No. _____

IN THE

Supreme Court of the United States

NICOLE BARONE,

Petitioner,

v.

WELLS FARGO BANK N.A.,

Respondent.

On Petition for a Writ of Certiorari to the Florida Fourth District Court of Appeals

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

This Court directs all courts that preventing manifest injustice and preserving the public's trust in the legal system are of upmost importance. Equally important is the proper adjudication of matters involving the U.S. Government, which are exclusive to this Court and its federal courts byway of the U.S. Constitution. But as witnessed herein and all too often, state courts have improperly misadjudicated the exclusive federal claims within millions of American's unlawful foreclosures, many by wrongdoer and unlawful foreclosure predator Wells Fargo. It is undeniable the U.S. Government is the real party in interest of millions of Americans unlawful foreclosures thru its financial agent Fannie Mae as confirmed within Treasury documents and confirmed by Wells Fargo in filings herein. After a decade of defending her family's constitutional rights in multiple federal and state courts, along with countless stories from American victims it is clear, manifest injustice, doing the right thing and upholding the law are not priority over further concealment of numerous unlawful actions that ultimately financially benefit the U.S. Government. So, taxpayers are liable for millions of unlawful foreclosures removing countless American families from their constitutionally protected homes byway of the Greatest mass fraud and coverup in history. This case raises vital constitutional issues over the government's direct financial interest in millions of unlawful foreclosures, securities laws, Constitutional property rights, foreclosure and modification fraud, standing and void judgements. This case raises issues of proper adjudication and enforcement of FL laws that have allowed the government/taxpayers to be in possession of a tainted unlawful and void title to the Barone's home.

Thus, the questions presented are:

1. Whether U.S. Government's wrongful possession of a tainted, unlawful void title due to clear violations of federal and Florida laws, including criminal Trespassing, Breaking & Entering, Changing Locks to lock the Barone's out of their home, Destruction of Property and posting unlawful notices on behalf of the government & its agent is acceptable to this High Court?

2. Whether U.S. Government's undeniable exclusive benefit from millions of unlawful foreclosures thru financial agent Fannie Mae, subject it to federal jurisdiction and property "takings" clause of the Constitution?

3. Whether common law, the U.C.C., prior holdings of this Court and the FL Supreme Court prohibit Wells Fargo and third parties from initiating foreclosures when they are not the true owner of the debt owed and therefore have not sustained financial injury?

4. Whether selling and/or pledging millions of homeowners' property as collateral numerous times without consent and disclosure thru RMBS securitizations and rehypothecations of alleged mortgage notes is unlawful, unconstitutional and violate SEC securities laws and NEMO DAT QUOD NON HABET? And whether the alleged mortgages are in fact securities transactions?

5. Whether the appeals court violated Cares Act Sections 4022 & 4024 prohibiting furthering foreclosures and evictions by unfairly dismissing the appeal with prejudice? And whether its false claims of frivolous and threat of sanctions on valid federal claims exclusive to this Supreme Court must be immediately reversed?

PARTIES TO THE PROCEEDING

Petitioner, Nicole Barone was defendant in Circuit Court, and appellant in the Appeals Court.

Respondent, Wells Fargo Bank N.A. was a party throughout litigation. Wells Fargo is alleged servicer for U.S. Government thru its financial agent FNMA.

RULE 29.6 STATEMENT

None of the petitioners is a nongovernmental corporation, has a parent corporation or shares held by a publicly traded company.

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Nicole Barone respectfully petitions for a Writ of Certiorari to review the order of Florida Fourth District Court of Appeals.

DECISIONS BELOW

The rehearing order of Florida Fourth District Court of Appeals (App. 1), dismissal with prejudice order (App. 2), non-opinioned PCA order (App. 3), threatening sanctions order (App. 4), denial of objection to sale order of 17th Judicial Circuit Court for Broward County (App. 5) and denial to vacate judgement order (App. 7) are attached hereto.

JURISDICTION

The Florida Fourth District Court of Appeals denial of rehearing order was entered on May 29th, 2020. The dismissal with prejudice order was entered on April 27th, 2020. The non-opinioned PCA and order wrongfully claiming the undeniable U.S. Government involvement frivolous while egregiously threatening sanctions for such federal claims were entered on January 2nd, 2020. The denial of objection order of 17th Judicial Circuit Court Broward County was entered on September 25th, 2019. This Court's jurisdiction rests on 28 U.S.C. § 1257(a), "the highest court of [the] State in which a decision could be had." *See, e.g., KPMG LLP v. Cocchi*, 565 U.S. 18, 19 (2011) (per curiam).

CONSTITUTIONAL, STATUATORY & RULING PROVISIONS INVOLVED

Fl. Stat. § 45.031(5) CERTIFICATE OF TITLE. -If no objections to the sale are filed within 10 days after

filing the certificate of sale, the clerk shall file a certificate of title and serve a copy of it on each party...

U.S. Const. amend. V, cl. 3 & 4, state: "...nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation." Accordingly, U.S. Const. amend. XIV, §1, cl. 2, provides in part: "nor shall any State deprive any person of life, liberty, or property, without due process of law."

U.S. Const. Article III, § 2, cl. 1: "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority...to Controversies to which the United States shall be a Party...". Concurring, 28 U.S.C. § 1345 states: "the district courts shall have original jurisdiction of all civil actions, suits or proceedings commenced by the United States, or by any agency or officer thereof expressly authorized to sue by Act of Congress." (June 25, 1948, ch. 646, 62 Stat. 933.).

U.S. Const. art. VI, cl. 2: "the Laws 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."

