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 Florida Fourth District Court of Appeals

PETITION FOR A WRIT OF CERTIORARI

John Barone
PO Box 5193
Lighthouse Point, FL 33074
954-644-9900
Pro Se Petitioner

QUESTIONS PRESENTED

This Court gives clear direction to prevent manifest injustice, for years the system failed millions of Americans and their Constitutional rights. Many were harmed by Wells Fargo and its numerous frauds. Unwarranted protections are given by Courts to assist in evasion and concealment of its many unlawful acts, especially in mistreatment of Pro Se parties.

For over a decade, banks have taken advantage of government's unconstitutional seizure of Fannie Mae, by wrongfully taking millions of Constitutionally protected properties. National banks orchestrated millions of wrongful foreclosures in state Courts while unethically utilizing federal preemption to quash many Americans claims. Americans claims have also been wrongfully suppressed of freedom of speech by social media.

The Constitution, its rights and protections therein must be held sacred, and the justice system centered by this Court must guarantee those rights and protections. When Courts charged with protecting Constitutional rights, including property rights heavily favor the unjust blatantly violating these rights and protections, the system is failing. Millions were unlawfully removed from their property while Courts assisted and/or turned a blind eye. This Court as protector of the Constitution must right these wrongs to ensure an unflagging commitment to these guaranteed rights and protections.

This case raises important issues of federal jurisdiction over national banks, federal RICO claims and government's Total Control over a *de facto* State-actor. It raises questions over Constitutional property rights and fraudulent seizure, including mortgage securitization (RMBS), default derivatives (CDSs, CDOs) and foreclosure and modification fraud. It raises Constitutional questions of FL appeals Court procedure infringing on Due Process. Thus, the questions presented are:

1.Whether the National Bank Act, 12 U.S.C. 1 *et seq.* restrictions on states, federal preemption and exclusive federal regulation vie for exclusive federal jurisdiction of Wells Fargo and national banks? and Whether state Courts as an appendage of the states are allowed to be separated therefrom under the Constitution, rendering the segregation within the NBA as unconstitutional?

2. Whether a state Court's unwillingness to entertain federal claims by clear and concise direction to "leave federal claims to the federal Court" violates Due Process and warrants a motion to stay proceedings in favor of a coexistent federal action?

3. Whether FL appeals Court procedure allowing for non-opinioned orders and denial of requests to legally substantiate these orders to remove review authority of the state High Court is unconstitutional and violates the guarantee of a fair legal process? Should all courts be held to the opinion standards of Federal Courts to satisfy Due Process?

4. 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?

5. Whether RMBS and REMIC trust securitization and rehypothecation of mortgage notes utilizing homeowners property as collateral without consent or knowledge is unlawful and unconstitutional? and Whether collection of financial benefits not applied to and above note debt owed are unlawful and unconstitutional?

PARTIES TO THE PROCEEDING

Petitioner, John Barone was plaintiff in 17th Circuit Court, and appellant in Florida 4th DCA. He was also plaintiff in U.S. District Court, So. Dist. of FL, No. 16-cv-60960-WPD, and currently in Eleventh Circuit Appeals Court, No. 18-11272-CC. His spouse Nicole has 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.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

OTHER AUTHORITIES

PETITION FOR A WRIT OF CERTIORARI

John Barone respectfully petitions for a Writ of Certiorari to review the order of Florida Fourth District Court of Appeals.

DECISIONS BELOW

The non-opinioned order of Florida Fourth District Court of Appeals (App. 1), reconsideration, certification and/or written opinion denial (App. 2), and order of 17th Judicial Circuit Court (App. 3) are attached hereto.

JURISDICTION

The non-opinioned order of FL Fourth District Court of Appeals was entered on April 26th, 2018, so this petition is timely filed. This Court's jurisdiction rests on 28 U.S.C. § 1257(a), "the highest court of [the] State in which a decision could be had." *See, e.g., KPMG LLP v. Cocchi*, 565 U.S. 18, 19 (2011) (per curiam).

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."

INTRODUCTION

This RICO litigation was brought in light of Wells Fargo's numerous unlawful actions against the Petitioner and his family. Since the filing in late 2015, many other Americans have come forward to share their ordeals with Wells Fargo and other financial institutions following the Financial Crisis. Countless complaints are related to the massive foreclosure crisis that has permanently scarred millions of Americans.

Millions have come to this Country in search of a new and better life, one with guaranteed freedoms and rights governed by the Constitution. These freedoms and rights have been violated far too frequently and brazenly by companies like Wells Fargo, with no fear of prosecution. Wells Fargo's list of wrongdoings against American victims and their Constitutional rights grows habitually, which begs this Court to address and right these wrongs to regain the public's trust in the legal system. Article III created the Court system for Americans to be able to pursue justice on their own behalf, but all too often *Pro Se* litigants are looked down upon by the judiciary and in some cases, as herein, are mis-

treated by litigating parties and Courts. This cancer that seems to align itself with individuals who fight back against corruption to protect their freedoms and rights, stems from an unwarranted protectionism of elitist with connections to the powers that be. This is not only unconstitutional as it discriminates by picking and choosing who is believed to be above the law who is not, it also fuels the segregation that is currently infecting this Country. All too often the interests of shareholders and the powers that be are put ahead of innocent victims, and this malfeasance must be corrected in order to preserve the Constitutionally guaranteed American way of life. Capitalism is built on a free system, but if manipulation continues in wrongfully protecting habitual wrongdoers like Wells Fargo, this Country will fall into a Socialistic spiral and lose its Democratic origins.

