

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

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GAREY WEBB,

*Petitioner,*

v.

U.S. BANK NATIONAL ASSOCIATION AS  
TRUSTEE FOR CRMSI REMIC SERIES 2006-03  
REMIC PASS-THROUGH CERTIFICATES, SERIES 2006-03,

*Respondent.*

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**On Petition for a Writ of Certiorari to the  
Supreme Court of Oklahoma**

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**PETITION FOR A WRIT OF CERTIORARI**

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**QUESTION PRESENTED**

Whether the Oklahoma Supreme Court violated the Fifth and Fourteenth Amendments of the U.S. Constitution by failing to address clear evidence of fraud in the record and permitting a bank to procure a residential foreclosure judgment through fraud on the court which constitutes the denial of Petitioner Webb's right to due process of law before being deprived of his property.

## **PARTIES TO THE PROCEEDINGS**

### **Petitioner**

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Petitioner, GAREY WEBB, is the owner and occupant in possession of residential real property that is the subject of a January 29, 2018 foreclosure judgment. Petitioner timely filed an independent post-judgment statutory action seeking to vacate the 2018 foreclosure judgment. The Wagoner County District Court denied and dismissed the petition to vacate and Petitioner timely appealed the Wagoner County District Court dismissal to the Oklahoma Supreme Court.

Petitioner is an individual and has no disclosures

### **Respondent**

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Respondent, CRMSI REMIC SERIES 2006-03 REMIC PASS-THROUGH CERTIFICATES, SERIES 2006-03, is a private Real Estate Mortgage Investment Conduit (“REMIC”) trust that is and was represented by U.S. BANK NATIONAL ASSOCIATION as trustee and that exists pursuant to a trust instrument filed with the United States Securities and Exchange Commission (“SEC”), known as a Pooling and Servicing Agreement (“PSA”) dated November 1, 2006.

## **LIST OF PROCEEDINGS**

District Court, Wagoner County, Oklahoma

Case No. CJ-2018-156

Garey Webb, Plaintiff, v. U.S. Bank National Association as Trustee for CRMSI REMIC Series 2006-03 REMIC Pass-Through Certificates, Series 2006-03, Defendant.

Judgment Date: March 15, 2021

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Oklahoma Court of Civil Appeals, Division Three

Case No. 119,508

Garey Webb, Plaintiff-Appellant, v. U.S. Bank National Association as Trustee for CRMSI REMIC Series 2006-03 REMIC Pass-Through Certificates, Series 2006-03, Defendant-Appellee.

Judgment Date: August 12, 2022

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Oklahoma Supreme Court

Case No. 119,508

Garey Webb, Plaintiff-Appellant, v. U.S. Bank National Association as Trustee for CRMSI REMIC Series 2006-03 REMIC Pass-Through Certificates, Series 2006-03, Defendant-Appellee.

Mandate Date: September 7, 2022

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## OPINIONS BELOW

Petitioner seeks review of the opinion of the Oklahoma Court of Civil Appeals (“COCA”) dated August 12, 2022. (App.1a), later accepted by the Oklahoma Supreme Court, which issued its mandate on September 7, 2022. (App.3a).



## JURISDICTION

Petitioner filed an appeal to the Oklahoma Supreme Court, which assigned the case to a panel of the Court of Civil Appeals, which issued its opinion on August 12, 2022. (App.1a). The Supreme Court of Oklahoma accepted this opinion and issued its mandate on September 7, 2022. (App.3a). This Court’s certiorari jurisdiction is properly invoked pursuant to 28 U.S.C. § 1257(a) because the final judgment rendered by the highest court of Oklahoma has caused Petitioner to be deprived of his rights to due process of law as guaranteed by the Fifth and Fourteenth Amendments to the U.S. Constitution. Certiorari jurisdiction is properly exercised to vacate the appellate court decision because the decision constitutes a violation of due process.

The Oklahoma Court of Civil Appeals decision dismissing Petitioner’s appeal of the trial court order that denied his independent petition to vacate a judgment for fraud on the court, filed pursuant to a special Oklahoma statute, 12 O.S. § 1031, was rendered final and a decree from the highest court in the state

when the Oklahoma Supreme Court denied certiorari review by order entered September 7, 2022.



## **CONSTITUTIONAL PROVISIONS INVOLVED**

### **U.S. Const. amend. V**

The Fifth Amendment to the United States Constitution provides in relevant part: “No person shall be . . . deprived of life, liberty, or property without due process of law. . . .”

