No. 20-399

ORIGINAL

In the

# Supreme Court of the United States

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Jung Hyun Cho et al,

Petitioners,

v.

Select Portfolio Servicing, Inc. et al.

Respondents

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ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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## PETITION FOR WRIT OF CERTIORARI



Jung Hyun Cho
Kyu Hwang Cho
Eun Sook Cho
Eui Hyun Cho

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# QUESTIONS PRESENTED

I. Whether a state summary court has competent jurisdiction over an unlawful detainer action challenged by a bona fide property dispute arising from a non-judicial foreclosure auction of a privacy-label mortgage securitization.

II. Whether a non-assigned Article III judge's "*independent duty*" intervention with removal jurisdiction of a state unlawful detainer case to a related federal case is constitutional, absent emergency and absent any motion by a party.

III. Whether the remand by the non-assigned judge to the state court whose jurisdiction is challenged is constitutional amid the alleged **fraud upon the court** in the remand proceedings, and whether the remand for lack of subject matter jurisdiction over the state case that "forms part of the same case or controversy" is constitutional, notwithstanding the supplemental jurisdiction.

IV. Whether non-borrowing co-occupants/family members of a homeowner have standing to FHA[1] redress on grounds of an injury in fact as aggrieved persons.

V. Whether the holding by the trial court that Petitioners have no private party right of action under HAMP[2] is valid, notwithstanding a landmark decision to the contrary.

VI. Whether **continuity plus relationship** substantiated by a facially plausible factual content and extrinsic evidence is not cognizable enough to invoke the RICO[3] pattern requirements as proximate cause.

VII. Whether Local. R. 302(c)(21) limiting pro se litigants' due process rights to be heard before Article III judges is constitutional.

VIII. Whether a trustee of certificate holders of private-label MBS[4] is eligible for postmortem credit bid on a non-judicial foreclosure auction, absent a competent cash bidder.

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[1] Fair Housing Act of 1968

[2] Home Affordable Modification Program (HAMP)

[3] Racketeer Influenced and Corrupt Organizations (RICO) Act OF 1970

[4] Mortgage-Backed Security is classified as privacy-label MBS and agency-label MBS. Agency means GSE(Government Sponsored Enterprise) including Fannie Mae and Freddie Mac.

## LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[ x] All parties **do not appear** in the caption of the case on the cover page. A list of all parties to the proceeding in the court judgment is the subject of this petition is as follows:

- Select Portfolio Servicing, Inc. , loan servicer
- Deutsche Bank National Trust Company, trustee of MBS certificate holders
- Bank of America, loan servicer
- WMC Mortgage LLC, loan originator
- The Wolf Firm, a law corporation
- Ronald Lee, real estate agent
- Juan Gomez, real estate agent
- Solano County Tax Assessor
- Jung Hyun Cho, petitioner
- Kyu Hwang Cho, petitioner
- Eun Sook Cho, petitioner
- Eui Hyun Cho, petitioner

## RELATED CASES

- Deutsche Bank National Trust Company v. Jung Hyun Cho, et al., No. FCM 154163, Superior Court of CA for Solano County. Judgment entered 08/03/2017.
- Deutsche Bank National Trust Company v. Jung Hyun Cho, et al. No. 2:17-CV-01357-MCE-DB-PS. Remand entered 07/11/2017.
- Deutsche Bank National Trust Company v. Jung Hyun Cho, et al. No.FCS049349, Appellate Div. of Solano Court. Judgment entered 08/28/2018.

- Jung Hyun Cho v. Deutsche Bank, No. FCS049317, Superior Court of CA for Solano County, Judgment suspended in December 2017 and entered in August 2018.
- Jung Hyun Cho v. Deutsche Bank, No. A154170, 1st District Court of Appeals, Judgment entered 09/30/2019. Petition for rehearing denied 10/29/2019.
- Jung Hyun Cho, et al. v. Select Portfolio Servicing Inc et al. No. 2:17-CV-01073-CKD. Judgment entered 08/14/2018
- Jung Hyun Cho, et al. v. Select Portfolio Servicing Inc et al. No. 18-186719, 19th Circuit. Judgment entered 04/21/2020.

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## STATUTES AND RULES

## OTHER

# IN THE

# SUPREME COURT OF THE UNITED STATES

# PETITION FOR WRIT OF CERTIORARI

Petitioners respectfully pray that a writ of certiorari issue to review the judgment below.

## OPINIONS BELOW

[ X ] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix **A-1, B-1** to the petition and is

[ ] reported at_____; or,
[ ] has been designated for publication but is not yet reported; or,
[x] is unpublished.

The opinion of the United States district court appears at Appendix **A-3, A-4, B-2** to the petition and is

[ ] reported at_____; or,
[ ] has been designated for publication but is not yet reported; or,
[x] is unpublished.

[ X ] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix **C-2** to the petition and is

[ ] reported at_____; or,
[ ] has been designated for publication but is not yet reported; or,
[x] is unpublished.

The opinion of the Appellate Division of Superior Court _____ appears at Appendix **C-3** to the petition and is

[ ] reported at_____; or,
[ ] has been designated for publication but is not yet reported; or,
[x] is unpublished.

## JURISDICTION

[ ] For cases from **federal courts**:

The date on which the United States court of appeals decided my case was April 21, 2020.

[x] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date:_____, and a copy of the order denying rehearing appears at Appendix ____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____(date) on _____(date) in Application No. ___A_____.

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

**Note:** resubmission was allowed by this Court within 60 days from Aug. 29, 2020.

[ ] For cases from **state courts**:

The date on which the highest state court decided my case was 08/28/2018.
A copy of that decision appears at Appendix C-2.
[ ] reported at_____; or,
[ ] has been designated for publication but is not yet reported; or,
[x] is unpublished.

The opinion of the Appellate Division of state court appears at Appendix C-3 to the petition and is

[ ] reported at_____; or,
[ ] has been designated for publication but is not yet reported; or,
[x] is unpublished.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a)

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The core issues of the Chos' appeal to 9th Circuit are due process and judicial impartiality. The required elements of due process are those that "minimize substantively unfair or mistaken deprivations" by enabling persons to contest the basis upon which a state proposes to deprive them of protected interests.

The Chos proceeding pro se have found a significant amount of unfairness and errors in court proceedings has grown acceleratingly to worsen their position to face an insult added to injury.

Landmark court cases support the Chos' claim in terms of similarity in FHA arguments.