If Americans cannot count on their Constitutional rights and freedoms being protected by the judiciary against wrongdoers like Wells Fargo, then the basic fabric of the American way of life has been removed, along with the American dream which was already wrongfully taken away from millions. For many, that dream was removed by fraudulent use of the foreclosure and modification processes, and for direct exclusive benefit of the government.

It is a shame that so many throughout litigation with Wells Fargo have curiously and conveniently fallen silent. Wrongful foreclosures draw unwanted attention, as foreclosure fraud was serious enough for hundreds of billions of dollars in government settlements with the financial industry, but defrauded homeowners lost their properties and livelihoods with no restitution. In Florida, instead of the settlement funds getting dis-

persed to the victim homeowners, the NMS was utilized to fund the infamous Rocket Docket which allowed for numerous unlawful proceedings and Due Process failures. Judges were closing hundreds of cases per day, one in particular noted as closing around 786 cases in one day, while violating homeowners Constitutional Rights. Many foreclosure Courts operated without mandatory court reporters or recording devices to protect homeowners Due Process rights, especially Broward foreclosure Court. These failures cannot be accepted by this Court, as they are not accepted by millions of American victims who pray on this Court to correct these dark clouds of injustice.

The Constitution demands that Americans be free to seek justice from those who violate their freedoms and rights. Homeownership is the American dream, and to allow it to be wrongfully taken away through massive fraud against millions for financial gain, especially to the government through FNMA and the NWS, is a great manifest injustice in need of fixing. By focusing on the letter of the law and the permanent damages inflicted unto millions of American victims, many by Wells Fargo, Mr. Barone prays this Court will uphold its Constitutional responsibility and get restitution for his family and countless homeowners.

STATEMENT OF THE CASE

This RICO action was brought for Wells Fargo's numerous unlawful and unethical acts against Mr. Barone and his family. In response to the initial RICO complaint, Wells Fargo through its elite counsel defamed/slandered him by trying to paint him as a "conspiracy theorist" for unlawful acts it has since admitted or that have been publicly outed. The Broward Court

unjustly classified this case as a HAMP action and failed to forward the filing to the Broward Records Division for public record. These unethical acts continue, as a few days ago Wells Fargo's elite counsel served a Federal Appeals Court RICO appendix with a makeshift damaged reused retail box much larger than the contents, with no sender information. These tactics are not used by an innocent party, they have been utilized throughout history by organized crime, providing more substantiation of Mr. Barone's RICO claims. Additionally, Wells Fargo's unlawful actions substantiate the fraud claims herein as they completely contrast with "The Vision and Values of Wells Fargo".

The original Judge was informed of the initial issues in the first hearing, and completely ignored Mr. Barone's arguments, including the claim that Wells Fargo utilized his property within its $1.2 Billion FHA scheme against the taxpayers.[1] Conveniently, Wells Fargo filed its evasive and insufficient discovery answer 5 days late and the same day it reached its FHA settlement with the government. It sent a misleading email attempting to sway Mr. Barone into believing it was allowed an additional 5 days to respond for mail or email service, when it knew the documents were personally served by the Sherriff's office. Within the settlement Wells Fargo admitted, acknowledged and accepted responsibility for filing false claims with the government and defrauding taxpayers, but wrongfully there were and still have been no criminal charges filed. The Judge claimed he didn't know about this settlement, but it was clearly outlined in Mr. Barone's filings of which he claimed he was fully informed. The Judge was

---

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

more concerned with finding out which legal professionals/colleagues of his had reviewed and substantiated Mr. Barone's claims. He wrongfully dismissed the complaint and motions without proving he actually read them. It wasn't long after Mr. Barone filed his federal RICO case, that the first Judge herein conveniently retired.

An amended complaint was filed drastically reduced in size and simplified. The new Judge's first reaction was to ask Mr. Barone if he was trying to put Wells Fargo out of business, to which he answered no, just to right the wrongs against his family. Needless to say, the Judge contradicted himself by then saying he didn't see any valid claims, especially RICO and by advising that he reviewed all the filings and was prepared to adjudicate, when he was unaware Mr. Barone had filed a response to the motion to dismiss. The Judge then stated that he did not want to entertain the federal and foreclosure claims, advising to *"leave the federal claims to the federal Court and foreclosure claims to the foreclosure Court."* Mr. Barone advised him that Wells Fargo was trying to get the federal Court to leave the federal claims herein, and he repeated his advisement. This is clear unwillingness to entertain federal and pertinent claims, which gives the federal Court the authority to act. This direction was also prejudicial, if followed Mr. Barone would have forfeited valid claims.

