19-346
No. 19-

In the
Supreme Court of the United States

ANDRZEJ MADURA
ANNA DOLINSKA-MADURA
Petitioners

v.

BANK OF AMERICA N.A. FKA.
BAC HOME LOAN SERVICING, L.P., ET AL.,
Respondents

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

PETITION FOR WRIT OF CERTIORARI

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The mortgage purportedly foreclosed had been rescinded in accordance with TILA long prior to commencement of the foreclosure suit. Without defensive pleading or underlying proof, the district court entered July 17, 2013 Summary Judgment of Foreclosure, concluding that the petitioners' May 23, 2001 rescission notice sent the creditor Countrywide Home Loans Inc., was "patently frivolous" as **was not sent to Bank of America NA (Bana)** a stranger to the petitioners who had no connection to their loan until its purported purchase eight years after they effected loan rescission. The following issues were essential to disposition of the foreclosure case, but were never actually the subject of competent proof in this action:

QUESTIONS PRESENTED

Whether, under the Truth in Lending Act and controlling case authority, the lender or creditor, after receipt of timely notice of rescission of a non-purchase money mortgage, given by the borrower, may decline to follow the prescribed procedure under sec 15 U.S..C 1635(b) provided for challenging or effectuating the rescission, and thereafter simply proceed with foreclosure of the rescinded mortgage, without pleading or proof of any deficiency in the rescission notice, and without pleading or proof of the subject matter jurisdiction of the chosen foreclosing court.

Whether, under the Truth in Lending Act and controlling case authority, the foreclosing court, upon the borrowers' defense that said court lacked subject matter jurisdiction to foreclose the previously duly rescinded mortgage, can declare the rescission notice to be insufficient (or "patently frivolous") for

the purpose without pleading or proof to that effect, first having been offered by the foreclosing creditor

a) where the rescission notice was timely given to the proper party, b) where it described TILA deficiencies as its basis, c) where it requested "invalidation" of the loan, though no magic words are required, d) where the district court examined, and had opined that the borrowers rescission notice was timely, showed their intention to rescind, opined that the lender failed to disclose required TILA disclosures, and opined that Maduras had "arguably rescinded", e) where the creditor made no response to the borrowers' rescission notice, timely or otherwise, as required by the Act, f) where the creditor made no attempt, belated or otherwise, to secure relief from its delinquency and g) where the creditor made no pleading and offered no proof that the notice was deficient.

Whether a final judgment entered foreclosing the said mortgage under circumstances described violates the borrowers right to due process under the 5th and 14thamendments to the US Const. where the purported security no longer constituted any lien on the subject property foreclosed;

Whether, following the borrowers rescission voiding the security interest of the mortgage, the borrowers' repayment of the principal of the loan, which TILA would have obligated them to do, but done so voluntarily, as a result of the creditors failure to comply with its TILA obligations, could operate as some waiver of rescission or ratification of the creditors inaction, so as to effectively revive the mortgage voided by the prior TILA notice, thereby permitting foreclosure of the "revived" mortgage.

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PETITION FOR WRIT OF CERTIORARI

Petitioners, Andrzej Madura and Anna Dolinska-Madura ("Maduras"), respectfully request that the Court issue a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

OPINIONS BELOW

The opinion of the Eleventh Circuit Court of Appeals is an unpublished *per curiam* opinion (A1-9).

JURISDICTION

The judgment of the court of appeals was entered on May 15, 2019. The jurisdiction of this Court rests on 28 U.S.C. § 1254(1)

RELEVANT CONSTITUTIONAL, STATUTORY AND REGULATORY PROVISIONS INVOLVED

Relevant provisions of the U..S Condtitution, Truth in Lending Act, 15 U.S.C. § 1601 et seq., and of the Federal Reserve Board' Regulation Z are reproduced in Appendix 31-33.(A31-33):

INTRODUCTION

The Eleventh Circuit affirmed denial of Rule 60(b)(4) motion for relief from void SJ of foreclosure as entered without subject matter jurisdiction to foreclose void mortgage, on purported three grounds:

1) This Court's decision in *Jesinoski* has no bearing on SJ of foreclosure as to loan rescission;

2) The district court's and the 11th Circuit's holding: the Maduras' loan rescission is "patently frivolous"as

May 23, 2001 intent to rescind loan was not sent to a stranger,Bana,who had no connection to their loan; 3) The timely effected loan rescission was waived because the current with payments Maduras after loan rescission paid the remaining debt on the Note.

This Court, in *Jesinoski,* explained when rescission was effected pursuant to TILA. However, the loan rescission issue is overloading federal jurisprudence with cases like this that show the inconsistency of the district and Circuits Courts with federal TILA statutory law and this Court's *Jesinoski* decision.

The issue is whether but timely received but ignored by the creditor nonjudicial rescission notice under the TILAAct, renders rescission "effected" per s.1635(b) and this Court's decision in *Jesinoski* and whether is mandating of by the Bureau's the creditor's action which if not performed, voids the security interest.

This case presents also the district court and the 11thCircuit's pressing, important, never settled by this Court or Circuits issue, as to whether borrowers current with the payments at loan rescission, by their payments after effecting their loan rescission towards the debt on the NOTE, waived already effected rescission, and revived void mortgage. Further, this case presents the district court's and the 11thCircuit's decisions in direct conflict of the TILA statutory law, this Court's *Jesinoski,* and all circuits on the issue of alleged insufficiency of the Maduras' rescission notice. This was a basis for the district court's SJ foreclosing the Maduras' principal residence, for the last 30 years their only homestead, and for the 11thCircuit's affirmance at bar.(A8). This was a basis for the district court's denial motion to dismiss foreclosure counterclaim due to its

subject matter jurisdiction to enter foreclosure of void mortgage by on June 18, 2001 effected loan rescission, ignored by the Creditor CHL(A 8). Congressional intent in enacting the federal Truth in Lending Act("TILA") was to protect consumers with clear rescission procedures, which the Maduras followed. *Jesinoski* cleared when loan rescission is effected but the banks and lower courts are still inconsistently applying the law this Court sought to clarify by its decisions in *Jesinoski.* In summary, this case presents an excellent vehicle for resolving the split in authority over the set forth here issues and over presented questions. Bana lacked legal authority to foreclose. *Res judicata* or collateral estoppel are inapplicable to the inconsistent 11th Circuit's orders and to void foreclosure judgment. The foreclosure judgment was invalid, as was the sale, because of the Maduras' rescission. Both TILA and this Court's holdings in *Jesinoski* are clear on this point. The Eleventh Circuit's opinion is in direct conflict. Decades of the misapplication of TILA's law prior to this Court *Jesinoski* should not be followed by years of the additional misapplication of it by the Circuits.

