No. 18- 220

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 REHEARING AGAINST OCTOBER 29, 2018 ORDER

Javier A. Carrillo at 89 N.W. 1st Street, Miami, FL 33128. Mayra Elizabeth Jimenez at 11011 S.W. 160 Street, Miami, FL 33157. Phone: (786) 712-4846. Noel Francisco, Solicitor General 950 Pennsylvania Ave., N.W. Room 5614, Washington, DC 20530. Phone (202) 514-2203. Rick Scott, Governor of Florida State, 400 S. Monroe ST, Tallahassee, FL 32399. Phone (850) 717-9337. Pan Bondi Attorney State of Florida, The Capitol PL-01, Tallahassee, FL 32399-1050. (850) 414-3300. Greenberg Traurig, P.A. Kimberly S. Mello, Esq. knows Counsel for U.S. Bank National Association, etc., at 101 E. Kennedy Blvd, Suite 1900 Tampa, Florida 33602. C.F.P.B. P.O. Box 4503 Iowa City IA 52244. Mary Cay Blanks, Clerk, Third District Court of Appeal at 2001 S.W. 117th Avenue, Miami, FL 33175-1716.

November 20, 2018

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Javier Alonso Carrillo Chaves other name used Javier A. Carrillo (hereinafter "Carrillo"); and, Mayra Elizabeth Jimenez other name used Mayra E. Farias ("Farias"), U.S. Citizens (hereinafter collectively "Farias/Carrillo") respectfully Petition for a Rehearing against this Court October 29, 2018 Order denying Certiorari (**A1.R.**)[1] pursuant to this Court's Rules 44 and 29.2. Petitioners acting as litigants **PRO SE** will state the grounds of controlling effect and to other substantial grounds not previously presented as result of this Court's opinions in Keiran v. Home Capital, Inc., & Takushi v. Bac Home Loans Servicing, Lp., 135 S. Ct. 1152 (2015); Peterson v.

[1] Appendix herein attached as A1.R., corresponds to Certificate of Compliance pursuant to the Rule 44.2.

Bank of America, N.A., 135 S. Ct. 1153 (2015); and, Gideon v. Wainwright, 372 U.S. 335 (1963).

I. BRIEFLY RELEVANT FACTS OF THE CASE

The transaction is a "federally related mortgage loan", defined in RESPA, 12 U.S.C. §2602(1) according to the paragraphs (I), (P); and, 16 of the Mortgage Instrument [2]; governed by the Federal Truth in Lending Act (TILA), 15 U.S.C. §1635(i) (1995) and 12 C.F.R. §226.23(h)(1996)Reg. Z. **On August 22, 2006**, Petitioners refinanced their homestead property/pri-

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[2] See http://www.miami-dadeclerk.com at CFN 2006R0935262 or Book 24863 Pages 3728-3747 recorded on 08/31/2006 in Harvey Ruvin, Clerk of Court, Miami-Dade County, Florida pursuant to the Rule 201 of the Federal Rules of Evidence.

mary dwelling securing an extension of credit in Miami-Dade by $240,000 from Indymac Bank, FSB. Farias/Carrillo received an inaccurate TILA disclosure on closing date; and, a Notice of the Right to Cancel was not received by Petitioners, which would give them 3-days to rescind the loans.

On August 13, 2009, Farias/Carrillo brought the First Affirmative Defense and sued respondent with an individual-Counterclaim (**A.9: 90a-134a**) [3] to enforce the rescission rights; and, to rescind the transaction at **COUNTERCLAIM ¶ 78** (**A.9: 131a**).

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[3] A.9: 90a-134a corresponds to the Appendix 9 from page 90 through page 134 of the Petition for a Writ of Certiorari's Appendix. "Appendix #: Page to Page" attached therein.

II. BRIEF FOR THE UNITED STATES AS AMICUS CURIE SUPPORTING JESINOSKIS

The United States held in Jesinoski v. Countrywide Home Loans, 574 U.S. ____ (2015) at Page 15 that:

> "The obligor also may exercise the right of rescission through notice given to the creditor in the context of an ongoing ... judicial foreclosure case, see, eg., 15 U.S.C. 1635(i) ... see, e.g. Family Fin. Servs., Inc. v. Spencer, 677 A.2d 479, 482, 487 (Conn. App. Ct. 1996)." (Art. II, US Const)

Farias/Carrillo sent their Notice of Rescission in the **COUNTERCLAIM'S paragraph 78** within 3-years of closing date (**A.9: 131a**).

