No. 20-1413

IN THE SUPREME COURT OF THE UNITED STATES

DEBRA M. BROWN

v.

FEDERAL NATIONAL MORTGAGE ASSOCIATION

On Petition For A Writ Of Certiorari To The Appeals Court For The Commonwealth Of Massachusetts

PETITION FOR REHEARING

DEBRA BROWN, ESQUIRE
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Petitioner
June 26, 2021

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PETITION FOR REHEARING

Pursuant to Sup. Ct. Rule 44.2 petitioner Debra Brown ("Petitioner") respectfully petitions this Court for an order (1) granting rehearing; (2) vacating the Court's June 1, 2021 ruling denying the petition for certiorari; and (3) redisposing of this case by granting the petition for certiorari, vacating the judgment and remanding to the Massachusetts Court of Appeals for further consideration in light of this Court's decision in Collins v. Yellen 594 U.S. (2021) decided June 23, 2021, for the purpose of determining whether the judgment should be reformed to consider the deprivation of constitutional due process by the taking of property by the U.S. Government and state actors.

Petitioner submits that the landmark decision issued by this Court on June 23, 2021 and decisions issued by the U.S. Court of Appeals for the First Circuit on June 6, 2021 and were cited in the original petition constitutes intervening circumstances of a substantial and controlling effect and include one additional constitutional issue that as not previously presented. This request is presented in good faith and not for purposes of delay.

As grounds for this petition for rehearing the Petitioner states the following:

1. On June 8, 2021 the United States Court of Appeals for the First Circuit (U.S.C.A.) issued their decision in Boss v. Federal Housing Finance Agency and Federal National Mortgage Association joined with other cases that presented the question of whether those plaintiffs could bring constitutional due process claims against the Federal National Mortgage Association after the Federal Housing Finance Agency ("FHFA"), acting as conservator, caused Federal National Mortgage Association ("FNMA") to exercise their

contractual rights to nonjudicially foreclose in the State of Rhode Island. The U.S.C.A. held that Fannie Mae, Freddie Mac and FHFA were *not acting as the government* when they did so, citing the decision issued the same day by the U.S.C.A. in Montilla v. Federal National Mortgage Ass'n, No. 20-1673 (1st Cir. June 8, 2021). [1]

2. In Montilla id., the U.S.C.A. affirmed the District Court Judge's grant of the FNMA's motion to dismiss and held that because FHFA stepped into Fannie Mae's shoes as its conservator and its ability to foreclose was a "contractual right inherited from FNMA by virtue of its conservatorship," FHFA was not acting as the government when it foreclosed on the plaintiffs' mortgages and was not subject to the plaintiffs' Fifth Amendment claims. In so holding, the court disagreed with an earlier Rhode Island district court's contrary holding in Sisti v. Fed. Hous. Fin. Agency, 324 F.Supp. 3d 273, 284 (D.R.I. 2018). See Montillo v. Federal National Mortgage Ass'n, No. 20-1673 (1st Cir. June 8, 2021).

3. On June 8, 2021, the U.S.C.A. reversed the District Court Judge's denial of the FNMA motion to dismiss in the Sisti case id. where that Judge held that "this Court is duty-bound to conduct an independent inquiry of the matter before it, bound by the law that controls it. See D'Arezzo v. Providence Ctr., Inc., 142 F. Supp. 3rd 224, 228-29 (D.R.I. 2015). In so doing, the Court is not persuaded by the reasoning of prior cases discussed more below and instead concludes that the Defendants can be found to be government actors." Id.

[1] Petitioner filed an Amicus Brief in the Boss case recommending that the Court wait for Court's decision in Collins v. Yellen 594 U.S. (2021). The Amicus Brief as not allowed and the decision issued by the Court.

4. On June 23, 2021 this Court issued a landmark ruling in Collins v. Yellen 594 U.S. (2021) addressing the status of the FHFA and its' director. The decision also resolved the issue of the federal court splits in Rhode Island that essentially overruled the U.S.C.A. decisions in Sisti, Boss and Montilla, holding inter alia that (1) FHFA was the government; (2) the directorship (leadership) of the FHFA was unconstitutional; (3) FHFA at all times was the executive branch of the federal government; (3) FHFA did not "step into the shoes" of Fannie Mae as conservator; (4) by statute, FHFA's powers differ critically from those of most conservators and receivers (page 30); (5) a party with an injury has standing to bring a claim for the violations by the director of the FHFA and (6) that HERA statute cannot be interpreted to allow for any violation of the U.S. constitution – thereby affirming that FHFA and FNMA are not above the U.S. Constitution and free to disregard the 5th Amendments protections of due process. Collins v. Yellen 594 U.S. (2021). President Biden accepted the resignation of the Director of FHFA within hours of the decision's release and a replacement was named.