INTRODUCTION

The Barone's are in a decade long fight to defend their constitutional rights against known wrongdoer and unlawful foreclosure predator Wells Fargo. The culmination of these years of numerous unlawful acts along with improper adjudication, ignoring the facts of law and mishandling of their multiple cases and federal

claims have led to the current situation in which the government is in unlawful possession of a tainted, unlawful and void title to their home. The title was issued even though the government and its financial agent Fannie were in direct violation of Fla. Stat. § 45.031(5), as Wells Fargo's and its representatives clearly forwarded the Barone's file to Fannie Mae only a couple of days after the unlawful sale and a week prior to the 10 day requirement of § 45.031(5). This obvious violation is inexcusable, as these parties are both very familiar with FL law as both have been involved in countless foreclosures in the state. So, Wells Fargo's further deliberate harassment of the Barone's put the government in the position of liability for the criminal acts of Trespassing, Breaking & Entering, Changing Locks, Destruction of Property and posting unlawful notices. Fannie Mae advised that it hires and depends on companies like Wells Fargo to know and adhere to the local laws. Additionally, because of the extent that the Barone's have brought this case into the public domain, there was a very noticeable lack of bidders for Wells Fargo's unlawful sale, which under Fl law was invalid, as it clearly was a Grossly Inadequate bid of $7,200.00 for a roughly $400,000.00 property.[1] This is the definition of inadequate, but the judge ignored it just like she irresponsibly claimed hearsay when showed pictures and advised of the criminal acts to the Barone's home noted above. More concerning is the fact that the Fl 4th DCA ignored these issues like it has with others pre-

[1] See *IndyMac Fed. Bank FSB v. Hagan*, 104 So.3d 1232, 1236–1237 (Fla. 3d DCA 2012) (confirming that it is well settled that "[i]n order to vacate a foreclosure sale, the trial court must find: (1) that the foreclosure sale bid was grossly or startlingly inadequate; and (2) that the inadequacy of the bid resulted from some mistake, fraud or other irregularity in the sale.") (quoting *Mody v. Cal. Fed. Bank*, 747 So.2d 1016, 1017–18 (Fla. 3d DCA 1999)) (emphasis added).

viously, but this time it decided to wrongfully threaten sanctions for valid federal and state claims. The state courts have not preferred any legal opinions to validate their decisions. Most importantly, this all occurred while the state courts clearly lacked jurisdiction of this matter as proper jurisdiction was exclusive to this Supreme Court and its federal district courts. *See Mansfield, C. & L. M. R. Co. v. Swan*, 111 U.S. 379, 382 (1884) "The requirement that jurisdiction be established as a threshold matter is 'inflexible and without exception,' "; for "jurisdiction is power to declare the law," and " 'without jurisdiction the court cannot proceed at all in any cause,' " *Steel Co. v. Citizens for Better Environment*, 523 U.S. 83, at 94 (1998); *Ruhrgas AG v. Marathon Oil Co. et al.*, 526 U.S. 574 (1999).

These issues are not just unique to this case, as millions of Americans have suffered from these unlawful foreclosures and so many, especially those who decided to defend their family's rights have horror stories of retaliation and harassment. The facts are clear and very well known, Wells Fargo prayed on families like herein with its unlawful predatory tactics in misleading with deliberate modification fraud in order to lure unsuspecting homeowners into a false trust which would eventually end with a wrongful foreclosure judgements and unlawful void titles that will remain void as no judge or court can make valid that which is void.

The severity of the unlawful acts herein forced Fannie Mae, unbeknownst to Wells Fargo, to request a settlement offer from the Barone's thru its representative who was part of the criminal Trespassing and acts noted above. But once the Barone's notified the court of this pending action, Wells Fargo declined the very reasonable offer for the extent of the damages done to Mrs.

Barone and her family over the past decade, and ignored requests to advise if Fannie Mae was advised and/or declined the offer, or if it was solely Wells Fargo. Even after it was advised that Fannie approached the Barone's to settle, Wells Fargo's response was to abruptly inform that they are to send all communications thru its elite counsel. The Barone's have been more than willing to settle these issues on very favorable terms for the government, Fannie and Wells Fargo, given the circumstances, only to be ignored, including by the courts when conferences were requested. The courts along with Wells Fargo have shown no willingness to settle these numerous unlawful acts. The government's financial agent has been the only party to act responsibly in willing to protect the government's image and interests herein.

This High Court can clearly see that the issues herein need to be resolved if not for all parties involved, at a minimum the government, its financial agent and the sanctity of the courts that have been marred by their collective actions and non-actions herein. This Court shoulders a heavy burden, if the issues herein are not rectified for millions of American families, there is a wave of millions more imminent, due to the current crisis caused by the coronavirus pandemic.

STATEMENT OF THE CASE

Most recently the unlawful actions noted above have occurred as part of a culmination of the numerous unlawful acts over the past decade. This foreclosure action was wrongfully initiated in state Court by Wells Fargo for the government's exclusive benefit thru its financial agent Fannie Mae. Wells Fargo violated the Notice of Fair Debt Collections Practices Act, 15 U.S.C § 1692, *et*

seq. by falsely asserting it was the owner of the debt. Wells Fargo failed to satisfy due process, as it purported service with questionable Affidavits of Lost Original Summonses. The affidavits were filed almost two months after the alleged service, and a few days after Wells Fargo erred in filing a default motion. Wells Fargo allegedly utilized ProVest LLC, who was publicly reprimanded for its fraudulent practices by consent order with the FL Atty. Gen. and dubbed the "sewer service" firm. Mrs. Barone's mediation request went unanswered, but a questionable notice of borrower non-participation was filed a few days after its default filing. Mrs. Barone does not recall refusing mediation, as she filed the request. Wells Fargo claimed mandatory mediation was not applicable, violating Administrative Order 2011-13-Civ.