### **U.S. Const. amend. XIV**

Fourteenth Amendment states: “No state shall . . . deprive any person of . . . property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”



## **INTRODUCTION**

This case is about a bank using the courts of Oklahoma to advance a fraudulent purpose and about the higher courts of the state looking the other way and turning a blind eye to the deprivation of Petitioner’s federal due process rights caused by the entry of a judgment procured through material fraud on the court.

It is essential for this court to address the Oklahoma Supreme Court’s failure and refusal to address or to remedy the deprivation of Petitioner’s federal constitutional right to due process of law

caused by the Wagoner County District Court refusal to vacate a foreclosure judgment procured through direct and material fraud on the court.

The bank's use of fraud on the court to obtain the foreclosure judgment was clearly established by Petitioner in the record but none of the Oklahoma courts, including the Oklahoma Supreme Court dealt with or addressed the evidence presented of the bank's substantial and material fraud on the court in procuring the foreclosure judgment.

The bank's material fraud on the court that concerns the basis for the bank's standing to foreclose as trustee of the REMIC trust permeates the entire foreclosure proceeding and the entire appellate process in this matter.

The Oklahoma Supreme Court's turning a blind eye to the clear and convincing evidence in the record of the bank's fraud on the court in obtaining the foreclosure judgment constitutes a direct and independent violation of Petitioner's rights to due process of law as guaranteed by the Fifth and Fourteenth Amendments to the U.S. Constitution.

Petitioner requests this court grant review under certiorari jurisdiction because of the deprivation of due process rights evidenced in the record below.



## STATEMENT OF THE CASE AND OF FACTS

### A. Fraud on the Court

The evidence that Respondent committed fraud on the court in obtaining a foreclosure judgment on Petitioner's home is Respondent's own private trust agreement, known as a Pooling and Servicing Agreement ("PSA"). Petitioner introduced Respondent's PSA into evidence in support of his post-judgment petition to vacate the foreclosure judgment.

The Respondent's PSA confirms that Respondent is a special tax sheltered trust known as a Real Estate Mortgage Investment Conduit trust ("REMIC trust") and that Respondent falsely told the foreclosure court that an assignment of mortgage to the trust existed given the purported mortgage assignment that Respondent presented to the court did not exist before the 2006 cutoff date for the transfer of mortgage assets to the trust specified and required by the PSA.

Respondent's REMIC PSA provisions are read narrowly, and the trustee is controlled by the PSA terms. *Ellington Credit Fund, Ltd. v. Select Portfolio Servicing, Inc.*, 837 F.Supp.2d 162, 192 (S.D.N.Y. 2011).

Petitioner established that the 2013 assignment of mortgage that Respondent filed in and relied on in the foreclosure case to establish and convince the trial court of the REMIC trust's standing to foreclose is not the mortgage assignment required by the PSA to exist before the PSA closing date to the acquisition of mortgage assets in 2006.

The terms of the PSA require transfers to take place prior to closing of the trust unless expressly permitted by the PSA. Sections 2.01 and 2.02 of Article II of the PSA, titled “Conveyance of Trust Fund” and “Acceptance by Trustee,” state, in pertinent part:

Section 2.01... CRMSI, concurrently with the execution and delivery of this Agreement, does hereby sell, transfer, assign, set over and otherwise convey to the Trustee without recourse, all the right, title and interest of CRMSI in and to the Trust Fund, including without limitation all of the right, title and interest of CRMSI in the Mortgage Loans, ... received or receivable by CRMSI on or with respect to the Mortgage Loans on or after the Cut-Off Date ... CRMSI shall not transfer any additional property to the Trust Fund except as expressly permitted by this Agreement.

(a)(1) In connection with such transfer and assignment of Mortgage Loans, CRMSI does herewith deliver to the Trustee (or to the Custodian on behalf of the Trustee) to be held in trust the following documents or instruments with respect to each Mortgage Loan so transferred and assigned ...

(i) The Mortgage Note, endorsed ...

(iv) An assignment from the Originator to the Trustee in recordable form ... of the Mortgage ... in a blanket assignment or assignments of the Mortgage to the Trustee

...