5. Petitioner challenged the judgment of the Massachusetts Appeals Court for a failure to consider violations of her Fifth and Fourteenth Amendment rights for due process prior to a taking of her property by the federal government and state actors. The Respondent (FNMA) argued in the appeal that (1) they were not acting as the government; (2) they were not required to adhere to the U.S. Constitution and (3) this matter had been fully litigated.

6. The Massachusetts Court of Appeals agreed with Respondents and held that this matter was fully litigated by a Massachusetts Rule 1:28 decision that provide not rationale for disposing of Petitioners constitutional claims.

7. In Collins v. Yellen this Court has affirmatively determined that (1) FHFA is the government; (2) that FHFA does not step into the shoes of a private actor as a result of conservatorship and (3) and that FHFA must act in accordance with the U.S. Constitution in executing FHFA's duties as conservator for FNMA and this has put an end to the respondents' argument that (1) they are not the government; (2) they do not need to comply with the Fifth and Fourteenth Amendment of the U.S. Constitution; and (3) they are free to take private citizens' property without regard to laws established by the Commonwealth of Massachusetts.

8. This Court included the following statement in their decision, "And there can be no question that FHFA's control over Fannie Mae and Freddie Mac can deeply impact the lives of millions of Americans by affecting their ability to buy **and keep their home**." At page 31. [emphasis added] This Petitioner's life has been deeply impacted by the decision of the FHFA and FNMA to refuse to allow due process.

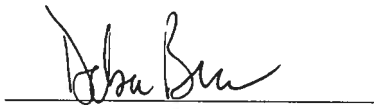
9. Petitioner requests the ability to add the separation of powers violation to her constitutional claims in the state court. To allow the judgment of denial of her petition for certiorari would be far more prejudicial than to remand this case for further consideration of these landmark principals.

CONCLUSION

For the foregoing reasons, Petitioner prays that this Court (1) granting rehearing; (2) vacate the Court's June 1, 2021 ruling denying the petition for certiorari; and (3) redispose this case by granting the petition for certiorari, vacating the judgment and remanding to the Massachusetts Court of Appeals for further consideration in light of this Court's decision in Collins v. Yellen (2021),

Respectfully submitted,

PETITIONER



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DEBRA M. BROWN

v.

FEDERAL NATIONAL MORTGAGE ASSOCIATION

On Petition For A Writ Of Certiorari To The Appeals Court For The Commonwealth Of Massachusetts

PETITION FOR REHEARING

CERTIFICATE OF COUNSEL

As counsel, I hereby certify that this petition for rehearing is presented in good faith, not for delay and is limited to the grounds allowed for in S.Ct. Rule 44.2.

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Petitioner
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IN THE SUPREME COURT OF THE UNITED STATES

DEBRA M. BROWN

v.

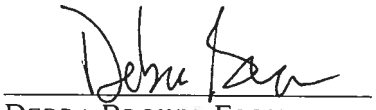
FEDERAL NATIONAL MORTGAGE ASSOCIATION

On Petition For A Writ Of Certiorari To The Appeals Court For The Commonwealth Of Massachusetts

PETITION FOR REHEARING

CERTIFICATE OF SERVICE

I hereby certify that this petition for rehearing was mailed first class mail to the attorneys of record in this proceeding. .



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Petitioner
June 26, 2021

United States Court of Appeals
For the First Circuit

No. 20-2025

CYNTHIA BOSS,

Plaintiff, Appellee,

v.

FEDERAL HOUSING FINANCE AGENCY; FEDERAL NATIONAL MORTGAGE ASSOCIATION,

Defendants, Appellants,

SANTANDER BANK, N.A.,

Defendant.

No. 20-2026

JUDITH A. SISTI,

Plaintiff, Appellee,

v.

FEDERAL HOME LOAN MORTGAGE CORPORATION; FEDERAL HOUSING FINANCE AGENCY; NATIONSTAR MORTGAGE, LLC,

Defendants, Appellants.

APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

[Hon. John J. McConnell, Jr., Chief U.S. District Judge]

Before

Lynch and Kayatta, Circuit Judges,
and Woodcock,* District Judge.

Michael A.F. Johnson, with whom Dirk C. Phillips, Omomah I. Abebe, and Arnold & Porter Kaye Scholer LLP were on brief, for appellant Federal Housing Finance Authority.

Samuel C. Bodurtha and Hinshaw & Culbertson LLP on brief, for appellants Federal Housing Finance Authority, Federal National Mortgage Association, and Federal Home Loan Mortgage Corporation.

Joseph A. Farside, Jr., Krystle G. Tadesse, and Locke Lord LLP on brief for appellant Nationstar Mortgage LLC.

Steven S. Flores, with whom Michael Zabelin and Rhode Island Legal Services, Inc. were on brief, for appellees.