Due to the prejudicial nature of the order and the federal jurisdiction questions ignored, Mr. Barone filed a motion to stay these proceedings. Wells Fargo failed to supply a copy of Mr. Barone's reply in its highly-questionable courtesy package sent to the Judge a day or so before the hearing, and refused to postpone to properly

prepare the Court. Additionally, Wells Fargo was supposed to appear telephonically, but one of its elite counsel showed up at the last minute in complete surprise to the Court and Mr. Barone. Wells Fargo argued that Mr. Barone's claims and motion hold no merit, but felt it was necessary to send senior counsel at the last minute to address, instead of the unknown understudies utilized previously. The denial of the stay led to the 4th DCA appeal, denial of reconsideration, certification and/or a written opinion to back up its decision and now the request to this Supreme Court.

The claims herein began with the foreclosure which was wrongfully brought in state Court by Wells Fargo, as it knew in alleging the beneficiary as FNMA, it was in essence working on the government's behalf, under its direction and for its exclusive benefit. Wells Fargo violated many procedures and federal laws, including from the onset, the Notice of Fair Debt Collections Practices Act, 15 U.S.C § 1692, *et seq.*, and Due process through service failures with questionable Affidavits of Lost Original Summonses. It filed the affidavits months after the alleged service by known fraudulent servicer ProVest LLC. There were issues with different handwriting on Wells Fargo's own ROS and summons, from the same alleged server, along with an ignored request for mediation, of which Wells Fargo claimed mandatory mediation was not applicable, violating Administrative Order 2011-13-Civ.

Many issues arose throughout foreclosure, including an unauthorized bank withdrawal and failure to file a fraud complaint under FDIC Section 10.1 Suspicious Activity and Criminal Violations. Wells Fargo led them to believe it did not know who the violator was for days, until it notified them, that it committed the unlawful

act and then attempted to conceal it as a collection action. This act was severe enough for their attorney at the time to advise that he was going to get the house from them, only to blindside them later with they would lose because the foreclosure Court wouldn't hear it at trial. Throughout foreclosure they were led to believe their defense was being properly handled, needless to say, many questions remain, including the misrepresention and inducement of judgement for a 4-6 month extension to file for modification with Wells Fargo's wrongful 48-hour ultimatum. They never signed any final judgement. Wells Fargo is still utilizing this wrongful judgement inducement, as it attempted to coerce one from Mrs. Barone for her father's home a few months ago. Moreover, Wells Fargo set a trial date for her father's home on July 3rd, and with assistance of Broward Judge Stone, foreclosed on a HELOC, which is not a self-authenticating negotiable instrument, in violation § 673.1041(1) Fla. Stat. (2012).[2] See *Third Federal Savings & Loan Association of Cleveland v. Koulouvaris,* Case No. 2D17-773 (Fla. 2nd DCA May 18, 2018);[3] *Chuchian v. Situs Invs., LLC*, 219 So.3d 992, 993 (Fla. 5th DCA 2017);[4] See also Peterson, David E., *Cracking the Mortgage Assignment Shell Game*, The Florida Bar Journal, Vol. 85, No. 9 (November 2011) at pg. 10, fn. 32;[5] Renuart, Elizabeth, *Uneasy Intersections: the Right to Foreclose and the U.C.C.*, 48 Wake

---

[2] "*a negotiable instrument is an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order.*" § 673.1041(1), Fla. Stat. (2012) (emphasis added).

[3] ("The HELOC note failed to require the payment of a fixed amount of money, making it a nonnegotiable instrument")

[4] ("credit agreement . . . was a nonnegotiable instrument because it was not for a fixed sum.")

[5] (Home Equity Lines of Credit are not negotiable and not covered under Article 3 of the UCC)

Forest Law Review 1205, at pg. 1228-29;[6] and 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.[7] More concerning, is the continued harassment, as Wells Fargo filed foreclosure documents on her father's first mortgage around June 1st and after it already unlawfully orchestrated the HELOC judgement and set a sale date on the property, on Saturday, which just happened to be Mrs. Barone's birthday, they unnecessarily served these documents. This was an unethical tactic continuing the long list of such that have occurred since inception of the Barone's foreclosure and have increased since his RICO actions.

During the infamous Rocket Docket, Wells Fargo allowed the foreclosure Court to operate without mandatory voice recorders or court reporters for protection of homeowners' due process rights. Wells Fargo also committed Dual-tracking by continuing foreclosure while allegedly processing the Barone's modification. This was chastised by Congress and restricted by the NMS. The scheme consisted of wrongfully advising customers to stop making payments, as they needed to be in the rears to file for HAMP, it then did not supply updates and dragged the process out for months. Former government insider S.I.G. TARP, Neil Barofsky outlined this in his book BAILOUT, Chapter 8, Foaming the Runway.[8] *See* also *Kuehlman v. Bank of America*, 177

---

[6] (a HELOC note is not negotiable because it does not contain a provision requiring payment of a fixed amount of money)

[7] (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)