Section 2.02 “ . . . The Trustee, by execution and delivery hereof, acknowledges receipt, subject to the review described in the following paragraph, of the documents and other property referred to in Section 2.01 . . . The Trustee (or the Custodian on the Trustee’s behalf) shall . . . review each Mortgage File within 120 days after the Issue Date, to ascertain that all required documents have been executed, received and recorded, if applicable, and that such documents relate to the Mortgage Loans identified in Exhibit B. If in the course of such review the Trustee finds a document or documents constituting a part of a Mortgage File to be defective in any material respect, the Trustee shall promptly so notify CRMSI, whereupon CRMSI shall have a period of 180 days within which to correct or cure any such defect (including correction or cure by substitution if permitted by Section 2.04). If any such material defect has not been corrected or cured, CRMSI will, not later than 180 days after the Trustee’s notice respecting such defect, repurchase the related Mortgage Loan from the Trustee . . . .

Respondent committed fraud on the court by telling the court to rely on the 2013 assignment of mortgage when responding to Petitioner’s objections to the REMIC trust’s standing to foreclose the mortgage on Petitioner’s home. The PSA evidence is clear that the 2013 mortgage assignment is false material evidence because the assignment did not exist before the

REMIC trust legally closed to mortgage acquisitions in 2006 as specified in the PSA.

Respondent falsely told the court in the foreclosure case that a valid assignment of mortgage to Respondent as trustee of the REMIC trust existed and that the REMIC trust owned the mortgage secured by Petitioner's home.

Respondent made the materially false statements in the sworn foreclosure complaint alleging standing to foreclose and claiming entitlement to a judgment of foreclosure of the mortgage on Petitioner's home.

## **B. Denial of Due Process**

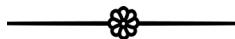
Petitioner has been denied due process of law as a direct result of the Oklahoma Supreme Court and the lower state court refusals, without explanation, to consider the clear and convincing evidence in the record that Respondent committed material fraud on the court in order to procure judicial relief in the form of a foreclosure judgment.

Petitioner is being deprived of his real property by the Oklahoma Supreme Court and by the lower state courts because his real property is being taken away through judicial process without first being afforded his federal rights to due process of law guaranteed to him by the Fifth and the Fourteen Amendments to the United States Constitution.

The foreclosure judgment was awarded based on false material statements and documents that Respondent, as trustee of the REMIC trust, attached to the foreclosure petition seeking to foreclose a mortgage secured by Petitioner's home.

The Oklahoma Supreme Court failed to grant certiorari review of the due process denial caused by the intentional failure to consider or rule on the PSA fraud on the court evidence that Petitioner presented thereby denying Petitioner his rights to due process of law.

Petitioner has been denied his rights to due process of law before deprivation of his property interest. The unconstitutional deprivation is magnified by the Oklahoma Supreme Court's denial of Petitioner's petition for certiorari which serves only to affirm the underlying state court decision that clearly turned a blind eye to material evidence of fraud on the court that compels vacation of the ill-gotten judgment.



## **REASONS FOR GRANTING THE PETITION**

### **I. CERTIORARI SHOULD BE GRANTED TO ADDRESS THE DEPRIVATION OF PETITIONER'S PROPERTY BY THE OKLAHOMA COURTS WITHOUT DUE PROCESS OF LAW.**

Summary reversal in this case is warranted because the highest court in Oklahoma deprived Petitioner of his federal constitutional rights to due process of law and by affirmatively departing from settled precedent without explanation and

The Oklahoma Supreme Court decision is contrary to this Court's controlling precedent and constitutes a cursory and wholly unacceptable disposition of alarming evidence presented of fraud on the court in the procurement of judicial relief in the form of a residential foreclosure judgment because “[a] fair

trial in a fair tribunal is a basic requirement of due process” and because “a decision produced by fraud on the court is . . . void”. *Caperton v. A. T. Massey Coal Co.*, 556 U.S. 868, 876 (2009) and *League v. De Young*, 52 U.S. 185, 203 (1850).

The Oklahoma Supreme Court’s denial of Petitioner’s petition for certiorari, which includes the court’s direct failure to address or consider the PSA evidence, is a denial of Petitioner’s rights to due process of law. Petitioner was denied due process when the Oklahoma Supreme Court refused to review or make a judicial determination upon certiorari of the statutory claim presented by Petitioner to vacate the foreclosure judgment based on clear and convincing PSA evidence that establishes Respondent committed deliberate fraud through false conduct directed to the judicial machinery itself for the specific purpose of influencing and corrupting the impartial functions of the court. *Lockhart v. Loosen*, 1997 OK 103, 943 P. 2d 1074, 1077-78; *Leck v. Continental Oil Co.*, 1989 OK 173, ¶ 22, 800 P.2d 224, 229-30 and *Bullock v. United States*, 763 F.2d 1115, 1121 (10th Cir. 1985).