STATEMENT OF THE CASE

Petitioners("Maduras") filed Rule 60(b)(4) motion due to the district court's and the 11th Circuit failure to determine challenged subject matter jurisdiction ("SMJ") issue pertaining to a purported mortgage foreclosure. The challenged rulings do not comport with the requirements of TILA, or with this Court's decision in *Jesinoski,* on the subject of mortgage rescission as a result of their inconsistent orders

relating to Maduras' loan rescission notice, which was ignored by the Creditor, Countrywide Home Loans Inc.("CHL"). The inconsistent decisions disregarding federal TILA statutes this Court's decision in *Jesinoski* are continued in Opinion below. On or about the 23rdday of May 2001, the Maduras served notice of rescission of their loan transaction purportedly consummated on the 26thday of July 2000(A9). This loan was a refinance of a previously existing mortgage with about 7% interest. The Maduras, mortgaged their residence to Full Spectrum Lending Inc.,("FSL") a subsidiary of Countrywide Home Loan Inc("CHL"). The agreed loan allowed them to repay any time without penalty as stated in the July 26,2000 closing TILA disclosure and the Adjustable Rate Promissory Note("NOTE") They sent notice of rescission (A39) the creditor and loan servicer, CHL, to whom they sent the first and all subsequent loan payments and the same was received by CHL on the 29thday of May 2001(A38) . They rescinded the loan due to non-disclosure at loan closing, and thereafter, of: 1) a second Note, created by CHL and operative in a subsequent foreclosure action, with forged initials of Mr. Madura's on Pg.2 under the prepayment penalty, which had not been included on the original NOTE signed at closing; 2) the prepayment penalty[1]; 3) a second TILA disclosure, created by CHL, later employed in foreclosure containing forged dated "signatures" of the Maduras under added prepayment penalty. The district Judge presiding in underlying forecloseure, judicially noticed original & forged sets of the Note&TILA (Doc.71,441,477-1) [2] Prior to loan rescission, after long investigation the

Prior to loan rescission, after long investigation the Maduras located copies of forged Note and TILA in CHL's Title Company, and, on advice of Police and FBI,retained Mr.Thomas Vastrick,forensic dcument examiner, who also serviced federal & state courts and US Postal Master. Vastrick's Nov. 25, 2001 report revealed that the Maduras dated signatures on the TILA disclosure and Mr. Madura's initials in Pg.2 of the Note were not genuine(Madura2 SJ,*Id4)*[2] Due to further non-disclosure the Maduras sued in *Maduras v. CHL etal,* 2002 CA2358 Madura1for fraud, forgery, loan sharking statutory usury and RICO. Borrower, Mr. Madura was compelled to arbitrate at National Arbitration Forum(NAF) (if he chose to do so). He was precluded bringing claims judicially. Until foreclosure, he had no day in courts. Mrs.Madura amended her claims with statutory TILA. She did not sue for non-judicial rescission per 15 USC s.1635(a)(b), which does not requiring legal action in order for rescission be fully effective. Rather CHL was in statutory s.1635(b) default, for having ignored Maduras' rescission notice). On 01/20/2004 Mrs.Madura through the interpreter, admitted,without CHL counsel objection, into

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[1] The rescission is mandated just for non-disclosure of prepayment penalty omly. See 15 U.S.C. § 226.18 (k)(1):" When an obligation includes a finance charge computed from time to time by application of a rate to the unpaid principal balance, a statement indicating whether or not a penalty may be imposed if the obligation is prepaid in full."

[2] The 11th Circuit confirmed: 1) 'CHL created not delivered to loan closing Note and Tila, with prepayment penalty, whuch were operative in underlying foreclosure. It affirmed. July 2008 SJ in *Maduras v. Countrywide et al,* 2008 WL 2856813 (M.D.Fla.)(Madura 2)'s holdings:

a) "Although there was a dispute over who signed what, an Adjustable Rate Note("Note') and a Truth in Lending Act("TILA") disclosure, were executed at the closing. These documents reflect that there was no prepayment penalty."*Id at 2;*

Madura1's evidence Vastrick's forensic report and On 01/20/2004 Mrs.Madura through the interpreter, admitted,without CHL counsel objection, into Madura1's evidence Vastrick's forensic report and sworn testimony of forgery, which was judicially noticed in Madura2(DE25 there) and by Judge Covington in foreclosure)(DE 71-1,523-1). At SJ hearing on Cross SJmotions Circuit Judge held as to forgery:"the Jury would have to decide"(A29), but waited 14 months and granted SJ in CHL's favor "though remains factual dispute"(as to forgery claims)(A26). As to fraud, the court held that she did not incur damages. It dismissed criminal usury in excess 25% as she was not a borrower because she did not apply for a loan but the court record evidences that she signed the riders, the mortgage, the Note and TILA. It dismissed the TILA claim on limitations grounds although her amended claim in 2003 related back to May 1, 2002, the date of the original complaint. The 2nd DCA Florida Judge Covington,who 7 years later presiding in foreclosure, affirmed this "SJ." Thus, after the Maduras repaid the debt on the original NOTE signed in closing Mr. Madura proceeded,husband was compelled arbitrate. On July 24, 2007, after being compelled by the Court, CHL, for the first time, disclosed its forged TILA. CHL disclosed forged note in May 10, 2001 facsimile, but produced it for the first time in Madura2 by Vice-President General Counsel Jay Laifman at Jan.2008 deposition taken by Mrs. Madura, pro se with the Interpreter.

Under 15 U.S.C. § 1635(b), CHL had 20 days from the date of receipt of the May 2001 rescission notice, within which to perform certain acts and/or to

file an action to determine the terms of under which the rescinded loan transaction, specifically the Maduras' tender, would be completed. CHL was in default of their obligations under Sec.1635(b) for not having responded to the notice and, therefore, the rescission effected by petitioners was fully effective from and after 20 days of its receipt on 18 June 2001, As a result, the subject loan transaction was fully void from and after 18June 2001 by operation of that statute As a non-judicial rescission described in 15 U.S.C.s.163 (a)(b), no legal action on the part of the borrowers was required in order for rescission to be fully effective. Since the May 29, 2001 receipt of the rescission notice, and at 20 days later June 18, 2001 s.1635(b) statutory deadline, neither CHL or any other entity, have taken action whether in the form of a pleading or otherwise, which would provide a basis for relief from the consequences of their failure to comply therewith. CHL has taken no action which could have forestalled, or avoided, the rescission of the loan transaction. As a result, without judicial relief from the consequences of its default, the mortgage was void; no mortgage remained to be foreclosed; and no court was possessed of subject matter jurisdiction to render judgment in a foreclose action regarding the subject property, As a further consequence, in the absence of pleading by defendant seeking to be relieved of the consequences of its inaction, no court was possessed of subject matter jurisdiction to rule on the issue, since the rescission described in §1635 was a nonjudicial act which needed no judicial validation.[3]

[3] Rescission is not a consequence of judicial action ....Courts action: "has no bearing upon whether and how borrower- rescission under §1635(a) may occur.",*Jesinoski 793.*

As a result, the non-judicial rescission was not subject to a *res judicata, or* claim or issue preclusion analysis. The post rescission orders related to the subject loan were nullities because courts lacked subject matter jurisdiction to foreclose a mortgage which had been voided. However, on April 23, 2007 CHL, at federal Madura2 action, not through its attorneys but improperly by private means, sent Mr. Madura a Default and Acceleration Notice letter threatened him with foreclosure in case of failure pay $8,249.88 on or before May 23, 2001(A49). Mr. Madura, by phone and in letter reminded CHL, the creditor, of the June 18,2001 rescission and the agreement that post rescission payments be accrued towards the principal of the debt on the NOTE. He attached certified copy of May 23,2001 rescission notice, forensic report and the transcript of Jan. 20, 2004 hearing of admitting, without CHL's objections, into Madura1's evidence, the forensic report and testimonies of forgery of CHL's Note and TILA. The forensic report generated in Madura2 indicated that not decivered to the closing the Notice of Right to Cancel contained dates not signed by the Maduras.