Wells Fargo enacted an unauthorized bank account withdrawal, and it failed to file the Barone's fraud complaint in violation of FDIC Section 10.1 Suspicious Activity and Criminal Violations. Wells Fargo admitted days later, it committed the unauthorized transaction, and attempted to conceal the unlawful act as a collection action. The Barone's attorney, who throughout the proceedings lead them to believe their defense was being handled properly, when it was not, advised that the foreclosure court wouldn't hear the unauthorized withdrawal at trial, and they would lose. This was part of Wells Fargo's wrongful 48-hour ultimatum, misrepresenting and inducing judgement for a 4-6 month extension to file for modification. The Barone's never signed a final judgement. Wells Fargo allowed the foreclosure Court to operate without mandatory voice recorders or court reporters for homeowners' due process rights protection. This all occurred during the infamous Rocket-Docket.

Wells Fargo committed Dual-tracking which was highly criticized by congress and restricted by the National Mortgage Settlement. Wells Fargo wrongfully advised that their payments needed to be in the rears in order to file for HAMP, and then dragged the process out for months by not supplying any updates. This is confirmed by former S.I.G. TARP, Neil Barofsky's book BAIL-OUT, Chapter 8, Foaming the Runway.[2] *See* also *Kuehlman v. Bank of America*, 177 So3d 1282 (Fla.5th DCA 2015); *Nowlin v. Nationstar Mortg.*, LLC, 193 So.3d 1043 (2016). Wells Fargo wrongfully alleged Mrs. Barone declined modification, sometime in July 2012. In a 2012 article, the US Treasury's Making Home Affordable Report suggested Wells Fargo was denying HAMP modifications to seek "lucrative fees on delinquent loans", and it only provided 9,761 HAMP trial modifications out of the 110,807 that it was required to. Wells Fargo was complying with its legal obligations under HAMP less than 10% of the time. Wells Fargo utilized this scheme to force its customers into default, so it could collect on its lucrative and unjust default derivatives and policies. Later in the process, Wells Fargo attempted to Bait & Switch them from a HAMP modification that was substantially more beneficial to them, into a secondary mod that clearly benefitted

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[2] - *"One particularly pernicious type of abuse was that servicers would direct borrowers who were current on their mortgages to start skipping payments, telling them that they would allow them to qualify for a HAMP modification. The servicers thereby racked up more late fees, and meanwhile many of the borrowers might have been entitled to participate in HAMP even if they had never missed a payment. Those led to some of the most heartbreaking cases. Homeowners who might have been able to ride out the crisis instead ended up in long trial modifications, after which the servicers would deny them a permanent modification and then send them an enormous "deficiency" bill."* (emphasis added). -

Wells Fargo and its "Investor", who was initially concealed and later admitted to being FNMA. It concealed that the much higher "Investor" mod payment was due to forced Lender Placed Insurance (LPI). Wells Fargo advised that they MUST pay for the LPI to qualify for the trial payments, and if they wanted to get their own policies they needed to decline the offer and start over by resubmitting another package. It advised this was FNMA's guidelines, and it was adhering, but it failed to substantiate. The Barone's submitted their own flood policy to be paid and charged to escrow, in accordance with Wells Fargo's written guidance, but it failed to accept the policy in favor of its own LPI policy with more than a 300% higher premium. Soon after they complained over the LPI policies, their property near the intracoastal and canals, was questionably removed as a mandatory flood zone.

Shortly thereafter Wells Fargo settled claims it was receiving secret incentives and/or 'kickbacks" from LPI policies, at the detriment of its entrusting customers. Wells Fargo utilized back door deals with LPI insurers that led to manipulated premiums and extensive control over LPI policies it charged to the Barone's for years. *See Simpkins v Wells Fargo Bank, N.A.*, 2013 WL 4510166, at *7 (S.D. Ill. Aug 26, 2013).

Wells Fargo's Escalation Department responded to their complaints with excuses for its wrongdoings, provided incorrect HAMP calculations, and blatantly avoided the unauthorized withdrawal and an unauthorized credit application that occurred a few weeks prior. Wells Fargo claimed it couldn't find any information. To conceal its wrongful acts, its response demanded the Barone's subpoena documents. Since then, it has avoided multiple RFPs within foreclosure, provided only

calculated foreclosure documents in Mr. Barone's state RICO action and wrongfully influenced dismissals in his Federal RICO action to avoid discovery.[3] Wells Fargo unethically attempted to discredit Mr. Barone by trying to self-label him a conspiracy theorist within its motion to dismiss his original state RICO complaint, for unlawful acts it has since been forced to publicly acknowledge and/or admit.

Wells Fargo allowed former peer, general magistrate Eiss, to be involved and handle its questionable strike of the RFP. Wells Fargo allowed Judge Rosenthal to handle the RFP while on demotion during a criminal investigation. Her actions in handling the RFP are highly-questionable. She was later investigated for ethics violations and retired after the FL High Court revoked her sweetheart deal over public outrage.

Wells Fargo has filed documents containing false statements, including motions to cancel sales. It failed to serve the Barone's a notice of sale filing by removing them from electronic service. It wrongfully influenced the Court to excuse its service failure by utilizing Hurricane Matthew, which did not affect their property. Moreover, Wells Fargo regularly set hearings without contacting them. It's counsel Mr. Hall, made perjurious statements to the Court, they advised of this in a 2015 email, and soon after he was no longer with the firm, only to return later. More concerning, Wells Fargo ignored a conciliation order for months, while multiple judges asked if there was a lawsuit coming for

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[3] Cases were brought for Wells Fargo's numerous wrongful acts against them. Federal RICO action: *Barone v. Wells Fargo Bank N.A.*, 16-16079-CC, 16-cv-60960-WPD; State RICO action: *Barone v. Wells Fargo Bank N.A.*, CACE15021684, 4th DCA 4D17-2531.

the issues brought to the Court, but no corrective actions were taken.