**Question I: Jurisdictional Issue**

**California Code of Civil Procedure**

Jurisdiction in Limited Civil Cases [85 - 89] ( Article 1 added by Stats. 1998, Ch. 931, Sec. 28. )

85. An action or special proceeding shall be treated as a limited civil case if all of the following conditions are satisfied, and, notwithstanding any statute that classifies an action or special proceeding as a limited civil case, an action or special proceeding shall not be treated as a limited civil case unless all of the following conditions are satisfied:

(a) The amount in controversy does not exceed twenty-five thousand dollars ($25,000). As used in this section, "amount in controversy" means the amount of the demand, or the recovery sought, or the value of the property, or the amount of the lien, that is in controversy in the action, exclusive of attorneys' fees, interest, and costs.

The state case of unlawful detainer intentionally set Plaintiff's monetary claim at under $10,000 in an egregious attempt to game the limited case jurisdiction to evade a jury trial for an unlimited case for over $25,000.

The landmark decision on Asuncion v. Superior Court (W. C. Financial, Inc.) (1980) is frequently cited for property disputes involving fraud.

Court of Appeals of California, Fourth Appellate District, Division One ruled:

> It is generally recognized the summary unlawful detainer action is not a suitable vehicle to try complicated ownership issues involving assertions of fraud and deceptive practices such as the Asuncions allege here. In holding an unlawful detainer action is not res judicata on the question of fraud in the acquisition of title, *Gonzales v. Gem Properties, Inc. (1974) 37 Cal. App. 3d 1029, 1036 [112 Cal. Rptr. 884],* pointed out, "The summary nature of unlawful detainer proceedings suggests that, as a practical matter, the likelihood of the defendant's being prepared to litigate the factual issues involved in a fraudulent scheme to deprive him of his property, no matter how diligent defendant is, is not great."

The court of Asuncion held

> Since this court[Municipal Court] is not a suitable forum to determine the need for a preliminary injunction nor its terms and conditions, we leave such matters for determination in the trial court. We hold only, the Asuncions are entitled to defend this eviction action based on the claims of fraud and related causes which they have asserted, and accordingly the action necessarily exceeds the jurisdiction of the municipal court and cannot be tried there.

**Questions II and III:**

**Supplemental jurisdiction 28 U.S. Code § 1367.**

(a) Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

**Question III : Fraud on the court involving removal jurisdiction**

**Removal Reviewable on Appeal**

SYLLABUS
OCTOBER TERM, 2008
CARLSBAD TECHNOLOGY, INC. V. HIF BIO, INC.

SUPREME COURT OF THE UNITED STATES

CARLSBAD TECHNOLOGY, INC. v. HIF BIO, INC., et al.

certiorari to the united states court of appeals for the federal circuit

No. 07–1437. Argued February 24, 2009—Decided May 4, 2009

Respondents filed a state-court suit alleging that petitioner had violated state and federal law in connection with a patent dispute. After removing the case to Federal District Court under 28 U. S. C. §1441(c), which allows removal if the case includes at least one claim over which the federal court has original jurisdiction, petitioner moved to dismiss the suit's only federal claim, which arose under the Racketeer Influenced and Corrupt Organizations Act (RICO). Agreeing that respondents had failed to state a RICO claim upon which relief could be granted, the District Court dismissed the claim; declined to exercise supplemental jurisdiction over the remaining state-law claims under §1367(c)(3), which allows such a course if the court "has dismissed all claims over which it has original jurisdiction"; and remanded the case to state court. The Federal Circuit dismissed petitioner's appeal, finding

that the remand order could be colorably characterized as based on a "lack of subject matter jurisdiction" over the state-law claims, §1447(c), and was therefore "not reviewable on appeal," §1447(d).

Held: A district court's order remanding a case to state court after declining to exercise supplemental jurisdiction over state-law claims is not a remand for lack of subject-matter jurisdiction for which appellate review is barred by §§1447(c) and (d). With respect to supplemental jurisdiction, a federal court has subject-matter jurisdiction over specified state-law claims, see §§1367(a), (c), and its decision whether to exercise that jurisdiction after dismissing every claim over which it had original jurisdiction is purely discretionary, see, e.g., Osborn v. Haley, 549 U. S. 225, 245. It is undisputed that when this case was removed, the District Court had original jurisdiction over the federal RICO claim under §1331 and supplemental jurisdiction over the state-law claims, which were "so related to claims ... within such original jurisdiction that they form[ed] part of the same case or controversy," §1367(a). On dismissing the RICO claim, the court retained its statutory supplemental jurisdiction over the state-law claims. Its decision not to exercise that statutory authority was not based on a jurisdictional defect, but on its discretionary choice. See Chicago v. International College of Surgeons, 522 U. S. 156, 173. Pp. 3–6.

508 F. 3d 659, reversed and remanded.

**Question II : Removal Jurisdiction**

**LOCAL RULE 122 (Fed. R. Civ. P. 63)**

AUTHORITY OF ASSIGNED JUDGES AND MAGISTRATE JUDGES

IN EMERGENCIES

> The Judge assigned to an action, or the Magistrate Judge when authorized, shall preside over the trial and determine all motions or other matters in that action, except as otherwise provided in Fed. R. Civ. P. 63 and Fed. R. Crim. P. 25, or as otherwise ordered, or in cases of emergency. In the event of an emergency requiring prompt action, if the assigned Judge or Magistrate Judge is unavailable, the matter shall be presented to the Clerk for temporary assignment to another available Judge or Magistrate Judge, if necessary. In such instance, it shall be the responsibility of counsel presenting the matter to provide the Judge or Magistrate Judge to whom the matter is presented with a detailed explanation of the necessity for the application's being handled on an emergency basis.
> The matter shall be returned to the calendar of the unavailable assigned Judge or Magistrate Judge upon the resolution of the matter, unless the matter is transferred pursuant to these Rules.

**Questions IV and V : Article III Standing**

1) Spokeo v. Robins

In 2016, the United States Supreme Court issued a landmark opinion addressing Article III standing under the U.S. Constitution. *See Spokeo v. Robins, —— U.S. ——, 136 S. Ct. 1540, 194 L.Ed.2d 635 (2016).* "[T]he 'irreducible constitutional minimum' of standing consists of three elements. The plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be Federal Magistrates Act of 1968redressed by a favorable judicial decision." Id. Ultimately, in Spokeo, the Supreme Court held that "Article III standing requires a concrete injury even in the context of a statutory violation." Id. at 1549.