[8] - *"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*

So3d 1282 (Fla.5th DCA 2015); *Nowlin v. Nationstar Mortg.*, LLC, 193 So.3d 1043 (2016). As part of the delay tactic, Wells Fargo wrongfully blamed Mrs. Barone for declining modification in July 2012. In 2012, The US Treasury's Making Home Affordable Report showed that Wells Fargo was complying with its legal obligations under HAMP less than 10% of the time, as Wells Fargo was 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 that it was required to. 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 FNMA, and was not forthcoming with information as to the higher "Investor" mod payment was due to forced Lender Placed Insurance (LPI). Additionally, Wells Fargo blatantly supplied wrong HAMP calculations to push unknowing customers into its secondary FNMA "investor" modification. 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.[9] Wells Fargo manipulated

---

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). -

[9] ***See*** *Simpkins v Wells Fargo Bank, N.A.*, 2013 WL 4510166, at *7 (S.D. Ill. Aug 26, 2013); *Leghorn v. Wells Fargo Bank, N.A.*, 950 F.

LPI premiums with insurers with back door deals that led to its extensive control over LPI policies that it placed on the Barone's for years. 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 FNMA 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 sub-mitted 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 LPI complaints, their property east of Federal Highway near the intracoastal and canals, was questionably removed as a mandatory flood zone.

They sent multiple correspondences to Wells Fargo complaining about the issues, including a few directed to the Legal Dept, Board of Directors and Executive Offices, but these complaints were all wrongfully directed to the mortgage department. More and more customers have come forward with similar issues with complaint correspondence to Wells Fargo. Wells Fargo has not attempted to resolve anything with the Barone's it continually responds with excuses and avoids addressing certain wrongdoings. In its response to a demand for documentation, Wells Fargo stonewalled with a subpoena demand, and since has ignored RFPs in foreclosure and proffered incomplete, evasive and insufficient discovery answers herein. Coincidently, Wells Fargo claims this RICO action is suitable in state venue, but its discovery answer is full of federal regulations protecting such documentation. Wells Fargo also violated

---

Supp. 2d 1093, 1115 (N.D. Cal. 2013); *Fladell v. Wells Fargo Bank, N.A.*, No. 0:13-cv-60721, 2014 WL 10017434, *1 (S.D. Fla. Mar. 17, 2014).

them through its unauthorized account scheme, by filing an unauthorized credit application. Additionally, Wells Fargo earned unjust fees on numerous occasions by charging to transfer funds to another customer's account, which it did not charge to non-customers. These issues and others forced his federal RICO filing.[10]

The federal RICO action has had numerous issues plague it as well, it is currently on a second trip to Eleventh Circuit because of a Judge, a customer of Wells Fargo Mortgage, refuses to recuse or disqualify himself, even though reasonable people are questioning his actions. Wells Fargo influenced a wrongful dismissal of his initial federal complaint, which was overturned.

There have been clear conflicts of interest along the way, as general magistrate Eiss, who worked for peer JP Morgan Chase and Judge Rosenthal, who was under criminal investigation questionably mishandled the foreclosure RFP. Rosenthal not long after resigned amidst a FL High Court ethics investigation.

For years, Wells Fargo committed multiple acts of Fraud Against the Court by filing documents containing false statements and procedural violations, with no consequences, including motions to cancel sales. Wells Fargo failed to serve a notice of sale filing by removing them from electronic service, which it then wrongfully influenced the Court, which assisted in excusing its service failure by utilizing Hurricane Matthew, which did not affect their property. Judge Stone refused to hear their arguments. Additionally, Wells Fargo regularly set hearings without contacting them, it's counsel Mr. Hall, made perjurious statements to the Court and it

---

[10] Federal RICO action: *Barone v. Wells Fargo Bank N.A.*, 18-11272-CC, 16-16079-CC, 16-cv-60960-WPD.

ignored a conciliation order for months, while multiple judges asked if there was a lawsuit coming over the issues, but no corrective actions were taken. The Courts did not take any action against Wells Fargo's trespassing inspectors, who are now utilizing drive-by picture taking. These inspectors harassed Mrs. Barone's mother for some time before her sudden death a few years ago, by banging on her door as early as 7:30 am and late at night advising Wells Fargo sent them to check occupancy. Wells Fargo also unethically attempted to coerce Mrs. Barone's parents into submitting a written statement blaming the Barone's for their financial situation to assist in approval of their modification.

Around the time Mrs. Barone's mother was on hospice dying in August of 2015, Wells Fargo wrongfully coerced a family friend, who is a highly respected community figure, to not do a business deal with Mr. Barone by defaming the Barone's and threatening his ongoing commercial projects. This quashed the deal and irreparably damaged a 50+ year friendship. After this, and before filing this RICO action, they sent notice and correspondence to Wells Fargo legal, board and executive offices, only to be forwarded yet again to the mortgage department. Its unethical acts continued, as Greg Nichols responded leading Mrs. Barone to believe he was an attorney in the legal department, while sarcastically downplaying the issues and trying to forestall any pending suit. He also wrongfully alleged the Barone's counsel participated in mediation and that he had over 500 documents ready to bring to Court. Wells Fargo has not substantiated his claims, including his legal status.