III. JESINOSKI V. COUNTRYWIDE HOME LOANS, INC., 135 S. Ct. 790 (January 13, 2015)

Farias/Carrillo initially alleged Jesinoski opinion as Jesinoski v. Countrywide Home Loans, 574 U.S. ____ (2015) in the Objections to Reset Foreclosure Sale on January 20, 2015 and trial Court granted the reset sale without hearing. See Case # 2009-6638-CA-01 in http://www2.miamidadeclerk.com/ocs/Search.aspx pursuant to the Rule 201 of the Federal Rules of Evidence. Daniels v. State 712 So. 2d 765 (Fla. 1998)

The question presented in Jesinoski was it that:

> Does the Truth Lending Act allow a borrower to rescind a loan by notifying the creditor within the three-year time frame, even though a lawsuit has not yet been filed?

Justice Antonin Scalia delivered the opinion for a unanimous Court. The Court held that the three-

year period required by the Truth in Lending Act (TILA) is satisfied when the borrower(s) notifies the lender of his intent to rescind the loan within that period, even if a lawsuit has not yet been filed. Notstanding, Farias/Carrillo sued respondent with a **Compulsory Counterclaim** within that period (**A.9: 121a-134a**), which 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. **Rule 41(2) of Federal Rules of Civil Procedure.**

The trial court did **not** enter a Counterclaim's Final Judgment pursuant to the **15 U.S.C. §1635 (i)(3)**; for which, it was a violation to the constitutional due pro-cess and the human rights because the recoup-

ment claim has been replaced by the compulsory counter-claim. **Amendment XIV, Section 1, U.S. Constitution.**

The Court in Jesinoski held that:

> "Finally, respondent invoke the common law ... The clear import of §1635(a) is that a borrower need only provide written notice to a lender in order to exercise his right to rescind. To the extent **§1635(b)** alters the traditional process for unwinding such a unilaterally rescinded transaction, **THIS IS SIMPLY A CASE IN WHICH STATUTORY LAW MODIFIES COMMON-LAW PRACTICE**." (Emphasis added) [4]

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[4] See complete Jesinoski opinion herein attached as **A2.R**.

IV. BRIEF OF C.F.P.B. AS AMICUS CURIE IN SUPPORT OF JESINOSKIS-APPELLANTS AND REVERSAL (Art. I & II, U.S. Const.)

The Consumer Financial Protection Bureau (CFPB) 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**. See 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. In our case, a timely and valid rescission has occurred as just as in Jesinoski; and, the respective rights and obligations of the parties are governed by **15 U.S.C. §1635(b) [12 C.F.R. §226.23(d)]**, Art. I,

U.S. Constitution. in which it orders that:

> "(b) When an obligor exercises his right to Rescind ...such interest arising by operation of law, **becomes void upon such a rescission**. **Within 20 days** after receipt of a notice of rescission, the creditor shall... take any action necessary or appropriate to reflect the termination of any security interest created under the transaction. **If the creditor has delivered ANY PROPERTY** to the obligor, **THE OBLIGOR may RETAIN POSSESSION OF IT**... If the **CREDITOR DOES NOT TAKE POSSESSION OF THE PROPERTY WITHIN 20 DAYS** AFTER tender by the obligor, **OWNERSHIP OF THE PROPERTY vests in the obligor WITHOUT OBLIGATION ON HIS PART TO PAY FOR IT**." (Emphasis added)

Notstanding, other bank, One West Bank, FSB is owner-holder of the security instrument pursuant to the Final Judgment of Foreclosure's paragraph 4; and, not respondent, U.S. Bank National Association as Trustee. **Amendment XIV.1, U.S. Constitution**. Edason v. Cent. Farmers Trust Co., 129 So. 698, 700 (Fla. 1930).

V. THE SUPREME COURT SHALL HAVE ORIGINAL JURISDICTION AND APPELLATE JURISDICTION, BOTH AS TO LAW AND FACT (Article III.2, U.S. Constitution)

The appealed order is an appealable order pursuant to Rule 9.130 (a) (3) (c) (ii) of Fla. R. App. P., the 3 DCA's Orders; and, Florida Supreme Court Order dated April 11, 2018 are reviewable by this Court because on May 25, 2018 was timely entered Application No: 17A1338 to Extend Time to File the Peti-

tion for a Writ of Certiorari in accordance with the Rule 13(5) of this Court. 28 U.S.C. §§2403(a) and (b) may apply versus the Supreme Law in the Land because the Amendment to the Article V, Section 3 of the Florida Constitution is Federally Unconstitutional. The authority for judicial review in the United States has been inferred from the structure, provisions, and history of the Constitution.

