No. 22-870

In the
Supreme Court of the United States

ELIEZER TAVERAS

Petitioner

v.

U.S. BANK NATIONAL ASSOCIATION;
U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE
FOR THE GSAMP TRUST 2006-HE6 MORTGAGE
PASS-THROUGH
CERTIFICATES, SERIES 2006-HE6;
OCWEN LOAN SERVICING, LLC

Respondents

On Petition for Writ of Certiorari
To The United States Court Of Appeals
For The Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

Eliezer Taveras
Pro se Petitioner
10902 NW 83 ST Unit 223
Doral, FL 33178

QUESTIONS PRESENTED

Whether a district court's decision to dismiss with prejudice an action improperly removed from state court is clear and manifest error that should be corrected by a writ of mandamus and not in appeal?

Whether the doctrine of improper claim splitting will be an open door for forum shopping to defendants who fraudulently remove to federal courts cases properly filed in state courts?

Whether a court of appeal has a duty to promptly command through mandamus a federal court to remand a case improperly removed from state court in order to secure the public interest in the just, speedy, and inexpensive determination of every action?

PARTIES TO THE PROCEEDING

The Petitioner is Eliezer Taveras, *pro se* litigant. Respondents are U.S. Bank National Association; U.S. Bank National Association, As Trustee For The GSAMP Trust 2006-HE6 Mortgage Pass-Through Certificates, Series 2006-HE6; and Ocwen Loan Servicing, LLC.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Sup. Ct. R. 29.6, it is noted that Eliezer Taveras is a person, a citizen of the State of Florida.

RELATED CASES

Eliezer Taveras v. U.S. National Bank, et al., No. 2022-003365-CA-01, in the Circuit Court Of The Eleventh Judicial Circuit, In And For Miami Dade, Florida, was initiated by Petitioner herein and removed by Respondents to the District Court, Southern District of Florida, becoming 1:22-cv-21134-Scola. After the District Court's denial to remand (and dismissal with prejudice), Petitioner filed a petition for writ of mandamus to the Eleventh Circuit Court of Appeal, Case No. 22-12199. The Petition was denied by the Eleventh Circuit and the case closed. Appeal to the order of dismissal is pending in the Eleventh Circuit (Case No. 22-11975).

U.S. Bank National Association, As Trustee, For The GSAMP Trust 2006-He6 Mortgage Pass-Through Certificates, Series 2006-HE6 v. Maria Sanchez, et al., No. 2017-020857CA01 (foreclosure action), in the Circuit Court Of The Eleventh Judicial Circuit, In And For Miami Dade, Florida. Case closed.

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Eliezer Taveras ("Petitioner" or "Taveras") respectfully prays that a writ of certiorari issue to review the opinion of the United States Court of Appeals for the Eleventh Circuit.

OPINION BELOW

The unpublished Order of the United States Court of Appeals for the Eleventh Circuit, denying the petition for writ of mandamus was entered on August 29, 2022, and is reproduced as Appendix A.

The unpublished Order of the United States Court of Appeals for the Eleventh Circuit, denying the petition for rehearing and rehearing en banc, was filed on December 1, 2022, and is reproduced as Appendix B.

Judgment of the Southern District of Florida, dismissing action with prejudice under improper claim splitting doctrine, and denying motion to remand the Complaint which had been removed by Defendants from the Circuit Court of Miami-Dade, Florida, was filed on May 9, 2022, and is reproduced as Appendix C.

The unpublished Order of the District Court for the Southern District of Florida, denying motion to set aside and for reconsideration was entered on June 2, 2022, and is reproduced as Appendix D.

JURISDICTION

The United States Court of Appeals for the Eleventh Circuit entered its Order denying mandamus on August 29, 2022, App. A; Petition for Rehearing and Rehearing en Banc having been denied on December 1, 2022, App B. The jurisdiction of the Court is invoked under 28 U.S.C. § 1254(1) and under Article III of the United States Constitution.

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const. Amendment V:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const. Art. III, section 2:

> The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; to all Cases affecting Ambassadors, other public Ministers and Consuls; to all Cases of admiralty and maritime Jurisdiction; to Controversies to which the United States shall be a Party; to Controversies between two or more States; between a State and Citizens of another State; between Citizens of different States; between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and

> foreign States, Citizens or Subjects. In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the Supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the Supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

STATEMENT OF THE CASE

This litigation stems from the disposition of the foreclosure action filed by Ocwen Loan Servicing, LLC. ("Ocwen"), on behalf of U.S. Bank National Association, As Trustee, For The GSAMP Trust 2006-He6 Mortgage Pass-Through Certificates, Series 2006-HE6 ("US Bank") in the Circuit Court of Miami-Dade, Florida (the "state court"), Case No. 2017-020857CA01.

