

No. 20-1525

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**In The  
Supreme Court of the United States**

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LEWIS ARCHER,

*Petitioner,*

v.

AMERICA'S FIRST FEDERAL CREDIT UNION,

*Respondent.*

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**On Petition For A Writ Of Certiorari  
To The United States Court Of Appeals  
For The Eleventh Circuit**

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**RESPONDENT'S BRIEF IN OPPOSITION  
TO PETITION FOR WRIT OF CERTIORARI**

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SANFORD G. HOOPER  
*Counsel of Record*  
TERRENCE W. MCCARTHY  
LIGHTFOOT, FRANKLIN & WHITE, L.L.C.  
The Clark Building  
400 North 20th Street  
Birmingham, AL 35203-3200  
(205) 581-0700  
(205) 581-0799 (Facsimile)  
shooper@lightfootlaw.com  
tmccarthy@lightfootlaw.com

*Attorneys for Respondent  
America's First Federal Credit Union*

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## QUESTIONS PRESENTED

The Eleventh Circuit affirmed the Southern District of Alabama's dismissal of Petitioner's case on *res judicata* grounds, as the same parties had fully litigated their differences arising out of the same facts in a prior action in the Alabama state court system. The Petition presents four questions, none of which are applicable to *res judicata*, and none of which would change the outcome of the case.

## **PARTIES TO THE PROCEEDING**

Petitioner is Lewis Archer. Respondent is America's First Federal Credit Union.

## **CORPORATE DISCLOSURE STATEMENT**

In accordance with United States Supreme Court Rule 29.6, Respondent states that no publicly held corporation owns 10% or more of Respondent's stock and there are no parents, subsidiaries and/or affiliates of Respondent that have issued shares or debt securities to the public.

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## STATEMENT OF THE CASE

This appeal is the latest chapter in a seven-year mortgage dispute between Petitioner and Respondent, America's First Federal Credit Union ("Respondent"). Respondent held the mortgage on Petitioner's home, he has not made a payment on the house since approximately June 2014, and he continues to live in the house. *See* App. 12; 32. Two Alabama state courts and two federal courts have rejected his arguments, and it is time for this dispute to finally come to an end.

On July 11, 2014, Respondent began a series of several foreclosure attempts, which culminated when Respondent officially foreclosed on Petitioner's home on January 29, 2016. App. 35; 36. Petitioner still refused to vacate the premises, so Respondent instituted an ejectment action in the Circuit Court of Mobile County, Alabama on April 11, 2016. App. 36-37. Petitioner raised multiple counter-claims and defenses and argued throughout the state court litigation that Respondent violated federal law, including the Real Estate Settlement Procedures Act ("RESPA"). App. 37-39. On June 25, 2018, the Circuit Court of Mobile County, Alabama entered summary judgment in Respondent's favor, finding Respondent entitled to possession of the property. App. 39. This judgment was affirmed by the Alabama Court of Civil Appeals on May 17, 2019. App. 41.

Refusing to recognize that the litigation was over, on May 31, 2019, Petitioner filed this federal action, arguing the same facts that he argued in the prior state

court action and once again arguing that Respondent violated RESPA. *See* App. 29-31; 42. Respondent moved to dismiss on the grounds of statute of limitations and *res judicata*. App. 42. The District Court granted the motion on statute of limitations grounds, rendering it unnecessary to reach the *res judicata* argument, although the Magistrate Judge did recognize that Petitioner “simply waited until the ejectment proceedings were all but completed in state court before filing the instant lawsuit in an attempt to get a second bite at the proverbial apple.” App. 13-14; 25-26; 60-61; 61, n. 11.

Petitioner appealed, and after briefing and oral argument, the Eleventh Circuit affirmed the judgment on *res judicata* grounds, finding it unnecessary to reach the statute of limitations issue. App. 19, n. 1; 20.

This is a case that never should have been filed because it was barred by both *res judicata* and statute of limitations. There is no federal or constitutional question that needs to be heard by this Court.



## REASONS TO DENY THE PETITION

### **I. This is a case about *res judicata* – not the Fourteenth Amendment or the Supremacy Clause – and presents no compelling reason for this Court to grant certiorari**

The Petition lists four Questions Presented, two of which involve the Supremacy Clause and one involves the Equal Protection Clause of the Fourteenth

Amendment. This case has nothing to do with either and presents no federal question. The same parties first fully litigated a related case arising out of identical facts in Alabama state court. On the heels of the adverse ruling from the Alabama Court of Civil Appeals, Petitioner filed this federal action in the Southern District of Alabama. The Eleventh Circuit properly disposed of the case on the grounds of *res judicata*.