2) *Wigod v. Wells Fargo*

In 2012, under the Wigod v. Wells Fargo Bank, N.A., 673 F.3d 547 (7th Cir. 2012), the Seventh Circuit Court of Appeals ruled that despite having signed a loan modification agreement and entered into a trial period, the homeowner could maintain a private cause of action against the lender or servicer under certain circumstance. The court held that borrowers who have entered into a trial period plan under HAMP can seek relieve when those servicers fail to abide by the terms of the trial period payment plan.

Under HAMP, the borrowers are provided with a trial period, requiring them to make payments for usually three months, and thereafter, the final modification agreement is supposedly mailed to the homeowner borrower. However, in cases, the bank does not follow through with the final HAMP modification and fails to offer it to the borrower. Or may fail to adhere to the same promised payments as set forth in the trial period.

**Question VII: Due Process**

The Fifth and Fourteenth Amendments to the United States Constitution each contain a due process clause. Due process deals with the administration of justice and thus the due process clause acts as a safeguard from arbitrary denial of life, liberty, or property by the government outside the sanction of law. The Supreme Court of the United States interprets the clauses broadly, concluding that these clauses provide three protections: procedural due process (in civil and criminal proceedings); substantive due process, a prohibition against vague laws; and as the vehicle for the incorporation of the Bill of Rights.

The clause in the Fifth Amendment reads:

> No person shall ... be deprived of life, liberty, or property, without due process of law.

While the clause in the Fourteenth Amendment says:

> ...nor shall any State deprive any person of life, liberty, or property, without due process of law.

**Question VI: RICO Pattern Requirement**

1) RICO Continuity Plus Relationship Test

*The controversy surrounding this element stems from two factors. First, RICO does not define "pattern of racketeering activity." Instead, the law states that such a pattern "requires at least two acts of racketeering activity" within ten years of each other. Second, in a 1985 decision entitled Sedima, S.P.R.L. v. Imrex Co., the Supreme Court suggested that RICO's "extraordinary" breadth stems from the judiciary's failure to interpret the pattern element meaningfully and not simply from statutory design. Accordingly, in what has become a landmark footnote, Justice White's majority opinion advanced the following suggestion:*

*The legislative history supports the view that two isolated acts of racketeering do not constitute a pattern. As the Senate Report explained: "The target of [RICO] is thus not sporadic activity. The infiltration of legitimate business normally requires more than one 'racketeering activity' and the threat of continuing activity to be effective. It is this factor of 'continuity plus relationship' which combines to produce a pattern."*

2) George v. Urban Settlement Servs.

It is a well-established fact that 105 cases cited George v. Urban for similar HAMP lawsuits involving RICO offences.

*UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT*
*Aug 15, 2016 833 F.3d 1242 (10th Cir. 2016)*

*Richard George, Steven Leavitt, Sandra Leavitt, and Darrell Dalton appeal the district court's dismissal of their putative class action against Urban Settlement Services, d/b/a Urban Lending Solutions (Urban) and Bank of America, N.A. (BOA). The plaintiffs asserted a claim under the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §§ 1961-1968, against BOA and Urban. They also brought a promissory estoppel claim against BOA. Both claims arose from the defendants' allegedly fraudulent administration of the Home Affordable Modification Program (HAMP). The district court granted the defendants' Fed. R. Civ. P. 12(b)(6) motions to dismiss both claims, denied the plaintiffs' request for leave to amend their first amended complaint, and dismissed the case. Because we conclude that the plaintiffs' first amended complaint states a facially plausible RICO claim against BOA and Urban and a facially plausible promissory estoppel claim against BOA, we reverse and remand for further proceedings. Our reversal moots the plaintiffs' challenge to the district court's denial of their request to further amend the complaint. When Congress enacted the Emergency Economic Stabilization Act of 2008, it authorized the Secretary*

*of the U.S. Department of the Treasury to establish the Troubled Asset Relief Program (TARP) and to purchase troubled assets, including certain residential mortgages, from financial institutions. See generally 12 U.S.C. §§ 5201, 5202, 5211. Consistent with this authority, the Secretary established HAMP in 2009 to encourage mortgage servicers to modify loan terms for delinquent borrowers at risk of foreclosure.*

**Question IV : Aggrieved person**

(1) Bank of America Corp.et al v. City of Miami, Florida. **Question IV**

*CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT*

*No. 15–1111. Argued November 8, 2016—Decided May 1, 2017**

*The City of Miami filed suit against Bank of America and Wells Fargo (Banks), alleging violations of the Fair Housing Act (FHA or Act). The FHA prohibits, among other things, racial discrimination in connection with real-estate transactions, 42 U. S. C. §§3604(b), 3605(a), and permits any "aggrieved person" to file a civil damages action for a violation of the Act, §§3613(a)(1)(A), (c)(1). The City's complaints charge that the Banks intentionally targeted predatory practices at African-American and Latino neighborhoods and residents, lending to minority borrowers on worse terms than equally creditworthy nonminority borrowers and inducing defaults by failing to extend refinancing and loan modifications to minority borrowers on fair terms.*

**Question V : Private Party Right of Action**

**HAMP V. FCA**

(1) Allison Engine Co. v. United States ex rel. Sanders, 553 U.S. 662 (2008)

The holding of *Allison* by the Supreme Court was overruled by Congress under Fraud Enforcement Recovery Act(FERA) of 2009 due mainly to the loose language found in the definition of federal money and financial institutions in False Claim Act of 1863, 31 U.S.C. §§ 3729 – 3733, despite three amendments made prior to FERA.

The crime of major fraud against the United States (18 U.S.C. § 1031), which previously covered only fraud in government procurement and contracts for services, is amended to include a wider range of government involvement, including grants under the American Recovery and Reinvestment Act of 2009, transactions under the Troubled Assets Relief Program(TARP), and any "other form of Federal assistance". FERA changes the definition of a financial institution for the purposes of Federal criminal law to include mortgage lending businesses, which are defined as "organizations which finance or refinance any debt secured

by an interest in real estate, including private mortgage companies and any subsidiaries of such organizations, and whose activities affect interstate or foreign commerce." 18 U.S.C. § 1014, which makes it a federal offense to falsify loan documents submitted to a broad range of financial institutions, is amended to include mortgage lending businesses in that range, and for good measure also includes any other person "that makes in whole or in part a federally related mortgage loan".

The HAMP violation is therefore to be pursuant to FERA. The Chos argue the panel misconstrued the rule of law by sweeping this case under the carpet of arguably judicial immunity at a challenging time like this COVID-19 pandemic that actually disabled a fair and realistic chance of any request for rehearing by either the panel or en banc.

