

No. 22-7704

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

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***THERESA MARSHALL***  
***Petitioner***

***vs.***

***WELLS FARGO & COMPANY, et al.***  
***Respondents***

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***On Petition for a Writ of Certiorari***  
***from the United States Court of Appeals***  
***for the Eighth Circuit***  
***No. 22-2470***

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**PETITION FOR REHEARING**

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Theresa Marshall  
P.O. Box 4404  
Little Rock, AR 72214  
501-666-3923

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**A. PETITION FOR REHEARING  
JURISDICTION**

Pursuant to Supreme Court Rule 44.1, the petitioner, Theresa Marshall, respectfully files this petition for rehearing of the court's decision denying petition for writ of certiorari, October 2, 2023.

This petition is filed within 25 days after entry of this courts decision denying petition.

**B. REASONS FOR GRANTING THE PETITION**

*Pursuit rule 60(b)(1) "mistake" which includes judge's errors of law. - *Kemp v. United States*, No. 21-5726*

Exceptional circumstances and petitioner not having "full and fair opportunity to litigate." *Allen v. McCurry*, 449 U.S. at 94 , (FRCP Rule 60(d))

**C. 8TH CIRCUIT COURT OF APPEALS  
"MISTAKES"**

8th Circuit court of appeals, decision to affirm district courts ruling, *was a mistake*.

Court states de novo review dismissal for lack of subject matter jurisdiction.

Court states de novo review dismissal for dismissal for failure to state a claim.

Court states 28 U.S.C. §1915(e) *which is proceedings in forma pauperis*.

Court decision is per curiam and unpublished.

Court decision was not titled and appears with two different appellees names and case number.  
(Case No. 22-2470) - (filed 1/24/23) - (Appendix A)  
**(Attached)**

Petitioner is not sure if appeals court was affirming district courts decision because it agreed that district court lacked overall or a particular subject matter jurisdiction, or that subject matter jurisdiction was lost.

Petitioner is not sure if appeals court was affirming district courts decision because it agreed that petitioner failed to state a claim that could proceed district court and case sited by appeals court did not relate to petitioners complaint claims.

Court affirmed both appeals in its ruling and consolidated petitioners complaint cases.  
*(Appendix Q) - (Attached)*

Petitioner petitioned court for clarification.  
*(filed 2/7/23)* and amended *(filed 2/8/23)*.

Court would not clarify its decision.  
*(Case No. 22-2470) - (filed 2/28/23) - (Appendix B)*  
*(Attached)*

Petitioner was deprived of appeals courts reasoning for affirming district courts decision to dismiss, *with prejudice*.

“For a party to argue on appeal that additional findings are necessary to enable meaningful review, the party need not necessarily preserve the issue by raising it in a motion for rehearing; the issue is often raised by the court itself.”<sup>[10]</sup> - “Ornelas v. United States, 517 U.S. 690 (1996) (in Fourth Amendment context, “independent review is therefore necessary if appellate courts are to maintain control of, and to clarify, the legal principles”), and because it increases arbitrariness and the likelihood of error.” See Jones v. Barnes, 463 U.S. 745, 756 n.1 (1983), Brennan, J., joined by Marshall, J., dissenting (“There are few, if any situations in our system of justice in which a single judge is given unreviewable discretion over matters concerning a person’s liberty or *property* . . .”).

D. **DISTRICT COURT**  
**“MISTAKES”**

District courts ruling to dismiss petitioners complaint “with prejudice”, *was a mistake*.

No violation of FRCP Rule 9 by petitioner.

Analysis by district court of petitioners previous court rulings, bankruptcy, circuit court, and courts of appeals, 8th circuit, was “a mistake” pursuit FRCP Rule 60(b)(1). (US Supreme Court) - (No. 22-7704) - (Appendix C) - (*Attached*) - (US Court of Appeals 8<sup>th</sup> Circuit) - (No. 22-2470) - (Brief) - (pg 10) - (filed 9/15/22) (Appendix D) - (*Attached*)

*Marshall v. Deutsche Bank, 4:10-cv-754-BRW* analysis by district court “was a mistake”. Petitioner did not lose in that case, and court BAPs writes “.... *and in fact the court did not fully dispose of the claim on the merits. Accordingly, we modify the judgment to reflect that the dismissal of the state-law claim is without prejudice, and we affirm the judgment as modified. .... We also deny appellees' motion to strike the reply brief.*” - (No. 22-7704) - (Appendix C) - (pg 4) - (*Attached*) - (US Court of Appeals 8<sup>th</sup> Circuit) - (No. 11-1843) - (Appendix E) - (*Attached*)