CHL stopped servicing, the acceleration and May 23, 2007 foreclosure(A54). This undisclosed loan owner, apparently, liquidated rescinded loan (A65). Three years later the Maduras received Nov. 2009 letter from Texas with a copy of improper unauthorized payment of their 2009 real estate tax by a stranger BACTaxServ.Corp, since its purchase in 1989. Maduras had always, each March after tax year, paid taxes at Tax Collector Office. Surprised, Maduras sent BACTaxServ.Corp.and HomeLoan Serv.L.P.letters warning of purchase or assignment of this rescinded loan and of the forged documents

(A58-60). As these and following letters were ignored, Maduras filed in Manatee Court a complaint for statutory violation of RESPA. This case was answered, and removed, by Bana to M.D.Fla.Court. Despite the letters, Bana, five months after its Dec.2011 Answer to RESPA claims, filed counterclaim of foreclosure of void mortgage concealing that loan was rescinded(DE77). In the foreclosure case, Bana appeared as the Maduras' loan owner or servicer stating that since loan closing it had been receiving the payments from Maduras.

Later, **54 days after the discovery deadline, Bana filed an affidavit, undisclosed in discovery, of its employee** (signed not before of public notary) affirming, as its own, a loan history derived from the loan history of CHL which had been generated by Maduras actual payments to CHL for principal payments made on the rescinded loan. This Bana loan history falsely represented, that since loan closing, even since 01/1986 (four years prior their home was built) it was receiving the Maduras' loan payments(A52-53), which is contradicted by CHL loan history. See result(A54,62-64). In addition, Bana falsely stated that sent April 23, 2007 Default Notice to Mr.Madura,yet in 2007 Bana was not even a privy to Countrywide Home Loan Inc. who serviced the subject loan but not on behalf of, or as a component of, Bana.(A49).

District Judge Covington, though lacking SMJ, apparently, was impressed by the Bana loan" history" and entered a wrongful foreclosure judgment twisting court's record in nonsensical holding:"[t]he Maduras incorrectly assert that Bank of America failed to give proper notice of default and acceleration. The 11thCircuit lacking SMJ affirmed

Based on the same plain error **"The Bank sent the Maduras a default letter dated April 23, 2007**, giving the Maduras until May 23, 2007, to cure the default or face acceleration." (Ap17) (enhanced added).

"In accordance with the acceleration clause **BOA sent the Maduras a default letter on April 23, 2007**, which notified them that the failure to cure the default on or before May 23, 2007 would result in acceleration of their loan and commencement of a foreclosure proceeding. The district court concluded BOA accelerated the loan on May 23, 2007, when the Maduras failed cure the default"593 Fed App'x*at 847* The issue is Maduras were also defrauded by Bana, that somehow, due to 2008 merger with CHL Bana somehow owned or serviced Maduras loan through CHL despite that fact that the loan had been rescinded in 2001 and, as a result, it was not a property right or interest which Bana could have acquired or succeeded to by way of its 2008 merger with CHL. The Bana loan history was false and misled the court. Further, Maduras were not aware until the Aug.1,2016 Fannie Mae's disclosure(A50, 51) that Bana, in an underlying action, concealed that since loan closing, at loan rescission and thereafter, ther Maduras' loan has been liquidated by Fannie Mae. Thus, contrary to the 11th Circuit's conclusion that"Maduras have not raised any evidence that was not considered at the time of the final judgment"(A8), created a new situation and courts never adjudicated these new facts.

Maduras' verified emergency motion for Rule 37's automatic exclusion undisclosed witness, was denied after remaining pending for 100days. The 11thCircuit affirmed Florida and federal violation of dueprocess rights to depose undisclosed witness'and

her, apparently, untrue testimony(A16) despite of IB's supporting unrebutted case law.
Middle District of Florida, though lacking SMJ to foreclose a void mortgage, has entered July 17,2013 SJ of foreclosure. Judge Covington, three years after entering SJ offoreclosure, entered an confirmation of order of sale of the property which was the subject of the void mortgage. In May 2017 she ordered the eviction of the Maduras from their home of 30years. As a result of the foregoing, they were dispossessed of their homestead by operation of a purported foreclosure judgment entered by a court lacking subject matter jurisdiction from the outset.

REASONS FOR GRANTING THE WRIT

This Petition presents court conflicts on legal issues of exceptional importance to the nation's consumers. Bana lacked legal authority to foreclose. The Eleventh Circuit in this case blatantly disregarded applicable this Court's and its own precedents in affirming despite this Court's unanimous *Jesinoski* decision. This Court ruling in *Jesinoski*, settled the circuits split regarding the effectivness of sent the lender borrowers' notice of intent to rescind loan, relying on the plain language of the TILA statute. This is the central issue in this case as it is *pari materia* to the lack of the courts' SMJ over foreclose of void mortgage effected by such notice. Though the effect is also unambiguously spelled out in 15U.S.C. §1635(b), courts are inconsistently ruling on this important federal TILAprotection law. Because the result in the case directly conflicts with this Court's decision in *Jesinoski* and federal TILA protection law, this Court should resolve the all conflicts and provide guidance to lower courts on this matter

relating to millions of consumers in the country. The TILA protection must be followed where as here, the Maduras effectively rescinded the loan but lost home by invalid foreclosure, where the right to foreclose was extinguished as a matter of law. This case presents an excellent vehicle for resolving continuous unability of the authorities, specifically of the Eleventh Cicruit and its US.MD.Fla.Court, to to answer the questions presented and to resolve an important question of federal TILA law that has been"decided by the Eleventh Circuit but which has not been, but should be settled by this Court. Further, the Eleventh Circuit decided an important but another federal question in a way that conflicts with relevant decisions of this Court and with majority of the Circuits on same important matter.

I. The Eleventh Circuit twice decided the important question of TILA, which has not been, but should be settled by this Court that the borrowers' post-rescission repayment of the principal of the loan operates as a waiver of TILA rescission effectively "reviving" the mortgage voided by the prior TILA notice, thereby permitting foreclosure of the "revived" mortgage

The 11thCircuit, by reporting only:"The district court found that Madura nullified any rescission by continuing to make payments."(A8), did not prove challenged SMJ but conflicted its *de novo* review of denial of Rule 60(b)(4) motion(A9) It aligned with "Bana's concept"(A46) repeated by the district court(Judge Covington)(20-21). In fact Judge Fay, and his panel decided that post-rescission payments

of remaining debt in the Note effectively revived the mortgage voided by the prior TILA notice, thereby permitting foreclosure of said"revived"mortgage. Thus, the 11thCircuit entered the inconsistent Opinion in direct conflict with the Fay Opinion in *Williams v. Homestake Mortg.,* 968 F.2d 1137 (11thCir.1992), the first 11thCircuit's precedent on the same issue:

"Williams was current on her payments despite the fact that she was not obligated to make those payments",*at1142*;

" Williams rescinded on October 27,1987 and still was making payments until July 29, 1988.",*at1138.*

Thereafterthe 11thCircuit, Judge Fay, delivered inconsistent affirmance of the SJ of foreclosure in this case directly contradicting its first precedent in *Williams*:"the Maduras 'ratified the loan' by post rescission payments.",*Maduras .v. BAC Home Loans Servicing LP,* 593,F.Appx.834(11th Cir.2014)*at844,* despite of the Maduras' arguments in IB, that "reviving mortgage is not provided in §1635 statutes.

