the Rule 9.125 of the Fla. R. C. P. was timely filed to the 3DCA [A. 7: 75a-85a].

39) Farias/Carrillo expressed a belief, based on a reasoned and studied judgment of Jesinoski v. Countrywide Home Loans, Inc., 135 S. Ct, 790 (2015) that the appeal would require immediate resolution by the Florida Supreme Court because (a) is of great

public importance, and (b) will have a great effect on the administration of justice throughout the state.

40) 3DCA denied the suggestion without opinion (A.7: 74a); all the Farias/Carrillo's related cases (3D11-3188 consolidated to the Case No.: 3D12-151; Case No.: 3D15-2334; 3D17-1281); all the Motion for Rehearing en Banc (decided only by 3-judges of the Panel of 10-judges); and, an extraordinary number of cases since the Amendment of 1980.

41) This constitutes evidence about the abuse of that Court's three judges; in its decisions without opinion against the opinions binding precedent of the Supreme Court of the United States; violating this that Court; the federal laws and fundamental human rights of the citizens of the State of Florida.

42) The facts denounced by Adkins, J., dissented with an opinion & England, Chief Justice of the Supreme Court of Florida on 1980, concurring specially, opinions: http://www.Courtliste_ner.com/1742174/jenkins*v*state/. Rule 201, Federal Rules of Evidence.

43) This definitely makes unconstitutional the Amendment to the article V; Section 3 of the Constitution of the State of Florida (1980) versus the Supreme Law in the Land.

44) Page 1 of the Brief for the United States as amicus curiae supporting Jesinoskis, shows the substantial interest of the United States in this Court's resolution of the question presented therein.

45) The United States may show a substantial

interest in this Court's resolution of the question presented here; this question, can be revised by the Court in accordance with the interest of the United States; if it is premissible.

46) The Supreme Court of the United States may give binding instructions or require the entire record to be sent for decision of the entire matter in controversy pursuant to the 28 U.S.C. §1254.

CONCLUSION

The petition for a writ of certiorari should be granted. Respectfully submitted,

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