In their pleadings, the Chos have stated a viable basis for RICO predicates perpetrated by lender and/or servicers during the 13-year period starting in September 2004. The Chos have fully stated facial plausibility on fraudulent operations by defendants, which are facially plausible enough to pass the "continuity plus relationship" test during the 13-year period enough to substantiate viable RICO claims.

**Question VII : Pro Se Litigation**

**Judiciary Act of 1789**

"[I]n the federal courts the right of self-representation has been protected by statute since the beginnings of our Nation. Section 35 of the Judiciary Act of 1789, 1 Stat. 73, 92, enacted by the First Congress and signed by President Washington one day before the Sixth Amendment was proposed, provided that 'in all the courts of the United States, the parties may plead and manage their own causes personally or by the assistance of counsel.'

**Local R. 302(c)(21)**

*(21) In Sacramento, all actions in which all the plaintiffs or defendants are proceeding in propria persona, including dispositive and non-dispositive motions and matters. Actions initially assigned to a Magistrate Judge under this paragraph shall be referred back to the assigned Judge if a party appearing in propria persona is later represented by an attorney appearing in accordance with L.R. 180.*

The Chos believe the foregoing local rule unfairly limits pro se litigants' procedural due process rights and may imminently harm by the Chos' position to be able to be referred back to the assigned district judge unless they are represented.

**Question VIII : Scope of Postmortem Credit Bid on Non-Judicial Foreclosure Auction**

**Bankruptcy Code Section 363(k), 11 U.S.C. §363**

*(k) At a sale under subsection (b) of this section of property that is subject to a lien that secures an allowed claim, unless the court for cause orders otherwise the holder of such claim may bid at such sale, and, if the holder of such claim purchases such property, such holder may offset such claim against the purchase price of such property.*

The Chos contend the bankruptcy courts are an Article I tribunal, while property disputes alleging fraud can be argued in an Article III tribunal, when and if proceedings in a consent jurisdiction under a magistrate judge is challenged on grounds of lack of bona fide procedural due process.

## STATEMENT OF THE CASE

### INTRODUCTION

The Chos[5], Petitioners, bought a real property[6] as their primary residence in the solo name of Jung Hyun Cho in September 2004 and had shared all the housing costs until they left this property in August 2017. The purchase price was $599,000 and financed with two loans from WMC Mortgage LLC. This property had remained underwater or minus equity for 13 years until the Chos left due to eviction judgment. A total out-of-pocket amount of approximately $350,000, let alone roughly $100,000 for home improvement, was paid for mortgage, home insurance and property tax alone. The monthly payment started at around $3,400 and later in the beginning of the 2007-2008 housing crash it went up to $4,600.

At the peak of the national 2007-2008 housing crash, the loan default occurred due mainly to family sickness, and partly because the borrower Jung Hyun Cho working two jobs at that time lost one. The borrower's mother Eun Sook Cho, was diagnosed with an incurable genetic disorder that threatened an imminent loss of vision.

### THE FACTUAL BASIS

After the default, notices of default and cancellations repeatedly followed until in April 2010, the then-servicer Bank of America offered the 3-month TPP[7] at $2,170/month under HAMP, starting in May 2010. Eventually, seven monthly payments of $2,170[8] were made. Nevertheless, Bank of America reneged on its promise to make the HAMP modification permanent.

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[5] Kyu Hwang Cho, father, 72, Eun Sook Cho, mother, 67, Jung Hyun Cho, first son, 43 and Eui Hyun Cho, second son, 40. They immigrated into California in late 1990 from South Korea. Two sons have never been married and still single mainly because they have lost their lifetime earnings due to the eviction.

[6] Located at 681 Tuscany Court, Fairfield, Solano County, CA 94534

[7] Trial Payment Plan afforded under HAMP conditional to the rescue funds of TARP.

[8] This payment amount was set by Bank of America as 31% of the gross household monthly income of $7,000.

In February 2013, Bank of America and CA Monitor Katie Porter[9] simultaneously sent letters to the Chos notifying eligibility of loan modification under HAMP. Applications were numerously filed with Bank of America due mainly to its runaround scheme. Eventually, Bank of America notified that servicing was transferred to Select Portfolio, starting from November 1, 2013, with a brief note indicating the application status would remain unchanged. However, Select Portfolio did not honor the continuity of the application status transferred.

In August 2014, Select Portfolio sent a notice of default in an egregious attempt to whitewash the continued status of the previous application. After a while Select Portfolio started taking a new application from not just the borrower but also from non-obligor family members. Again, the runaround scheme came into play, making Petitioners to turn in supplementary financial information countlessly.

Finally, they offered an in-house modification package that was a far cry from the HAMP criteria of 31% of gross household income. Simply put, the in-house offer did not change from the original monthly payment. Select Portfolio started extorting Petitioners to accept the in-house offer of approx. $3,000/month against multiple threats of non-judicial foreclosure auction.

The extortion continued with over 10 notices of auction and cancellations until October 31, 2016, when the auction finally took place. No cash bidders were present, and after a lapse of a week, the trustee took title by means of postmortem credit bid.

## STATEMENT OF PROCEEDINGS

1) On April 7, 2017, Deutsche Bank, after acquiring title, brought an unlawful detainer action in a summary court of Superior Court of California for County of Solano. Naturally, Petitioners' motions to fight back for affirmative defense were started but serially denied.
2) Realizing the state court is not for a cross-complaint, the Chos sued seven parties in the U.S. Court for Eastern District of California(CAED) on May 22, 2017. One of defendants, Select Portfolio, is and was neither a California corporation nor a foreign corporation registered in California. The eighth defendant was added a year later.
3) Removal of the unlawful detainer case was signed on 07/02/2017 and filed & entered in CAED on 07/05/2017.
4) On July 11, 2017, the removal case was remanded to the originating summary court.
5) Motion to quash the remand filed in CAED on 07/31/2017. Denied.
6) State summary court judgment entered on 08/03/2018. No.FCM1541263.
7) Notice to evacuate until 08/17/2017 served to the Chos.
8) Motion for Temporary Restraining Order for Injunction filed in CAED on 08/11/2017. No.2:17-CV-01073-KJM-CKD. Denied.

[9] Katie Porter was nominated in March 2012 as the state's independent monitor of banks in a nationwide $25 billion mortgage settlement: the incumbent U.S. Representative for California's 45th congressional district since 2019.