The Constitution does not expressly provide that the federal judiciary has the power of judicial review. Rather, the power to declare laws unconstitutional has been deemed an implied power, derived from **Articles III and VI**. It is the inherent duty of the courts to determine the applicable law in any given case. State constitutions and statutes are valid only

if they are consistent with the Federal Constitution. Any law contrary to the Federal Constitution and the federal laws, when they are "made in pursuance" of the Constitution, are void. The federal judicial power extends to all cases "arising under this constitution". U.S. Supreme Court has the duty to interpret and apply the Constitution and to decide whether a federal or state statute (**Art. V §3, Fla. Const.**) conflict with the federal Constitution. All judges are bound to follow the Constitution. If there is a conflict, the federal courts have a duty to follow the Constitution and to treat the conflict statute **AS UNENFORCEABLE**. The Supreme Court has final appellate jurisdiction in all cases arising under the Constitution, so the Supreme Court has the ultimate

authority to decide whether statutes (**Art. V §3, Fla. Const.**) are consistent with the Constitution. See Marbury v. Madison, 5 US (1Cranch) (1803).

Hamilton, Alexander. Federalist No. 82 (July 2, 1788) explained that consistent with the need for **UNIFORMITY** in **INTERPRETATION** of the Constitution, the Supreme Court has authority to hear appeals from the state courts in cases relating to the Constitution. See Gideon v. Wainwright, 372 U.S. 335 (1963); in which, **a federal provision was imposed over the Florida Constitution**. Rules 60(b)(4), (5), (6) & (d); 61 of the Federal Rules of Civil Procedure; 1.540(b) (4) & (5) of Fla. R. C. P.; and, 28 U.S.C. §§§1253, 1254, 1257(a); in which, they give relief from final judgments, decrees or orders if there

is merit to the case, which there is in this case. The 28 U.S.C. §§2403(a) and (b) may apply in this case.

VI. THE ORDER DENYING THE PETITION FOR A WRIT OF CERTIORARI DIRECTLY CONFLICT WITH ANOTHER UNITED STATES SUPREME COURT'S OPINIONS

Before WOLLMAN, BYE, and COLLOTON, Circuit Judges, U.S. Court of Appeals for the Eighth Circuit, No. 12-2508. Appeal from U.S. District Court for the District of Minnesota–Minneapolis.

The case was before Court on remand from the United States Supreme Court. In Peterson v. Bank of America, N.A., 135 S. Ct. 1153 (2015), the Court granted a writ of certiorari, vacated the court's judgment in Bank of America, N.A. v. Peterson, 746

F.3d 357 (8th Cir. 2014), and remanded the case for reconsidering in light of its decision in Jesinoski v. Countrywide Home Loans, Inc., 135 S. Ct. 790 (2015). [Keiran v. Home Capital, Inc., 135 S. Ct. 1152 (2015); Takushi v. Bac Home Loans Servicing, Lp., 135 S. Ct. 1152 (2015); and, Peterson v. Bank of America, N.A., 135 S. Ct. 1153 (2015)].

> "In Peterson, we relied upon our court's decision in Keiran v. Home Capital, Inc., 720 F.3d 721 (8th Cir. 2013), in holding that the Petersons' claim for rescission under the Truth in Lending Act, 15 U.S.C. § 1601 et seq. was time-barred by 15 U.S.C.

§ 1635(f) because of their failure to file a lawsuit within three years of their transaction with Bank of America. 746 F. 3d at 360. The Supreme Court held in Jesinoski that **the Keiran court had erred** in holding that a borrower's failure to file a suit for rescission within three years of the transaction's consummation extinguishes the right to rescind and bars relief. 135 S. Ct. at 792. In light of the Court's holding in Jesinoski, we vacate that portion of our judgment in Bank of America N.A. v. Peterson that granted Bank of America su-

> mmary judgment on the Petersons' **claim for rescission**, reinstate that portion of our judgment that vacated the grant of summary judgment to Bank of America on the **Petersons' counterclaim** for statutory damages, and remand the case to the district court for further proceedings consistent with this opinion". (All emphasis added).

Farias/Carrillo are respectfully requesting that the Court requests a response pursuant to the Rule 44.3. Respondent was timely notified that the case was docketed (Court's August 21, 2018 letter); and, the Court's Waiver form without to have received any respondent's response.

CONCLUSION

The Petition for a Rehearing against the October 29, 2018 Order should be granted; and, the Writ of Certiorari should be granted. Judgment VACATED and case REMANDED for further consideration in light of Jesinoski v. Countrywide Home Loans, 574 U.S. __ (2015), 135 S. Ct. 790 (2015); and, any other relief as the Court consist just in this circumstances.