For years, Wells Fargo allowed inspectors to trespass on their property without prior consent, prompting no trespassing notices. Wells Fargo's inspectors harassed Mrs. Barone's mother for some time before her sudden death a few years ago. They would bang on her door as early as 7:30 am and late at night advising Wells Fargo sent them to check occupancy. Wells Fargo wrongfully attempted to coerce Mrs. Barone's mother and father into submitting a statement blaming the Barone's for their financial situation to assist approval of their modification. A few months before Mr. Barone filed his state RICO action, they sent an email to Wells Fargo's Executive Offices, Legal Department and Board of Directors notifying of intent to file. Wells Fargo wrongfully forwarded their communication to the mortgage department. Greg Nichols responded and led Mrs. Barone to believe he was an attorney in the legal department, while he sarcastically downplayed the issues and tried to forestall any pending suit, but Wells Fargo never substantiated his claim. He alleged the Barone's counsel participated in mediation in this case which also has not been substantiated.

Around this time, Mrs. Barone had a questionable encounter with her counsel and Judge Lazarus in the courthouse, where Lazarus advised her not to file ethics charges against Judge Rosenthal, but rather revisit the RFP. She revisited the RFP and Lazarus failed to address it. Lazarus then allowed Wells Fargo's counsel to play games in avoiding its non-answer to the RFP for over a month, while lashing out at him for not making himself available for hearings and setting and canceling others. Lazarus' tone changed when McDonough

finally appeared, coincidently the day before the sale date. While awaiting hearing, McDonough unethically defamed the Barone's by yelling across the courtroom to a colleague and by sarcastically showing and discussing their file with a lawyer unconnected to the case, while Mrs. Barone sat a few feet away. At the hearing, Lazarus was unprepared, he had to ask for a copy of the motions from Mrs. Barone and then immediately scrolled to the back of the filing and curiously ruled a technicality against them, while brashly ignoring Wells Fargo's notice of sale deficiency. McDonough didn't have to say a word. This forced her to file bankruptcy to protect their property from Wells Fargo.

Wells Fargo's issues continued when she filed to reopen her bankruptcy. Upon notice, the foreclosure Court clerk immediately placed a stay on the case. A few hours later, Wells Fargo filed a moot motion to cancel the sale for the next week without mentioning the bankruptcy filing. Mrs. Barone showed for the hearing from being unable to trust Wells Fargo's previous wrongful actions. Before the hearing she advised Wells Fargo's new representative, the motion was moot because of her bankruptcy filing. The representative called her office and advised Wells Fargo's motion needed to be heard. Mrs. Barone was wrongfully forced in front of Judge Stone, who again refused to hear her arguments. Wells Fargo never acknowledged the bankruptcy and perjured the Court by asserting there must have been a mod package submitted, when it knew this was false. Judge Stone refuse to check the docket on the computer in front of him and assisted Wells Fargo's fraud, by granting the moot motion and resetting the sale date. A few days later, FL Atty. Gen. Pam Bondi was notified through email and ex-U.S. Atty. Preet Bharara by FedEx of these unlawful acts of the Court

and Wells Fargo, and they ignored. Mrs. Barone went to file a motion to cancel the wrongful sale and was advised that the clerk was unaware of what Wells Fargo was attempting, it was completely against procedure, so he recancelled the sale. He noted it all in the computer and said that Wells Fargo was not going to be happy with him, but he had to do the right thing.

Soon after, they filed a motion to vacate final judgement and sanctions against Wells Fargo for this blatant act of fraud on the Court. They also filed a motion for clarification of Wells Fargo's counsel and of the Court's jurisdiction over Wells Fargo prior to and post judgement. Wells Fargo played games with setting the hearing. At hearing, Lazarus stonewalled them when they attempted to bring up Wells Fargo's admitted FHA fraud and its unauthorized account scandal. Lazarus ignored their arguments and denied their motion. On April 25th, Mrs. Barone attended the 2017 annual shareholder meeting in Florida as a guest of Sr. Nora Nash of Sisters of St. Francis. Sr. Nora was aware of the issues and at the meeting had to stand up and assertively get Mr. Sanger and Mr. Sloan to take Mrs. Barone's questions, after they passed over her numerous times. A few weeks later May 8th, Mrs. Barone filed to remove this action to Federal Court on the federal jurisdiction questions. After she filed notice, under 28 U.S.C. § 1446, the foreclosure Court no longer had jurisdiction and should automatically stay the proceedings. The clerk wrongfully advised that only bankruptcy automatically stays proceedings, which is not what the FL 3rd DCA advises. The clerk forced her to pay for and file a motion to cancel the sale. The clerk wrongfully set a hearing for the next morning and forced Mrs. Barone to return. At the May 9th Hearing, Wells Fargo argued against the clear language of stat-

ute § 1446 and committed further fraud against the Court with Lazarus' assistance.[4] Lazarus arrogantly defied § 1446 by denying their motion and ordered the property sold. He knowingly defied federal law. This forced them to remove their belongings from the property and incur unnecessary stress and costs. While this was occurring, Sr. Nora advised she was communicating with Wells Fargo executives, including board members, regarding the issues, and advised that she wasn't getting anywhere with them and her efforts may be useless.

More concerning was the highly-questionable swift remand order by the Federal Court after the sale. The filing had close to a thousand pages to be reviewed and the costs incurred for copies and the filing fee should have warranted a thorough review. For some curiously odd reason the District Court felt it necessary to push aside its overwhelmed docket to immediately address the removal in favor of Wells Fargo. Ironically, Wells Fargo was at the time blatantly committing another fraud against the Court by violating 28 U.S.C. § 1446. Wells Fargo was well aware of its blatant violation of § 1446, *See Musa v. Wells Fargo Delaware Trust Company* (Case No. 1D15-0937, 1st DCA, FL. Dec. 2015). The Barone's filed an objection to the sale on May 18th, and on May 19th, appealed the vacate judgement and sale cancelation orders.