On 10/1/2018, the state court entered final judgment of foreclosure on behalf of US Bank despite the fact that **a lawful foreclosure complaint was never filed** during the pendency of the foreclosure action. On February 22, 2022, Taveras filed suit in the state court against Respondents (Case No. 2022-003365-CA-01), seeking avoidance of the final judgment of foreclosure and treble damages pursuant to Florida and federal RICO, among other reliefs.

On 4/13/2022, Respondents removed the case to federal court pursuant to 28 U.S.C. §§ 1331, 1441, and 1446. Additionally, on 4/15/2022, Respondents moved the court to dismiss the action **for lack of subject matter jurisdiction** (pursuant to Rooker-Feldman and the doctrines of res judicata).

On 4/19/2022, Taveras urged the court to remand on the grounds of **lack of jurisdiction** to review a state judgment and asserting that the removal was improper. In addition, Taveras filed his Motion to Show Cause why Defendants and their attorneys of records should not be sanctioned for the fraudulent removal. On 5/9/2022, ignoring Taveras' motion to remand and motion to show cause the district judge Robert N. Scola, Junior, signed an order dismissing the action with prejudice under the doctrine of improper claims splitting. Appendix C. Judge Scola based his order on the fact that the district court had previously dismissed an action filed by Taveras on February 17, 2021, in this district. The previous action raised out of the same nucleus of operative facts and was dismissed by the district court for **lack of jurisdiction** under Rooker Feldman, as Taveras was seeking annulment of the final judgment of foreclosure.

After Judge Scola's dismissal of the present action (Appendix C), and denial of motion for reconsideration (Appendix D), Taveras sought a writ of mandamus in the Eleventh Circuit, urging the court to order the district court to remand his case to state court, arguing that the dismissal was void, as it was entered by a court lacking jurisdiction, and the removal was a fraudulent tactic by Appellees that should not be encouraged by the district court. Additionally, to preserve his rights, Taveras filed a notice of appeal.

Notably, rather than waiting for the final resolution of this action, Respondents chose to evict Taveras from home forcibly. On 7/7/2022, after a 24-hrs eviction notice, around five Respondents' employees arrived at Taveras' home accompanied by a Miami Dade's Sheriff, who gave Taveras and his family five minutes to vacate the Property. A few minutes later the employees proceeded

to change the door lock and the Sheriff told Taveras and his family that they would be arrested if they entered the property without authorization thereafter. The Miami-Dade deputy sheriff did not undertake any effort to determine whether Taveras had a right to be on the premises. Despite efforts by Taveras to provide documentation supporting his legal right to reside at the property, the officer ignored Taveras' pleas and escorted him and his family from the premises. The Sheriff and Respondents' employees dispossessed Taveras of his home by physically removing all his personal items, more likely throwing them in the trash, causing irreparable harm to Taveras. These eviction facts were also brought before the Eleventh Circuit, as Taveras filed a motion for a temporary restraining order that was denied by the court.

On 8/29/2022, the Eleventh Circuit entered its order denying Taveras' petition for writ of mandamus (Appendix A), arguing that Taveras had exercised "the adequate alternative remedy of filing an appeal to this Court". On 9/2/2022, Taveras moved for rehearing and rehearing en banc arguing that waiting for appeal was improper. On 12/1/2022, the Eleventh Circuit entered its order denying rehearing, finding that Taveras "had, and exercised, the adequate alternative remedy of filing an appeal." Appx. B.

This timely Petition for Writ of Certiorari is presently before the Court.

REASONS FOR GRANTING THE PETITION FOR WRIT OF CERTIORARI

This case represents a recurring question of great importance that has divided the courts of appeal: whether a court of appeal has a duty to command a

district court, without delay, to act promptly "in order to secure the secure the just, speedy, and inexpensive determination of every action"[1] in a flagrant abuse of the litigation process. The Eleventh Circuit has held that in the instant action, Taveras must wait for a decision on appeal. This unprecedented holding (the "Decision") conflicts with prior decisions of this Court and other circuit courts governing actions dismissed by federal courts lacking jurisdiction.

This Court has determined that cases involving property rights, particularly foreclosure actions and related matters, involve important state interests. See *Shaffer v. Heitner*, 433 U.S. 186, 207-208 (1977) (recognizing a state's "strong interests in assuring the marketability of property within its borders and in providing a procedure for peaceful resolution of disputes about the possession of that property.").

I. THE DECISION CONFLICTS WITH PRIOR DECISIONS OF THIS COURT AND OTHER COURTS OF APPEALS

This case is a superior vehicle for resolving a circuit conflict on a well-defined legal issue of exceptional importance to our legal system.

In re Amendments to Florida Rule of Civil Procedure 1.510, 309 So. 3d 192 (Fla. 2020), Florida adopted the Celotex trilogy in order to "secure the just, speedy, and inexpensive determination of every action".[2] This amendment reflects the public interest in a prompt resolution of every case brought to a Florida court, and

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[1] Federal Rule of Civil Procedure 1 states that the Rules shall be construed to secure the just, speedy, and inexpensive determination of every action. FED. R. Civ. P. 1.

