

20-278

USCA11 No.: 19-13189

IN THE
SUPREME COURT OF THE UNITED STATES

MARGUERITE SMTIH,

Petitioner,

vs.

SECRETARY OF VETERANS AFFAIRS, et al

Respondent(s)

On Petition for

A WRIT OF CERTIORARI to the United States Court of Appeals
for the 11th Circuit

PETITION FOR
WRIT OF CERTIORARI

FILED
JUL 29 2020

OFFICE OF THE CLERK
SUPREME COURT, U.S.

Respectfully submitted,

Marguerite Smith
Marguerite Smith

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RECEIVED
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SUPREME COURT, U.S.

QUESTION(S) PRESENTED

Does the 11th Circuit's circuit rules supersede the Federal Rules of Appellate Procedures, particularly when it results in depriving an individual due process before the court?

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

CERTIFICATE OF INTERESTED PARTIES

In accordance with 11th Circuit Rule 26.1-1, Rules that a petition for rehearing en banc
Must include in the certificate of interested persons a complete list of all persons and entities
listed:

1. Bilal Ahmed Faruqui, Attorney General's Office, Counsel for Mark H. Mahon, Appellee
2. Boor, Julianna, Director, Department of Veterans Administrative St Petersburg, FL (in her individual capacity), Defendant-Appellee
3. Corinis, Jennifer W., AUSA, Dept. of Veterans Administration St Petersburg, FL
4. Davis, Brian, J., United States Middle District Judge, Jacksonville Division
5. Department of Veterans Affairs Administrative Regional Office, St Petersburg, FL.,
Defendant-Appellee
6. Grandy, Todd B., AUSA, Appellate Division, Counsel for Appellee
7. Lopez, Maris Chapa, United States Attorney, Defendant-Appellee
8. Mahon, Mark, H., (in his individual personal capacity), Defendant-Appellee
9. Powers, Sean M., Assistant United States Attorney, Defendant-Appellee
10. Richard, Monte C., Magistrate Judge, United States District Court
11. Schlesinger, Harvey E., United States Middle District Judge, Jacksonville Division
12. Smith, Marguerite Smith, pro se, Plaintiff-Appellant
13. Watson, Jay B., (in his individual personal capacity), Defendant-Appellee, Counsel for
Attorney General' Office
14. Wilkie, Robert, Secretary of Veterans Affairs



Marguerite Smith

OPINIONS BELOW

For cases from federal courts:

The time to file a petition for a writ of certiorari runs from the date of entry of the judgment or order sought to be reviewed, and not from the issuance date of the mandate (or its equivalent under local practice). Rule 13.3

Memorandum to Counsel or Parties 11th Circuit court

Rule 41, Federal Rule of Appellate Procedure, and Eleventh Circuit Rule 41-1 for information regarding issuance and stay of mandate was reentered July 27, 2020 and an extension of time to file the petition for a writ of certiorari.

JURISDICTION

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

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APPENDIX A- Federal Court *see attached copy*

Docket Case # 3:19-cv-00161-BJD-JRK

Docket Case # 3:19-cv-01420-BJD-JBT

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

The Due Process Clauses, Amendment V and Amendment XIV, § 1

- Procedural due process simply requires that the government follow certain procedures before it can deprive an individual of his or her rights to life, liberty, or real property.
- Substantive due process requires the government to have a sufficiently strong reason to deprive an individual of his or her right to an adequate standard of living, including food, clothing, social security, health care and access to housing.

APPELLATE RULES OF PROCEDURE

FRAP RULE 41

Rule 41. Mandate: Contents; Issuance and Effective Date; Stay

- (a) **Contents.** Unless the court directs that mandate issue, the mandate consists of a certified copy of the judgment, a copy of the court's opinion, if any, and any direction about costs.
- (b) **When Issued.** The court's mandate must issue 7 days after the time to file a petition for rehearing expires, or 7 days after entry of an order denying a timely petition for panel rehearing, petition for rehearing en banc, or motion for stay of mandate, whichever is later. The court may shorten or extend the time by order.
- (c) **Effective Date.** The mandate is effective when issued.
- (d) **Staying the Mandate Pending a Petition for Certiorari.**
 - (1) **Motion to Stay.** A party may move to stay the mandate pending the filing of a petition for a writ of certiorari in the Supreme Court. The motion must be served on all parties and must show that the petition would present a substantial question and that there is a good cause for stay.
 - (2) **Duration of Stay; Extensions.** The stay must not exceed 90 days, unless:
 - (A) the period is extended for good cause; or
 - (B) the party who obtained the stay notifies the circuit clerk in writing within the period of the stay:
 - (i) that the time for filing a petition has been extended, in which case the stay continues for the extended period; or
 - (ii) that the petition has been filed, in which case the stay continues until the Supreme Court's final disposition.
 - (3) **Security.** The court may require a bond or other security as a condition to granting or continuing a stay of the mandate.
 - (4) **Issuance of Mandate.** The court of appeals must issue the mandate immediately on receiving a copy of a Supreme Court denying the petition, unless extraordinary circumstances exist.

