

**IN THE
SUPREME COURT OF THE UNITED STATES**

MARQUES (Petitioner)

v.

JP MORGAN CHASE, N.A. (Respondent)

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

PETITION FOR REHEARING OF WRIT OF CERTIORARI

Petitioner respectfully requests rehearing under Rule 44, of which "grounds shall be limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented."

Substantial basis for reconsideration include:

1. As a worldwide pandemic with ever-increasing ramifications persists, could *not* promptly settling certain issues within the Petition exacerbate a public health crisis? The answer is *yes*, as it underscores issues paramount not only to petitioner, but to general social wellbeing at this unprecedented time,

For example, it argues that nonjudicial foreclosure is inherently unfair, as it lacks due process protection built into the country's founding document. It is reasoned the 14th amendment prohibits such practice, yet countless families will continue to lose their homes simply because they are denied the right to have courts address valid concerns. And disallowed opportunity for an impartial party to consider the foreclosure may be wrongful or due to error. This is patently inequitable.

Nonjudicial foreclosure can lead to loss of life. According to Bloomberg News journalist Kristen Capps, a "study [released in the *American Journal of Public Health*] suggests that the *mechanism* of foreclosure proceedings might actually lead to increased risk for suicide."¹

¹<https://www.bloomberg.com/news/articles/2015-02-20/a-new-cdc-study-finds-that-suicides-over-foreclosures-and-evictions-doubled-during-the-housing-crisis>

Nonjudicial foreclosure is a flawed procedure that likely contributes to a broken society. The fact it isn't practiced in all states gives further credence to its inefficiency. And since this case deals with homestead property, also protected under the 14th amendment, the present time is a crucial and optimal period to consider these matters. As any factor that can result in individuals becoming unsheltered can further aggravate the effects of the pandemic.

Georgia Code allows a debtor to be notified of a pending foreclosure "no later than 15 days before the date of the proposed foreclosure."² This short period of time is all it takes for a family to be put onto the streets. Nonjudicial foreclosure as practiced in Georgia³ conflicts with statutes in states such as Florida, New York and Louisiana which allow provision for judicial oversight measures.⁴

A new COVID variant has recently emerged since the writ denial on November 22, which amplifies threats to the general health and livelihood of the populace. And the resulting economic impact for homeowners may be severe. According to the National Alliance to End Homelessness: "COVID-19 is creating a health and economic crisis in America and throughout the world."

² GA Code: Title 44, Chapter 14, Section 162.2 (44-14-162.2): (a) Notice of the initiation of proceedings to exercise a power of sale in a mortgage, security deed, or other lien contract shall be given to the debtor by the secured creditor no later than 15 days before the date of the proposed foreclosure.

³ O.C.G.A §44-14-162 et. seq.

⁴ Source: <https://www.nolo.com/legal-encyclopedia/chart-judicial-v-nonjudicial-foreclosures.html>

Policies that affect the wellbeing of citizens should be closely scrutinized, without delay, to ensure they don't contribute to or magnify the situation. If nonjudicial foreclosure is already causing families to lose their homes without recourse, now more than ever it is imperative to minimize harmful outcomes.

With little evidence that many have made a complete financial recovery since COVID emergence, *any* foreclosure, can cause a family to become unsheltered, and have to live on the streets, in homeless shelters, in a vehicle, or with family or friends who may not have adequate space. These close living conditions are hazardous in that they allow disease to spread more rapidly. Equity in housing requires a more just and thorough process than nonjudicial foreclosure.

2. According to the rules of this Court, a compelling reason for grant of review under Rule 10 is if a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter.

This reason applies specifically to this case. The 11th Circuit, by affirming the District Court decision that petitioner's note and deed were separated, entered a decision in conflict with other US appellate courts which hold that such separation nullifies and invalidates the deed.

There's no better time than the present to come to a consensus on this inconsistency, which would eventually be addressed in all likelihood. In this present

emergency, there is, or should be, impetus for agreement in the best interest of the people.

3. The present health crisis amplifies the necessity for constitutional safeguards to protect civil liberties, in this instance the 14th and 5th amendments. Therefore any due process-related issue that can result in foreclosure and/or homelessness should ideally be re-evaluated at this particular juncture. The Petition touched upon due process issues that were allegedly unjust, but did not discuss intervening circumstances caused by COVID-19. Losing one's residence is generally distressing and overwhelming. Losing it during an epidemic is exceptionally so. The Court is respectfully asked to take the following factors into consideration, and grant rehearing.

Petitioner contends the District Court, although allowing a chance to present the case, didn't allow the same opportunity to defend it as vigorously as the opposing party. For example, by using an alleged procedural mishap (which the Petition suggests was a *court error*) to deny the 59(e) reconsideration of final judgment motion as untimely, the Court didn't consider the merits of the request. However it accepted Chase's unquestionably tardy opposition to this same motion, which the 11th Circuit supported as "within the court's discretion." Allowing Chase yet denying petitioner – was this an obvious show of bias?