The Oklahoma Supreme Court failed to meet its judicial duty “to see that the waters of justice are not polluted.” *Mesarosh v. United States*, 352 U.S. 1, 14 (1956). As a result, Petitioner’s due process rights have been violated by the Oklahoma Supreme Court’s refusal to grant certiorari review and by the court’s failure and refusal to consider the merits of his certiorari petition that a state court residential foreclosure judgment was procured through a deliberate misrepresentation of truth and through the use of false evidence that “involve[s] a corruption of the truth-seeking function of the trial process.” *United States v. Agurs*,

427 U.S. 97, 107 (1976), *Miller v. Pate*, 386 U.S. 1, 7 (1967) and *Darden v. Wainwright*, 477 U.S. 168, 181-82 (1986).

The Oklahoma Supreme Court's refusal to grant certiorari review allows deliberate deception of the court by the presentation of false evidence and is incompatible with the due process commands in the United States Constitution. The refusal allows the fraud on the court to go uncorrected even when the false evidence is clear in the record. This result must be reversed for being incompatible with the demands of the constitutional rights at stake. *Giglio v. United States*, 405 U.S. 150, 153 (1972) (*citing Mooney v. Holahan*, 294 U.S. 103, 112 (1935)).

Due process is not satisfied in this case where the Oklahoma Supreme Court allows a deliberate deception and fraud on the state court to occur through the filing of false claims and false documents. The denial of certiorari review constitutes state action within the purview of the Fourteenth Amendment, which is intended to guard and enforce every right secured by the United States Constitution and governs any action of a state, 'whether through its legislature, through its courts, or through its executive or administrative officers . . . ' *Mooney v. Holahan*, 294 U.S. 103, 112 (1935).

Through the active conduct of the Oklahoma Supreme Court, the state has acted to deprive Petitioner of his property by denying certiorari review of a foreclosure judgment obtained through material fraud on the court involving false claims of standing. The Oklahoma Supreme Court's refusal to grant certiorari review violates the standards and rules of law that apply to insure against the judicial deprivation of

property without due process of law. *Beth v. Heath*, 47 U.S. 228, 247 (1848) (“equitable powers can never be exerted in behalf of one who has acted fraudulently, or who, by deceit or any unfair means, has gained an advantage”).

Because Petitioner’s ownership of his home is constitutionally protected as a property right, a foreclosure judgment procured through fraud on the court is *per se* obtained with unclean hands and the Oklahoma Supreme Court’s refusal to grant certiorari review of the Petitioner’s appeal of the foreclosure judgment on grounds of fraud on the court as occurred in this case does not comport with due process. *American Mfrs. Mutual Ins. Co., v. Sullivan*, 526 U.S. 40, 59 (1999).

The Due Process Clause limits the powers of all branches of government, including the judiciary and even though the contours of the Due Process Clause are not set in stone, judges are not at leave to ignore the rule of law and in this case, the Oklahoma Supreme Court’s refusal to grant certiorari review of Petitioner’s appeal of the falsely obtained judgment in this case fails to afford him the due process and impedes the equal access to justice required and essential to protect his interests in his residential property. *Rinaldi v. Yeager*, 384 U.S. 305, 310 (1966), *Fuentes v. Shevin*, 407 U.S. 67, 80-1(1972); *Truax v. Corrigan*, 257 U.S. 312, 333 (1921), *Brinkerhoff-Faris Trust & Say. Co. v. Hill*, 281 U.S. 673, 681-82 (1930).

It is left to this Honorable Court to enforce equal justice under law and to address the failure of the Oklahoma Supreme Court to address Petitioner’s specific evidence and claims concerning the commission of fraud on the court in procuring the foreclosure

judgment. The abdication of judicial responsibility by the Oklahoma Supreme Court in refusing to grant petitioner's petition for certiorari creates disorder and cannot stand in a country that has a foundational right to a fair and impartial judiciary.



## CONCLUSION

The Court should grant the petition, summarily reverse the lower court's judgment, and remand for further proceedings directing the lower court consider the fraud on the court issues raised by Petitioner on the merits.

Respectfully submitted,

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