

FEB 06 2021

OFFICE OF THE CLERK

IN THE SUPREME COURT OF THE UNITED STATES

NO: 20-1435

GLENN GALVAN, et al; all Applicable Home Owners;
Petitioner, Appellant, CounterClaimant

Nevada Supreme
Court Case NO:

76214

vs.
Nationstar Mortgage,
Respondent, Defendants, CounterDefendant

CV12-02785

GLENN GALVAN, In Personam, In rem,
Petitioner, Appellant, Plaintiff

CV15-01360
[Consolidated
With
CV12-02785]

vs.
Aurora Loan Services, Quality Loan
Service Corp.; Beneficiaries,
other related Loan Servicers; et al.,
and Does 1 through 100, inclusive
Respondents, Defendants

Supreme Court Rule 10(B) and (C)

An Appeal from the Nevada Supreme Court

PETITION FOR WRIT OF CERTIORARI

ACTING IN PRO SE

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ORIGINAL

QUESTIONS FOR THE SUPREME COURT

1. Whether all Nevada Courts abused their discretion and made errors in fact and in misapplying the court rules by not ruling if the State Court Proceedings are DEFECTIVE and are improper before the court as Nationstar violated numerous court rules which prejudiced the Galvan in conducting his case?? This deprives Galvan of procedural due process as mandated Nevada's Constitution and 5th and 14th Amendments of the US. Constitution regarding procedural due process of property.
2. Whether the Nevada Appeals Court made errors in fact in applying Nevada law and federal law [18 U.S.C. § 1028(a)(1)(2)] by deeming Galvan in lacking in standing where the Appeals Court deemed the mortgage assignment "voidable" ?? Nevada law NRS 107 [Deed of Trusts], federal court rulings and law, and the William's Test state otherwise, **to be "void"**. The ruling violates and deprives Galvan the fundamental constitutional rights of substantive due process in Nevada's Constitution and 5th and 14th Amendments of the US. Constitution regarding procedural due process of property.
3. Whether the Nevada State Courts has abused their discretion by setting aside end/or not considering facts and findings of the Consent Orders/Decrees issued by the Office of Thrift and Supervision regarding Aurora Loan Services and 1999 MERS Corporation pursuant to 12 USC § 1818(i)(1)?? The affidavits signed by these parties [Nationstar, Aurora] for this case lack trustworthiness. These were the bases of the Galvan's preliminary injunction in which the lower court denied. Appeals Court and Nevada Supreme Court let the lower court ruling stand.

4. Whether the Nevada State Courts abused their discretion and misapplied Nevada Law [NRS 106.210] where Nationstar and previous parties did not record all of the chain of assignments or Deed of Trust as mandated by the said statute?? **NRS 106.210** states that foreclosing proceedings shall be terminated and voided if instruments are NOT recorded. In addition, Nationstar, the entity who are trying to foreclose, lack proof that they have in their possession original instruments together with the deed of Trust pursuant to the Nevada Supreme Court rulings and the Uniform Commercial Code. Appeals court order contradicts Nevada Supreme Court order.

5. Whether the Nevada State Courts has misapplied compulsory counterclaim rules NRCP 13(a) by dismissing CV15-01360 even though both cases of CV12-02785 and CV15-01360 were consolidated?? As numerous federal courts have determined that dismissal of cases due to compulsory counterclaims when cases are consolidated is inappropriate. A misapplication in dismissing cases due to NRCP 13(a) deprives and prejudices Galvan procedural due process 14th and 15th Amendments of the U.S. Constitution in conducting his case.

6. Whether the Nevada Courts has violated their discretion and deprived Galvan of due process rights and free speech pursuant to the First Amendment, 5th and 14th of the US. Constitution by naming Galvan vexatious litigant even though Nationstar and its counsel broke numerous court's rules and Galvan presented substantial evidence in which the lower courts set aside or ignored to support his case and to vigorously defend the actions in these proceedings??

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PARTIES IN THIS CASE

Petitioner

Glenn Galvan- Petitioner, Nevada resident, is the owner of the real property of 7866 Morgan Point Circle, Reno, Nevada 89523, Parcel #: 23207306, Lot: 29; is the "subject property" in which this litigation is based on. The petitioner has been an Engineer for 5 decades working in various technology industries with many accomplishments. Part of my tenure was in Regulatory Compliance and Product Safety working with applying rules and regulations to very complex and sophisticated technology products.

All Applicable Homeowners- Petitioner/Plaintiff- All homeowners who are in similar circumstances as with the Petitioner and where this Honorable Supreme Court's ruling will also affect their outcomes.

Respondents, Plaintiffs, Defendants, And Counter-Defendants

Nationstar Mortgage (Nationstar) aka: Mr. Cooper- Respondent, Plaintiff, Defendant/ Counter-Defendant -Texas Corporation, Loan Servicer, 350 Highland Drive, Lewisville, Texas 75067, that is attempting to foreclose Galvan's subject property in the "judicial foreclosure". Plaintiff alleges Nationstar lacks authority and standing to foreclose based on several reasons, including missing and/or fraudulent assignments on the Deed of Trust. Resident Agent: CSC Services of Nevada, Inc. Nationstar was acquired by WMIH Corp. (NASDAQ:) in July of 2018.

Quality Loan Service Corp. (QLS) – Respondent Defendant/Counterdefendant- Past Loan Servicer, Alleged Trustee, California based Corporation, address is 2141 5th

Ave, San Diego, CA 92101 (619) 645-7711. Resident Agent: Kristin A. Schuler-Hintz in Las Vegas, NV.

Aurora Loan Services (ALS)- Respondent/ CounterDefendant- Lost its Business License to conduct business in the State of Nevada on December 31, 2017. Aurora was acquired by Nationstar Mortgage **See Appendix U**. Aurora was subsidiary of Aurora FSB where the parent company was Lehman Brothers.

All Loan Servicers- All current and past loan servicers which may not be listed above which had servicing agreements with the subject property and whom this court can or cannot acquire jurisdiction.

All Members of the Trust- All current and past members of the trust for the subject property not listed above in this complaint and whom this court can or cannot acquire jurisdiction.

