

No. 20-1525

Supreme Court, U.S.  
FILED  
APR 28 2021  
OFFICE OF THE CLERK

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IN THE  
SUPREME COURT OF THE UNITED STATES

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LEWIS ARCHER

Petitioner

vs.

AMERICA'S FIRST FEDERAL CREDIT UNION

Respondent

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On Petition for Writ of Certiorari To  
THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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PETITION FOR WRIT OF CERTIORARI

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LEWIS ARCHER  
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SUPREME COURT, U.S.

## FOUR QUESTIONS PRESENTED

Thousands of families are being put out of their homes by way of a RESPA (Real Estate Settlement Procedure Act) loophole found in Non-Judicial foreclosure State Courts such as Alabama. According to this loophole, a mortgagee's failure to comply with federal loss-mitigation regulations cannot be asserted as a defense in an ejectment action in Non-Judicial State Courts. In addition, there is currently a conflict among U. S. Circuit Courts of Appeals concerning equitably tolling of the Statute of Limitation in RESPA cases such as this one. This is yet to be addressed by the U. S. Supreme Court.

The four questions before the United States Supreme Court are:

1. Does the fact that there is "no defense for Federal Mitigation wrongdoing by lenders in non-judicial State court" while such defense naturally exists in federal court, violate the Equal protection clause of the Fourteenth Amendment?

2. Does the fact that there is “no defense for Federal Mitigation wrongdoing by lenders in non-judicial State court” while such defense naturally exists in federal court, violate the Federal “Supremacy Clause” in the Second paragraph of Article VI of the US Constitution?

3. Since a lender can stretch its RESPA abuse such as Dual-Tracking over many months or years to use up the victim’s three-year Statute of Limitation Period, in this case 19 months of dual-Tracking followed by a nonjudicial state court procedure stretched for 2 years, should Equitable Tolling of the Statute of Limitation be applied in RESPA (Real Estate Settlement Procedure Act) cases?

4. Does issuing a State Writ of Possession, before the Federal Mitigation wrong doings are addressed in a proper jurisdiction, violate the Federal “Supremacy Clause” in the Second paragraph of Article VI of the US Constitution?

## LIST OF ADDITIONAL PARTIES

Shearie Archer

### CORPORATE DISCLOSURE

Petitioner does not have a parent corporation and is not a publicly held corporation.

- *America's First Federal Credit Union v. Archer*, No. CV-2016-900716 Circuit Court of Mobile County, Alabama June 25, 2018.
- *Archer v. America's First Federal Credit Union*, No. No. 2180136, Alabama Court of Civil Appeals. Judgement entered May 17, 2019.
- *Archer v. America's First Federal Credit Union*, No. 1:19-CV-00258 U. S. District Court for the Southern District of Alabama Southern Division. Judgement entered Dec. 2, 2019.
- *Archer v. America's First Federal Credit Union*, No. 19-15182, U. S. Court of Appeals for the Eleventh Circuit. Judgement entered Feb 1<sup>st</sup>, 2021.

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IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari  
issue to review the judgment below.

**OPINIONS BELOW**

The opinion of the United States court of appeals for  
the Eleventh Circuit appears at Appendix A to the  
petition and is unpublished.

The opinion of the United States district court appears  
at Appendix B to the petition and is unpublished.

The findings and recommendations of the United  
States magistrate judge appears at Appendix C.

The United States court of appeals denial for the  
timely filed rehearing appears at Appendix D.

## JURISDICTION

The date on which the United States Court of Appeals decided my case was February 1<sup>st</sup>, 2021.

A timely petition for rehearing was denied by the United States Court of Appeals for the Eleventh Circuit on the following date: March 18<sup>th</sup>, 2021, and a copy of the order denying rehearing appears at Appendix D.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1)



CONSTITUTIONAL AND STATUTORY  
PROVISION INVOLVED

14<sup>th</sup> Amendment to the United States Constitution

Section 1

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.

US Constitution Article VI

Paragraph 2

This Constitution, and the Laws of the United States  
which shall be made in Pursuance thereof; and all  
Treaties made, or which shall be made, under the  
Authority of the United States, shall be the supreme  
Law of the Land; and the Judges in every State shall  
be bound thereby, any Thing in the Constitution or  
Laws of any State to the Contrary notwithstanding.