Bruce Bennett, Chané Buck, Lawrence D. Rosenberg, C. Kevin Marshall, and Jones Day on brief for amici curiae Institutional Investors in Fannie Mae and Freddie Mac.

Thomas A. Cox on brief for amicus curiae National Consumer Law Center.

June 8, 2021

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* Of the District of Maine, sitting by designation.

LYNCH, Circuit Judge. Plaintiffs in these appeals, consolidated for oral argument, entered into mortgages giving their lenders the right, under Rhode Island law, to nonjudicially foreclose on their mortgages. The appeals concern whether these plaintiffs can bring constitutional due process claims against the Federal National Mortgage Association ("Fannie Mae") and the Federal Home Loan Mortgage Corporation ("Freddie Mac") (collectively, the "GSEs") after the Federal Housing Finance Agency ("FHFA"), acting as the GSEs' conservator, caused the GSEs to exercise their contractual rights to nonjudicially foreclose. For the reasons stated in Montilla v. Federal National Mortgage Ass'n, No. 20-1673 (1st Cir. June 8, 2021), Fannie Mae, Freddie Mac, and FHFA were not acting as the government when they did so. The plaintiffs' claims fail.

The decision of the district court is reversed with instructions to enter judgment in favor of Fannie Mae, Freddie Mac, and FHFA.

Certificate of Service

4/3/2021

No.

IN THE

Supreme Court of the United States

DEBRA M. BROWN.

v.

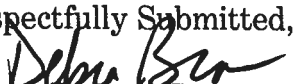
FEDERAL NATIONAL MORTGAGE ASSOCIATION

PETITION FOR WRIT OF CERTIORARI

I hereby certify that I am this day serving the foregoing document upon the person(s) and in the manner indicated below. First class mail as follows:

Thomas J. Walsh
Harmon Law Offices
150 California Street
Newton, MA 02458

Respectfully Submitted,



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No.

IN THE

Supreme Court of the United States

DEBRA M. BROWN.

v.

FEDERAL NATIONAL MORTGAGE ASSOCIATION

PETITION FOR A WRIT OF CERTIORARI TO THE APPEALS COURT FOR THE COMMONWEALTH OF MASSACHUSETTS

PETITION FOR WRIT OF CERTIORARI

DEBRA M. BROWN, ESQ.
Pro se

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CURRY & TAYLOR ♦ (202) 350-9073

QUESTION(S) PRESENTED

In 2018 petitioner discovered that a judgment issued by the Massachusetts Land Court ("Land Court") in 2009 ordered the sale of her property. The petition in the Land Court was filed by Federal National Mortgage Association's ("FNMA") servicer and foreclosure attorneys. By statute in 1990, the Massachusetts legislature terminated the authority of the Land Court to issue such judgments. Yet the Land Court continued to issue such judgments. Like all but a handful of homeowners with qualifying military service, petitioner was denied notice and all right to participate in the Land Court proceeding. When she discovered this void judgment she immediately filed a post-foreclosure motion to vacate in the Housing Court in that this taking and the consequent Housing Court eviction proceeding violated her due process and equal protection rights guaranteed her by the U.S. and Massachusetts Constitutions. The Land Court and the Housing Court judgments violated the petitioner's constitutional rights and were void as a matter of law. Petitioner and FNMA agree petitioner was not in default at the time the notice of default letter issued. Petitioner and FNMA agree that FNMA had no financial interest in the property and paid nothing for the taking of the property.

I. Whether the U.S. Government and/or state government can take private citizens' property without due process of law constituting a violation of the Fifth and Fourteenth Amendments of the United States Constitution.

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OPINIONS BELOW

The opinion of the Massachusetts Supreme Judicial Court Application for Further Appellate Review Denied, October 23, 2020, Massachusetts Court of Appeals decision (CA 1A); Northeast Housing Court decision (CA 5A), and Massachusetts Land Court decision (CA 10A).

JURISDICTION

This Court has jurisdiction over this matter, invoked under 28 U.S.C. § 1257(a). This petition is timely filed within 150 days of the October 22, 2020 final state court judgment (C.A. 19A) pursuant to Supreme Court Rule 13.1

RELEVANT PROVISIONS INVOLVED

U.S. Const. Amend. V:

> No person shall be... be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const. Amend. XIV, sec. 1:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

ruled that FHFA and FNMA violate the U.S. Constitution by taking citizens' property in non-judicial foreclosure without due process.

The Massachusetts Courts have created a judiciary scheme around the non-judicial foreclosure statute that makes the state an "actor" in the taking of private property without due process. The state became an "actor" when the Land Court issued a judgment to sell the property without allowing due process to petitioner in that proceeding. (CA 10A) The state was also an actor in the Housing Court, where petitioner is being dispossessed of her property without due process (CA-5A) and an actor when the Appeals Court did not consider the trial court's record of due process in the appeal.(CA-1A) In over nine years of litigation, petitioner was allowed no due process in violation of the Fifth and Fourteenth Amendment as due process is defined by this Court.