On May 23rd, the 4th DCA ordered to show cause for appealability of the sale cancelation order, asserting lack of jurisdiction to review. Her response was filed on

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[4] *See Bulloch v. United States*, 763 F.2d 1115, 1121 (10th Cir. 1985) (fraud upon the court exists "where the judge has not performed his judicial duties"); *Trans Aero Inc. v. LaFuerga Area Boliviana*, 24 F.3d 457 (2nd Cir. 1994)

June 1st, included the objection to the sale and clearly outlined the blatant 28 U.S.C. § 1446 violation. On June 29th, the Court undermined justice by dismissing the appeal of an obviously void order that clearly violated § 1446. This prompted a July 13th motion for clarification, which Wells Fargo failed to respond to, and the 4th DCA failed to address. Mrs. Barone advised the Court they had to summon the Broward Sherriff to the property on June 14th, for acts of trespassing, vandalism and theft. Over the past few months or so, on multiple occasions a gate on the property has been broken by forced entry. The Barone's social media accounts have had posts regarding Wells Fargo and this case deleted without notice and reasoning.

On October 26th, the 4th DCA issued a non-opinioned order, failing to address the vital jurisdiction questions and Wells Fargo's numerous wrongful acts, including multiple federal violations. In 2015 while Mrs. Barone's mother was on hospice dying, Wells Fargo defamed them and quashed a business deal with a family friend, a respected and influential local businessman who had two commercial projects with Wells Fargo at that time.

On November 22nd, she appealed to FL Supreme Court, outlining the jurisdictional issues within the notice. On November 29th it was dismissed for no review of a non-opinioned order. When it returned to the state court the motion to vacate the judgement was denied, the judge manipulated Mrs. Barone into not attending the hearing in which he wrongfully reset the unlawful sale date instead of resetting the hearing as he falsely advised. The unlawful sale was allowed, an objection was filed and only a few days later Fla. Stat. § 45.031(5) was blatantly violated by the aforementioned criminal acts. These issues were wrongfully concealed by exc-

uses and improper adjudication. Appeals were filed and dismissed with prejudice and the court falsely claimed valid federal and state claims were frivolous and threatened sanctions to further conceal these unlawful acts.

REASONS FOR GRANTING THE WRIT

This petition raises vital Constitutional questions of proper jurisdiction of the U.S. Government, its undeniable involvement in millions of unlawful foreclosures thru its financial agent FNMA and multiple frauds by Wells Fargo. These issues are of great public importance, as they have far reaching implications into the lives of every American. Millions of state foreclosure judgements wrongfully procured by third-parties for the ultimate financial benefit of the government are constitutionally void. Many of these foreclosures have corrupted land titles, as most loans were secretly securitized, rehypothecated and hedged multiple times for profiteering, and clear Chain of Titles were not proffered. It is likely FNMA doesn't rightfully own the notes to many of the wrongfully foreclosed properties, because of these multiple undisclosed securities transactions, unbeknownst to unsuspecting Americans who were duped into believing they entered conventional mortgage contracts when in fact they were premeditated securities transactions. Robo-signing and fraudulent documents were utilized in attempts to fill documentary voids. The unlawful benefits syphoned from each property by these non-legal owners calculates to staggering amounts above what was legally owed. The questions are ripe for review by the Court to set rightful Constitutional precedent as to jurisdiction of the government and its financial agent.

The Court should therefore grant this petition to address these serious issues.

I. This Court Should Grant Certiorari To Reverse The Wrongful Actions In Issuing A Tainted Unlawful Void Title To The Government Due To Criminal Acts Of Trespassing, Breaking & Entering, Changing Locks, Destruction Of Property & Posting Unlawful Notices And For Unfairly Dismissing The Appeal With Prejudice During The Unprecedented Covid-19 Crisis In Contrast To Cares Act Sections 4022 - 4024 And With Serious Family Medical Issues

It is completely unacceptable that thru the unlawful acts of Well Fargo and its representatives along with the assistance of the courts thru improper adjudication, the U.S. Government is in possession of a tainted, unlawful void title to the Barone's home by way of its financial agent Fannie Mae. Especially because the foreclosure judge committed deliberate fraud on the court and Mrs. Barone to reset the unlawful sale, the unlawful sale was clearly grossly inadequate in violation of Fl law and the criminal acts of Trespassing, Breaking & Entering, Changing Locks to lock the Barone's out of their home, Destruction of Property and posting of unlawful notices was in blatant violation of Fl Stat. § 45.031(5) **CERTIFICATE OF TITLE. -If no objections to the sale are filed within 10 days after filing the certificate of sale, the clerk shall file a certificate of title and serve a copy of it on each party...** (bold emphasis added). These criminal acts were orchestrated only a few days after the unlawful sale and a week early to the § 45.031(5) requirements. This is inexcusable as Wells Fargo and its counsel have handled thousands of foreclosures in the state and are very familiar with the law, and the fact that Wells Fargo claimed it had nothing to do with it and attempted to blame the government's financial agent for the

unlawful acts is despicable. The government's financial agent depends on Wells Fargo to abide by local laws, and Wells Fargo failed to protect the government from these unlawful acts. This High Court must rectify these unlawful actions and reprimand Wells Fargo.

Additionally, the 4th DCA unfairly dismissed this action with prejudice during an unprecedented national health crisis, in contrast to the Emergency Cares Act Sections 4022- 4024 in which Fannie Mae and other agents of the government are **prohibited from furthering foreclosures for at least 60 days until May 18th and at least 120 days for evictions.** (bold emphasis added). It is unfair the 4th DCA held Mrs. Barone to not being able to pay for the record because the Broward Court was closed, and was locked down due to the virus. Additionally, she is on disability and has a compromised immune system so she would not have been able to enter the courthouse even if it were open. She was advised that she could not pay over the phone, so how could any court directed to prevent manifest injustice proffer such unfairness and deliberate manifest injustice? And during a time of national emergency? Not to mention she advised the court of her serious medical issues. Moreover, she has been dealing with her father being diagnosed with cancer. This unfairness is unreasonable and unacceptable in a legal system built on and directed to prevent manifest injustice and to foster the public's trust in the system, most certainly when the unfairness is furthering concealment of unlawful acts that have wrongfully procured a void title in the possession of the government's financial agent.