INTRODUCTION AND STATEMENT OF THE CASE

To the HONORABLE SUPREME COURT

COMES NOW, Petitioner, GLENN GALVAN, acting in PRO SE hereby respectfully submits **PETITION FOR WRIT OF CERTIORARI**.

The Petitioner, Glenn Galvan respectfully moves this Court grant the Certiorari Petition stemming from the Nevada Supreme Court Cases 76214 and 76214-COA, (Second District Court in the State of Nevada in the County of Washoe, Case No#: **[CV15-01360 consolidated with CV12-02875]** for the timely filing of a petition for a writ of certiorari into the Supreme Court of the United States. The Nevada Supreme Court [en banc] has denied petition in 76214 for Review on September 11, 2020. This timely petition for

Review was filed on July 30, 2020. As such, pursuant to 28 USC §1654, 28 USC § 2101(f), 28 USC § 1254(1) along with Sup. Ct. R. 10(b) and (c). The certiorari petition will present substantial federal questions which are novel at this same time the Nevada Supreme/Appeals Court rulings were contradictory to federal and Nevada State Law along with being unconstitutional. Most notably, these questions to be raised in the certiorari petition, raise basic and important constitutional issues such as “Due Process” Fifth and Fourteenth Amendments, where the Nevada Supreme and Appeals Court rulings contradict or conflict with Federal Court Rulings and federal law. Specifically, the petition will raise questions regarding the improper application of the NRCP13(a) which mirrors FRCP13(a) where misapplying the rule and improper dismissal constitutes a violation of Galvan’s “due process” when cases were consolidated. Other federal questions will be raised as a matter of federal law and the U.S. Constitution where this court requires further statutory interpretation. There’s injustice being enacted against the petitioner thus Galvan seeks rectification from this honorable court.

This case before the Supreme Court is about an illegal foreclosure in which Nationstar is attempting to enforce against Galvan. Nationstar has violated procedurally many court rules conducting their case. The evidence presented to the Nevada State Courts is that Nationstar lacks standing to enforce the foreclosure due to defective documentation namely the Deed of Trust Mortgage Assignment in which the Nevada Supreme Court warranted to be ruled as “void” based on previous court rulings both federal and state, Nevada law, and federal law. Some key decisions by the state court that were rendered, Galvan contends to be unconstitutional and in error which conflicts with federal court rulings.

NEVADA COURT OPINIONS AND SUPPORTING EVIDENCE

The Nevada Supreme Court's Order is attached as **Appendix A**. The Appeals Court Opinions and order is in **Appendix B** and the 2nd District Court Opinions is **Appendix D through M**. The Supporting evidence is on **Appendix N thru X**.

JURISDICTIONAL STATEMENT

The United States Supreme Court has jurisdiction pursuant to **Sup. Ct. R. 10(b) and (c)**. The petitioner has authority to conduct this petition pursuant to **28 USC §1654**. The petitioner was born in North Carolina, is an American Citizen, is resident of Reno in the state of Nevada in the United States of America.

Pursuant to **28 USC § 1253** this Supreme Court has jurisdiction in this case. Final order was published on September 11, 2020 by the Nevada Supreme Court. There are federal questions before this United States Supreme Court pursuant to **28 USC § 1331**.

The Petitioner cannot afford an attorney at this time but may do so in the future. I have sought to retain counsel, however, because of the complexity of this case and time, in addition, of the cost the petitioner could not retain counsel.

STATEMENT OF THE FACTS, CASE HISTORY, AND PROCEDURAL

BACKGROUND

A. History of Events - On December 5, 2005 Galvan executed a refinance of the "Subject Property" through MILA. MILA filed for bankruptcy (*U.S. Bankruptcy Court, Western District of Washington, Case # 07-13059*). MILA's is NO longer in existence as the company ceased operations thereabouts in April 2007. This refinance is known as the "Subject Loan" in this petition. The "Subject Loan"

original amount was for about \$410,000 however, with penalties and other fees and costs Nationstar is asking for about \$630,000. Evidence shows that the “Subject Loan” of the “Subject Property” was allegedly sold and improperly transferred several times during the period of 2005 and 2012. Duestche Bank National Trust Company is/was listed as a trustee/investor/party of interest.

B. Aurora Loan Services became the allegedly unauthorized servicer for Galvan’s mortgage in the March/April of 2008. Prior to that Homecomings Financial was also an allegedly unauthorized Servicer where the mortgage assignment was never lawfully recorded [NRS 106.210] in the Washoe County Recorder. (**See CV12-02785 Reply Dated 3/28/18 all exhibits**)

C. Sometime in the spring of 2009 Quality Home Service became unauthorized trustee for the servicer Aurora Loan Services. Deed of Trust state that the Lender can only “remove trustee and appoint a successor trustee”. In September 2009 a Quality Home Service through their attorneys McCarthy Holthus held a mediation. Where Galvan was induced to agree to a short sale of his “subject property”. Agreements were signed and Galvan held a short sale for more than a year, the subject property was NOT sold. The unauthorized short sale of the Galvan’s “subject property” was a great nuisance and disruption to the Galvan’s life. All this took place before an allegedly invalid an/or fraudulent assignment of Deed of Trust was executed between MERS and Aurora Loan Services on April 22, 2010 and filed with the Washoe Recorder on May 4, 2010 (**See Appendix O**].

D. On October 22, 2012, Aurora Loan Services transferred the mortgage to Nationstar Mortgage as Nationstar Mortgage acquired the assets of Aurora Loan Services on

June 2012. The evidence shows that this transfer was illegal and/or invalid. Then the Judicial Foreclosure was commenced in the 2nd District court on November 6, 2012 by Nationstar.