9) Findings and Recommendation by Magistrate Judge filed on 09/06/2017. The Chos received paper copy thereof belatedly on 09/27/2017 due to post-eviction address change, of which filing in CAED was timely.
10) Motion to amend the complaint filed on 09/13/2017 during non-receipt of the foregoing paper copy. The Chos did not have access to PACER at that time.
11) On 01/17/2018, the district judge assigned to the federal case, adopted Magistrate Judge's Findings dated 09/06/2017. Hon. Kimberley J. Mueller issued an order that [1]Petitioners have no private party right of action, [2] Petitioners other than Jung Hyun Cho have no standing to FHA claim, and [3] Jung Hyun Cho is granted leave to amend.
12) Interlocutory appeal to the foregoing order filed in 9th Circuit on 02/08/2018. Denied on 03/26/2018.
13) Petition for Transfer filed in 1st District Court of Appeals Division One(1DCA) 06/09/2018. No. FCS049349. Never entertained.
14) Consent to jurisdiction filed by two defendants on 07/31/2018, after a lapse of over a year from the filing date of 05/22/2017 without paper service to the Chos.
15) Judgment entered by CAED on 08/14/2018. No.2:17-CV-01073-CKD.
16) Appeal to 9th Circuit filed on 09/12/2018. No.18-16719
17) Opening Brief filed in 9th Circuit on 01/30/2019. No. 18-16719
18) Petition for Writ of Mandamus filed in 9th Circuit 02/20/2019. No.19-70425
19) Petition denied 05/29/2020. No.19-70425
20) Memorandum issued by 9th Circuit on 04/21/2020. No.18-16719.

## ISSUES OF LAW

This petition for a writ of certiorari is premised on a first-generation immigrant family, the Chos, and their civil liberties under Fair Housing Act of 1968(FHA) aka Civil Rights Act of 1968.

In September 2004, the Chos bought the property for primary residence in the solo name of Jung Hyun Cho. The purchase was financed with two subprime loans from WMC Mortgage LLC, the originating lender. The lender promised the Chos that early refinancing within a year is feasible. At the peak of the national 2007-2008 housing crash, the loan default occurred due mainly to family sickness, and partly because the borrower Jung Hyun Cho working two jobs at that time lost one.

The promised early refinancing never realized until the Chos lost their home of 13 years to a shady non-judicial foreclosure auction on October 30, 2016. In an attempt to evade and deter litigation, servicer after servicer played the runaround game, and reneged numerously on their commitments to loan modification under both HAMP and National Mortgage Settlement. Again and again, the servicers fraudulently induced the Chos to loan modifications to deter litigation.

On April 7, 2017, Deutsche Bank National Trust Company sued three of the Chos in a state summary court to take advantage of quicker eviction. The Chos' affirmative defense

did not work due to jurisdictional defect of the summary court. A cross-complaint was not viable because Select Portfolio Servicing(SPS) was not a California corporation.

In an attempt to determine jurisdiction for redress, the Chos brought a lawsuit against SPS and six other parties on May 22, 2017 in the federal court of Eastern District of California under the foregoing Fair Housing Act of 1968, Fraud Enforcement Recovery Act(FERA) of 2009 and Racketeer Influenced and Corrupt Organizations (RICO) Act of 1970. A year later, another defendant was added to the federal action.

This federal case was dismissed in August 2018 on grounds of failure to allege facially plausible claims. In September 2018, the Chos appealed to the 9th circuit court of appeals for review. On April 21, 2020, the panel of three judges at the 9th circuit issued a memorandum affirming the district court's dismissal. Appendix A-1 MEMORANDUM 04/21/2020.

1) WMC Mortgage

As the original lender, WMC has scienter. To expedite its private-label mortgage securitization scheme, WMC committed a willful misrepresentation on early refinancing within one year. Upon securitization, WMC made a quick exit from the status of original lender. In April 2019, WMC filed for chapter 11 bankruptcy protection and since then it has been administratively closed to this case. General Electric agreed to pay the Department of Justice a $1.5 billion penalty for alleged accounting misrepresentations stemming from the company's now defunct subprime mortgage business, WMC. Source: CNBC News Published FRI, APR 12 2019

*The Justice Department alleged that GE, through WMC, misrepresented the quality of its subprime loans.*

*"The financial system counts on originators, which are in the best position to know the true condition of their mortgage loans, to make accurate and complete representations about their products. The failure to disclose material deficiencies in those loans contributed to the financial crisis," Justice Department Assistant Attorney General Jody Hunt said in a statement.*

*The potential violations were investigated under the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). The law allows federal authorities to pursue civil penalties of violations made by federally insured financial institutions.*

2) Bank of America(BofA)

BofA acquired Countrywide Home Loans in 2018 and created the appearance of Jung Hyun Cho, the homeowner/borrower as a long-term defaulter by numerously deceiving the borrower on loan modification offers and then fraudulently inducing to another offers to deter litigation. In May 2010, BofA offered Trial Period

Plan(TPP), which was conditional to obtaining the public rescue funds of TARP and, when the borrower completed the 3-month TPP in time, it has reneged on it and delayed the process until it started another round of fraud on National Mortgage Settlement on Feb. 1, 2013, and made a fraudulent inducement to another chance of loan modification with its successor, Select Portfolio Servicing, Inc(SPS). These repeated acts of willful breach of promissory estoppel is construed as RICO predicates, thereby inferring the 'continuity plus relationship' in terms of duration and its continuance into the future.

3) SPS

SPS took over servicing from BofA in November 1, 2013 and gave the impression that SPS was offering HAMP by asking for submission of all the financial documents from not just Jung Hyun Cho, the borrower, but all the family. After some delays, SPS started the trickery of bait and switch instead of HAMP. Instead, SPS offered an in-house package of loan modification that has changed very little from the original loan terms, and kept torturing the Chos with more than a dozen threats of foreclosure auctions until Deutsche Bank took title in October 2016.

4) Inchoate Offences by Two Real Estate Agents

Long-term furtive surveillance and intrusion on privacy and seclusion rights were perpetrated. The Chos suffered from persistent inchoate offences by servicers' field operatives who are real estate agents. This 5-year offences were started by BofA and was inherited by SPS. Psychological torture plus vandalism has devastatingly wreaked havoc on the Chos, causing emotional depression and psychological trauma. The operatives were so skillful and furtive as not to be seen by any of the Chos while hanging 50-odd doorknob hangers on the front door of the property during the 5-year period.

5) Jurisdictional Defect

Undisputably, the summary court for Solano County has no jurisdiction over bona fide property dispute premised on civil fraud. S*ee Asuncion v. Superior Court (W. C. Financial, Inc.) (1980) - 108 Cal. App. 3d 141, 166 Cal. Rptr. 306.* The jurisdictional deficiency has been a proximate cause for removal to this federal action.