The issues with the foreclosure Court continued, as Judge Lazarus advised Mrs. Barone, in a questionable

encounter in the courthouse with her counsel, to not file ethics charges against Judge Rosenthal, but rather revisit the RFP. They obliged, Lazarus said he needed time to review everything and get back to the parties, but he failed to address the RFP. Lazarus allowed Wells Fargo's counsel Mr. McDonough to play games in avoiding its non-answer to the RFP for over a month, while lashing out at him for not making himself available for hearings and setting and canceling others. When McDonough finally appeared the day before the sale date, Lazarus' tone changed, as he assisted Wells Fargo in its unethical games and forced Mrs. Barone to file for bankruptcy to stop Wells Fargo from unlawfully seizing 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 curiously ruled a technicality against them, while blatantly ignoring Wells Fargo's notice of sale deficiency, and without McDonough having to say a word. Before the hearing, McDonough unethically defamed them 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.

Wells Fargo's issues continued when she filed to reopen her bankruptcy. Upon notice, the foreclosure Court clerk immediately placed a stay on the case. A few hours later, Wells Fargo filed a moot motion to can cel the sale for the next week without mentioning the bankruptcy filing, and the next day filed a NOH for the moot motion. Before the hearing she advised Wells Fargo's new representative, that the motion was moot because of her bankruptcy filing. The representative called her office and advised that Wells Fargo's motion needed to be heard. Mrs. Barone was wrongfully forced in front of Judge Stone, who again refused to hear their

arguments that the motion was moot. Wells Fargo never acknowledged the bankruptcy and perjured the Court by asserting there must have been a mod package submitted, when it knew this was false. Judge Stone refuse to check the docket on the computer in front of him and assisted Wells Fargo's fraud, by granting the moot motion and resetting the sale date. More concerning was the non-action and numerous unreturned calls after submitting the documented proof of Wells Fargo's blatant Fraud on the Court to FL Atty. Gen. Pam Bondi and then U.S. Atty. Preet Bharara. The clerk later advised that he was unaware of what Wells Fargo was attempting, it was completely against procedure, so he re-cancelled the sale. He noted it all in the computer and said that Wells Fargo was not going to be happy with him, but he had to do the right thing. This prompted their motion to vacate final judgement and sanctions against Wells Fargo, and a motion for clarification of Wells Fargo's counsel and the Court's jurisdiction over Wells Fargo. Wells Fargo played games with setting the hearing by only noticing the vacate and sanctions motion and forced the Barone's to notice their own clarification motion, by alleging the clarification was not really a motion. Lazarus stone-walled them when they attempted to bring up Wells Fargo's admitted FHA fraud and its unauthorized account scandal. Lazarus ignored the arguments of *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), denied their motion to vacate and sanctions and completely ignored their jurisdiction clarification motion. The Barone's contacted Sr. Nora Nash of Sisters of St. Francis, who from the beginning thanked God for putting them together. Sr. Nora brought Mrs.

Barone along as a guest to Wells Fargo's 2017 annual shareholder meeting in Florida. Sr. Nora had to stand up and assertively get Mr. Sanger and Mr. Sloan to take Mrs. Barone's questions, after they passed over her numerous times.

Soon after, 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, which is not what the FL 3rd DCA advises.[11] They were forced to pay for and file a moot motion to cancel the sale in contrast to the clear wording in § 1446. Lazarus played games along with Wells Fargo's counsel and forced a moot hearing for the next morning, coincidently the same day as the sale date, and proceeded to blatantly violate § 1446, deny the cancellation motion and ordered their home sold.[12] This forced them to incur unnecessary costs to remove their belongings from the property that must be righted and reimbursed by Wells Fargo and the Court.[13] During this, Sr. Nora advised she was communicating the issues to Wells Fargo executives, including board members, so Wells Fargo's leadership was informed of its unlawful actions, but no corrective action was taken.

---

[11] *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).

[12] *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)

[13] Some costs are accruing monthly and all costs were added to relief requested in Mr. Barone's Federal Amended Complaint.

This federal Court system needs to be concerned with the highly-questionable swift remand order that was entered by the Federal Court after the sale. 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. The District Court's decision to unnecessarily push aside its overwhelmed docket to immediately address the removal in favor of Wells Fargo and the government's interest in FNMA must be questioned by this Court, as it mars the sanctity of the federal Court. During this questionable remand, Wells Fargo was blatantly violating 28 U.S.C. § 1446., of which it was well aware of. *See Musa v. Wells Fargo Delaware Trust Company* (Case No. 1D15-0937, 1st DCA, FL. Dec. 2015).[14] The Barone's timely objected to the sale and appealed the vacate judgement and sale cancelation orders.

The issues continued, as the 4th DCA ordered to show cause for appealability of the sale cancelation order, asserting lack of review jurisdiction, and soon after dismissed the cancelation order. Their motion for clarification, which Wells Fargo did not respond to, went unaddressed by the Court. About a month after the unlawful sale, the Broward Sherriff's office was summoned to the property for acts of 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

---

[14] *"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).

year, with an alleged and unsubstantiated identity theft issue. They did not have these issues prior to litigating Wells Fargo.