The clear language of s.1635 *et seq* nowhere provides that the borrower may nullify" any rescission" by payments towards the remaining debt on the Note. The 11th Circuit overlooked that the mortgage loan transaction is specifically distinctive from general contract law. It failed to TILA the required of text-based analysis. "Ratification" is yet another common law concept foreign to TILA. See this Court's discussion in *Jesinoski* that TILA rescission differs from a common law rescission. The 11th Circuit's position shows that it relied on theory that Maduras had somehow waived or ratified the Countrywide Home Loan Inc. Sec.1635 (b) default or "inaction"; and that this somehow succeeded in

undoing the effect of the Maduras' timely rescission notice. In any event, the concept of "waiver" under TILA is futile as rescission is effective from service of the notice. Bana's, the district court's and the 11thCircuit's concept of "ratification"]is inconsistent with s.1635(b)'s of TILA, which voids the mortgage and the interest but not the principal on the note. The Maduras explained this partial SJ motion(DE415-Pg.9), in Rule60(b)(4) motion at bar and on appeal below citing the Official Board Commentary to Reg.Z that, by being current with the payments at loan rescission and thereafter, they did not ratify nor revive the already rescinded mortgage, nor did they waived rescission:

"For purpose of this section, the addition to an existing obligation security on a consumer's principal dwelling is a transaction. The right of rescission applies only to the addition of the security interest and not the existing obligation. The interest in property is: automatically negated, regardless of its status and whether or not it was recorded perfected." § 226.15(d)(1); 226.23(d)(1) (enhanced added) (Official Board Commentary to Reg.Z)

The 11th Circuit twice (in Nov.10, 2014 affirmance and in Opinion below) ruled in conflict with this Courts emphasis on the importance of the plain meaning rule, stating that if the language of a statute or regulation has a plain and ordinary meaning, courts need look no further and should apply the regulation as it is written." In most cases, a textual reading will be dispositive. *United States v. Ron Pair Enters., Inc.,* 489 U.S. 235, 242 (1989). Furthermore, "absent some obvious repugnance to the statute, the . . . regulation implementing [TILA]

should be accepted by the courts." *Anderson Bros. Ford v. Valencia,* 452 U.S. 205, 219 (1981).

Thus, contrary to the position of the 11th Circuit (A8) and the district court(A21) and Bana(A46), a federal loan is not a single contract as it includes the note and mortgage but only the security interest and fees were void upon rescission. The issue of fact, the private non-judicial mortgage rescission may not be revived by subsequent events, unless a courts' intervention timely occurs within 20 days from the receipt of rescission notice and occurs upon the initiative of the creditor. See s.1635(b), which voids the mortgage only but not the debt on the note. The district court and theCircuit, in conclusory findings, failed to give to TILA as was
required by the text. The Maduras, were current with loan payments at loan rescission and until the Nov. 2006 pay-off of the debt on their original note delivered and signed at the closing. The mortgage and security interest and fees were void and the cost of closing were credited due to June 18, 2001 effective loan rescission.

A clear language of s.1635 *et seq* nowhere provides that borrower may nullify "any rescission" by paymens towards the remaining debt on the Note. Following this 11thCircuit's concept a borrower, after loan rescission, may keep remaining principal to the lenders' detriment. The 11th Circuit overlooked that mortgage loan transaction is specifically distinctive from general contract law. It failed to give TILA law the required of text-based analysis. "Ratification" is yet another common law concept foreign to TILA. See *Jesinoski* that TILA rescission is differ from a common law rescission. The 11th Circuit's position shows that it relied on theory that Maduras had

somehow waived or ratified CountrywideHome Loan Inc. Sec.1635(b) default or "inaction"; that somehow succeeded in undoing the effect of the timely rescission notice. To the extent that this concept may not "revive" the court's SMJ to pursue with the rescinded mortgage, the said 11thCircuit's "theory" is futile. In any event, the concept of "waiver"under the TILA is futile as rescission is effective from service of the notice. Contrary, Bana, the district court's and the 11th Circuit's concept of "ratification" is inconsistent with s.1635(b)'s TILA Statute which void mortgage and the interest but not the principal on the NOTE. The Maduras explained this courts in underlying foreclose in partial SJ motion (DE415-Pg.9), in Rule 60(b)(4) motion at bar and on appeal below citing the Official Board Commentary to Reg.Z that, by being current with the payments at loan rescission and thereafter, they did not ratify nor revive the already rescinded mortgage, nor did they waived rescission:

"For purpose of this section, the addition to an existing obligation security on a consumer's principal dwelling is a transaction. The right of rescission applies only to the addition of the security interest and not the existing obligation. The interest in property is: automatically negated, regardless of its status and whether or not it was recorded perfected." § 226.15(d)(1); 226.23(d)(1) (enhanced added)

(Official Board Commentary to Reg.Z)

It proves the 11th Circuit twice (in Nov.10, 2014 affirmance and in Opinion below) conflicts with this Courts numerous times emphazing the importance of the plain meaning rule, stating that if the language of a statute or regulation has a plain and ordinary meaning, courts need look no further

should apply the regulation as it is written." In most cases, a textual reading will be dispositive., *United States v.Ron Pair Enters.,Inc.,*489U.S.235,242 (1989).

Thus, contrary to the position of the 11thCircuit (A8) and the district court(A21) and Bana(A46) a federal loan is not a single contract as it includes the Note and mortgage but only security interest and fees were void upon rescission. The issue of fact, the private non-judicial mortgage rescission may not be revived by subsequent events, unless courts' intervention timely occurs within 20 days from the receipt of rescission notice and occur upon the initiative of the creditor. See s.1635(b), which void the mortgage only but not the debt on the Note. The district court and the 11thCircuit, in conclusory findings, failed to give TILA law the required of text-based analysis to consider that the mortgage transaction is distinctive from common contract law.

The Eleventh Court,did not penalize Williams for making post-rescission payments. The Maduras had every reason expect that the TILA statute meant what it said regarding tender. Their payments, of the principal balance on original note signed at closing would not amount to a ratification of CHL silence or its failure to participate in statutory process under s.(b). This clearly show that the 11th Circuit failed to address TILA and Commentary and conflicts with *Kontrick v.Ryan,*540.US.(2004).443 (by failing to give this law the required sort of text-based analysis.