The Court of Appeals decision constitutes an error of law because (1) the Land Court judgment was void ab initio; (2) Land Court judgment represents a state action ordering the sale of a private citizen's property without due process; (3) the foreclosure was void ab initio as it was a government taking of property without due process; and (4) the Housing Court process is a state action dispossessing a private citizen from her property and due process was required. Where it is the federal government, acting through contractors to take the property and put into the government's name, that action without any pre-deprivation due process is unconstitutional.

The time for this Court to resolve the debate about the status of FNMA under the conservatorship of FHFA as government agencies (as such required to provide for pre-deprivation due process) is now. FHFA

FHFA continues to administer an agency that they understand to be above government oversight, including all state legislation to halt unnecessary foreclosure. States have interests in preventing community blight and preventing widespread homelessness of families and FHFA's actions violate FNMA's charter to be only a "secondary-market participant" and not own property directly. In Massachusetts, the state law is construed to not apply to FHFA and FNMA.

Petitioner in this case is an individual whose home was taken by FNMA. (CA12A-18A) In 2009 FNMA ordered their contractors to enter the Land Court to obtain a judgment ordering the sale of the property. (CA-10A) Following that judgment, FNMA's contractors created transfer papers (CA-12A-18A) and recorded them in the registry of deeds. Then FNMA entered the Housing Court to obtain a judgment for possession by motion for summary judgment. (CA-5A) The Housing Court allowed discovery that included admissions by FNMA that (1) they ordered the foreclosure; (2) they were the holder of the note and mortgage; (3) under their guidelines, petitioner was not in default of her mortgage; (4) FNMA paid nothing for the note and mortgage; (5) FNMA paid nothing for the assignment of bid of the property; and (6) FNMA did not know what happened to petitioner's note and mortgage. The Appeals Court did not consider the record of due process which was non-existent. (CA-1A)

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financial crisis. See Housing and Economic Recovery Act of 2008, 122 Stat. 2654. It regulates primarily Government-sponsored enterprises, not purely private actors. And its single-Director structure is a source of ongoing controversy. Indeed, it was recently held unconstitutional by the Fifth Circuit, sitting en banc. See Collins v. Mnuchin, 938 F. 3d 553, 587–588 (2019).

one's home "should not be assessed lightly or without fair notice and an opportunity for a hearing on the record." Roadway Express, Inc. v. Piper, 447 U.S. 752, 766-767(1980).

This Court has determined that individuals are entitled to procedural due process if the property/liberty interest at stake is deemed to be of such magnitude or importance that its loss can fairly be characterized as important; and it depends upon the extent to which the individual will be "condemned to suffer grievous loss." Morrissey v. Brewer, 408 U.S. 471, 481(1972) quoting Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123, 168 (1951) (Frankfurter, J., concurring). Goldberg v. Kelly, 397 U.S. 254, 262-263 (1970).

This Court has outlined that once it is determined that the Due Process Clause applies to the proceedings below, "the question remains what process is due." Loudermill, 470 U.S. at 541 quoting Morrissey v. Brewer, 408 U.S. at 481. This Court's decision in Mathews v. Eldridge, 424 U.S. 319, 334-335(1976) dictates that the process due in any given instance is determined by **weighing "the private interest that will be affected by the official action" against the government's asserted interest, "including the function involved" and the burdens the government would face in providing greater safeguards.** Id. at 335. The Mathews calculus contemplates a judicious balancing of these concerns, through an analysis of "the risk of an erroneous deprivation" of the private interest if the process were reduced and the "probable value, if any, of additional or substitute procedural safeguards." Id. See Hamdi v. Rumsfeld, 542 U.S. 507, 528-529(2004).

Factors roughly in order of priority that have been considered to be elements of a fair hearing: (1) an

> the federal government. The Board of Directors of FNMA are appointed by FHFA and FNMA has been under the control of FHFA and/or the United States Treasury for thirteen years. The Rhode Island District Court Judge held "based on these facts, FNMA is an agency or instrumentality of the United States for the purpose of individual rights guaranteed against the federal government by the United States Constitution. *Sisti v. Fed. Hous. Fin. Agency*, 324 F. Supp. 3d 273, 277 (D.R.I. 2018) .R.I. 2018). See DOT v. Ass'n of Am. R.R., 135 S. Ct. 1225, 1232-1233 (U.S. 2015); Lebron v. National Railroad Passenger Corp., 513 U.S. 374 (1995).