The 4th DCA ignored the multiple requests herein and in the foreclosure appeal, for assistance in properly adjudicating the vital federal jurisdiction questions. The Court questionably filed Wells Fargo and FNMA favorable non-opinioned orders herein and in the foreclosure appeal which is currently in this Court Case No. 17-1601, as well as denied a request for written opinion. What is the 4th DCA hiding? What are they afraid to address? What makes them think that they are above Constitutional law to remove the right to a fair legal process by not citing any case law to back up its decisions in contrast to federal Court requirements?

The media is deafly silent regarding these foreclosure issues involving Wells Fargo and FNMA. Fox News has been silent since working on a Broward foreclosure Court story due to many complaints, especially Judge Lazarus. That story fell eerily quiet over a year ago, after an email interview with Sr. Nora, that the Sisters of St. Francis refuse to release. A local producer substantiated the wrongdoings by visiting the courtroom for research, and quickly pointing out all the players involved. Now a year later, Sr. Nora has been out of contact, the Fox producer has been quiet, and the story delayed. The ACLU has fallen quiet after last advising it was still researching late last year, and after Mrs. Barone introduced an ex-Wells Fargo employee from their credit union, who is now believed to be no longer employed their and not returning email. For years, too many parties have mysteriously gone quiet and fallen out of the picture. A 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

This petition raises vital questions of Americans Constitutional rights of due process and fairness in the Courts for *Pro Se* litigants. The proper jurisdiction of the U.S. Government and its exclusive interest in State-actor FNMA through its unconstitutional setup of the FHFA are pivotal factors that need addressing by this Court. The seemingly endless and ever-growing list of unlawful acts against millions of American victims by habitual wrongdoer Wells Fargo need to be addressed by this Court. These issues have far reaching implications into the lives of all Americans and are of great public importance, as the government is in Total Control of trillions in American mortgages through FNMA. These issues have plagued this nation for close to a decade. FNMA stakeholders can be put in a culpable situation over millions of unconstitutional and wrongful foreclosures if these issues are not properly addressed and corrected. The facts of law will show that millions of wrongful foreclosure judgements are void and the past decade has witnessed the largest heist of American property and wealth in our Country's history. Corrupted land titles mar every state records division, and the secret securitizations, rehypothecations, default policies and multiple derivative hedges have allowed Wells Fargo, and essentially the government through NWS, to profiteer off of mass foreclosure fraud on millions of Americans. They cannot provide true clear Chain of Title because the true owners are unknown or multiple unsuspecting investment groups. The wrongful foreclosures were utilized to help fund the NWS liquidity, that was used to fund government activities, including Obamacare. FNMA doesn't own the notes to

many of the wrongfully foreclosed properties, because they sold and rehypothecated these loans multiple times to investment groups, essentially creating unlawful and undisclosed securities transactions in place of traditional mortgages. The billions in settlements for Robo-signing and fraudulent documents substantiate the need for homeowner restitution. The unlawful benefits syphoned from each property by non-legal owners calculates to staggering amounts above what was legally owed. For far too long the Courts have been corrupted by Wells Fargo to evade and conceal its numerous unlawful acts, and its time the millions of victims regain some trust in the American justice system, and it all starts right here at the nucleus, this Court. The questions are ripe for review and addressing by the Court to set rightful Constitutional precedent.

I. This Court Should Grant Certiorari To Resolve The Conflict With Jurisdiction Over Restrictions On States And Their Appendage Courts Within The National Bank Act, 12 U.S.C. 1 *et seq.*

This Court in *Watters v. Wachovia Bank, N. A.*, No. 05-1342, 550 U.S. 1 (2007) (quoting *Farmers' & Mechanics Nat'l Bank v. Dearing*, 91 U.S. 29, 34 (1875)) outlined the restrictions on states within the NBA. It made clear "the States can exercise no control over" national banks and that "[s]tate officials may not exercise visitorial powers with respect to national banks." 12 U.S.C. § 484(a). Under 12 C.F.R. 7.4000(a)(2)(i)-(iv):

"Visitorial powers" encompass *"[e]xamination of a [national] bank," "[i]nspection of a bank's books and records," "[r]egulation and supervision of activities authorized or permitted pursuant to federal banking law,"*

and "[e]nforcing compliance with any applicable federal or state laws concerning those activities." (emphasis added).

This clearly prohibits states from exercising any control over Wells Fargo with regard to affording relief herein that would affect its daily business. Additionally, states are restricted from examination of books and records, which undeniably hinders the right to full and fair discovery and explains Wells Fargo's foreclosure RFP avoidances and its evasive and insufficient discovery answers herein. Without these vital authorities, states cannot afford the Constitutional guarantee of a "fair legal process" in their Courts. Although Congress allowed for state and federal Courts to encompass the NBA, therein lies a major conflict, the assumption that a state Court, or Judge as a state official can be separated as an appendage of the state to offer a venue for an exclusive federally chartered and regulated bank like Wells Fargo with federal pre-emption rights. This is the definition of conflict, and the facts don't support a Constitutional "fair legal process" in state Court against national bank Wells Fargo.