- E. Court Procedural History - Only Nationstar Mortgage initiated a judicial foreclosure action against the Galvan's "Subject Property" on November 06, 2012 known as Case No: CV12-02785.
- F. The record will show Galvan timely answered the complaint from Nationstar Mortgage and filed counterclaims on December 28, 2012 for five causes of action against **ONLY** Nationstar Mortgage. Namely for Fraud in the Inducement, Bad Faith, Violations of the Nevada Revised statutes and Nevada court Procedures, violation of RESPA and HOEPA, and violations of the Fair Credit Reporting Act (FCRA) with NO rem action. Nationstar filed a responsive pleading/answer which was late 1/30/2013. The petitioner had to file motions and a default.
- G. After the petitioner submitted his answer/responsive pleading on December 28, 2012 Nationstar never scheduled an early case conference pursuant to the court rules NRCP 16.1 [**See attached Declaration/Affidavit**]. There was an early case conference scheduled in early 2015 but even that one was inappropriate as the federal case 3:13-cv-00234-MMD- along with the CV12-02785 was still in the jurisdiction of the Ninth Circuit court of appeals. Mandate by Ninth Circuit Court Appeals was executed on May of 2015.
- H. On May 7, 2013 Galvan amended the State's Court case (from 5 causes of action) and removed them into the U.S. District Court of Nevada and supplemented the federal case with additional claims to 14 causes of action which included Foreclosure Fraud,

Inducement, Misrepresentation, Enrichment, Civil Conspiracy, Civil Rico Violations, Breach of Fiduciary Duties, Breach of Security Instrument, Usury, etc. Galvan's case in the U.S. District Court, Nevada, supplemented additional parties other than Nationstar for diversity jurisdiction known as 3:13-cv-00234-MMD-

- I. On February 18, 2014 the U.S. District Court issued its dismissal of the Case and to remand the "Judicial Foreclosure" back to the 2nd District Court of Nevada because of, mostly due to lack of subject matter jurisdiction compulsory counterclaims FRCP 13(a).
- J. Galvan Filed a Motion for reconsideration on February 28, 2014. After the U.S. District Court's dismissal, in early March 2014 during Galvan's reconsideration motion in the US District Court and upon further inspection of the documents it was discovered that the Corporate Assignment of the Deed of Trust is alleged to be fraudulent. It was discovered that the individual, Theodore Schultz, who signed on the affidavit on the Corporate Assignment of the Deed Of Trust of the 'subject property" signed as VP Mortgage Electronic Registration Systems. In fact, by a ruling out of the Court of Appeals of Ohio, (**See Aurora Loan Servs., L.L.C. v. Louis, 2012-Ohio-384**), Mr. Schultz was an employee of Aurora Loan Services as this was eventually admitted by the Request for Admissions in the fall of 2016. There were NO valid corporate resolution attached in any documentation or there was NO Power of attorney or no order attached authorizing Schultz to sign for MERS. The assignment was recorded with the Washoe County recorder on May 4, 2010. (**See CV12-02785 Motion 11/10/2016 all exhibits**)

K. The the 9th Circuit Court of Appeals issued its order to affirm on February 27, 2015 citing that FRCP 13(a) was the primary reason behind the District Court's dismissal.

L. On April 24, 2015 the Ninth Circuit Court of Appeals Panel denied Galvan's petition for rehearing and rehearing en banc. Subsequently, Galvan filed a new action with the 2nd District Court known as CV15-01360.

M. On July 27, 2015 the Washoe County Second District Court of Nevada approved the Galvan's motion to proceed in forma pauperis and subsequently filed Galvan's complaint which included nine causes of action of Statutory Concealment of a Material Fact, Fraudulent Concealment, Fraudulent Inducement, Construct Fraud, Notary Fraud/Fraudulent Misrepresentation, Aiding and Abetting, Negligent Misrepresentation, Breach Of Covenant of Good Faith and Dealings-Tort, and Quite Title against Nationstar Mortgage, Aurora Loan Services, and Quality Loan Service. The new parties in CV15-01360 the 2nd District Court had jurisdiction and were all properly served [See Complaint in Appendix X]. By an order, **the record will show that CV15-01360 and CV12-02785 were consolidated on 11/12/2015.** Nationstar filed a Motion to Dismiss CV-01360 after the cases were consolidated for NRCP 13(a), the Nevada 2nd District court dismissed CV15-01360 due to compulsory counterclaims even though many cases across the nation have ruled that once cases are consolidated, dismissals based on compulsory counterclaims are inappropriate.

N. A new U.S. District Court of Nevada case was opened in December 31, 2015 with MERS and DBNTC being the defendants known as 3:15-cv-0632-MMS-VPC. The complaint was filed on April 18, 2016. Discovery period was held till September 5, 2016, Some admissions were made, however MERS and DBNTC fail to provide

critical documents. Nevertheless, Galvan has obtained numerous documents and evidence from that federal case that later were utilized in CV12-02785.

- O. Because of the rulings and orders in the 2nd District Court on February 20, 21, and 22, the federal case 3:15-cv-0632-MMD-VPC was dismissed because of res judicata. In addition, the appeal in the Ninth Circuit Court of Appeals was also upheld.
- P. During the Discovery for CV12-02785 during 2016 and early 2017 the petitioner requested 4 times for Request for Admissions (RFAs) and Production of Documents (PODs) from Nationstar. Nationstar did NOT cooperate in the discovery.
- Q. In all instances either Nationstar did not answer the requests or answers were “frivolous” as the Discovery Master noted in their order (**See CV12-02785 Order 11/23/2016**). The petitioner had to file a Motion to Compel Discovery. (**See CV12-02785 Motion 8/31/2016 and 9/1/2016**) The Master ordered Nationstar to Compel Discovery on Several key requests including producing Corporate Resolution between MERS and Aurora after January 1, 1999 when MERS was incorporated. (**See CV12-02785 Order 11/23/2016**). Nationstar never produced a valid corporate resolution that Authorizes Theodore Schultz from Aurora Loan Services to sign for 1999 MERS.
- R. Another order from the Master was for Nationstar to produce the original Mortgage Instruments including the original note and deed of trust pursuant from this Nevada Supreme Court authority (**See Leyva v. National Default Serv.**). Nationstar’s counsel objected. The presiding 2nd District Court judge sided with Nationstar such that they need not have to produce the original instruments and the Appeal court reaffirmation.