However,the Eleventh Circuit decided for the third time(including Opinion below) an important question not settled by federal TILA law that has not been, but should be, settled by this Court. The

issue presented in this petition is a matter of national importance.i.e.as the *Williams* and *Maduras* cases. Some circuits apparently followed or still may follow the Eleventh Circuit's erroneous interpretation of the TILAstatutes. As this issue was never decided by this Court, this Court should determine the proper"interpretation"of the TILA rescission statutes. This Court, in *Jesinoski*, cleared the circuits' interpretations on some issues of the TILA statutes, however other parts of TILA are still being misapplied resulting in losses of the borrowers' properties, as it happened here. To effectuate TILA's purpose, a court must construe 'the Act's provisions liberally and requires **absolute compliance** by creditors,*Hauk v.JPMorgan Chase BankUSA*,552 F.3d1114(9thCir.2009,*Id at1118.*

II. The district court and the 11thCircuit failed to require proof of the challenged subject matter jurisdiction, despite the rule that, once challenged, subject matter jurisdiction must be proven.
Man v.Thiboutot,100 S .Ct. 2502(1980)

Based on both Courts' failure to prove challenged SMJ over foreclosure of void mortgage,which once challenged must be proven and this Court's decisions in *Jesinoski,* the Maduras, filed March 18, 2018 Rule 60(b)(4) motion for relief from void order, and the Memorandum of Law as to thisCourt's and circuits' requirements for the exercising SMJ. Judge Covington's order failed to prove SMJ(A9)

"[A] court has jurisdiction to determine its own jurisdiction. *U.S.v.United Mine Workers of Am.*,330 U.S.258, 292(1947). Here, the district court had only juridiction to determine that it lacked SMJ.

"When a district judge exercised supplemental jurisdiction over state-law claims, state law governs substantive issues .....",*McDowell v.Brown* 392F3d 1283,1294(11th Cir.2004). Further, the district court's basis of jurisdiction over state foreclosure action is futile as barred by this Court's decision in *Daimler Chrysler Corp. v. Cuno,* 547 U.S. 332 (2006) (dismissing for lack of standing) holding: "Supplemental claim must satisfy the ArticleIII doctrines of standing," Further, the district court purportedly attempted to "decide" the efficiency of the Maduras' rescission notice ("the Maduras' notice was not a proper")(A8), but ventured outside the scope of the pleadings given the fact that Bana's counterclaim lacked even a remark as to loan rescission or SMJ. The Florida appellate courts are well settled that: "A court may not enter an order outside the scope of the pleadings ", *Lovett v. Lovett,*112 So.768(Fla.1927),and other DCAfollow. The district court,and the 11thCircuit, failed to prove SMJ,and are in direct conflict with this Court's requirements Justice William Rehnquist's Canons of Statutory Construction.Each statutory provision should be read by reference to the whole act. *John Hancock Mut.Life Ins Co.v. Harris Trust &Sav.Bank,*114 S.Ct.517,523(1993)(Pg.93-97); "Preponderance of the evidence standard applies in civil cases"*Grogan v.Garner,*498U.S279,286(1991); "Prove on the record all jurisdiction facts related to the jurisdiction asserted"*Town of Lantana, Fla.v.Hoppe,*102F.2d118(5thCir.1939); "Follow statutes, as statutory provisions have the same import as provisions governing subject matter" *Kontrick v.Ryan,*540U.S.(2004). The 11th Circuit's

per curiam Opinion failed to follow *Kontrick* and did not prove the district and own SMJ:

A. Countrywide refused to rescind the loan"(A2). Neither July17,2001 CHL letter contains refusal or synonym(A48) nor was a response to May 23,2001 notice. The Comptroller of Florida Investigation on June 4,2001 directed CHL respond to #CP01500483 (A47)'s failure to deliver to the closing CHL's forged Note&TILA with prepayment penalty(Pg.5n2 above);

B."Argument that the Maduras had rescinded their loan were barred...because they had already pursued them in Madura1 their first action in Florida state court."*Id at517-18* (A3) is misleading. Madura1SJ evidences **NO** Maduras' rescission claim nor adjudicating them(A21-30). Madura2SJ: "Plaintiff did not sue for rescission until she filed suit in this court in Nov.2006"2008 WL 2856813,(M.D.Fla)*Id11* **"Mrs.Madura did not sue for rescission in Madura1"**, 593,F/App'x,834(11th.Cir.2014),*Id843;*

C. The affirmance of SJ of foeclosure is in direct conflicts with its Aug.2017 *Waisome v. JPMorgan ChaseBankNAetal*,No.16-1653(Doc.85-10912-007z) ("[R]escission is [timely] effected when the borrower notifies **the creditor** of his intention to rescind [TILA] does not also require him to sue ...);

D. Opinion below held that Madura 2 granted SJ in favor of BOA(A3) while its affirmance of SJ of foreclosure held that Madura 2 granted SJ **in favor of Countrywide**,593,F.App.*at838*.

E. The 11thCircuit's pssages of "significant higher standard"contradicts its *de novo* reviewed.

The affirmance of the Madura SJ, where Madura 2 ruled against Mrs.Madura because she did not raise rescission claims in state action directly conflict with *Jesinoski* private non-judicial loan rescission under

the Act not requiring a lawsuit, and same Opinion below and *Waisome*(A8). However,the same Madura 2SJ directly conflicts with the same Opinion below holding that Mrs.Madura's loan rescission claims are barred by collateral estoppel or res judicata as she pursued them in Maduras' first action in Florida(A3). Opinion behold Madura2 granted SJ in favor of BOA(A3) but affirmance of SJ held that Madura2 granted in favor of CHL,583,FAppx,*at838.* This Court, in *Standefer v. v.U.S.,*447,U.S.10(1980, provides standard:
"[I]nconsistency [was] reason, in itself, for not giving preclusive effect and makes clear, collateral estoppel "is premised upon an underlying confidence that the result achieved in the initial litigation was substantially correct."*23* n.18; seeRestatement (Second) of Judgments§29 cwt.(1982):
"Where a determination relied on as preclusive is itself inconsistent with some other adjudication of the same issue, that confidence is generally unwarranted. (explaining rationale for rule that non-mutual collateral estoppel does not apply when the judgment that would be given preclusive effect is inconsistent(Pg.13).

III.The district court's denial of the Maduras' motion to dismiss for lack of SMJ, and 11th Circuit's affirmance is arguable without merits clear and egregious usurpation of judicial power,and thereby creates irreconcilable conflict with other circuits and this Court's decision in *Jesinoski* on the efficiency of the TILA rescission notice given by the petitioners.