II. This Court Should Grant Certiorari To Address Its *Younger* Direction To Intervene In Situations Of Bad Faith To Protect Federal Jurisdiction And Constitutional Rights

This Court directed 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)) 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. In *Younger v. Harris*, 401 U.S. 37, 91 S.Ct. 746, 27 L.Ed.2d 669

(1971) this Court held 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). It is obvious the state Courts herein and in foreclosure are unwilling to protect Constitutional rights, and have acted in bad faith, especially in denial of Mr. Barone's request for a cited opinion to substantiate an order. The state Courts have shown a clear bias with highly-questionable actions leaning in favor of Wells Fargo and the government's interest through FNMA. The states prejudicial direction and unwillingness to entertain federal claims is a clear act of bad faith and a violation of Constitutional rights. These acts cannot be excused, as (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).

III. This Court Should Grant Certiorari To Address Florida Appeals Court Procedure That Infringes On Constitutional Due Process With Non-Opinioned Decisions And Denial Of Requests To Substantiate Such Orders

Federal Courts follow standards like written orders citing law to back up their decisions. State Courts should be held to the same standards, as no Court should be allowed to rule without citation of law in

which its decision is based, especially a state Court reviewing Constitutional issues with far reaching implications. The appeals and review structure of the U.S. Court system is necessary, as misinterpretations of law are a reality. A non-opinioned order does not satisfy the Constitutional guarantee of a fair legal process, nor can it satisfy the common law doctrine of fair procedure. This is a state procedure that appears obvious on its face to be unconstitutional. Herein, the trial court and 4th DCA never cited case law to back up their decisions, and 4th DCA refused to comply with Mr. Barone's request for an opinion. These non-opinioned orders in FL have attorneys crying foul, to the point that one decided to put it in writing.[15] These orders fail Constitutional Due Process under Amendments V and XIV.

These orders cannot satisfy this Court's holding that "justice must satisfy the appearance of justice." in *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). This concurs with *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."

IV. This Court Should Grant Certiorari To Address The Jurisdiction Of The U.S. Government And Fannie Mae's *de facto* State-actor Status Under *Dept. of Transportation* And *entwinement* Under Brentwood Academy

---

[15] *See* Samantha Joseph, Can He Say That? Frustrated Attorney Asks, "What's Wrong With the Third DCA?", Daily Business Review, Available at: https://www.law.com/dailybusinessreview/sites/dailybusinessreview/2018/02/09/can-he-say-that-frustrated-attorney-asks-whats-wrong-with-the-third-dca/?slreturn=20180321235644

Article III § 2 Cl. 1 of the Constitution and 28 U.S.C. § 1345 outline federal jurisdiction of the government's interests. This Court concurred 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). There is no segregation to unnamed controlling parties, as the government is within litigation with the Barone's through FNMA, to be found within these controlling laws and precedents. Because the government is exclusively benefiting, as an unnamed controlling party, from the unlawful actions by Wells Fargo against the Barone's, it renders the proper venue to the federal Court system. These vital jurisdiction questions are not for a state appeals Court to decide, nor should they be ignored and unaddressed by the same Court utilizing an unconstitutional uncited order. These questions demand federal law citations to substantiate any decision in proffering a guaranteed fair legal process. Neither the state lower nor appeals Court utilized any case law to back up their decisions herein and therein the foreclosure. This cannot be considered Due Process and part of a system of fair and unbiased Judiciary.

Moreover, this Court set State-actor precedent in *Lebron v. National Railroad Passenger Corp.*, 513 U.S. 374, 115 S. Ct. 961, 130 L. Ed. 2d 902 (1995), and clarified it a decade later in *Dept. of Trans. v. Assoc. of American Railroads,* 135 S. Ct. 1225, 191 L. Ed. 2d 153 (2015), in which it directed Courts to not just rely on Congressional labels, but to assess the "practical reality" of an entity's operating status *in fact.* The temporary argument is used in defense of government's Total Control, exclusive benefit thereof and claims to hold the authority to sue on FNMA's behalf. 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). FNMA is claimed to be a private company, but in 'reality" it is operating for the exclusive financial benefit of and under the Total Control of the government. The temporary label was put to rest by the FHFA IG who stated, as time passes it has become *"more obvious that the conservatorships would not be temporary."*(emphasis added)[16] and by FNMA's 8-k filed after the seizure which stated *"[t]he delegation of authority [would] remain in effect until modified or rescinded by FHFA"*, and *"[the] conservatorship has no specified termination date."* (emphasis added).[17]

FNMA also falls under *de-facto* State-actor status when utilizing this Court's "entwinement test" in *Brentwood Academy v. Tennessee Secondary School Athletic Ass'n*, 531 U.S. 288, 297, 121 S.Ct. 924, 148 L.Ed.2d 807 (2001). FNMA's actions are clearly entangled with State-action as this Court found in *Brentwood*. This test is proper as it addresses instances in which government assists and/or a State-actor "affirmatively authorizes, encourages, or facilitates private conduct that violates the Constitution."[18] Accordingly, Constitutional rights protect private property from government use, and this Court holds that an American's ("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).