6) Postmortem Credit Bid by Deutsche Bank

Whether Deutsche Bank in the capacity of trustee for holders of certificate of MBS, is eligible for credit bidding for non-bankruptcy foreclosure auction. Section 363(k) of the Bankruptcy Code provides that the court can deny a credit bid for cause.

> The term "cause" is not defined in Section 363, but it is intended to be a flexible concept enabling a court to fashion an appropriate remedy on a case-by-case basis. Further, the language of Section

> 363(k) does not prohibit a bankruptcy court from placing conditions upon a secured creditor's ability to credit bid. Typically, "cause" to deny a credit bid may be found where (i) there is a bona fide dispute as to the extent, validity or priority of the creditor's lien in the property for which it seeks to credit bid; (ii) there is a bona fide dispute as to the allowed amount of the creditor's claim; (iii) when determining the status of a creditor's security interest or lien in the property would substantially extend the sale process and diminish the value of the property being sold; or (iv) where the secured creditor fails to follow the bidding procedures established by the Bankruptcy Court. *See RadLAX Gateway Hotel, LLC v. Amalgamated Bank, No. 11-166, 2012 WL 1912197 (U.S. May 29, 2012)*

Whether the trustee for private-label MBS certificate holders can be treated as a secured creditor in the Bankruptcy Court begs the question. Whether the trustee's credit bid was made without diminishing the market value of the property also begs the question.

7) Judicial misconducts

Beyond all reasonable doubt, the following incidents have exceeded the scope of judicial errors by all appearances, causing irreparable damages to the Chos, and severely undermined impartiality and procedural due process. "[P]rocedural due process rules are meant to protect persons not from the deprivation, but from the mistaken or unjustified deprivation of life, liberty, or property."

a) Unlawful intervention by state court clerk

Though this incident did not occur in the federal courts, but it had a devastating impact on the property ownership issue, which is a common thread linking state and federal action related to this property. Without even any court officers about the procedure, a state court clerk returned unfiled the borrower's application for pendency of action for no good cause. This application was subject to discretion of a judge. This misconduct deterred the process by over four months, during which the property was successful sold to a house flipper. Belatedly, the application for pendency of action was resubmitted and approved by the then presiding judge of Superior Court of California for Solano County, and was recorded with County Recorder.

b) Fraud on the court by a non-assigned district judge

On 07/11/2017, the non-assigned judge remanded the removal case on grounds of lack of subject matter jurisdiction. A petition for writ of mandamus was filed on Feb. 20, 2019 and was denied on May 29, 2019. ***See Appendix B-2 No.19-70425***. The remand for lack of subject matter

perverted the course of justice, giving a devastating impact on both federal and state court proceedings. The Chos allege the remand was not proper on grounds of (1) willful antedating of the filing date of removal to April 24, 2017 from the correct date of 07/05/2017 in an egregious attempt to bifurcate the removal case from the federal action to evade supplemental jurisdiction. (2) willful suppression of the factual basis of close relatedness between the removal case and Case No. 2:17-CV-01073-KJM-CKD (3) no service of paper copy to Kyu Hwang Cho. (4) No showing of justification for emergency. (5) No motion from any opposing party filed. (6) No justification for the non-assigned judge to sit in for either of both district and magistrate judges already assigned to this federal case. The Chos allege this misconduct constitutes fraud on the court involving willful false material statement.

*Fraud on the Court, or Fraud upon the Court, is where a material misrepresentation has been made to the court, or by the court itself. The main requirement is that the impartiality of the court has been so disrupted that it can't perform its tasks without bias or prejudice.*

*Some examples of fraud on the court include:*
*a. Fraud in the service of court summons (such as withholding a court summons from a party)*
*b. Corruption or influence of a court member or official*
*c. Judicial fraud*
*d. Intentionally failing to inform the parties of necessary appointments or requirements, in efforts to obstruct the judicial process*
*e. "Unconscionable" schemes to deceive or make misrepresentations through the court system.*

The Chos allege the foregoing forgery applies to the underlined item "e".

SYSTEMIC ISSUES

1. Inherent Systemic Discrimination Against Pro Se Litigants

According to ABA Journal of Sept. 11, 2017, Judge Richard Posner cites boredom with judging as well as rebuffed efforts to aid pro se litigants in a new interview explaining his decision to suddenly retire from the Chicago-based 7th U.S. Circuit Court of Appeals.

"The basic thing is that most judges regard these people as kind of trash not worth the time of a federal judge," Posner said.

2. Pro se litigation

The Supreme Court noted that "[i]n the federal courts, the right of self-representation has been protected by statute since the beginnings of our Nation. Section 35 of the Judiciary Act of 1789,1 Stat. 73, 92, enacted by the First Congress and signed by President

Washington one day before the was proposed, provided that 'in all the courts of the United States, the parties may plead and manage their own causes personally or by the assistance of counsel.'"

While the loan modification status started a tough going with SPS, the Chos made countless attempts to find the right attorney to represent them. All told, more than a dozen law firms or law offices were contacted and only two of them stayed with the Chos for a brief stint. Regardless of the merit of case prevalence, financial issues might arguably be the reason they would distance themselves away from at-fault homeowners like the Chos in view of time-consuming proceedings. Therefore, unrepresented parties may be treated like party crashers ruining judicial economy and may lose a fair opportunity for procedural due process.

3. Article III Standing

In 2016, the United States Supreme Court issued a landmark opinion addressing Article III standing under the U.S. Constitution. *See Spokeo v. Robins, —— U.S. ——, 136 S. Ct. 1540, 194 L.Ed.2d 635 (2016).* "[T]he 'irreducible constitutional minimum' of standing consists of three elements. The plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." Id. Ultimately, in Spokeo, the Supreme Court held that "Article III standing requires a concrete injury even in the context of a statutory violation." Nonetheless, the Chos, being unrepresented, were denied Article III standing and even due process rights.

4. The Gaming Tactics of Consent Jurisdiction

The Federal Magistrates Act of 1968, as amended, was enacted by the Congress to create a new federal judicial officer who would (1) assume all the former duties of the commissioners and (2) conduct a wide range of judicial proceedings to expedite the disposition of the civil and criminal caseloads of the United States.

Contrary to its good cause, the Chos believe the consent jurisdiction served to delay legal proceedings unreasonably due to error-prone proceedings. In this federal action, two defendants actually gamed the consent jurisdiction, delayed the proceedings fourteen months until a few days before judgment of case dismissal was entered, while the magistrate judge did practically nothing to expedite proceedings, denying repeatedly the Chos' motions to expedite them. The consent jurisdiction is flawed and contradictory to the legal maxim : Delayed justice is justice denied.