*Analysis by district court of petitioners filing Arkansas Supreme Court, year 2016* “was a mistake” (1) court granted in forma pauperis then ruled in forma pauperis was improvidently granted. .....(2) Petitioners case never went to Court of appeals, case went Supreme court, *only* (3) Finally court reporter refused to produce transcript, for which case could not proceed, without. (4) Petitioners last filing in case entails how court failed procedural norms of Court of Appeals and Supreme Court. - (4:21-cv-01091-DPM) - (Order) - (Doc 18) (filed 7/6/22) - (pg 3) - (Brief Addendum) - (22-2470) - (filed 9/15/22) - (pg 10) - Supreme Court – (cv-16-113) - (cv-18-1013) - (cv-19-417)

*Temporary injunction* motioned by petitioner to try to minimize petitioners losses and to save equity in petitioners home of (26) twenty-six years was denied *as moot* by district court, *rather* than set for hearing or stating courts finding and conclusions of decision. - (28 USC § 1331) - (*federal question*) - *Osborn v. Bank of the United States*, 22 U.S. 738 (1824)

*“A case becomes moot only when it is impossible for a court to grant any effectual relief whatever to the prevailing party.” - (City of Erie, 529 U.S. at 287) - (4:21-cv-1091-DPM) - (Doc 6) - (filed 12/14/21) - (Doc 12) - (filed 5/26/22)*

*“For a party to argue on appeal that additional findings are necessary to enable meaningful review, the party need not necessarily preserve the issue by raising it in a motion for rehearing; the issue is often raised by the court itself.” [10] Ornelas v. United States, 517 U.S. 690 (1996) (in Fourth Amendment context).*

**E. BANKRUPTCY COURT  
“MISTAKES”**

Subpoena to appear and testify not honored by bankruptcy court. - “Ornelas v. United States, 517 U.S. 690 (1996) (in Fourth Amendment context) - (11 U.S.C. §1327) - (Appendix M, N) - (**Attached**)

**F. CIRCUIT COURT  
“MISTAKES”**

Circuit court rulings was clearly a mistake, based on fraudulent deceit, by defendants, Wells Fargo, et. al.

Circuit court ruling prevented petitioner opportunity to file anything in case after dismissal of case, except “notice of appeal”, prevented petitioner any of her *Rule 60* rights and violation of her due process rights under *42 USC Sec. 1983*.

Circuit court was not aware of US BAPs 8th Circuit ruling, deeming all rulings made in petitioners 2018 bankruptcy, that “*none*” was final orders. - (*US BAPs 8th Circuit*) - (No 18-6025) - (filed 9/27/18). - (Appendix G) - (**Attached**)

Circuit court was not aware that *fraud* on Court, against defendants, were able to proceed. - (*US BAPs 8<sup>th</sup> Circuit*) - (No 18-6025) - (filed 9/27/18). - (Appendix G) - (**Attached**)

Circuit court was not aware that, *all* rulings in petitioners, 2018 bankruptcy were not binding. - (*US BAPs 8th Circuit*) - (No 18-6025) - (filed 9/27/18). - (Appendix G) - (**Attached**)

Bankruptcy court filed with circuit court all orders while petitioner was in 2018 bankruptcy *and on appeal, except* “*Judgment*” from US BAPs 8th Circuit ruling, deeming all rulings made in petitioners 2018 bankruptcy, that “*none*” was final orders. - (US BAPs 8th Circuit ) - (No. 18-6025) - (filed 9/27/18) - (Appendix G) - (Attached)

Trial court judge’s findings were not supported by sufficient evidence.

Trial court judge’s findings were written by alleged attorney for Deutsche Bank not Wells Fargo (*servicer*), not Department of Veteran Affairs (*owner who financed loan*) and not by Court. - (*Conflict of Interest/fraud*)

#### **G. EXTRAORDINARY CIRCUMSTANCES**

Petitioners right to move forward district court had already been determined by US BAPs 8th Circuit, which made bankruptcy courts ruling to foreclose, *year 2018 none binding*, and “*judgment*” US BAPs 8th Circuit should have been submitted to circuit court by bankruptcy court. - (US BAPs 8th Circuit) - (No 18-6025) - (Appendix G)-(Attached)

*US BAPs 8th Circuit ruling gave petitioner right to move forward district court against bankruptcy Judge, Trustee, and respondents.*

Docket entry by circuit court judge on *October 23, 2015* prevented petitioner from submitting US BAPs 8th Circuits’ “*judgment*” to circuit court and violation to petitioner. (*Violation 42 USC § 1983*) - (14<sup>th</sup> amendment rights procedural, substantive due process) - (US BAPs 8th Circuit) - (No 18-6025) - (filed 9/27/18) - (Appendix G) - (Attached) - (See: Circuit court above) - (US BAPs 8th Circuit)

Petitioner after being unlawfully with deceit, evicted of home of (26) twenty-six years, by sheriff, was not aware of 8th Circuit BAPs ruling until months after judgment ruling, and did not understand significance of ruling until months later.