S. The petitioner then filed a Mandatory Injunction to produce the Original Mortgage Instruments. In the 2nd District Court order the injunction was denied.[Appendix G]

T. The petitioner filed a Motion for Summary judgement based on all of the substantial and corroborating evidence (**See CV12-02785 Motion filed on 11/10/2016**). The District Court denied the petitioner's motion for summary judgment did not consider any of the evidence provided which included an **Affidavit/Declaration** on the admissibility of the evidence (**See Appendix J**). Then petitioner filed a Motion for Reconsideration NRCP 52, 59, and 60 based on new evidence that was discovered (**See CV12-02785 Motion filed on 03/7/2017**). That motion was also denied on **5/19/2017 [See Appendix F]**

U. Nationstar filed motion to name the Petitioner a vexatious litigant. That was granted.

V. The petitioner filed a Motion to Strike Nationstar Motion to name the Petitioner as Vexatious Litigant due filing a motion containing a false Material fact in which the Nationstar's Counsel never revised or corrected. (**See CV12-02785 Motion filed on 6/4/2017)[See Appendix E]**)

W. The petitioner filed a motion to have the honorable judge to be recused based on the conduct of the Court. The honorable Judge was recused, however the motion was denied, and the honorable judge reasserted back into the bench for CV12-02785 to adjudicate the final motion.

X. After the final order from the 2nd District Court, Galvan a timely Notice of Appeal was filed with the Nevada Supreme Court on June 27, 2018, Case #: 76214. The Supreme Court decided to transfer the case to the Nevada Court of Appeals, Case #

76214-COA on June 13, 2019. On July 13, 2020 Nevada Court of Appeals rendered a opinion and order. Then Galvan petitioned a timely Supreme Court review of the Court of Appeals Opinion and Order. On September 11, 2020 the Petition for review was denied. Subsequently, Galvan filed this Petition to the U.S. Supreme Court.

1. Broad Aspect of the Facts for MERS and Aurora Loan Services

A. MERS- Based on the Consent Decrees/Orders¹ issued by the Board of Governors on April 13, 2011, documentation from the Delaware of Secretary State, MERS own System Procedures there were 2 separate companies of Mortgage Electronic Registration Systems:

- 1.** The first company of Mortgage Electronic Registration Systems was incorporated in October 16, 1995 then ceased operations in June 30, 1998. **(See CV12-02785 Motion filed on 11/10/2016 and 3/7/2017 on Exhibit 4)**
- 2.** Second Company of MERS was incorporated in January 1, 1999. This is where all of the documents and all of the mortgages, assignment activities and others are under the MERS System including Galvan's "subject property". **(See CV12-02785 Motion filed on 11/10/2016 and 3/7/2017 on Exhibit 4 and Exhibit 5, Page 209)**
- 3.** According to the consent decrees/orders MERS were engaging "unsound and unsafe practices" where MERS:

"(4) In connection with services provided to Examined Members related to tracking, and registering residential mortgage loans and initiating foreclosures ("residential mortgage and foreclosure-related services"), MERS and MERSCORP:

1. Regarding Consent Orders pursuant to 12 USC §1818(i)(1) "no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order under any such section, or to review, modify, suspend, terminate, or set aside any such notice or order."

(a) Have failed to exercise appropriate oversight, management supervision and corporate governance, and have failed to devote adequate financial, staffing, training, and legal resources to ensure proper administration and delivery of services to Examined Members; and

(b) have failed to establish and maintain adequate internal controls, policies, and procedures, compliance risk management, and internal audit and reporting requirements with respect to the administration and delivery of services to Examined Members.

(5) By reason of the conduct set forth above, MERS and MERSCORP engaged in unsafe or unsound practices that expose them and Examined Members to unacceptable operational, compliance, legal, and reputational risks.” (See Appendix T, Page 5)

4. According to the same consent decrees/orders, the OTC ordered MERS to establish the Corporate Resolution Management System (CRMS) “*development and implementation of a plan to ensure that MERS certifying officers are transitioned expeditiously onto the Corporate Resolution Management System “CRMS” in accordance with MERS’ current certifying officer policy and process;*” (See Appendix T, Page 10 at g)

B. Aurora Loan Services (ALS)- Based on the consent orders and other documentation-

5. Aurora Loan Services (ALS) was a subsidiary of the Aurora Bank, FSB who was a subsidiary of Lehman Brothers who filed for bankruptcy in September 15, 2008. ALS claims it is a member associated with MERS.

6. Consent decrees/orders issued by Office of Thrift and Supervision (OTS), January 09, 2009 issued a cease and desist order for Lehman and its subsidiaries. The order stated that the *Association (Lehman, ALS Etc) shall NOT (i) engage in any transaction with an affiliate” (See Appendix S, page 6) In addition the OTS finds that the association has engaged in unsafe and unsound banking practices*

and failed to comply with requirement of various laws and regulation including”

(See Appendix S, page 2) . The order lists out detailed violations, including

“Operating with capital that is insufficient”

7. On April 13, 2011 again the OTS issued Consent Decrees/Orders against ALS and stated that they were engaging in unsound and unsafe practices. The OTS findings were significant:

“ 2. In connection with certain foreclosures of loans in its residential mortgage servicing portfolio, the Association engaged in the following unsafe or unsound practices:

(a) filed or caused to be filed in state and federal courts numerous affidavits executed by its employees or employees of third-party service providers making various assertions, such as ownership of the mortgage note and mortgage, the amount of the principal and interest due, and the fees and expenses chargeable to the borrower, in which the affiant represented that the assertions in the affidavit were made based on personal knowledge or based on a review by the affiant of the relevant books and records, when, in many cases, they were not based on such personal knowledge or review of the relevant books and records;

(b) filed or caused to be filed in state and federal courts, or in local land records offices, numerous affidavits or other mortgage-related documents that were not properly notarized, specifically that were not signed or affirmed in the presence of a notary;

(c) litigated foreclosure and bankruptcy proceedings and initiated non-judicial

foreclosure proceedings without always ensuring that the promissory note and mortgage document were properly endorsed or assigned and, if necessary, in the possession of the appropriate party at the appropriate time;

(d) failed to devote sufficient financial, staffing and managerial resources to ensure proper administration of its foreclosure processes;

(e) failed to devote to its foreclosure processes adequate oversight, internal controls, policies, and procedures, compliance risk management, internal audit, third party management, and training; and

(f) failed sufficiently to oversee outside counsel and other third-party providers

handling foreclosure-related services.” (See Appendix S, Page 2 and 3)

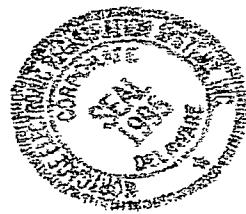
C. Specific Facts Relating to this Case:

- 8.** 1999 MERS is listed in Galvan’s Deed of Trust in (See Appendix P) as the beneficiary. This case is an example unsound and unsafe practices as stated in the consent decrees/order from all parties, including MERS, ALS, DBNTC “*filed or caused to be filed in state and federal courts, or in local land records offices, numerous affidavits or other mortgage-related documents that were not properly notarized, specifically that were not signed or affirmed in the presence of a notary;*” *See (See Appendix S, page 2).*
- 9.** A corporate resolution (CR) ((See Appendix N) was submitted as part of the discovery, however, it is alleged to be invalid as it was executed by William Hultman, Officer of MERS, in October 22, 1998 before 1999 MERS corporation was incorporated on January 1, 1999. There was NO MERS in existence when this Corporate Resolution was executed as 1995 MERS Corporation cease to exist or merged on June 31, 1998 (See Appendix N and Q). No Corporate Resolution exists between the 1999 Corporation of MERS and Aurora Loan Services. **Nationstar never produced a corporate resolution after January 1, 1999 as ordered by the Discovery Master in the 2nd District Court.**
- 10.** In Galvan’s Deed of Trust in (See Appendix P], it states that “***MERS is a separate corporation that is acting solely as a nominee for Lender and Lender’s successor and assigns. MERS is the beneficiary of this Security Instrument.***” MERS incorporated in 1999 is a separate and distinct Corporation and legal entity from 1995 MERS.

11. DBNTC is the trustee and/or the Investor Party of Interest to Galvan's mortgage.

12. The corporate assignment of the Deed of Trust for the Subject property executed by Theodore Schultz in **(See Appendix O)** utilizes a 1995 seal/stamp where, according to MERS the assignment requires the use a 1999 seal/stamp for the 1999 corporation of MERS (see below). The evidence shows that the use of the 1995 MERS seal/stamp misrepresents the real corporation of MERS. This is corroborated by MERS own procedures and other related court documents. **[See Appendix V and W].**

13. **Valid or Proper MERS Corp Seal Invalid and/or Counterfeit MERS Corp Seal**



14. Evidence that was discovered illustrate the assignment signed by Theodore Schultz in other courts throughout the nation have named him as "known robosigner". **(See Appendix W)**

The above facts are all supported and corroborated by the Secretary State of Delaware **(See Appendix Q)**, MERS own internal procedures **(See Appendix V]**, OTS Consent Orders **(See Appendix S and T]** in Galvan's Deed of Trust, the Viel Doctrine, William Hultman's own testimony **(See CV12-02785 Motion filed on 11/10/2016 in Exhibit 13)** and other court cases across the country **[See Appendix W]**. Admissibility of all of these exhibits are sworn by Declaration/Affidavit **[See Appendix]**.

LEGAL ANALYSIS FOR GRANTING THE CERTAURARI PETITION

1. The Supreme Court Warrants to Grant Certiorari Because The Opinions Addresses Issues of Exceptional Importance and is Meritorious with the Public Interest in Mind - Factors to consider to grant for the Certiorari Petition. In all questions from above, this review will have Nationwide significance as with the current situation with COVID-19 along with unemployment throughout the Nation and in the state of Nevada will bring forth more foreclosure actions and fraud by scheming parties. The courts have a duty to ensure proceedings against the homeowner are fair and are protected against abuse and fraud and are constitutional from the foreclosing parties. This review will ensure that all of the "l's" and "T's" are crossed including that the proceedings are lawful, constitutional, and procedurally proper before the court when parties initiate a foreclosure.

From the final judgment issued by Nevada State Courts, the review will present issues and questions of Federal Law, Nevada law, along with constitutional issues with these case's orders that contradict Federal law, Federal Court rulings, prior Nevada Supreme Court's rulings and Nevada Law along with error in facts. Matters raised as a principal issue a question of first impression involving the United States or Nevada Constitutions or common law where further discussions along with additional points of authority will be made below.

The specific issues of court case dismissals based on Compulsory Counterclaims, the issues of void and voidable of recordings are fundamental issues Nationwide public importance that require clarity by the U.S. Supreme Court where these matters are being raised as a principal issue a question of nationwide public importance, or an issue upon

which there is an inconsistency and conflicts with the published decisions between Nevada's District Court and State Supreme Court along with the federal courts. Certiorari is necessary such that Galvan can present these issues this honorable Supreme Court can adjudicate them.

This honorable Supreme Court has reviewed numerous "due process" cases:

Hurtado v. California, 110 U.S. 516, 529 (1884); Ashcroft v. Iqbal 556 U.S. 662(2009); State Farm Mut. Automobile Ins. Co. v. Campbell, 538 U.S. 408, 123 S. Ct. 1513 (2003); Wilkinson v. Austin 545 U.S. 209, 125 S. Ct. 2384, 162 L. Ed. 2d 174, (2005); Caperton v. AT Massey Coal Co., Inc., 556 U.S. 868, 129 S. Ct. 2252 (2009)

"To invoke the protection of the Due Process Clause at all—whether under a theory of "substantive" or "procedural" due process—a party must first identify a deprivation of "life, liberty, or property." See **Obergefell v. Hodges, 135 S. Ct. 2584[2015]**. Here Galvan is invoking the deprivation of his property due to the lack of enforcement of Federal and Nevada Law.

From this, there is a public interest issue here and there is a reasonable probability that this honorable Supreme Court will grant the certiorari petition as the Supreme Court will ensure that pro-se litigants who cannot afford counsel have a uniform nationwide standard for homeowners on the application of Rule 13(a) and 12 USC 1818i(1) and U.S. Constitution. This review will ensure Galvan's case in state and federal courts issue an order to foreclose without proper "due process" and/or have cases improperly dismissed by the courts. *"he is not deprived of property without due process of law, even if he can be regarded as deprived of his property by an adverse result."* See **Marchant v. Pennsylvania R.R., 153 U.S. 380, 386 (1894)**. The Nevada State Courts decision

deprives Galvan of the requirements of "due process". These constitutional issues undoubtedly present substantial questions that are of exceptional importance for the constitutional balance of powers and responsibilities between the Courts, States, and individuals; issues the U.S. Supreme Court is likely to review on certiorari.