To Aug.27,2012 motion to dismiss with prejudice the Bank's Foreclosure Counterclaim for lack SMJ,and for CHL's failure respond, the Madura attached their their May 23, 2001 rescission notice(A39-43) and CHL' May 29,2001 return receipt(A38). They argued violation of the12.F.C.R.s.226.23(d)(2) TILA,and first11thCircuit precedent *Williams v.Homestake Mortg.,*968F2d.1137(11thCir.1992) that rescission notice must be sent to the Creditor and:"Rescission is automatic upon the consumer's notice."*Id.at1141.* The11thCircuit affirmed(*Maduras v.CHL* 344F.Appx 509(11th.Cir.2009)) the direct precedent as to Maduras' Rescission Notice in *Maduras v.CHL et al,* 2008WL 2856813 M.D.Fla) Final SJ:

"A consumer can exercise herrights to rescind simply by notifying the **creditor** of the rescission in awritten comunication12C.F.R.§226.23(a)(2) (to exercise the right to rescind, the consumer shall notify **the creditor** of the rescission by mail, telegram or other means of written communication). Here the letter demanding invalidation of the forged mortgage sent to Countrywide in May 2001 arguably was such a written communication notifying the lender of the Maduras' intent to rescind the mortgage loan, and such was made within three-years period after the closing. To the extent that the letter sought invalidation of the mortgage agreement it was ignored by Countrywide."*Idat11.* Countrywide failed to forward disclosure and ignored the demand to invalidate agreement,*Idat3.*

CFPB Bureau's Notice of Right to Cancel provides how to cancel: *You may use any written statement that is signed and dated by you and states **your intention** to cancel, or you may use this notice."*

Judge Covington, denied the Madruras' motion to dismiss challenging her SMJ, holding: "The letter does not do is mention TILA or accomplish rescission In addition, the letter makes no mention of Bank of America the counterclaimant and the Maduras failed explain why the letter to Countrywide would affect the rights of Bank of America in this action."(A20).

However, the 11th Circuit affirmed it in violation of the plain text of s.1635(b) and s.226.23(d)Reg.Z and created conflict with majority of the Circuits and with this Court's decision in *Jesinoski.*
Judge Covington's Order, conflate all §1.635etseq TILA provisions that govern the way how borrower may exercise loan rescission;
a) Her statement: "the letter does not do is mention TILA" is barred by letter mentioning created by CHL undelivered to the closing TILA SIX TIMES and demanded produce it as it may be forged as the Note. TILA forgery was undisputed(Pg.5n 2 above) and judicially noticedDE71,171,410; 477-1,523-1)
b) Jesinoski found that nowhere does §1635(a) allow for a debate as to disputed or undisputed notices *at793;*
c) Statement:"letter failed mention BANA"(or sent to BANA) is inapposite. Judge Covington held that BANA for the first time appeared on April 30,2009 when allegedly purchased subject loan(A5);
d) explainng federal Judge why loan rescission

An *ipse dixit* this district Judge's reasonings devoid of any analysis and are insufficiant as a matter of law egregious for SMJ and without arguable merit, *Student Aid Funds, Inc. v.Espinosa,* 130S.Ct.U.S.(2010)*at1377.*

The 11th Circuit affirmed this fundamental misconception of 15USC §1635(a)(b) on plenar appeal and in post-Jesiniski Nov.23, 2015 Opinion: "After defaulting on a loan from BACHome Loans Serv.,which later merged with and into Bank of America NA.(BOA), the Maduras sued BOA(A10-12)...." [T]he issue involved in the Maduras' rescission claim was not whether they needed to file a lawsuit to rescind their loan, **but rather, whether they notified BOA that they intended to rescind.** *Jesinoski* would not have affected this issue, nor any of the other issues involved in their case.Because the Maduras' appeal is without arguable merit, their motion for IFPstatus is DENIED." Maduras v BAC Home Loan Serv L.P., No.:15-12925 (11/23/2015).

1. The Maduras obtained July 26,2000 loan from FSLnot BACHome Loan Serv.L.P originated in 2009

2. The Maduras never defaulted and were current also after loan rescission, In Nov ,2006 default they sued CHL not a stranger BOA(Bana).

Under the Eleventh Circuit's view, borrowers' rescission notice timely sent to the lender and effecting loan rescission e.g.voiding the mortgage per the TILA statutes and this Court's decision in *Jesinoski* would revive void mortgage because it should be sent to a stranger Bank who has no connection to borrowers' loan but who in future would like to foreclosure the borrowers' lacking security interest home despite the lender was in section §1635(b) statutory default for failure to .

follow its 20-day rescission mandate. The 11th Circuit's position negates the TILA's effectiveness which is a violation of the Maduras' due process rights under the 14th Amend. to U.S. Const.because other borrowers living in other circuits did not lost homes as per TILA **sent the lender** their rescission notices as did the Maduras. The district court's nonsensical decisions and the Eleventh Circuit same by affirming it in Opinion below conflicts with almost all circuits' decisions on the same issues,few cited below due to word limit:

1) *Sherzer v.Homestear Mortg.Serv.*,707F.3d255, (3rd.2013) recognizing that the right of rescission is exercised by sending **the creditor** notice;

2) *Jesinoski*:"No doubt that rescission is reffected when the borrower notifies **the creditor** of his intention to rescind.",*Jesinoski at792;*

3) "**When lender** would not respond within twenty days to the notice if rescission, the ownership of the property vests in borrowers.§1635(b)."(*Stanley v. Americorp Credit Corp*,164 F.Supp.2d 578, 584(D, Md.2001);

IV. The Eleventh Circuit's affirmation violated the Maduras' due process rights under the 14th Amend. and is also in direct conflict with this Court's decisions that a person not a party to judicial proceedings may not be bound by its outcome

The 11th Circuit affirmed in inconsistent opinions numerous violations of Florida's substantive law Judge Covington, presiding, rested on supplemental jurisdiction over foreclosure of the Maduras' private

principal dwelling without any compliance with Florida substantive law.
Judge Covington, judicially notified certified copies of the transcript from this hearing and of forensic reports and sets forged Note and TILA and original Note and TILA signed by the Maduras at loan closing(DE71;410;477-1;523-1) and

Madura1SJhearing,where trial court held:"[T]he Jury would have to decide exactly decide exactly exactly what documents were signed or not signed at the time of the closing."(A29).

Trial Judge granted SJ in CHL's favor as to Mrs. Madura's claims(Mr.Madura had no day in courts until underlying foreclosure) but"remained" "factual dispute" raised in her CrossSJmotion on CHL's liability for creation of not delivered to loan closing forged Note and TILAdisclosure containing not genuine forged the Maduras' signatures(A26).

Prior SJ of foreclosure NOassignments of the mortgage was recorded in the public record transferring beneficial interest in this loan to any entity specifically to Bana. On Feb.2, 2015 Bana recorded the MERS Assignment of Mortgage precluding its May 2, 2012 foreclosure counterclaim and July 13, 2013 SJ of foreclosure.

See *BACFunding v. Jean Jacques*,28So.3d936 (2010): *"U.S.Bank failed to establish its status as legal owner and holder of the note and mortgage, the trial court acted prematurely in entering final summary judgment of foreclosure in favor of U.S. Bank. We therefore reverse final SJ foreclosure.*

On July 2, 2013 the Maduras requested Judicial Notice of June 7, 2013 Florida Supreme CourtBILL, SC/CS HB 87(DE484) and filed a motion to dismiss

ownership of void mortgage to Merrill foreclosure for the district court continuous violations of Florida substantive law. On June 17, 2013,Bana sold alleged ownership of void mortgage to Merrill Lynch]Asset Holding Inc. This precluded SJ of foreclosure.