This High Court should grant certiorari to rectify this unfairness to preserve the sanctity and public trust in the legal system.

II. This Court Should Grant Certiorari To Resolve The Vital Issue Of Government's Undeniable Exclusive Benefit & Involvement In Millions of Americans Unlawful Foreclosures Thru Its Financial Agent Fannie Mae Warranting Exclusive Federal Jurisdiction Under Article III And Federal Statute 28 U.S.C. § 1345.

Since the Financial Crisis, the government has enjoyed exclusive financial benefit of the GSE's, including Fannie Mae, this is undeniable. There are Treasury contracts that directly assert Fannie is **ACTING SOLELY AS FINANCIAL AGENT FOR THE UNITED STATES**,[5] as well as Wells Fargo's filing in the 4th DCA herein notes Fannie as **FINANCIAL AGENT FOR THE UNITED STATES GOVERNMENT**.(bold emphasis added). The government's position is undeniably clear, it is the Real-Party-In-Interest herein and in millions of unlawful foreclosures of Americans homes. This Court has long held the constitution and federal law are clear that the business of the government is the business of this Supreme Court and its federal courts. See *United States v. Texas,* 143 U.S. 621 (1892), the federal judicial power exclusive to the Supreme Court included ***"cases in which the United States was a party,"*** (bold em-phasis added); **The Federal Court has jurisdiction and shall decide arguments over how to interpret the Constitution and federal law.** (*See Marbury v. Madison*, 5

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[5] US Treasury, *"Amended and Restated Commitment to Purchase Financial Instrument and Servicer Participation Agreement"*, between Fannie Mae **(acting solely as financial agent of the United States)** and Wells Fargo, available at https://www.treasury.gov/initiatives/financial-stability/TARP-programs/housing/mha/Documents_Contracts_Agreements/wellsfargobankna_redacted.pdf

U.S. 137 (1803))(bold emphasis added). Article III of the Constitution directs the Federal Court holds exclusive jurisdiction over any action in which the U.S. Government is a party. Additionally, Fannie Mae is undeniably the financial agent of the government and as such, 28 U.S.C. § 1345 grants the Federal Court jurisdiction over actions by the government, its agencies and officers. This matter was improperly before the state courts for a decade, along with millions of foreclosures in which Americans were wrongfully removed from their homes to the direct financial benefit of the government. Accordingly, these issues need to be rectified by this High Court to not only preserve the sanctity of the legal system and the courts, but most importantly to preserve and protect the sanctity of the U.S. Constitution and the freedoms we as Americans are guaranteed.

Moreover, this Court made it clear in *Department of Transportation v. Association of American Railroads,* 135 S. Ct. 1225 (2015) that an entity operating as Fannie has, is in "practical reality" an agent for the government. Additionally, this Court addressed agency principle and severity of the control aspect which pretty much outlines Fannies operations in *Hollingsworth v. Perry*, 133 S. Ct. 2652 (2013). Furthermore, the governments undeniable position herein and therein millions of Americans mortgages and unlawful foreclosures, in which it is in Total Control of Fannie while it operates as its financial agent solidifies the agency factor is present.[6] These vital issues of law must be rectified, most especially with the state courts who clearly lack jurisdiction over these matters involving the government and millions of unlawful foreclosures. Accordingly, the

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[6] *See* RESTATEMENT (THIRD) OF AGENCY § 1.01 cmt. f (1)(2006) *("An essential element of agency is the principal's right to control the agent's actions.")*.

state courts lacked proper jurisdiction to handle these matters while allowing a decade of unlawful, and in many instances despicable acts to besmudge the justice system and courts with numerous frauds. More concerning is the fact these clearly valid federal claims are far from the 4th DCA's misguided assertions of frivolous, and its baseless threat of sanctions to wrongfully suppress valid federal claims, further conceal numerous unlawful acts and defy this High Court's mandated direction to prevent manifest injustice and preserve the public's trust in the courts, must be rectified. Therefore, this High Court should rectify these vital constitutional issues to regain the public trust in the courts, government and our inherent constitutional rights.

III. This Court Should Grant Certiorari To Address The Vital Flaws In Wells Fargo & Third Parties Unlawfully Initiating Foreclosures & Wrongfully Receiving Benefits Therefrom In Violation Of Common Law, The U.C.C., Prior Holdings Of This High Court & Fl High Court

This High Court's holding in *Valley Forge Christian Coll. v. Americans United for Separation of Church & State, Inc.*, 454 U.S. 464, 474 (1982) (*"real party in interest must assert its own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties."),* made it clear the real party in interest must assert its own claims.(emphasis added). The Florida High Court concured in *Smith v. Kleiser*, 91 Fla. 84 (Fla. 1926) (*"In a suit to foreclose a mortgage...it should be in the name of the real owner of the debt secured.")*(emphasis added). The *Real-Party-In-Interest-Doctrine* concurs, along with Fed. R. Civ. P 17 (*"An action must be prosecuted in the name of the real party in interest.")* (emphasis added) and Rule 19