FHFA as conservator was charged with *reorganizing, rehabilitating or winding up [FNMA] affairs* 12 U.S.C §4617(a)(2). In fact, FHFA expanded FNMA affairs, embraced a nationwide litigation campaign to further insulate FNMA actions from judicial scrutiny, engaging courts to determine that (1) FHFA is not a government actor; (2) HERA gave FHFA and FNMA immunity from all state consumer protection laws: and (3) "Congress intended FHFA to "exercise [its]rights, powers, and privileges" as conservator without being "subject to the direction or supervision of any other agency of the United States or any state. 12 U.S.C. §4617(a)(7) these "rights, powers and privileges expressly include the "transfer or sale of any GSE asset without approval, assignment or consent. FHFA vigorously opposed the Sisti decision (Id.) and is currently maintaining an appeal in the First Circuit Court of Appeals - agreeing with petitioner that this matter is of utmost importance.

status of the FHFA and FNMA has led to lawlessness, particularly in states that are "non-judicial." [5]

FHFA is managed by a single director and this Court recognized that this Single Director structure as an anomaly in Seila Law LLC v. CFPB 591 U.S. (2020) declaring that the single Director configuration "is incompatible with our constitutional structure. Aside from the sole exception of the Presidency, that structure scrupulously avoids concentrating power in the hands of any single individual." "The Constitution does not vest the Federal Government with an undifferentiated 'governmental power.'" Department of Transportation v. Association of American Railroads, 575 U. S. 43, 67 (2015) (THOMAS, J., concurring in

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[5] "The Framers recognized that, in the long term, structural protections against abuse of power were critical to preserving liberty." Bowsher, 478 U. S., at 730. Their solution to governmental power and its perils was simple: divide it. To prevent the "gradual concentration" of power in the same hands, they enabled "[a]mbition . . . to counteract ambition" at every turn. The Federalist No. 51, p. 349 (J. Cooke ed. 1961) (J. Madison). At the highest level, they "split the atom of sovereignty" itself into one Federal Government and the States. Gamble v. United States, 587 U. S. ___, ___ (2019) (slip op., at 9) (internal quotation marks omitted). They then divided the "powers of the new Federal Government into three defined categories, Legislative, Executive, and Judicial." Chadha, 462 U. S., at 951. They did not stop there. Most prominently, the Framers bifurcated the federal legislative power into two Chambers: the House of Representatives and the Senate, each composed of multiple Members and Senators. Art. I, §§2, 3. The Framers viewed the legislative power as a special threat to individual liberty, so they divided that power to ensure that "differences of opinion" and the "jarrings of parties" would "promote deliberation and circumspection" and "check excesses in the majority." See The Federalist No. 70, at 475 (A. Hamilton); see also id., No. 51, at 350. Id. 591 US_(2020)

actors. *Sisti v. Fed. Hous. Fin. Agency*, 324 F. Supp. 3d 273, 277 (D.R.I. 2018) .R.I. 2018).

FHFA's appeal argues that (1) FHFA and FNMA are not "government" actors; (2) are not required to provide pre-deprivation due process and (3) that the District Court's conclusion that FHFA and FNMA are government actors "rests on flawed logic.[6]" Brief of Appellant page 11 filed December 7, 2020.[7]

The very rationale for placing the entities into conservatorship – to stop the fraud – has been channeled by the FHFA single director into a nationwide litigation campaign that the protections afforded individuals by the U.S. Constitution do not apply to FHFA and FNMA and the lawlessness of their contractors/servicers **are immune** from prosecution by any individual, state, or judiciary.

In June 2014, the former Massachusetts Attorney General filed a complaint in Massachusetts Superior Court charging that FNMA and FHFA engaged in unfair or deceptive practices in Massachusetts by failing to comply with existing statutes, [including An Act Preventing Unlawful and Unnecessary

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[6] FHFA argues that the key proposition underlying the district court's erroneous conclusion – drawn from Goldman, The Indefinite Conservatorship Of Fannie Mae And Freddie Mac Is State Action. 17 J. Bus &Sec. L. 11,26 (2016)

[7] FHFA's summary of the argument states "Ms. Boss's argument that those entities denied her due process by conducting a non-judicial foreclosure fails as a matter of law, because neither entity is a government actor for such purposes. Brief at page 10. On September 29, 2020 the parties filed a Stipulation and Joint Motion for Entry of Final Judgment to bring this action to a final, appealable judgment. JA506-511. Since the parties settled, FHFA essentially has no opposition to their appeal and no likelihood that this Court could review this matter.

B. Facts and Procedural History

1. Petitioner owned her home since 1991 and believed that she had been given a one-year forbearance for her mortgage payments due to an extraordinary event. She received verbal confirmation from her servicer that she thought was the "lender."