RULES OF THE SUPREME COURT

SCOTUS RULE 10

RULE 10. Consideration Governing Review on Certiorari

- a) A United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;

SCOTUS RULE 30

RULE 30. Computation and Extension of Time

1. In the computation of any period of time prescribed or allowed by these Rules, by order of the Court, or by an applicable statute, the day of the act, event, or default from which the designated period begins to run is not included. The last day of the period shall be included, unless it is a Saturday, Sunday, federal legal holiday listed in 5 U. S. C. §6103, or day on which the Court building is closed by order of the Court or the Chief Justice, in which event the period shall extend until the end of the next day that is not a Saturday, Sunday, federal legal holiday, or day on which the Court building is closed.
2. Whenever a Justice or the Clerk is empowered by law or these Rules to extend the time to file any document, an application or motion seeking an extension shall be filed within the period sought to be extended. An application to extend the time to file a petition for a writ of certiorari or to file a jurisdictional statement must be filed at least 10 days before the specified final filing date as computed under these Rules; if filed less than 10 days before the final filing date, such application will not be granted except in the most extraordinary circumstances.

STATEMENT OF THE CASE

This is about Marguerite Smith, the Petitioner requesting Injunction Relief against the Department of Veterans Affairs and Respondents in this case where the Respondents claim ownership of Petitioner's real property, which, is included in a pooled security instrument issued by Freddie Mac, of which, FHFA is the conservatorship, and where Respondents never admitted they obtained consent from FHFA in order to foreclosure on government property.

The 11th Circuit Court of Appeals review *de novo* a district court's grant of a motion to dismiss with prejudice. To prevent dismissal under Rule 12(b)(6), the petitioner must allege sufficient facts to state a claim for relief that is "plausible on its face." Claims are plausible when the petitioner pleads facts that allow the court "to draw the reasonable inference that the defendant is liable for the misconduct alleged."

Petitioner then filed for a Rehearing En Banc, in compliance with F.R.A.P. 41(d) Staying the Mandate Pending a Petition for Certiorari. (1) Motion to stay the mandate pending the filing of a petition for a writ of certiorari in the Supreme Court. The motion must be served on all parties and must show that the petition would present a substantial question and that there is good cause for a stay. (2) Duration of stay must not exceed 90 days, unless the period is extended for good cause. That the petition has been filed, in which case the stay continues until the Supreme Court's final disposition.

Rule 35(b)(1)(B) is very clear that en banc can be requested if, "the proceeding involve one or more questions of exceptional importance, each of which must be concisely stated." First, the Constitution protects a person's life, liberty, and real property from government interference without due process of law. Second, Ms. Smith's, petitioner 5th & 14th Amendment of due process were violated by defamation and depriving her deceased husband's (Sgt. Floyd A. Smith) Veterans Benefits who served in Vietnam War in the United States Army with an honorable discharge. Third, to receive an honorable discharge, a service member must have received a rating from good to excellent for his or her service. Sgt. Smith also were honored with a Purple Heart a decoration awarded in the name of the President to those wounded or killed while serving in the United States military. Here, Petitioner's Motion for Injunction Relief is of exceptional importance as she request relief to prohibit the Respondents and Dept of Veterans Affairs from selling her deceased husband's property or estate, where Respondents are not authorized. Petitioner has a right to social security, health care and access to housing. On April 3, 2020 Judgment were entered by United States Court of Appeals for the Eleventh Circuit.

ARGUMENT

Petitioner, Marguerite Smith is entitled to Due Process, the same way as any party represented by an attorney. The very rules the 11th Circuit deprived Ms. Smith of, are undoubtedly the rules provide for due process. It is still a shock to the conscious of Petitioner that the 11th Circuit Court of Appeals is allowing the Respondents to sell Government Property (of which Ms. Smith's mortgage is included), without even so much as a verbal statement from Respondents that they had received consent from FHFA.

REASONS FOR GRANTING THE PETITION

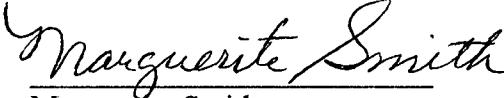
- 1) To maintain order and uniformity amongst the Circuit Court of Appeals.
- 2) This High Court set forth the Federal Rules of Appellate Procedure, and, the Appellate Courts must comply with the procedures, particularly the procedures that directly impact due process, as in this case.
- 3) Ensure Petitioner is provided equal opportunity to due process before judiciary, same as all others before it.

CONCLUSION

This concludes by exploring the privacy rights protected under the Constitution and is divided into substantive and procedural due process. The concept that the government must have a sufficiently strong reason to interfere with an individual's rights to life, liberty, and real property. The Petitioner seeking protection of economic rights that rely on the Constitution as the source of the limits on the government. Finally, as you are the Nine Justices before the highest court of country, please understand that a petitioner suffering from Type-2 pre-diabetes, and is deprived, has a hard-enough time presenting a case to the courts.

Thank you for your time and consideration. Enclosed is the filing fee of \$300.00
on the 27th of August 2020.

Respectfully submitted,


Marguerite Smith
Marguerite Smith