which requires parties to a suit when the Court cannot accord complete relief among existing parties. Wells Fargo falsely presented itself to the Court as an actual holder "designated holder" with authorization to pursue this action under Article 3 of the UCC. Wells Fargo's purported standing as an Article 3 holder as servicer fails as a servicer/agent can never be an article 3 holder. A servicer under Article 3 is not a "holder" of the note because the **UCC considers the principal to be the holder when an agent is in possession of the principal's property**. See *In re Phillips*, 491 B.R. 255, 263 (Bankr. D. Nev. 2013) ("Thus, a person is a **"holder"** of a negotiable instrument **when it is in the physical possession of his or her agent.**"). (bold emphasis added). See also, *Bankers Trust (Delaware) v. 236 Beltway Inv.*, 865 F. Supp. 1186, 1195 (E.D. Va. 1994) (**the UCC "sensibly recognizes that a party has constructive poss-ession of a negotiable instrument when it is held by the party's agent...**" [internal citations omitted])(bold emphasis added). Under § 673.2011, Fla. Stat. Ann., ("Negotiation always requires a change in possession of the instrument because **nobody can be a holder without possessing the instrument, either directly or through an agent.)** (bold emphasis added). Additionally, under § 673.2031(4), Fla. Stat. **("If a transferor purports to transfer less than the entire instrument, negotiation of the instrument does not occur.")**, and a party can only become an Article 3 holder by way of "negotiation"—**which involves a transfer of the entire bundle of rights in the instrument.** § 673.2011, Fla. Stat. (defining negotiation)(bold emphasis added). Wells Fargo may purport it has possession of the note for the purpose of enforcing, but **this is NOT a negotiation under Florida law** and was never intended to be. (emphasis added). Adherence to Statutes is imper-

ative, as "the Legislature does not intend to enact useless provisions, and courts should avoid readings that would render part of a statute meaningless." *Borden v. East-European Ins. Co.*, 921 So. 2d 587, 595 (Fla. 2006) (citing *State v. Goode*, 830 So. 2d 817, 824 (Fla. 2002)). In Fannie Mae Servicing Guide, Part I, Chapter 2, Section 202.06, Note Holder Status for Legal Proceedings Conducted in the Servicer's Name, it advises **"Fannie Mae is at all times the owner of the mortgage note, whether the note is in Fannie Mae's portfolio or whether owned as trustee...",** therefore there was never any negotiation of the entire bundle of rights as required by law, so Wells Fargo never became a holder or real party in interest and failed to satisfy standing. See *Balch v. LaSalle Bank, N.A.*, 171 So. 3d 207, 209 (FLA. 4th DCA 2015) "evidence that the note was transferred into the trust prior to the foreclosure action is insufficient by itself to confer standing because **there was no evidence that the indorsee had the intent to transfer any interest to the trustee."** (bold emphasis added). Accordingly, Wells Fargo cannot be considered a holder under the UCC and Florida law in its capacity as servicer, depriving it of standing and rendering this action and judgement *void ab initio,* regardless if it was in possession of a properly endorsed note. In fact, Wells Fargo is not the debt owner and cannot legally surrender any of the alleged note owner's rights, nor has it suffered a financial injury. Additionally, no proof of chain of title has been proffered, most especially any documentation or endorsement proving Fannie Mae is even the rightful holder. A blank endorsement allegedly affixed by defunct Wachovia Bank, whose assets were acquired by Wells Fargo, is the only documentation proffered in a world where numerous unconsented securitizations and rehypothecations occur as a normal course of business. Moreover, since

when does the government or its financial agent, finance a purchase of a security instrument without a paper trail so its governmental actions can be reviewed? Wells Fargo has not substantiated, its alleged claims that Fannie is the note owner, and that the security instruments have not been sold to and/or rehypothecated one or more times to RMBS trusts, hedge funds, the federal reserve and/or any other government entities by itself or former Wachovia. Why was the loan never clearly endorsed over to Wells Fargo or Fannie? Who owns the note and the right to enforce it?

Although this law allowing for third-party actions is controversial, alternatively Wells Fargo still fails at standing. Under Florida law the 4th DCA coincidentally set the standard in *Elston/Leetsdale, LLC v. CWCapital Asset Mgmt. LLC*, 87 So. 3d 14 (Fla. 4th DCA 2012), where it made it clear a servicer may only be considered as a party to a foreclosure if (1) its principal/real party in interest has joined in or (2) ratified its conduct. Herein, Wells Fargo did not join the real party in interest as a named party, nor did Wells Fargo submit any substantive evidence to prove the real party in interest ratified this action. Therefore, Wells Fargo was never a real party in interest at the time this case was filed nor at the time of judgement. *Elston/Leetsdale* outlined that the real party in interest must be joined as a party unless the relationship between real party in interest and plaintiff fits into one of these six categories: 1) a personal representative; 2) an administrator; 3) a guardian; 4) a trustee of an express trust; 5) a party with whom or in whose name a contract has been made for the benefit of another; or 6) a party expressly authorized by statute to sue in that party's own name without joining the party for whose benefit the action is brought. Fla. R. Civ. P. Rule 1.210(a).

Accordingly, Wells Fargo's relationship with the real party in interest is not one of these six categories, and under *Elston/Leetsdale* it was required to join the real party in interest, which it failed to do, depriving it of standing to bring this action. The rule expressly lists the types of agents that may sue in their own name without joining the real party in interest which implies the exclusion of other relationships. See *Biddle v. State Beverage Dept.*, 187 So. 2d 65, 67 (Fla. 4th DCA 1966) (applying '[e]xpressio unius est exclusio alterius'—**the mention of one thing implies the exclusion of another**)(bold emphasis added).

Although Rule 1.210(a) does not expressly mention ratification, the Florida district Courts have decided to follow the 3rd DCA in *Kumar Corp. v. Nopal Lines, Ltd.*, 462 So. 2d at 1185 (affidavits unequivocally show that principal ratified and endorsed agent's action in bringing suit on principal's behalf). Accordingly, Wells Fargo failed to satisfy this second vital option to prove standing, as it never produced any substantive evidence from the real party in interest expressly authorizing it bringing this foreclosure action. Since it is mandatory a party must acquire standing before filing suit, Wells Fargo's hoodwinking of the Court at the onset with its purported standing, legal conclusions and wrongful presumption of facts renders these proceedings *void ab initio*. See *Boyd v. Wells Fargo Bank, N.A.*, 143 So. 3d 1128 (Fla. 4th DCA 2014) (reversing summary judgment of foreclosure because **foreclosing lender failed to produce documentation establishing that it had standing at the time it filed the foreclosure complaint**). (bold emphasis added).