Respectfully submitted,

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Appendix AR.1

No. 18-220

IN THE SUPREME COURT OF THE UNITED STATES

Javier A. Carrillo, ET. AL. Individuals

Petitioners,

v.

U.S. Bank National Association as Trustee for Lehman XS Trust, Mortgage Pass/Through Certificates Series 2006-16N; ET. AL.

Respondent /

CERTIFICATE OF COMPLIANCE

As required by Supreme Court of the United States' Rule 44, the 28 U.S.C. §1746; and, under the law of the United States of America, Javier A. Carrillo and Mayra E. Farias declare under penalty of perjury

that the Petition for a Rehearing against the October 29, 2018 Order is presented in good faith and not for delay; and, that it is restricted to the grounds specified in the Rule 44.2 of this Court.

Executed on November 20, 2018.

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Appendix AR.2

135 S. Ct. 790 (2015)

Larry D. JESINOSKI, et ux., Petitioners

v.
COUNTRYWIDE HOME LOANS, INC., et al

No. 13-684.

Supreme Court of United States.

Argued November 4, 2014.

Decided January 13, 2015.

791*791 David C. Frederick, Washington, DC, for Petitioners.

Seth P. Waxman, Washington, DC, for Respondents.

Elaine J. Goldenberg for the United States as amicus curiae, by special leave of the Court, supporting the Petitioners.

Lynn E. Blais, Michael F. Sturley, Austin, TX, Michael J. Keogh, Keogh Law Office, St. Paul, MN, Erin Glenn Busby, Houston, TX, David C. Frederick, Counsel of Record, Matthew A. Seligman, Kellogg, Huber, Hansen, Todd, Evans & Figel, P.L.L.C., Washington, DC, for Petitioners.

Noah A. Levine, Alan E. Schoenfeld, Jason D. Hirsch, Wilmer Cutler Pickering Hale and Dorr LLP, New York, NY, Andrew B. Messite, Reed Smith LLP, New York, NY, Seth P. Waxman, Counsel of Record, Louis R. Cohen, Albinas J. Prizgintas, Christopher D. Dodge, Wilmer Cutler Pickering Hale and Dorr LLP, Washington, DC, Aaron D. Van Oort, Faegre Baker Daniels LLP, Minneapolis, MN, for Respondents.

Justice SCALIA delivered the opinion of the Court. The Truth in Lending Act gives borrowers the right to rescind certain loans for up to three years after the transaction is consummated. The question presented is whether a borrower exercises this right by providing written notice to his lender, or whether he must also file a lawsuit before the 3-year period elapses.

On February 23, 2007, petitioners Larry and Cheryle Jesinoski refinanced the mortgage on their home by borrowing $611,000 from respondent Countrywide Home Loans, Inc. Exactly three years later, on February 23, 2010, the Jesinoskis mailed respondents a letter purporting to rescind the loan. Respondent Bank of America Home Loans replied on

March 12, 2010, refusing to acknowledge the validity of the rescission. On February 24, 2011, the Jesinoskis filed suit in Federal District Court seeking a declaration of rescission and damages.

Respondents moved for judgment on the pleadings, which the District Court granted. The court concluded that the Act requires a borrower seeking rescission to file a lawsuit within three years of the transaction's consummation. Although the Jesinoskis notified respondents of their intention to rescind within that time, they did not file their first complaint until four years and one day after the loan's consummation. 2012 WL 1365751, *3 (D.Minn., Apr. 19, 2012). The Eighth Circuit affirmed. 729 F.3d 1092, 1093 (2013) (*per curiam*).

Congress passed the Truth in Lending Act, 82 Stat. 146, as amended, to help consumers "avoid the uninformed use of 792*792 credit, and to protect the consumer against inaccurate and unfair credit billing." 15 U.S.C. § 1601(a). To this end, the Act grants borrowers the right to rescind a loan "until midnight of the third business day following the consummation of the transaction or the delivery of the [disclosures required by the Act], whichever is later, by notifying the creditor, in accordance with regulations of the [Federal Reserve] Board, of his intention to do so." § 1635(a) (2006 ed.).[*] This regime grants borrowers an unconditional right to rescind for three days, after which they may rescind only if the lender failed to satisfy the Act's disclosure requirements. But this conditional right to rescind

does not last forever. Even if a lender *never* makes the required disclosures, the "right of rescission shall expire three years after the date of consummation of the transaction or upon the sale of the property, whichever comes first." § 1635(f). The Eighth Circuit's affirmance in the present case rested upon its holding in *Keiran v. Home Capital, Inc.*, 720 F.3d 721, 727-728 (2013) that, unless a borrower has filed a suit for rescission within three years of the transaction's consummation, § 1635(f) extinguishes the right to rescind and bars relief.