2. In December 2009, unknown to petitioner, FNMA's servicer obtained a judgment from the Land Court, naming petitioner ordering a sale of the property. (CA-10A-11A) This proceeding is pursuant to the Soldiers and Sailors Relief Act ("SCRA") petitioner has no right to notice of the proceeding and is not allowed to participate in the proceeding in any way.[8]

3. In May 2010 FNMA ordered the servicer and foreclosure attorneys to conduct a non-judicial sale of her home.(CA-12A-18A) FNMA did not allow any pre-deprivation hearing to hear evidence of non-default. Petitioner filed an action in the Massachusetts Superior Court and received a preliminary injunction after a hearing to stop the recording of the deed because FNMA's servicer failed to comply with the Government's Home Affordable Modification Program ("HAMP") when they foreclosed prior to allowing

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[8] In 1990 the Massachusetts Legislature determined that the Land Court could not issue "judgments of foreclosure" and could only issue a determination of military status of the homeowner. In 2013 it was revealed in an SJC decision that the Land Court had continued using a form of judgment that included a judgment allowing the foreclosure sale for 23 years after the legislature outlawed the practice and the SJC determined that judgement is void as (1) the Land Court is a court of limited jurisdiction and (2) that judgment was beyond the authority of the Land Court to issue. HSBC v. Matt 464 Mass 193 (2013)

5. In 2018 petitioner discovered the void Land Court judgment and immediately moved the Housing Court to declare the judgment void ab initio. The Housing Court denied her motion. Petitioner appealed the decision on grounds that (1) the void judgment from the Land Court should render everything void; (2) that there was no subject matter jurisdiction for the Land Court or the Housing Court; and (3) petitioner was denied Constitutional due process in all the prior proceedings. The Appeals Court issued a non-published decision (CA-1A) affirming the Housing Court opining: "none of the several courts that adjudicated the borrower's rights have relied on the Land Court Judgment" and "Accordingly, as the Housing Court judgment was not void, the judge properly denied the borrower's motion to vacate." The Land Court and the Housing Court judgments violated the petitioner's constitutional rights and were void as a matter of law because FNMA had no standing to enter the Land Court or Housing Court.

REASONS FOR GRANTING THE PETITION

This case presents a question of extraordinary importance: whether state actors can take property without due process and whether HERA exempts FHFA and FNMA from compliance with the U.S. Constitution's Article V and XIV prohibition of the taking of private property by the government and/or state without due process of law. The FHFA and FNMA, through their appeal to the U.S. Court of Appeals in the Sisti case, (U.S.C.A. 20-02025 On appeal from the U.S.D.C. for the District of Rhode Island, Case No. 1:17-cv-00042) recognizes that the question of whether they need to comply with the Constitution and

Chief Justice McConnell's decision in Sisti that states "Numerous district courts, as well as the Sixth and D.C. Circuits, have concluded that the Defendants are not government actors for purposes of constitutional claims-a fact the Defendants emphasized throughout their briefing and at oral argument.." *Sisti v. Fed. Hous. Fin. Agency*, 324 F. Supp. 3d 273, 277 (D.R.I. 2018) .R.I. 2018.

The question presented is of utmost importance for addressing a tsunami of foreclosures and evictions that will result in homelessness of millions of families in the wake of the pandemic. This case presents an opportunity for the Court to resolve the issue and reinstate Constitutional protections of pre-deprivation due process for all Americans with mortgages subsidized by the government-sponsored agencies.

1. The FHFA is an agency like no other. It wields broad authority over the U.S. housing market. Similar to the Consumer Financial Protection Bureau's structure, the FHFA is headed by a single director, and the President cannot remove that Director except for "inefficiency, neglect of duty, or malfeasance in office. FHFA's Director enjoys more unilateral authority than any other official in any of the three branches of the U.S. Government," aside from the President himself. PHH Corp. v. Consumer Financial Protection Bureau, 881 F.3rd 75, 167 (D.C. Cir. 2018)(en banc) Kavanaugh, J., dissenting). The Director alone decides "what rules to issue, how to enforce the law, whether an individual or entity violated the law, and what sanctions and penalties to impose on violators of the law." Id. At 165. Yet the President cannot remove the Director except for cause. That combination –

The FHFA placed FNMA into conservatorship in 2008 rather than receivership. "Conservatorship", in contrast [from receivership], serves a different function. FHFA has described the purpose of conservatorship is "to establish control and oversight of a company to put it in a sound and solvent condition." Goldman, supra, at 25; accord 12 U.S.C. § 1821(d)(2)(D) (conservator may take action to put entity in "a sound and solvent condition," as well as carry on entity's business and conserve assets); 12 U.S.C. § 4617(b)(2)(D) (same). Conservators, unlike receivers, have a fiduciary duty running to the corporation itself...l Goldman, at 26. Applying the logic of Meyer to this case reveals that FHFA has waived sovereign immunity, and thus, can be considered a government actor. In contrast to the Massachusetts decision that immunizes FNMA from liability under state consumer protections laws and housing court summary process actions.