2. **The Nevada State Court Rulings, Conflict with State Laws, Federal Laws, and Previous Federal/State Court Rulings:** Regarding the first question before this honorable court. The Nevada Court of Appeals never ruled if the 2nd District Court Proceedings were procedurally improper before the Court. As an example, the Nevada State Court allowed the District Court's orders to stand where the case proceedings were procedurally improper before the Court. As stated in the attached Declaration/Affidavit [see attached Affadavit] Nationstar violated many court rules thus prejudicing the petitioner in conducting his case. The State Court never admonished Nationstar or their counsel for their behavior. Clearly an issue of the US Constitution 5th and 14th Amendment regarding property, Procedural Due Process. The language of the Fourteenth Amendment requires the provision of due process when an interest in one's "life, liberty or property' is threatened.

See Morrissey v. Brewer. 408 U.S. 471, 481 (1982). "The requirements of procedural due process apply only to the deprivation of interests encompassed by the Fourteenth Amendment's protection of liberty and property. When protected interests are implicated, the right to some kind of prior hearing is paramount. But the range of interests protected by procedural due process is not infinite." Board of Regents v. Roth. 408 us. 554, 569-71 (1912). Developments under the Fifth Amendment's Due Process Clause have been interchangeable. Cf. Amett v. Kennedy, 416 US. 134 (1974). The homeowner was deemed sufficiently important to require procedural due process before repossession could occur. See Fuentes v. Shevin, 407 U.S. 67 (1972) (invalidating replevin statutes which authorized

09 the authorities to seize goods simply upon the filing of an ex parte application and the posting of bond).

In this court where the denial of Galvan in not inspecting the original instruments where there's evidence of malfeasance from Nationstar et al [See **Consent Orders/Decrees in Appendix S and T**] and Nationstar not following court rules prejudices the petitioner regarding lack of Procedural Due Process in District Court Proceedings.

Here the petitioner request to grant the certiorari as the rulings conflict with of the 5th and 14th amendment provisions as provided in the U.S. Constitution as the petitioner here was prejudiced procedurally in conducting his case for his property.

*“Because the Constitution protects rather than creates property interests, the existence of a property interest is determined by reference to ‘existing rules or understandings that stem from an independent source such as state law.’” **Phillips v. Washington Legal Foundation**, 524 U.S. 156, 164 (1998) (quoting **Board of Regents of State Colleges v. Roth**, 408 U.S. 564, 577 (1972)).” See **Nelson v. Colorado**, 137 S. Ct. 1249 [2017]*

In addition to procedural due process deprivations, Galvan is entitled to relief for the reason as the record will show that Nationstar did not answer the complaint in CV15-01360. Nationstar filed an UNTIMELY dispositive motion on December 10, 2015 long after the answer [response pleading] was due. No motion for extension of time was completed. Thus, Nationstar had a requirement to answer to Galvan's pleading within 21 days NRCP 12(a) in CV15-01360 absent of a motion NRCP 12(b) within the 21 days. *“A motion asserting any of these defenses must be made before pleading if a responsive pleading is allowed.”* [quoting NRCP 12]. Key dates for CV15- 01360 from the record. **See Attached affidavit**

Complaint Filed by the Petitioner: Date: July 27, 2015
Affidavit of Service for all Parties: August 28. 2015

Notice of Default Filed: September 14, 2015

CV15-01360 and CV12-02785 were Consolidated: November 12, 2015

Motion to Dismiss CV15-01360 Filed: December 10, 2015

Again, a procedural due process issue in which warrants relief to be granted.

Regarding **Question 2** on the issue of the “**Voidable mortgage assignment**” in an Improperly Notarized Instrument “*Under the Williams Test, an improperly notarized instrument is void*”. For Galvan’s Mortgage Assignment, all evidence, and Points of Authority state that Galvan’s Mortgage Assignment and “Deed of Trust” warranted to be deemed “Void” because of Several Factors. Nevada Law calls defective documentation as “void” **NRS 107.080 and .0805**. The Appeals Court ruled that based on previous rulings from NV Supreme Court Case “**Wood vs Germann**” that Galvan lacked standing to Challenge the mortgage assignment [**See Appendix B, Pg6 and 7**]. Galvan here contests that this Appeals Court ruling conflicts with “**Wood**” as the core issue in that case in “**Wood**” is separate from this case and doesn’t apply here for Galvan’s Mortgage assignment, as “**Wood**” focuses on “*post-closing date loan assignment*” on whether it is voided. See **Wood v. Germann, 121 Nev. at 729, 121 P.3d**. Here the corporate resolution is from a Defunct MERs Company and the Corporate Stamps utilized in Galvan’s Mortgage assignment again is from the defunct MERs Company [1995]. The issue of “*acknowledgement*” is the real core issue here in this defective mortgage assignment.

Acknowledgement Defined for Notaries as a matter of Nevada law:

“NRS 240.002 “*Acknowledgment*” defined. “*Acknowledgment*” means a declaration by a person that he or she has executed an instrument for the purposes stated therein and, if the instrument is executed in a representative capacity, that the person signed the instrument with proper

authority and executed it as the act of the person or entity represented and identified therein. "

The Nevada Appeals Court recognizes that the notarized mortgage instrument is improper as Mr. Theodore Shultz who signed Galvan's Mortgage Assignment lacked the "proper authority" to notarize it and utilizes an incorrect stamp. From this, Nationstar initiated a case that is "*being presented for any improper purpose*" "and "*factual contentions have NO evidentiary support*" [quoting NRCP and FRCP Rule 11] warrants that this honorable Supreme Court to dispose Nationstar's case. As a result, from various court cases the Deed of Trust and assignment warrants to be deemed "void". It is direct and with clarity the Nevada Supreme Court ruled "*Under the Williams test, an improperly notarized instrument is void*" See **Torrealba v. Kesmetis** 124 Nev. Adv. Op. No. 10 March 6, 2008; " Also the ruling contradicts Federal Case Authority "*A scenario in which a loan assignment might be void is where the assignor did not possess the rights it was purporting to assign*". See **Culhane v. Aurora Loan Servs. of Neb.**, 708 F.3d 282, 291 (1st Cir.2013) [quoted from "**Wood vs Germann**"]. The "Voidable" ruling from the Nevada Appeals Court conflicts with federal law where:

"(a) Whoever, in a circumstance described in subsection (c) of this section—
(1) knowingly and without lawful authority produces an identification document, authentication feature, or a false identification document;
(2) knowingly transfers an identification document, authentication feature, or a false identification document knowing that such document or feature was stolen or produced without lawful authority; 18 U.S.C. § 1028(a)(1)(2)

Regarding the "**Restatement (Second) of Contracts § 7 (Am. Law Inst. 1981)**"

[Appendix B see page 6, 2nd paragraph] on the issue of "void", the Appeals Court ruled that the assignment warranted to be ruled "voidable". To the contrary, Restatement of Contracts states in **Giannone v. Ayne Inst**, 290 F. Supp. 2d 553, 561 (ED Pa. 2003)

(noting that “fraud in the factum” renders a contract void) in addition, The 7th Circuit stated that contracts for the performance of an illegal act were “void and unenforceable” See **U.S. Nursing Corp. v. Saint Joseph Med. Ctr.**, **39 F.3d 790. 791 (7th Cir. 1994)** and “any ostensible contract is void” See **RESTATEMENT (SECOND) OF CONTRACTS § 174 (1981)**. In addition, an agreement is void if it is the result of fraud. See **Rosenthal v. Great Western Fin. Sec. Corp.**, **926 P.2d 1061, 1073 (Cal. 1996)**. The petitioner pleaded 3 types of frauds [Fraudulent Concealment, Notary Fraud or Fraudulent Misrepresentations and Constructive Fraud] in his pleading filed on July 27, 2015 in CV15-01360 [See Appendix X] and again when the petitioner filed for leave to Amend the pleadings. In both cases the Nevada 2nd District Court improperly dismissed the petitioner’s pleadings and denied leave to amend. Ultimately, this proved to be very prejudicial against the petitioner as the courts did not utilize the pleadings to adjudicate the final judgment. Clearly a Nevada Constitutional issue, along with 5th and 14th Amendments of the US. Constitution regarding due process of property. The Restatement also states that voidable contracts “*might be defined as one type of unenforceable contract.*” See **Restatement (Second) of Contracts § 8 cmt. a (1981)**.

Here with all of these factors stemming from the Wilson Test, Nevada Revised Statutes **NRS 107** and **NRS 107.0805** and with authorities from the Courts, along with Restatement (Second) of Contracts warrants that the U.S. Supreme Court renders the Mortgage Assignment, Deed of Trust, and Foreclosure ‘void” following this review.

On the issue of **Question 3**, the Consent Decrees/Orders, The Nevada State Courts allowed the issue to stand, where Facts and Findings of the Consent Decrees issued by the Office of Thrift and Supervision were set aside when Galvan presented to the State Courts

in his Complaints and during the Motion for Summary Judgment proceedings. The Nevada State Courts failed to take judicial notice on the facts and findings in their orders and opinions contrary to federal law pursuant to **12 USC § 1818(i)(1)**. This prejudices Galvan on the court proceedings and on the outcome of the case as the Nevada Courts set aside and ignored the facts and findings of the consent decrees in their final orders which were part of the basis of these proceedings as the documents, affidavits, and assertions made by Nationstar were not to be trusted. [See Appendix B, page 5 Bottom]. Regarding **12 USC § 1818(i)(1)**, this honorable Supreme Court has recognized the enforcement of this law.

"[E]xcept as otherwise provided in this section no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order under this section, or to review, modify, suspend, terminate, or set aside any such notice or order." See **Board of Governors, FRS v. MCorp Financial, Inc., 502 U.S. 32 [1991]**

Regarding to **Question 4**, Nevada law specifically NRS 106.210, is quite clear regarding the Recording of assignments of mortgages. The recording is ministerial act as stated by the Nevada Supreme Court. Evidence illustrate that certain beneficiaries did not record the assignment as required by NRS 106.210.

NRS 106.210 *"Any assignment of a mortgage of real property, or of a mortgage of personal property or crops recorded prior to March 27, 1935, and any assignment of the beneficial interest under a deed of trust must be recorded in the office of the recorder of the county in which the property is located, and from the time any of the same are so filed for record shall operate as constructive notice of the contents thereof to all persons. A mortgage of real property, or a mortgage of personal property or crops recorded prior to March 27, 1935, which has been assigned may not be enforced unless and until the assignment is recorded pursuant to this subsection. If the beneficial interest under a deed of trust has been assigned, the trustee under the deed of trust may not exercise the power of sale pursuant*

to NRS 107.080 unless and until the assignment is recorded pursuant to this subsection.”

The Nevada Supreme Court has ruled in NRS 106.210 U.S Bankruptcy court stating

“We conclude that MERS' recordation of its assignment to Deutsche Bank was a ministerial act. MERS was operating as the agent of Deutsche Bank, and both the assignment and the recordation "involved obedience to instructions" from Deutsche Bank. See In re Rugroden, 481 B.R. at 78; see also In re Bower, 462 B.R. 347, 354 (Bankr. D. Mass. 2012).” See In re Montierth, 2015 NV 55

With the above points of authority, the ruling in the Nevada Appeals Court conflicts with the ruling against the petitioner, Galvan. Thus, another procedural due process issue where the Nevada Courts deprived Galvan of not enforcing the law {NRS 106.210] under the deed of trust by “not exercising the power of sale” when the recording was not completed for Galvan’s mortgage and property.

For **Question 5**, regarding the dismissals based on compulsory counterclaims when cases are consolidated. The Nevada Appeals Court side stepped on the issue of “compulsory counterclaims” and focused on a 'false issue" on whether Nationstar was obligated to answer the petitioner’s complaint in CV15-01360 [See **Appendix B ,pg 8**]. The record will show, on July 13, 2015 Galvan commenced CV15-01360 with new parties and actions along with critical new evidence along with new laws and consent orders/decrees from Office and Thrift and Supervision (OTS), then later was consolidated on November 12, 2015 with CV12-02785. On March 1, 2016 Nationstar moved to dismiss CV15-01360 for compulsory counterclaims (NRCP 13). The 2nd District Court dismissed CV15-01360 even though many federal courts have ruled that compulsory counterclaims NRCP 13(a) are no longer an issue when cases are consolidated. This deprives Galvan of procedural due process for claims and

relief where the subject matter of the case were about his property. Here the Nevada State Court has decided to dismiss the case [CV15-01360] for compulsory counterclaims, NRCP 13(a), where numerous federal courts have determined that dismissing consolidated cases are inappropriate.