This case was decided in the midst of the pandemic. As petitioner was denied opportunity to amend the Complaint before it was dismissed with prejudice, she felt

she had no other recourse but to appeal. The 11th Circuit filed its decision in late February 2020, during the early stages of COVID. And in fact Chase took the liberty of foreclosing in January 2020, while the appellate decision was still pending. This would ordinarily be devastating, but combined with the emergent health emergency, was exceptionally debilitating mentally, physically and emotionally. Petitioner fought through migraine headaches and other agonies in pursuit of justice without the assistance or support of an attorney.

Being that the foreclosure, appellate decision, appellate reconsideration denial, and writ denial all took place during the pandemic or emergence of the new omicron strain which *may well be a more transmissible variant than Delta*,⁵ petitioner respectfully requests rehearing, because the issues wherein are critical and urgent in nature – as with any legal issue that could cause one to become unhoused during the midst of a pandemic.

Since the District Court rejected multiple requests to amend the complaint, it consequently denied petitioner due process to cure any deficiencies. Although *pro se* parties should not necessarily be given leeway, they should not be penalized for being self-represented or for any other reason.

Being that this matter deals with weightier concerns such as having shelter versus being unsheltered, it diverges in comparison to other types of cases where the stakes are less significant. On the contrary, this case deals with life and death. There is tremendous evidence linking foreclosure to suicide and death by stress-

⁵ <https://www.cnn.com/2021/12/03/health/omicron-cdc-walensky-testing/index.html>

related health conditions. In fact, a study published in 2014 shows suicides "spurred by severe housing stress—evictions and foreclosures—doubled between 2005 and 2010,"⁶ according to Bloomberg News. Below are additional examples.

We find that living in a neighborhood with a spike in foreclosures is associated with significant increases in urgent unscheduled visits, including increases in visits for preventable conditions. The estimated relationships cannot be accounted for by increasing unemployment, declines in housing prices, migration, or by people switching from out-patient providers to hospitals. (JEL D14, F12, R31)

American Economic Journal: Economic Policy, Vol. 7, No. 1, February 2015, pp. 63-94

Experiencing a foreclosure is associated with elevated anxiety and depression.

The health effects of the foreclosure crisis and unaffordable housing: A systematic review and explanation of evidence. Social Science & Medicine, Volume 162, August 2016, pp. 88-96

A 2015 analysis of studies examining the link between foreclosures and physical and mental health showed that a predominance of research establishes that the foreclosure process does indeed make people sicker. Another study estimates that foreclosures can impact overall health in a community, with every additional foreclosure in a ZIP code leading to more non-elective hospital or emergency room visits over the next year. Since foreclosures are often highly concentrated in certain neighborhoods, children living in or near foreclosed homes may suffer from the consequences of living in neighborhoods with more vacant houses, higher crime rates, lower social cohesion and a lower tax base.

North Carolina Housing Finance Agency ⁷

⁶ *Increase in Suicides Associated With Home Eviction and Foreclosure During the US Housing Crisis: Findings From 16 National Violent Death Reporting System States, 2005–2010.* Katherine A. Fowler, PhD, R. Matthew Gladden, PhD, Kevin J. Vagi, PhD, Jamar Barnes, MPH, and Leroy Frazier, MSPH (source: <https://www.bloomberg.com/news/articles/2015-02-20/a-new-cdc-study-finds-that-suicides-over-foreclosures-and-evictions-doubled-during-the-housing-crisis>)

⁷ <https://www.nchfa.com/news/foreclosures-hurt-homeowners%E2%80%99-health>

Recent systematic reviews link foreclosure to worse health at both the individual and population levels.

American Journal of Epidemiology, Volume 185, Issue 6, 15 March 2017, pp. 436–439, <https://doi.org/10.1093/aje/kww169>, Published: 10 February 2017 ⁸

Foreclosure can lead to homelessness, and *1 in 3 individuals experiencing homelessness is unsheltered* (American Public Health Association, 2020)⁹. It goes without saying that *people experiencing homelessness are particularly vulnerable in the COVID-19 pandemic*, according to The National Health Care for the Homeless Council.¹⁰

This Court didn't present a reason for the denial, and while this is within its rights, due to the pandemic and the unsheltered crisis, these intervening circumstances debatably warrant addressing of the Petition.

This request may not fully articulate the extent of intervening factors, which may not be possible anyway due to COVID being uncharted territory in terms of how alarmingly things are developing. However, it cannot be denied that the present global epidemic is substantial in nature, and arguably justifies rehearing. The Court is thanked for its hopeful reconsideration.

/s/ A. Marques

⁸ <https://academic.oup.com/aje/article/185/6/436/2982001>

⁹ <https://apha.org/News-and-Media/Multimedia/Infographics/Unsheltered-and-COVID-19-text>

¹⁰ <https://nhchc.org/clinical-practice/diseases-and-conditions/influenza/>

CERTIFICATION

This is to certify that the rehearing petition grounds are limited to intervening circumstances of substantial or controlling effect or to other substantial grounds not previously presented.

CERTIFICATE OF COMPLIANCE

This document compiles with Rule 33 of the U.S.
Supreme Court. It has 1638 total words.