---

[16] Fed. Hous. Fin. Agency, Office of the Inspector Gen., *Enterprise Reform*, 2, 5 https://perma.cc/3EDX-CYXX

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

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

Furthermore, in *Hollingsworth v. Perry*, 133 S. Ct. 2652, 186 L. Ed. 2d 768, 2013 U.S. LEXIS 4919 (2013), this Court outlined the agency test, which is conclusive when looking at FNMA's *de-facto* operational status. FNMA is acting agent on the government's behalf and with its right of Total Control over its operations and finances. This concurs with, *("An essential element of agency is the principal's right to control the agent's actions.")* (emphasis added).[19] Accordingly, under these holdings, FNMA is a *de-facto* State-actor, subjecting it to federal jurisdiction.[20]

The government has syphoned billions of dollars out of FNMA as the exclusive financial benefactor, while millions of Americans wrongfully lost their homes. This crisis has left millions of American families homeless and in poverty, just look at the problems plaguing San Francisco, Wells Fargo's headquarters, and the makeshift tent city nearby the federal Courthouse in downtown Fort Lauderdale. The Treasury Sectary advised publicly that NWS monies were used for government operations, including funding the gap in Obamacare. These are Constitutional and federal violations, which give the federal Court jurisdiction, as this Court holds the federal Court shall decide arguments over how to interpret the Constitution and federal law. (*See Marbury v. Madison*, 5 U.S. 137 (1803)).

V. This Court Should Grant Certiorari To Address The Vital Issues Of Void Judgements,

---

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

[20] *See* Brian Taylor Goldman, "The Indefinite Conservatorship of Fannie Mae and Freddie Mac is State-Action", 17 J. Bus. & Sec. L. 11 (2017), Michigan State Univ. College of law, *Available at* http://digitalcommons.law.msu.edu/jbsl/vol17/iss1/1

Unlawful Securitization & Rehypothecations Hidden From Homeowners And Collection Of Benefits Not Applied To And Above Legal Debt Owed

Long standing doctrine prohibits third-parties like Wells Fargo from asserting the rights of another. This conflict with foreclosure Courts allowing for presumeption of standing is unconstitutional. Legal standards utilized in other types of litigation must be adhered to as to not discriminate, which has been the case all too often in foreclosure Courts. 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) (*"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). This concurs with long-held Florida Supreme Court holding in *Smith v. Kleiser*, 91 Fla. 84 (Fla. 1926) (*"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* concurs, along with Fed. R. Civ. P 17 (*"An action must be prosecuted in the name of the real party in interest."*) (emphasis added) and Rule 19 which requires parties to a suit when the Court cannot accord complete relief among existing parties. Wells Fargo does not own the debt and cannot legally surrender any of the alleged note owner's rights, or any unknown investment groups who truly own the debt and right to foreclose. Wells Fargo does not really know who the rightful owners of millions of mortgage notes and the rights thereto are, as they were transferred and pledged multiple times in undisclosed securitizations and rehypothecations. Neither FNMA nor Wells Fargo can have any rights to foreclose on the notes, as they

sold these rights to investors that are still in legal battles over these failed RMBS investments. FNMA's own guidelines create a conflict, as it states "Fannie Mae is at all times the owner of the mortgage note, whether the note is in Fannie Mae's portfolio or whether owned as trustee..."[21] FNMA claims that it never relinquishes ownership in the mortgage notes, but through securitization it sells its ownership and rights thereto. Why would any investor buy a mortgage note without the right to foreclose? As in that scenario Wells Fargo and FNMA have incentive to sell the notes and push for default so they could unethically double benefit from foreclosure. Wells Fargo utilized secret de-fault policies, including the admitted fraudulent FHA policies, CDS, CDOs, and similar derivatives to profiteer from foreclosures, giving it an incentive to push its customers, like the Barone's into default and drag it out to make it next to impossible for them to cure. Wells Fargo through these secret benefits has collected sums far in excess of the legal debt owed and it did not credit these ill-gotten gains to the debt balance. It is unlawful and unethical, to profiteer off the demise of customers while wrongfully removing them from their property.

Clear chain of title has not been proffered because it doesn't exist, and without this vital information a party cannot further a wrongful foreclosure. Accordingly, the lack of clear chain of title renders the Barone's and millions of foreclosure judgements void. Who really owns millions of notes, including the Barone's, and has the right to enforce them. Documents have come forth showing inconsistent arguments by alleging one thing with investors and another with borrowers, within litigations between share-holders and RMBS holders

---

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

against FNMA and banks. Cases have solidified that presumption can no longer play a major role in foreclosures, as it does not in other Court proceedings. 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). [22]

This Court is the ultimate protector of Americans Constitutional rights, and the issues herein warrant righting these wrongs and regaining the public's trust in the legal system for generations to come.

CONCLUSION

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

Dated: July 23rd, 2018

By: _____

John Barone
PO Box 5193
Lighthouse Point, FL 33074
954-644-9900
Pro Se Petitioner

[22] *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