Systemic discrimination against pro se litigants has upended the rule of law. Local Rule L.R. 302(C)(21)of the district court permits only represented parties before a district judge, when a case is referred back to a district judge from a magistrate judge, thereby undermining Article III standing and threatening imminent damages to an unrepresented party, particularly in civil frauds.

There is a reasonable doubt that the said local rule is far from being constitutional. The Chos filed a claim of unconstitutionality premised on this local rule for review by the 9th Circuit and Department of Justice. The panel grossly abused its discretion and swept it away under the carpet. The core value of this appeal process was judicial impartiality and due process.

ARGUMENT AGAINST MEMORANDUM

**Page 2 L 1-6:** The panel mentioned "federal and state claims arising out of completed foreclosure proceedings"

The Chos argue the panel decision on appeal comes with a connotation that once ruled, it is all over, whatever the reason. This is logically fallacious and circular. Furthermore, the Chos contend that when this federal action was filed, the foreclosure proceedings were under way. Even completed foreclosure proceedings can be vacatable for some reasons. There are three elements to make judgment vacatable 1) existence of fraud 2) lack of bona fide jurisdiction, 3) inherent lack of bona fide due process of bona fide law. Even the Supreme Court holding of *Allison Engine Co. v. United States ex rel. Sanders* was overruled by Congress posthumously under *Id.* Fraud Enforcement Recovery Act(FERA).

**Page 2 L 7-12:** The panel mentioned FCA claim.

Contrary to the panel's contention, the Chos filed a federal claim under Fraud Enforcement Recovery Act of 2009. It was not a whistleblower suit under FCA. *See Wigod v. Wells Fargo Bank.* The holding of *Wigod* permits a private party right of action under HAMP on breach of contract. HAMP initiatives for troubled homeowners were conditional to federal rescue fund provided to banks under TARP. In 2009 FERA amended significant part of FCA to include even private mortgage lenders as financial institutions, thereby creating a solid basis for enforcing prevention of reverse false claims arising from TARP and HAMP. The Chos' federal claim was premised on FERA, but the trier of facts and this panel of 9th Circuit oversimplified the Chos' claim to distort the factual basis so as to create the appearance of the Chos claiming standing to FCS claim, albeit being not a relator or a qui tam plaintiff. Wigod was numerously cited in many appellate decisions. The appellate decisions citing Wigod include *Mahin Oskoui v. JPMorgan Chase Bank, et al. 9th Circuit in 15-55457(2017). West v. JPMorgan Chase Bank, N.A. (2013) 214 Cal.App.4th 780, 154 Cal.Rptr.3d 285. Bushell v. JPMorgan Chase Bank, N.A. (2013) 220 Cal.App.4th 915*

**Page 2, L 13-20:** The panel stated the Chos failed to plead a substantive violation of RICO.

The Chos' situation was similar to George v. Urban Settlement Servs. In its decision, the panel willfully suppressed a factual basis for a pattern of racketeering by two real estate agents. Instructed by Bank of America and SPS, Ronald Lee and Juan Gomez perpetrated inchoate offences inclusive of furtive surveillance and intrusion on privacy and seclusion rights. The panel decision is fatally flawed in that the panel ruled based on a cursory reading of staff attorneys' memos. The panel decision is not based on the merits, turning a blind eye to a pattern of racketeering by servicers for over a decade.

**Page 3 L 1-5:** The panel ruled issue preclusion by District Court was proper on grounds that this issue was already litigated and resolved in a prior state court action.

The Chos argue the state court action involved jurisdictional defect and allegation of fraud and therefore is neither res judicata nor collateral estoppel but invalid and vacatable. The state court action was an unlawful detainer action with defect of jurisdiction, while the federal action is civil fraud requiring federal enforcement of FHA.

The Chos argue that issue preclusion is not proper on grounds of an injury in fact substantiated by circumstantial and extrinsic evidence. The panel decision severely contravenes the landmark decision by U.S. Supreme Court on *Bank of America Corp.et al v. City of Miami, Florida.*

The FHA prohibits, among other things, racial discrimination in connection with real-estate transactions, 42 U. S. C. §§3604(b), 3605(a), and permits any "aggrieved person" to file a civil damages action for a violation of the Act, Article III

**Page 3 L 6-1:** The Chos have claimed a substantiated and viable claim for federal redress. There is a reasonable doubt that the panel has read the Chos' pleadings in full text, in lieu of staff attorney's arguably prejudged, oversimplified or rubber-stamped memos. A violation of FHA is a civil fraud requiring federal enforcement. This federal case is a typical mortgage fraud by industry insiders, as defined by FBI.

**Page 3 L-12-17:** The panel stated the Chos failed to state a plausible claim for relief.

The Chos stated facially plausible claims for relief as the pleading stage gets ripe for discovery needs. The Chos contend that WMC Mortgage LLC, the original lender, and Bank of America, the servicer, had scienter, knowing ahead that the private-label mortgage securitization is going to be another form of Ponzi scheme in the event of default by a majority of homeowners and/or mortgagors. That Ponzi scheme scenario became a stark reality during the 2007-2008 housing crash. It construes foreseeability. The 2007-2009 housing crash was a good example. WMC was committed to a massive fine due to fraudulent operations right before it filed for a chapter 11 bankruptcy in April 2019.

**Page 3 L 113-15 – Page 4 L 1-5:** The panel misconstrued Article III standing, upending the rule of law and contravening the U.S. Supreme Court's landmark ruling on Article III standing. *See Spokeo v. Robins, —— U.S. ——, 136 S. Ct. 1540, 194 L.Ed.2d 635 (2016)*

**Page 4 L 6-10:** The panel failed to understand equality of taxing affecting modification under FHA.

The Chos' claim for inequality was based on years of repeated petition filed with Solano County and groundless denial. The details of adjudicative factual basis were delineated in the Chos' REQUEST FOR JUDICIAL NOTICE, which comes with a comparison table showing three properties of similar size located in the proximity.

**Page 4 L 11-14:** The panel grossly abused its discretion to affirm the trial court's decision that amendment is futile, showing circular reasoning that all the completed proceedings

are res judicata. Also, the panel stated "de novo" review, which means no deference to the trial court. On the contrary to the good cause for de novo review, the panel appears to accord of a high level of deference, indicating the district court decision is infallible. It is illogical to say that because it is bad it is bad.