The D.C. Circuit explained in Perry Capital v. Menuchen:

> Assuming the FHFA has sovereign immunity when it acts on behalf of the Companies as conservator, the Congress has waived the agency's immunity by consenting to suit. The Congress has granted Freddie Mac "power ... to sue and be sued ... in any State, Federal, or other court," 12 U.S.C. § 1452(c)(7), and has granted Fannie Mae the same "power ... to sue and to be sued ... in any court of competent jurisdiction, State or Federal," id. § 1723a(a). The FHFA "by operation of law []immediately succeed[ed] to ... all ... powers" of the Companies upon its appointment as conservator-including the Companies' power to

2. The question of whether FNMA can take property without compensation and no due process is of vital importance at this time in our country. Since 2008 the FNMA footprint on the U.S. secondary mortgage market has doubled and now is involved with ninety percent of mortgages. That means that FNMA's numbers of servicers, contractors and foreclosure attorneys haves also expanded without oversight. In the wake of the 2008 financial crisis FNMA, through their servicers engaged in widespread conversion of private property to FNMA's Real Estate Owned ("REO") assets. In some states whole neighborhoods were converted from families to the FNMA REO assets.

The framers of our constitution sought to ensure that "no man or group of men will be able to impose its unchecked will." United States v. Brown, 381 U.S. 437, 443 (1965). The concentration of so much power in the hands of the Director of the FHFA increases the likelihood of a person's property deprivation without due process.

A decision that HERA's anti-injunction clause expressly removes conservatorship decisions from court's oversight violates the separation of powers of the U.S. Constitution. "**The Constitution constrains governmental action by whatever instruments or in whatever modes that action may be taken. And under whatever congressional label.**" quoting *Ex parte Virginia* , 100 U.S. 339, 346–47, 25 L.Ed. 676 (1880)

HERA's anti-injunction clause cannot invalidate the U.S. Constitution and the Fifth Amendment protections for an individual's right to property. Chief Justice John McConnell wrote:

B. The Decision Below Is Erroneous – State Is An Actor

1. This Court has outlined the elements of substantive due process to be afforded an individual prior to the government taking an individual's property and the Massachusetts courts have not followed that precedent. The starting point in defining an individual's rights is identifying the individual's property or liberty interest at risk in these proceedings. The Fifth Amendment prohibits the state from taking property without due process and the fourteenth amendment restates that prohibition. Plaintiff was entitled to procedural due process if the property/liberty interest at stake is deemed to be of such magnitude or importance that its loss can fairly be characterized as important; and it depends upon the extent to which the individual will be "condemned to suffer grievous loss." Morrissey v. Brewer, 408 U.S. 471, 481(1972) quoting Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123, 168 (1951) (Frankfurter, J., concurring). Goldberg v. Kelly, 397 U.S. 254, 262-263 (1970).

When the government has not been required to show standing in the Courts, it has not fully complied with the non-judicial foreclosure statutes and obtains summary judgment resulting in the taking of private property, the state became an actor and part of the taking. Even if Land Court did its job of requiring SCRA petitioners to prove standing, this would not satisfy due process (notice; opportunity to be heard; neutral arbiter). Though a SCRA case explicitly concerns "narrow issue" of military status (*HSBC Bank v. Matt*, 464 Mass. 193 (2013), the Land Court's assumption that most if not all petitioners have

Finishing v. DiChem, Inc. 419 US 601 (1975), Mitchell v. WJ Grant Co., 416 U.S. 600 (1974) and Smiadach v. Family Finance Corp. 395 US 337 (1969)

The petitioner has a significant property interest at stake. The foreclosure and eviction permanently deprives her of ownership, possession, and use of the property, which she uses as her primary residence; clouds the title to the property; impairs her ability to sell, rent, or otherwise alienate the property; taints her credit rating; reduces the chance of her obtaining a future loan or mortgage; subjects her to eviction; and jeopardizes her security in a dwelling place. No compensation was given for the excess equity in the property.

The government had no financial interest at stake before obtaining ownership and possession of the property as admitted in the FNMA's testimony. There are no exigent circumstances that would justify the lack of a pre-deprivation hearing, nor would a meaningful hearing before a neutral party impose significant fiscal or administrative burdens.[11]

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1. [11] A 30(b)(6) deposition was taken of Terrence Evans, a 16-year employee of FNMA on February 11, 2014. In that deposition Mr. Evans made the following statements:

   Q. Who at FNMA holds the information as to what mortgage-backed security pool a particular loan goes into? A. **The lenders create their pools and place loans into them.** Q. Say that again? A. **The lender creates, you know, their pools and puts loans into the pools. So FNMA does not make, you know, does not always make those allocations.** APP 159

   How could this type of transfer of property interest comply with the Statute of Frauds? It could not. Q. So if Debra Brown's mortgage was placed in a mortgage-backed