On Feb.26,2016 Bana bought for $100.00 the Maduras' home without notifying them of foreclosure sale ordered by Judge Covington to conduct byUS Marshall's in violations of 28U.S.C.§ 1963, Rule Fed R.of Civ.Pr. and Fla.substantive statutory law.[4]The Maduras due to newly discovered evidence filed motions to stay foreclosure sale(Doc.668-669) with Jan.16,2015 assignment of the mortgage to Bana (A55) and Aug 1,2016 Fannie Mae's disclose of since loan closing an exclusive ownership of subject loan (A50,51,54). Judge Covington in denials and the 11thCir. on appeal of confirming of wrongful foreclosure, neither considered nor rejected new arguments based on new evidence. Judge Covington, three years after entering SJ of foreclosure, entered upholding statutes order of sale of the property which was the subject of the void mortgage.

The 11th Circuit based its affirmance of SJ of foreclosure upon: "Collateral estoppel bars the Maduras from relitigating all claims that they raised or could have raised in their initial state-court action including the following issues: .....whether they had

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[4] See:1) *Condaire, Inc. v.Allied Piping, Inc.*,286 F.3d 353, 357-58 (6thCir. 2002)("[pursuant to 28 U.S.C. § 1963. No federal statute governs the means of enforcing a judgment pursuant to the FCRA."; 2) Florida Supreme Court mandates foreclosure sale within 35 days from Judgment, and 3) USMD Fla. Court, US Marshall and Bana did not notify of sale violations of the redemption of the sale of their home.

rescinded the July 26, 2000 loan through the May which was the subject of the void mortgage.

The 11th Circuit based its affirmance of SJ of foreclosure upon: "Collateral estoppel bars the Maduras from relitigating all claims that they raised or could have raised in their initial state-court action including the following issues: .....whether they had rescinded the July 26, 2000 loan through the May 23,2001 letter",593FedApp'(11th Cir. Nov,10,2014) *Id 843.* However, it failed examine this collateral estoppel that it was based on purported effect of Madura2 SJ holdings **in CHL's favor** as to non-borrower Mrs.Madura's rescission claims: "Plantiff's rescission claims would be time barred **because they were not brought within 3 years of consummation of the morgtage loan.**".....

"To the extent that the letter sought the invalidation of the mortgage agreement it was ignored by Countrywide. Plaintiff, however **did not sue for rescission until she filed suit in this Court in Nov. 2006.**", FAppx. 2d2008 WL2856813 (M.D.Fla.)*Id11* (enhanced added). The Eleventh Circuit's collateral estoppel basis for its affirmance of SJ of foreclosure is in direct conflict with this Court's decision in *Jesinoski":* "Rescission is effected when the borrower notifies the creditor of his intention to rescind.,... the statutes does not require him to sue."*JesinoskiId 792.* Thus, Mrs. Madura did not need sue for decade earlier effected non-judicial private loan rescission under the TILA Act, as such lawsuit should be dismissed, because prior to foreclosure she and Mr. Madura did not incur the damages required for suing CHL for its §1635(b) statutory default as to

loan rescission by ignoring the rescission notice and its obligation mandated by thereof. Further,a private nonjudicial letter of intention to rescind is not judicial cause of action, whereby, NO judicial *res judicata* and collateral estoppels applied until the lender would initiate a suit in case it determine that the loan rescission was incorrect. See: "TILA rescission at law procedures based on a notice and "the bank ['s] [obligation] *to file suit to essentially prevent rescission* "(Consumer Financial Protection Bureau's Amicus Brief in *Jesinoski*).

In compare to its erroneous affirmance of foreclosure the Opinion below affirming denial of the Maduras' Rule 60(b)(4) motion for relief from violating the Maduras' Due Process Rights SJ of foreclosure entered without SMJ over lacking security interest Bana counterclaim of foreclosure, held: "In Madura 2 the district court....**granted summary judgment in favor of BOA** on Dolinska-Madura claims, *Madura v. Countrywide Home Loans, Inc.*, 334 F.App'x 509, 513 (11th Cir. 2009). On appeal we concluded that Doliska-Madura's ....arguments that Maduras had rescindeed their loan were barred by the doctrines of *res judicata* and collateralestoppel, **because they had pursued them in Madura 1, their first action in Florida state court.** *Id at 517-518*."(App. at 3).

By the inconsistency of erroneous affirmance of SJ of foreclosure and with its erroneous Opinion below containing *ipse dixit* reasoning devoid of substantive analysis(compare text in bold) the 11th Circuit did not prove challenged district court's and its own SMJ. The 11th Circuit, being, apparently, unable to rebut the Maduras' based on clear TILA's and *Jesiniski*'s arguments raised in Rule60(b)(4) motion,

IB and RB, departed from the accepted and usual course of judicial proceedings by holdings:1)"in Madura2, *Madura v.Countrywide* Home Loans Inc., the Court granted SJ **in favor of Bana**(A3)(Bana was not a party to this SJ and even not a privy with CHL prior to merger) and:
2) arguments that the Maduras rescinded their loan ..were barred ...**because they had already pursued them in Madura 1,** their first action in Florida state court"(App. at 3) The set forth above court record is contrary as well as its affirmance of SJ of foreclosure Accordingly, to the extent that the 11thCircuit failed prove the district and its SMJ, it again violated the Maduras due process rights in erroneous deprivation of their principal dwelling. Its exchange CHL with not privy Bana in Madura 2SJ and its twisting the record that the Maduras already pursued with loan rescission in state Madura 1 (while borrower Mr. Madura due to arbitration had NO a day in court until foreclose), and Mrs.Madura never claimed loan rescission in Madura 1, see Madura SJ(App.at 21-30) is improper and futile the11th Circuit' self defense against the Maduras' on June 18, 2001 executed loan rescission. New the 11th Circuit somehow attempt impress a reader that the Maduras' Notice of loan rescission should be sent to stranger Bana not to creditor CHL ,as it, since this Court's decision in *Jesinoski,* in such nonsensical way, changed its basis for an erroneus deprivation the Maduras' home

Since May 23, 2001 notice CHL in state Madura1 and federal Madura 2 actions, the courts nor Bana until SJ of foreclosure, never disputed the Maduras' loan rescission.

The district court was aware of since 2009 through 2014 affirmance of SJ of foreclosure of the 11th

Circuit's continuing the inconsistancy its Opinions and double standard as to Pro Se Maduras' on June 18, 2001 effected loan rescission. See Opinion below aligning with this Court:"*Jesinoski clarified that the TILA allows an obligor to rescind by notifying the creditor within the statutory period of the onbligor intent to rescind but does not require the obligor to sue within that timeframe."(*App at 8). The 11th Circuit, in same Opinion, affirmed dismissal with prejudice citing its SJ of foreclosure's affirmance upon directly conflicting the TILA and *Jesinoski* collateral estoppel's effect of Madura 2 SJ against Mrs.Madura because she purpotedly failed to sue for loan rescission in state Madura1: " See *Madura,* 539 F.App'x*at 841-50* ...We affirmed that....rescission arguments were barred by res judicata and collateral estoppel (App.at5).