“A petition for a writ of certiorari will be granted only for compelling reasons.” Sup. Ct. R. 10. There are no “compelling reasons” for this Court to hear this case, nor does this case fall within any of the examples listed in Rule 10. *See* Rule 10(a)-(c) (listing the categories indicative of “the character of the reasons the Court considers”). The Eleventh Circuit properly analyzed all four elements of *res judicata* under Alabama law and properly found that all four elements were satisfied. App. 15-19.

To illustrate, “[u]nder Alabama law, ‘the essential elements of *res judicata* are (1) a prior judgment on the merits, (2) rendered by a court of competent jurisdiction, (3) with substantial identity of parties, and (4) with the same cause of action presented in both action.’” *Kizzire v. Baptist Health System, Inc.*, 441 F.3d 1306, 1308-09 (11th Cir. 2006) (quoting *Equity Res. Mgmt., Inc. v. Vinson*, 723 So. 2d 634, 636 (Ala. 1998)).

The Eleventh Circuit correctly found that “[t]he first three elements are easily satisfied here.” App. 16. The Circuit Court of Mobile, Alabama’s grant of summary judgment, “which was affirmed by the Alabama



Court of Civil Appeals, clearly constitutes a prior judgment on the merits.” App. 16. Elements two and three were also satisfied because state courts have concurrent jurisdiction over RESPA claims, and the parties in the prior state court action were the same as in this action. App. 16-17.

As for the fourth element, “Alabama uses the ‘substantial evidence’ test to determine whether two causes of action are the same for *res judicata* purposes. Under this test, *res judicata* applies when the same evidence substantially supports both actions.” *Kizzire*, 441 F.3d at 1309 (citing *Equity Res. Mgmt.*, 723 So. 2d at 637). “‘*Res judicata* applies not only to the exact legal theories advanced in the prior case, but to all legal theories and claims arising out of the same nucleus of operative facts.’” *Kizzire*, 441 F.3d at 1309 (quoting *Old Republic Ins. Co. v. Lanier*, 790 So. 2d 922, 928 (Ala. 2000)).

The Eleventh Circuit correctly concluded that “the state and federal court actions concerned the same nucleus of operative facts.” App. 17. Both cases were about the mortgage dispute, and in both cases, Petitioner argued RESPA violations every step of the way. *See* App. 17-19. Thus, the Eleventh Circuit properly held that “permitting the Archers to proceed would be giving them a second bite at the apple, which we cannot do.” App. 19.

The Eleventh Circuit was correct. But even if Petitioners were to contend the Eleventh Circuit improperly applied the elements of *res judicata*, “[a] petition

for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.” Sup. Ct. R. 10. As such, Petitioner has not presented a compelling reason and the Petition should be denied.<sup>1</sup>

## **II. There is no compelling reason for the Court to hear the equitable tolling issue**

Petitioner also asks this Court to declare that the doctrine of equitable tolling should be applied in a Real Estate Settlement Procedures Act case. This is not a proper question for this Court for two reasons. First, the Eleventh Circuit did not even reach Respondent’s statute of limitations argument, as the case was decided on *res judicata* grounds. App. 19, n. 1.

Second, the District Court ruled that “even if equitable tolling does apply in RESPA cases, the requirements would not be met here.” App. 25.

In short, the outcome of this case would not change if this Court were to rule that equitable tolling applies in RESPA cases. Statute of limitations had no bearing on the Eleventh Circuit’s decision, and the Southern District of Alabama has already found that the elements of equitable tolling would not be satisfied. A

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<sup>1</sup> It is also noteworthy that Petitioners attempted to make a “Supremacy Clause” argument in the court below. But as the Eleventh Circuit ruled, it consisted of “two sentences of their initial brief,” they provided “no additional support” for their argument, it “was not fully briefed,” and it was “abandoned.” App. 19-20.

ruling that equitable tolling applies in RESPA cases would not change the outcome. Thus, there is no “compelling reason[]” to answer that question.



### CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

SANFORD G. HOOPER

*Counsel of Record*

TERRENCE W. MCCARTHY

LIGHTFOOT, FRANKLIN & WHITE, L.L.C.

The Clark Building

400 North 20th Street

Birmingham, AL 35203-3200

(205) 581-0700

(205) 581-0799 (Facsimile)

shooper@lightfootlaw.com

tmccarthy@lightfootlaw.com

*Attorneys for Respondent*

*America's First Federal Credit Union*