The SJC recognizes the role of the Housing Court includes a higher burden where property rights are in the balance:

> We therefore hold that, whenever it becomes apparent to a court in a summary process action that a plaintiff may not be the owner or lessor of the property at issue, the court is obligated to inquire into the plaintiff's standing and, if it determines that the plaintiff lacks standing, it must dismiss the action for lack of subject matter jurisdiction, regardless of whether any party raises an issue of standing. See HSBC, 464 Mass. at 199-200; Mass. R. Civ. P. 12 (h) (3). Although dismissals for lack of subject matter jurisdiction are ordinarily without prejudice because they typically do not involve an adjudication on the merits, in cases where a lack of standing is also fatal to the merits of the plaintiff's claim, as here, dismissal must be with prejudice. See Abate v. Fremont Inv. & Loan, 470 Mass. 821, 828, 836

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complied or not? A. Correct. Q. Or is any of this that FNMA needs to do? A. These are servicer responsibilities. Q. Does FNMA have any responsibilities with respect to foreclosure? A. We delegate the decision making to the servicer. (APP 185, page 144) Q. So tell me how this works A. The Servicer will determine the bid price [according to] how it is laid out in our guide. Q. Once that decision is made and once the bid is made and once it's the high bid, what happens? A. The property is reverted into Fannie Mae's REO inventory. Q. But no money exchanges hands A. Correct. Q. Because Fannie Mae buys the property for itself A. Essentially. (APP 813, page 234-236)

what the government is doing to him, notice and an opportunity to be heard are essential. Wisconsin v. Constantineau, 400 U.S. 433 (1971). As a title-theory state, even though a property has a mortgage, they have not lost all rights to their property.

The right to cross-examine and confront adverse witnesses and their evidence implies the right to marshal and adduce one's own evidence in support of a position on a contested fact issue such as (1) whether the foreclosure was void because there was no pre-deprivation hearing Sniadach v. Family Fin. Corp., 395 U.S. 337, 89 S.Ct.1820 (1969); (2) whether the Land Court judgment was void by testimony of the author of the assignment; (3) the precise amount of the debt due respondents under the note, if plaintiff's liability was established. 441 U.S. 418, 423(1979). See Hamdi v. Rumsfeld, 542 U.S. at 534.

In a recent case in Massachusetts, Judge Sorokin wrote: In Massachusetts, courts have consistently held that non-judicial foreclosures are constitutional. See, e.g., U.S. Bank Nat. Ass'n v. Ibanez, 941 N.E.2d 40, 49 (Mass. 2011) ("Massachusetts does not require a mortgage holder to obtain judicial authorization to foreclose on a mortgaged property."); Rice v. Wells Fargo Bank, N.A., 2 F. Supp. 3d 25, 33 (D. Mass. 2014) ("Massachusetts is a non-judicial foreclosure state and a mortgage holder need not obtain judicial authorization to foreclose on mortgaged property."). *Garcia v. Nationstar Mortg.*, Civil No. 20-10246-IT, 2-3 (D. Mass. Feb. 10, 2020)

The disconnect in this decision is the following: (1) a land court judgment ordering a sale (making the state an actor in the taking); and (2) a housing court grants possession to the government without due process makes the housing court a state actor. When

particularized," as well as "'actual or imminent.'" Id., at 560. It cannot be "' "conjectural or hypothetical.'" " Ibid. Second, a grievance that amounts to nothing more than an abstract and generalized harm to a citizen's interest in the proper application of the law does not count as an "injury in fact." And it consequently does not show standing. Hollingsworth, supra, at 706; see also Lance v. Coff-man, 549 U. S. 437, 439–441 (2007) (per curium) (describing this Court's "lengthy pedigree" in refusing to serve as a forum for generalized grievances). In other words, a plaintiff cannot establish standing by asserting an abstract "general interest common to all members of the public," id., at 440, "no matter how sincere" or "deeply committed" a plaintiff is to vindicating that general interest on behalf of the public, Hollingsworth, supra, at 706–707. Justice Powell explained the reasons for this limitation. He found it "inescapable" that to find standing based upon that kind of interest "would significantly alter the allocation of power at the national level, with a shift away from a democratic form of government." United States v. Richardson, 418 U. S. 166, 188 (1974) (concurring opinion). He added that "[w]e should be ever mindful of the contradictions that would arise if a democracy were to permit general oversight of the elected branches of government by a nonrepresentative, and in large measure insulated, judicial branch." Ibid.; see also Schlesinger v. Reservists Comm. to Stop the War, 418 U. S. 208, 222 (1974); Warth v. Seldin, 422 U. S. 490, 500 (1975). Cf. Federal Election Comm'n v. Akins, 524 U. S. 11, 21–25 (1998)