After many inconsistent 11th Circuit's Opinions on the same issue of outlined in this pettion this last May,15, 2019 inconsistent Opinion below violated again the Maduras due pricess rights under the 14th Amendment to US Constitution, as the subject matter jurisdiction over deprivation of the Maduras' petitioners property home must be consistent with due process,*Pennoyer v.Neff,* 95U.S.714(1878). The 11thCircuit since,the first its 2009 Opinion in, Madura2,continously violated of the Mr.Madura's Due Process Rights to wit:

On Aug.2, 2002 state court compelled Mr. Madura, the only borrower, in this action to abitrate the loan rescission and other claims in National Arbitration Forum(NAF) "

Since that time until 2012 foreclosure courts did not allow him a day in court until the 2002 foreclosure.

The 11th Circuit' based of the said affirmance on: "**Since Mr.Madura had to arbitrate those claims (including loan rescission) the doctrine of collateral estoppel precluded the judge in this case from adjudicating those claims on the merits.**"(*Maduras v. BACHomeLoanServ.etal,*593F.Appx.834(2014)at844.

This is a plain error directly violating Mr.Madura's due process rights under the 14th Amendment to US Const. as this (wrongful) foreclosure was excluded from the arbitration agreement, whereby, the judge in foreclosure was not precluded from adjudicating borrower Mr.Madura's rescission claims in defenses wrongful foreclosure of private residential dwelling.

The 11th Circuit is in direct conflict with this Court's decisions in in *Richards v. Jefferson County*, 517U.S793(1996):"One is not bound by a judgment *in personam* in a litigation in which he is not a party."

The Maduras preserved these arguments on plenar appealNo.13-13953(RB at 3-7;IB at12-14) in petition to recall mandate(App.at 5) and IB on appeal below).The district court and 11th Circuit never adjudicated nor rejected them. Mrs .Madura's fraud claims, were dismissed as "she did not incur damages.(Appat26). In foreclosure both Maduras incurred them. Her raised in a Motion for Partial SJ as to forgery of both Maduras' full dated signatures on the TILA and Mr.Madura's initials on the Note were not ruled as Madura1 state Court in SJ hearing, held:"**Is'nt that what the jury would have to decide, exactly what documents were signed or not signed at the time of the closing**"(App.at29). In SJOrder on Cross SJ motions the Court decided "**A factual dispute (of forgery) remains**"(A26).

These Mr.Madura's arguments were preserved in lower court and on appeal (No.13-13953:IB at12-14, RB3-7), and in petition to recall mandate(at15). The district and the Eleventh Circuit never adjudicated.

In summary, the previous affirmance and affirmance below evidence the 11th Circuit in direct conflict with 28 U.S.C.1652: "Except in matters governed by the Federal Constitution or by Acts of Congress, the law to be applied in any case is the law of the State,*Erie R Co.v.Tompkins*,304,U.S.64,(1938),*at78*. The11th Circuit failed consider that affirmance of denial of Rule 60(b)(4) motion for relief from void judgment of foreclosure of void mortgage violated substantial Florida law while this Court announced a bifurcated test to evaluate state statutes under the*Erie* doctrine

Petitioners Present a *Prima Facie* Case

Establishing a *prima facie* case of the magnitude of violation of due process, requires of the deprivation of a constitutional or federal statutory right, a causal connection between the actor and the deprivation, and state action. *Sanchez v.Pereira-Castillo*,590F.3d 31,41(1stCir.2009) It is clear it happened here:

A. In this case,the district court, violated the Maduras' constitutional and federal statutory rights by the failure to find a due process violation resulting from her entry, of a foreclosure judgment against the Maduras at a time when that court lacked SMJ to foreclose a mortgage previously voided pursuant to the statutory language of TILA as reaffirmed in this Court's decision in Jesinoski. The Eleventh Circuit did the same *by affirming* thereof. Seein Opinion below its inconsistent order on this central issue(A1-9).

B. As is set forth in this petition, the district court, and the Eleventh Circuit, violated the Maduras' constitutional and federal statutory due process rights under the 14thAmendment to US Constitution by entering and affirming foreclosure judgment, an erroneous deprivation of their residency dwelling and evicting them from for the last 30 years their only homestead at a time when the former court lacked subject matter jurisdiction to foreclose a mortgage previously voided pursuant to the statutory language of TILA as reaffirmed in this Court's decision in *Jesinoski*.

C. The district court violated borrower Mr. Madura's constitutional and federal statutory rights under the 14th Amendment to US Constitution by failing, to observe this Court's decisions that he, as a not a party to Madura1SJ state and federal Madura 2SJ federal judicial proceedings, may not be bound by their 'outcome, a wrongful foreclosure judgment of an erroneous deprivation of his private property and the he 11thCircuit, by the affirmance thereof violated the same. See Opinion below containing as is set forth above, its inconsistent decisions violating the TILAstatutes and this Court'sJesinoski.

The Decision Below, apparently unknowing, Misconstrues the Due Process Clause of the Fourteenth Amendment

A review of the Eleventh Circuit's departure from traditional practice raises a serious question of constitutional magnitude. The constitutionality of alleged subject matter jurisdiction over Bana's lacking Art.III standing counterclaim of foreclosure

without proper authorization, has become imminent in the light of our jurisprudence. The district court's and the Eleventh Circuit's affirmance is unfaithful to both elementary logic and the foundations of common law and our due process jurisprudence.

Based on the foregoing, the Maduras pro se have stated a due process violation of such a significant magnitude that the affirmance of the said dismissal with prejudice is void. Bana and these courts never stated a shred of evidence that there it has been compliance with due process. Thus, the Maduras *Pro Se* have alleged a reviewable constitutional case that is "plausible on its face." *Ashcroft v.Iqbal*,556 (U.S.) 662,678,(2009). For the foregoing reasons, the petition for writ of certiorari should be granted.

The Petition presents court conflicts on legal issues of exceptional importance to the nation's consumers.

The general issue is whether TILA rescission is "effected" upon timely notice, as this Court held in *Jesinoski v. Countrywide Home Loans, Inc.,* 135 S. Ct. 790 (2015), triggering mandated lenders' action which, if not performed, void the lender's security interest. Under the Eleventh Circuit's view, borrowers' rescission notice timely sent to the lender and effecting loan rescission e.g. voiding the mortgage per the TILA statutes and this Court's decision in *Jesinoski* would revive void mortgage because it should be sent to a stranger Bank who has no connection to borrowers' loan transaction but who in future would like to foreclosure the borrowers' lacking security interest home despite the lender was in section § 1635 (b) statutory default for failure to follow its 20-day rescission mandate. The 11th Circuit's position negates the TILA's

effectiveness which as well its continuous violations of the Maduras' due process rights under the 14th Amend.to US.Const. rights and its since decade continuing the improper inconsistency in its Opinions as to 15 U.S.C.TILA 1601*et seq* Statutes.

CONCLUSION

For the foregoing reasons and those stated in the Petition for a Writ of Certiorari, the Petition should be granted.

Respectfully submitted on August 12, 2019 by pro se:

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Andrzej Madura and Anna Dolinska-Madura