District court interfered with petitioners complaint filings, confusing pro-se petitioner on what complaint, court would accept *objecting (petitioners RICO and filing on behalf of government, etc)*. - (4:20-cv-01373-DPM) - (4:21-cv-00735-DPM) - (4:21-cv-01091-DPM) - (\$25 Billion National Mortgage Settlement ("the \$25 Billion NMS)

District court held petitioners complaint almost (1) one year before ruling, thus, interfered with petitioners ability to timely amend complaint filings and contributed to any statute of limitation expiration.

District court failed to timely rule on petitioners motions, allowed time to pass for serving defendants, then found reason to dismiss petitioners complaint, then *required* filing with a *new* case number, and finally dismissing case *with prejudice, without respondents ever having to litigate*.

District court apologized to petitioner on (2) two, separate occasions for not timely ruling in petitioners complaint cases. - (Appendix C) - (pg 2) - (No. 3) - (**Attached**) (*Complaint initially filed*) - (filed 8/19/21) - (4:21-cv-00735-DPM) - (*Amended Complaint*) - (filed 12/3/21) - (4:21-cv-01091-DPM).

Court of appeals 8th circuit ignored district courts assertion *that (1) "She can only win if this Court explicitly or implicitly decides that the state court got her foreclosure proceedings wrong. This court does not have jurisdiction to make that determination."* - Skit Intern., Ltd. v. DAC Tech, of Ark., Inc., 487 F.3d 1154, 1156-57 (8th Cir 2007) (2) *"Her remedy at this point is to appeal."* - (Brief Addendum) - (22-2470) - (filed 9/15/22) - (pg 10) - (4:21-cv-01091-DPM) - (Order) - (Doc 18) - (filed 7/6/22) - (pg 3)

Respondents (Wells Fargo, et al.) foreclosed petitioners home of (26) twenty-six years (*circuit court*) in *wrong entity name*. Petitioners mortgage loan was financed through the Department of Veterans Affairs and is/was a VA loan. - (38 U.S.C. § 3732) - (11 U.S.C. § 1327) - (*bank/wire fraud*)

## **H. PUBLIC INTEREST**

Wells Fargo has been able to take pro-se debtors homes through courts, especially bankruptcy courts, without legal standing, and fraudulent deceit, and courts nationwide are turning a blind eye, including this court. Thus, altering the course of justice, while Wells Fargo, et. al. continues to fraudulently, take possession of long-time homeowners, homes. - (*US Supreme Court*) - (No. 21-7377) (*filed 5/31/22*) - (*Torres vs Wells Fargo et al.*) - (*Dial v. Deutsche Bank Nat'l Trust Co.*) - (4.12-CV-00180-JLH) - (*filed 9/26/12*) - (*United States of America et al., vs Wells Fargo*) - (1:12-cv-00361-RMC) - (*Consumer Financial Protection Bureau consent order of 2022 against (Wells Fargo N.A.)* - (*File No. 2022-CFPB-0011*) - (pg 9)

## **I. CLOSING**

Given the substantial questions about petitioner being deprived of a "*full and fair opportunity to litigate*" or *fair hearings*. - (*Allen v. McCurry*, 449 U.S. at 94) - (*Creech v. Addington*, 281 S.W.3d at 382 (Tenn. 2009) and "*mistake*" in judge's errors of law FRCP Rules 60(b)(1)–(6), *FRCP 60(d)* this Court should grant rehearing so that it may have the benefit of *full merits briefing by petitioner and appellees*. - See *McWilliams v. Dunn*, 137 S. Ct. 1790, at 1807 (2017) - (Alito, J., dissenting), (admonishing majority for deciding issue without "receiving adversarial briefing, which in turn helps the Court reach sound decisions" (internal citations omitted)).

## **J. Annotation** **PRIMARY HOLDING**

The term "*mistake*" in *FRCP 60(b)(1)*, which authorizes a court to reopen a final judgment, *includes* a judge's errors of law.

## **K. CONCLUSION**

For the foregoing reasons, the petition for rehearing should be granted, 8th circuit appeals court decision affirming district courts decision to dismiss *with prejudice* should be reversed and remanded to district court and appointment of counsel mandated.

Respectfully submitted,

  
Theresa Marshall, petitioner  
P.O. Box 4404  
Little Rock, AR 72214  
501-666-3923

## **CERTIFICATE OF COUNSEL**

I, Theresa Marshall hereby certify that this petition for rehearing is presented in good faith and not for delay. The grounds are limited to intervening circumstances of substantial and controlling effect and other substantial grounds not previously presented.

/s/ Theresa Marshall, petitioner  
Theresa Marshall