**Page 4 L 15-16:** The panel ruled the Chos' contention that the district court exhibited hostility is meritless.

The Chos argue that hostility and discrimination show more reasonable likelihood of being non-obvious. Judicial immunity and judicial infallibility are not within the same domain. Lack of judicial impartiality forms a basis for hostility and discrimination by delaying fair proceedings.

For instance, the Chos filed a motion for leave to amend on 09/13/2018[ECF 85] and it was lodged until the Chos filed a duplicate[ECF 87] in person on 09/29/2017. The court stayed proceedings for about 40 days without a notice until 10/02/2017. The court clerk denied receipt on 09/13/2017 of ECF 85, when one of the Chos was filing the duplicate ECF 87 in person. The Chos filed more than a dozen motions with the district court, and all of them ended up a blanket denial based on prejudged misconception. Some of the motions did not affect the prevalence of the case at all, but to pursue judicial economy and efficiency. The foregoing incident and blanket denial may cause a reasonable person to entertain a doubt that the trial court was friendly and attentive enough to help an injured party to see if legal redress or equitable relief is available in a timely fashion. It was an insult added to injury.

There were multiple incidents, which included judicial and clerical errors that had caused unconscionable injury to the Chos' position: (1) the foregoing incident of unreasonable lodging of an amendment for two weeks, while court clerk insisting on non-receipt and (2)another incident of filing only one out of 7 documents that had to be timely filed. The remaining 6 documents were belatedly filed but the filing dates were behind the validity of statute of repose. (3)Fraud on the court committed by a non-assigned district judge who arbitrarily remanded removal of a state unlawful detainer action by bifurcating the removal case from the federal action by committing a document forgery in an attempt to evade of application of supplemental jurisdiction over the case that forms part of the case or controversy under Article III . *See Appendix B-3. 2:17-CV-01073-KJM-CKD & 2:17-CV-01357-MCE-DB.* Ninth Circuit No. 19-70425. The removal case was remanded to the summary court that has allegedly no jurisdiction over property dispute. *See Id. Asuncion v. Superior Court.*

**Page 4 L 17-23:** The panel is admittedly authorized to rule on part of the review process sua sponte.

The Chos contend this denial of all the motions and requests entertain a reasonable doubt that the panel is free from a gross abuse of discretion.

## REASONS FOR GRANTING THE PETITION

This High Court's jurisdiction is invoked to fix significant interjurisdictional disunity caused by the 9th circuit decision on appeal that turned out to be novel, unprecedented and even contradictory to a set of landmark case decisions frequently cited for similar FHA arguments, threatening unconscionable injury to the public confidence in the judiciary system.

[1] **De Novo Review**: The panel of the 9th circuit stated the 'de novo' review of this cause, meaning zero deference to lower court discretions and decisions. Notwithstanding, the panel's decision is mostly premised on significant oversight of the challenged due process rights and lack of judicial impartiality at the trial court. The panel failed to show the good cause for the "de novo" review that is intended to search for the unfair or mistaken deprivation of due process rights.

[2] **Faulty Reasoning of Res Judicata**: To support the foregoing view, the panel arbitrarily swept under the rug Petitioners' Judicial Notice of Adjudicative Facts. Furthermore, Petitioners' claim of unconstitutionality was not entertained, knowing the foreseeability of imminent risks to the Chos in future proceedings. The panel decision was based on faulty reasoning of the res judicata status automatically afforded on allegedly impugnable lower court decisions without further review of the rule of the law and the meritorious factual basis supporting proximate causes.

[3] **Promissory Estoppel**: The panel oversighted promissory estoppel related to the HAMP claim and abused its discretion to confuse it for FCA claim, knowing this FHA claim is not a quit tam lawsuit. The panel failed to show a basis for understanding close relatedness of HAMP and the amendments of FCA added to FERA: reneging on the HAMP commitment to mortgage loan modification on the condition of getting federal rescue funds may pave the way for a reverse false claim provided under FERA that may be construed as mortgage fraud.

[4] **RICO Offences**: The panel did not consider garden variety claim resulting from servicers and their agents' RICO predicate offences of 5-year-long infringements on privacy and seclusion rights. There was no showing that the panel has appropriately reviewed these RICO offenses substantiating the continuity plus relationship test of servicers and their field operatives. This FHA claim revolves around a white collar crime : mortgage fraud by industry insiders. The appellate decision of *George v. Urban Settlement Services, No. 14-1427 (10th Cir. 2016)* vindicates the RICO claim dismissed in the trial court. Bank of America was a co-defendant in George v. Urban Settlement. The panel decision contravenes the appellate decision held by the *George* court.

[5] **Inequality v. Overtaxing**: The panel failed to demonstrate a difference between the honest error of overtaxing and the chronic inequality in the assessment of local property tax. The panel oversimplified Petitioners' claim on irreparable injury devastating refinancing terms. Years of repeated refusals by Solano County to remedy the challenged chronic inequality was an added blow to loan modification on a fair term. The panel decided to bifurcate it as a tax court claim instead of a FHA claim. The Chos' claim of

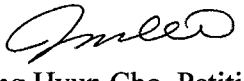
chronic inequality stems from the abrupt increase of local property tax since 2012 when servicers turned the mortgage loan into an impound account. In their judicial notice, the Chos provided adjudicate facts plus a showing in the form of a comparison table. The property in question was over $2,000 higher annually than the other two properties of similar size in the proximity. The inequality claim is premised on Solano County's chronic refusal to consider the Chos' request for relief, in the presence of the foreseeable result of the inequality affecting the Chos' loan modification status.

**In conclusion**, the panel overly anatomized proximate causes of this federal claim only to miss a common thread linking the whole of this civil fraud claim. Accordingly, the panel failed to see the core issue of federal enforcement tenet of this claim, while arbitrarily defying the doctrine of ***stare decisis***. The panel decision contravenes landmark decisions that are frequently cited to adjudicate similar FHA arguments. They are *Bank of America Corp. v. City of Miami Consolidated with Wells Fargo & Co. v. City of Miami (SCOTUS 2017), Wigod v. Wells Fargo(7th Cir. 2012), George v. Urban (10th Cir. 2016), Oskoui v. J.P. Morgan (9th Cir. 2017), and Asuncion v. Superior Court (W. C. Financial, Inc. 1980).*

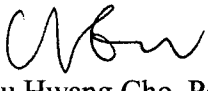
## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

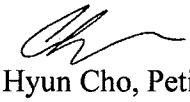


Jung Hyun Cho, Petitioner



Kyu Hwang Cho, Petitioner

Eun Sook Cho, Petitioner



Eui Hyun Cho, Petitioner

Date: September 23, 2020