## STATEMENT OF THE CASE

The Archers (*Petitioners*) suspected that something was not quite right in the law when their lender (*Respondent*) America's First Federal Credit Union, failed to comply with several federal loss-mitigation regulations, then went straight to State Court to eject the Archers from their home of 27 years.

The State Court ignored ALL of the Archers' defenses concerning Federal Mitigation wrongdoing by their lender. The lender proceeded to use up the Archer's Statute of Limitation period then, simply submitted to the State Court a prewritten "Writ of Possession to be signed by the State Court Judge and it worked!

When the Archers took the lender to Federal Court, compulsory counter claims did not matter because the lender simply pleaded Res Judicata!

The Archer's suspicion was confirmed when it was revealed that a mortgagee's failure to comply with federal loss-mitigation regulations cannot be asserted as a defense in an ejectment action in Non-Judicial State Courts.<sup>1,2</sup>

Lenders routinely use this loophole to deprive thousands of homeowners of their homes in Non-judicial State Courts such as Alabama. Federal law makes it clear that the loss mitigation regulations are

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<sup>1</sup> Williams v. Wells Fargo

Bank, N.A., 218 So. 3d 816, 825 (Ala. civ. App. 2016).

<sup>2</sup> "An ejectment action following a nonjudicial foreclosure. . .

is not a 'foreclosure action,' and a defense in such an action asserting errors in the foreclosure process is a collateral attack on a foreclosure." Id., quoting

Campbell v. Bank of America, N.A., 14: 141 So. 3d 492, 496 (Ala. Civ. App. 2012).

intended to apply to Judicial and Non-Judicial Foreclosures equally<sup>3</sup>. Many homeowners lose their homes in that manner without being aware that it was a losing battle from the beginning!

Therefore, the supervisory authority of the United States Supreme Court is being called upon to address the constitutionality of this critical issue in the four questions before this honorable court. At this present time, the federal circuit courts are split in tolling of the Statute of Limitation period for RESPA violations for the thousands of homeowners who were harmed by their lenders.

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<sup>3</sup>12 CFR § 1024.41

**(f) *Prohibition on foreclosure referral -***

**(1) *Pre-foreclosure review period.*** A servicer shall not make the first notice or filing required by applicable law for **any judicial or non-judicial foreclosure process** unless:

## REASON FOR GRANTING THE PETITION

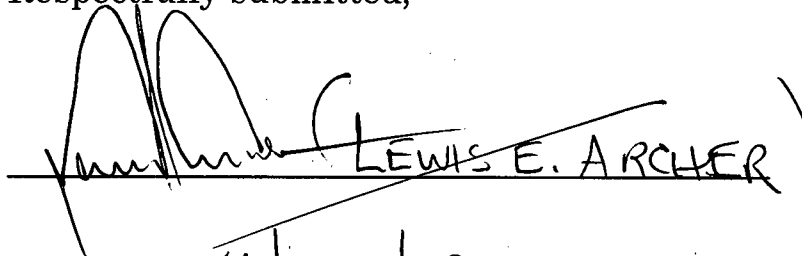
Granting this petition will help thousands of homeowners including the Archers to stay in their homes. It will remove the no defense for Federal loss mitigation abuse in nonjudicial State court that lenders use to deprive thousands of homeowners of their homes. It will also help the courts appellate jurisdiction by resolving the existing conflict among U. S. Circuit Courts concerning the potential to Equitably toll the Statutes of Limitation of RESPA cases such as this one.

## CONCLUSION

We pray that this honorable court takes in consideration that this issue is of importance to thousands of homeowners far beyond the parties involved. Many abuses by lenders have surfaced in recent years. Additionally, it is unsettled law amongst the 12 Federal Circuit Courts of Appeals concerning tolling of the Statute of Limitation in RESPA cases such as this one.

The petition for a writ of certiorari therefore should be granted.

Respectfully submitted,

  
LEWIS E. ARCHER

Date: 4 | 28 | 2021

APPENDIX A

DECISION OF THE UNITED STATES COURT OF  
APPEALS FOR THE ELEVENTH CIRCUIT

William Pryor Chief Judge, Grant and Tjoflat, Circuit  
Judges.

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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No. 19-15182

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D.C. Docket No. 1:19-cv-00258-TFM-MU

APPENDIX A