Wells Fargo's claims as agent also fail, because such an allegation without allegations necessary to establish an agency relationship, is therefore a mere legal conclusion that the Court should not have taken as true. *See Loan Co. v. Smith*, 155 So. 2d 711 (Fla. 1st DCA 1963) (**holding that mere legal conclusions are fatally defective unless substantiated by sufficient allegations of ultimate fact**); *Phelps v. Gilbreth*, 68 So. 2d 360 (Fla. 1953) (**holding that allegations of legal conclusions are of no legal effect or significance and are generally ignored in the construction and consideration of the pleadings of which they are a part**). (bold emphasis added). By not providing any endorsement, assignment and/or affidavit attached to the note from the real party in interest transferring all rights thereto to satisfy negotiation and to satisfy ratification under Florida law, Wells Fargo was deprived of standing in this action.

Additionally, Wells Fargo cannot claim to be acting as servicer for the note and owner of the mortgage, as it is well established law that the mortgage follows the note, but the note never follows the mortgage, so Wells Fargo could not have owned the mortgage and had standing to foreclose while claiming that Fannie owns the note. See *Carpenter v. Longan*, 83 U.S. 271 (1872) **"the note and mortgage are inseparable; the former as essential, the latter as an incident. An assignment of the note carries the mortgage with it, while an assignment of the mortgage alone is a nullity."** (bold emphasis added). The 4th DCA concurred in *Lizio v. McCullom*, 36 So. 3d 927, 929 (Fla. 4th DCA 2010) **"The party seeking foreclosure must present evidence that it owns and holds the note and mortgage in question in order to pro-**

ceed with a foreclosure action." (bold emphasis added). Wells Fargo failed to satisfy standing under *Lizio*, and its allegations clearly create a genuine issue of material fact as to whether it owned and held the note and mortgage under federal and Florida law, thus depriving it of standing to foreclose. *See Verizzo v. Bank of New York*, 28 So. 3d 976, 978 (Fla. 2d DCA 2010) (providing that **"there is a genuine issue of material fact as to whether the Bank of New York owns and holds the note and has standing to foreclose the mortgage.")** (bold emphasis added). And when doubt exists, ("It is well settled that a plaintiff in a foreclosure case **must demonstrate that it had standing at the time the complaint was filed.**") *McClean v. JPMorgan Chase Bank Nat'l Ass'n*, 79 So. 3d 170, 173 (Fla. 4th DCA 2012). (bold emphasis added). Accordingly, **"Where the defendant denies that the party seeking foreclosure has an ownership interest in the mortgage, the issue of ownership becomes an issue the plaintiff must prove."** See *Lizio*; *Carapezza v. Pate*, 143 So. 2d 346, 347 (Fla. 3d DCA 1962). (bold emphasis added). *Longan* concurs with the use of Mortgage Electronic Registration Systems (MERS) herein, as it is well known the mortgage and note were immediately separated and in fact the original "wet seal documents" were most likely destroyed upon electronic scanning and transfer.

Therefore, this Court should grant certiorari to address and rectify these vital third party and tainted unlawful title issues and the facially void judgements.

IV. This Court Should Grant Certiorari To Address Violations Of SEC Securities Laws & NEMO DAT QUOD NON HABET With Numerous Sales &/or Pledges Of Americans Homes With-

out Their Consent, Knowledge or Benefit And Address The Fact These Were Premeditated Securities Transactions Not Conventional Mortgages As Advised

One of the greatest issues that led to the housing crisis was the failures is creation, supervision and regulation of mortgage backed securities. These security instruments are allowed to be sold and resold multiple times to different parties without any knowledge, consent or benefit from the homeowners whose homes are traded on the open market. In fact, many of these assets, including those that inevitably became toxic, were purchased with printed taxpayer dollars by the federal reserve. The problem with these instruments is they are not conventional mortgages as unsuspecting homeowners are led to believe, they are in actuality premeditated securities transactions, as the originators are calculating and preparing for the inclusion of the loans on Americans homes into these RMBS or Residential Mortgage Backed Securities even before the closing of the loans. These **undisclosed securities transactions** are in direct violation of Securities and Exchange Commission (SEC) Rule 10b-5 targeting securities fraud authorized under § 10(b) of the Securities Exchange Act of 1934, and codified at 17 C.F.R § 240. 10b-5 *Employment of manipulative and deceptive devices.* This Act was adopted to provide more transparency in secondary securities markets, similar to the current RMBS markets, in response to the stock market crash of 1929. Wells Fargo and its predecessor Wachovia clearly violated this rule by *employing a scheme to defraud* the Barone's into believing they were entering into traditional mortgage contracts when in fact they were undisclosed/secret securities transactions, by ***making untrue statements or omitting material facts*** and

by ***engaging in any act, practice or course of business which operates as a fraud or deceit.*** (bold emphasis added). As part of this securities fraud, Wells Fargo securitized and rehypothecated the loan herein multiple times collecting unjust benefits by selling and/or pledging the property it did not possess or have a right to in violation of **NEMO DAT QUOD NON HABET (*"no one gives what they don't have"*).** Wells Fargo failed to disclose these secret secondary market securities transactions, including numerous securitizations, rehypothecations, secondary default insurance and derivatives transactions, all of which were not authorized by the Barone's or the contracts, creating multiple breaches. These numerous breaches were part of a calculated scheme to defraud the Court, the Barone's and millions of other unsuspecting Americans of their property, and essentially voids the contracts.

It is clear the courts in millions of Americans unlawful foreclosures have failed at preventing manifest injustice. This Court asserts the need for justice to prevail in this system set up to protect the people and preserve the public's trust, and Mrs. Barone prays on that.

CONCLUSION

For all these reasons, the Court should grant this petition.

Dated: August 25th, 2020

By: _____

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