*"Indeed, several courts "have determined that consolidation obviates the concerns of Rule 13(a), thereby making dismissal inappropriate." See **Jack LaLanne Fitness Centers**, 884 F.Supp. at 164 (D.N.J. 1995) (citing **Branch v. Federal Deposit Insurance Corporation**, 825 F.Supp. 384, 401 (D.Mass.1993); **Provident Life and Accident**, 740 F.Supp. at 496). **Parker Rust Proof Co. v. Detrex Corp.**, 14 F.R.D. 173, 174 (E.D.Mich.1953)"*

This misapplication of the Court Rules deprives and prejudices Galvan of his U.S. Constitutional rights of procedural due process [5th and 14th Amendment] and deprives him in presenting his case in order for the court to secure their desired outcome.

For **Question 6** In naming Galvan a Vexatious Litigant, again Nationstar did not properly utilized the four part standard to name Galvan as such in their motion while misstating a critical material fact in which Nationstar never corrected- **[See Appendix B pg 9 & 10]**. Again, this is an issue of Procedural Due Process of property. The restrictions that affected Galvan ability to pursue further legal action in regards to his property is clearly not intended by the founders and Supreme Court Precedent regarding 5th and 14th amendments. As Honorable Supreme Court Chief Justice Roberts has noted: *"The Judiciary's role is limited "to providing] relief to claimants, in individual or class actions, who have suffered, or will imminently suffer, actual harm."* See **Tyson Foods, Inc. v. Bouaphakeo**. 136, S.Ct. 1036 (2016). Such deprivations instituted by the state court in not allowing court proceedings against Nationstar by Galvan when Nationstar's motions

were deficient in utilizing the four-part standard, stated a false material fact in Nationstar's motion in which they were given the opportunity to correct but never did, caused Galvan to file many motions due to Nationstar not following the court rules. In addition, the appeals court stated that the petitioner acted in "harassing" manner but stated no facts or events to support this. The Nevada 2nd District Court stated that in naming a vexatious litigant was due to "delay" with the foreclosure which is incorrect. This case was not about delaying it was about whether the respondents had authority to conduct the foreclosure based on the defective documentation and fraud. All this requires further Constitutional scrutiny from this Honorable Supreme Court as it contradicts with the US Supreme Court's rulings, and federal law.

3. Nevada Appeals Court brought up the Disqualification Issue- In regards to the Honorable District Court Judge, Judge Simons, the petitioner, Galvan, desired not to be involved in a battle with the courts and specifically did not bring up the disqualification issue in the appeal. The very core of the Statement of the Case herein were questions that indirectly relate to the basis for the justification in part the disqualification was sought. The petitioner motioned for a new judge because I knew with some certainty the 2nd District Court in prejudice wanted to name me as a vexatious litigant. In the appeal, I wanted to focus on the procedural aspect of the case and on its merits. If the Appeals Court ruled in my favor, then I would have motioned for a transfer with all due respect to the 2nd District Court. The reasons that the petitioner motioned the court for disqualification was because of prejudice and bias [I am Hispanic American] along with other reasons which were outlined in Galvan's motion in the district court in which includes Nationstar not following the court rules that were not sanctioned, not enforcing

state and federal laws regarding foreclosures, and 2nd District Court not taking judicial notice on the evidence which were submitted from public authorities [See Appendix F pg.3], this includes the OCC Consent Decrees. In addition, Nationstar counsel stated facts that were materially NOT correct in their motions. Nationstar's counsel were given the opportunity to correct the records, however they never did. When the petitioner sought sanctions the Nevada Courts denied them. All this were sufficient reasons for the petitioner to seek with all due respect disqualification under Nevada Law. From this, there exists a double standard as the petitioner discusses below.

4. There is a Double Standard between Individuals and Corporate Entities Regarding Enforcement of State and Federal law and the Nevada Court Rules in this Particular Case- The Nevada Courts have given the respondents, Nationstar, preferential treatment and the benefit of the doubt when their Council violated the court rules or do not enforce the laws pertaining to foreclosures. Prime examples are in the above Legal Analysis in what transpired that were discussed in all of the questions. There were no sanctions against Nationstar and ultimately received a victorious outcome. Ultimately, naming the petitioner a vexatious litigant for vigorously defending his property, where there is ample evidence and support lawfully a case dismissal in favor of Galvan, is the result of the double standard. I pray that the U.S. Supreme Court can rectify this.

5. From the Certiorari if Granted the Petitioner Galvan seeks the following Relief-

1. This Honorable Court to grant this Certiorari Petition.

2. The United States Supreme Court to dismiss Nationstar Judicial Foreclosure CV12-02785 on a number of grounds including being Procedurally improper before the court and/or by FRCP or NRCP Rule 11.
3. To amend the “Findings of Fact” and for declaratory judgement that rulings regarding Galvan’s standing in not challenging his mortgage assignments are unconstitutional and a ruling that Galvan’s mortgage assignments deemed “Void” based on the results of the “Williams Test”.
4. For Declaratory Judgement that Corporate Assignment Deed of Trust/assignment to Galvan’s Mortgage be deemed invalid and “groundless” pursuant to Nevada Law (NRS-205.395) and Federal law 18 U.S.C. § 1028(a)(1)(2)
5. Overturn and amend the decision to dismiss CV15-01360.
6. To Overturn the Order in Denying the Petitioner’s Motion to Strike or Overturn the Nevada 2nd District Court’s order in naming Galvan as a vexatious litigant.
7. Have this Honorable Supreme Court take Judicial Notice of the Petitioner’s evidence from “public authorities” which were sworn under penalty of perjury by declaration/affidavit in the 2nd District Court proceedings -

CONCLUSION

For the reasons set forth above and injustice is about to be performed against the petitioner, Galvan respectfully requests that this honorable United States Supreme Court grant the Petition for Certiorari.