That was error. Section 1635(a) explains in unequivocal terms how the right to rescind is to be exercised: It provides that a borrower "shall have the right to rescind ... *by notifying the creditor,* in accor-

dance *with regulations of the Board, of his intention to do so*" (emphasis added). The language leaves no doubt that rescission is effected when the borrower notifies the creditor of his intention to rescind. It follows that, so long as the borrower notifies within three years after the transaction is consummated, his rescission is timely. The statute does not also require him to sue within three years.

Nothing in § 1635(f) changes this conclusion. Although § 1635(f) tells us *when* the right to rescind must be exercised, it says nothing about *how* that right is exercised. Our observation in *Beach v. Ocwen Fed. Bank*, 523 U.S. 410, 417, 118 S.Ct. 1408, 140 L.Ed.2d 566 (1998), that § 1635(f) "govern[s] the life of the underlying right" is beside the point. That

case concerned a borrower's attempt to rescind in the course of a foreclosure proceeding initiated six years after the loan's consummation. We concluded only that there was "no federal right to rescind, defensively or otherwise, after the 3-year period of § 1635(f) has run," *id.*, at 419, 118 S. Ct. 1408, not that there was no rescission until a suit is filed.

Respondents do not dispute that § 1635(a) requires only written notice of rescission. Indeed, they concede that written notice suffices to rescind a loan within the first three days after the transaction is consummated. They further concede that written notice suffices after that period if the parties agree that the lender failed to make the required disclosures. Respondents argue, however, that if the

parties dispute the adequacy of the disclosures — and thus the continued availability of the right to rescind — then written notice *does not* suffice.

Section 1635(a) nowhere suggests a distinction between disputed and undisputed rescissions, much less that a lawsuit would be required for the latter. In an effort to sidestep this problem, respondents point to a neighboring provision, § 1635(g), which they believe provides support for their interpretation 793*793 of the Act. Section 1635(g) states merely that, "[i]n any action in which it is determined that a creditor has violated this section, in addition to rescission the court may award relief under section 1640 of this title for violations of this subchapter not relating to the right to rescind." Respondents argue

that the phrase "award relief" "in addition to rescission" confirms that rescission is a consequence of judicial action. But the fact that it can be a consequence of judicial action when § 1635(g) is triggered in no way suggests that it can *only* follow from such action. The Act contemplates various situations in which the question of a lender's compliance with the Act's disclosure requirements may arise in a lawsuit — for example, a lender's foreclosure action in which the borrower raises inadequate disclosure as an affirmative defense. Section 1635(g) makes clear that a court may not only award rescission and thereby relieve the borrower of his financial obligation to the lender, but may also grant any of the remedies available under § 1640 (including statutory damages). It has no bear-

ing upon whether and how borrower-rescission under § 1635(a) may occur.

Finally, respondents invoke the common law. It is true that rescission traditionally required either that the rescinding party return what he received before a rescission could be effected (rescission at law), or else that a court affirmatively decree rescission (rescission in equity). 2 D. Dobbs, Law of Remedies § 9.3(3), pp. 585-586 (2d ed. 1993). It is also true that the Act disclaims the common-law condition precedent to rescission at law that the borrower tender the proceeds received under the transaction. 15 U.S.C. § 1635(b). But the negation of rescission-at-law's tender requirement hardly implies that the Act codifies rescission in equity. Nothing in our juris-

prudence, and no tool of statutory interpretation, requires that a congressional Act must be construed as implementing its closest common-law analogue. Cf. *Astoria Fed. Sav. & Loan Assn. v. Solimino*, 501 U.S. 104, 108-109, 111 S.Ct. 2166, 115 L.Ed.2d 96 (1991). The clear import of § 1635(a) is that a borrower need only provide written notice to a lender in order to exercise his right to rescind. To the extent § 1635(b) alters the traditional process for unwinding such a unilaterally rescinded transaction, this is simply a case in which statutory law modifies common-law practice.

The Jesinoskis mailed respondents written notice of their intention to rescind within three years of their loan's consummation. Because this is all that a bo-

rrower must do in order to exercise his right to rescind under the Act, the court below erred in dismissing the complaint. Accordingly, we reverse the judgment of the Eighth Circuit and remand the case for further proceedings consistent with this opinion. It is so ordered.

[*] The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 50 L.Ed. 499.