[2] Fla. R. Civ. P. 1.010.

the Eleventh Circuit's ruling that Taveras must wait for a decision on appeal, given the circumstances, is contrary to this interest.

In ruling that Taveras must wait for appeal and by failing to order the district court to remand this action to the state court, the Eleventh Circuit has flipped the rules that generally govern judgments entered by courts lacking jurisdiction, and cases of extraordinary, urgent circumstances.

On the contrary, this Court held that mandamus or prohibition is available "to confine an inferior court to a lawful exercise of its prescribed jurisdiction" *Roche v. Evaporated Milk Ass'n*, 319 U.S. 21 (1943). Courts have recognized that mandamus is available "when the trial court has exceeded its jurisdiction or has declined to exercise it, or when the trial court has so clearly and indisputably abused its discretion as to compel prompt intervention by the appellate court." *In re Avantel, S.A.*, 343 F.3d 311 (5th Cir. 2003) (quoting *In re Dresser Indus., Inc.*, 972 F.2d 540, 543 (5th Cir.1992)). The writ may issue if there is no other adequate means of obtaining the desired relief; if the petitioner's right to issuance of the writ is "clear and indisputable"; and if the appellate court in its discretion is satisfied that mandamus is appropriate under the circumstances. *Cheney v. U.S. Dist. Court,* 542 U.S. 367, 380-81 (2004) (quotation marks omitted); *Mallard v. U.S. Dist. Court*, 490 U.S. 296, 309 (1989). Each of these factors is satisfied here, as the district court far exceeded its jurisdiction in a case of exceptional state importance, and Taveras can vindicate his interests only through immediate review. Taveras meets the high threshold for a writ of mandamus ordering the district court to remand.

A court of appeal normally has a wide discretion to determine whether the criteria for writ are satisfied; but as this Court has stressed, "[d]iscretion is not whim," *Halo Elecs., Inc. v. Pulse Elecs., Inc.*, 136 S. Ct. 1923, 1931 (2016), and even broad discretion can be exercised in a manner that constitutes a "clear abuse of discretion" that "justif[ies] the invocation of th[e] extraordinary remedy" of mandamus, *Cheney*, 542 U.S. at 380.

The decision below is incorrect; mandamus is warranted without delay because of the extraordinary, urgent circumstances of this case. As the Chief Justice stated, "[g]iven the ongoing chilling effect of the state law, the District Court should resolve this litigation and enter appropriate relief without delay." *Whole Woman's Health v. Jackson*, 595 (2021).

The Decision raises the question of whether a party affected by a void judgment needs appeal. The decision below is wrong, appeal is not appropriate or necessary here. The district court's order dismissing this action is void. Judgment is a void judgment if the court that rendered it lacked jurisdiction of the subject matter, or jurisdiction over the parties, or acted in a manner inconsistent with due process, Fed. Rules Civ. Proc. 60(b)(4). See, e.g., *United States v. Boch Oldsmobile, Inc.*, 909 F.2d 657, 661-62 (1st Cir.1990) (explaining that the concept of void judgments must be narrowly construed to comport with the interests of finality). A void order is entirely null within itself; it is not susceptible to ratification or confirmation.

The law is well-settled that a void order or judgment is void even before reversal. *Valley v. Northern Fire & Marine Ins. Co.*, 254 U.S. 348,41 S. Ct. 116 (1920) "Courts are constituted by authority and they cannot go

beyond that power delegated to them. If they act beyond that authority, and certainly in contravention of it, their judgments and orders are regarded as nullities; they are not voidable, but simply void, and this even prior to reversal." *Williamson v. Berry*, 495, 540 12 L. Ed. 1170, 1189 (1850).

II. THE CIRCUIT COURT LACKS JURISDICTION, THEREFORE, MANDAMUS IS APPROPRIATE

Judge Scola knew or should have known that the district court lacked jurisdiction in this action. All courts have an "independent obligation to determine whether subject-matter jurisdiction exists, even in the absence of a challenge from any party." *Arbaugh v. Y & H Corp.*, 546 U.S. 500, 514 (2006) (citing *Ruhgras AG v. Marathon Oil Co.*, 526 U.S. 574, 583 (1999)) (jurisdiction upheld). *Sharkey v. Quartantillo*, 541 F.3d 75, 87–88 (2d Cir. 2008) (citing *Arbaugh v. Y & H Corp.*, 546 U.S. 500, 514 (2006); *Da Silva v. Kinsho Int'l Corp.*, 229 F.3d 358, 361 (2d Cir.2000)) ("To the extent the threshold limitations are jurisdictional, we are required to raise them sua sponte.").

The principles of waiver, consent, and estoppel do not apply to jurisdictional issues—the actions of the litigants cannot vest a district court with jurisdiction above the limitations provided by the Constitution and Congress. In *Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694 (1982), this Court noted that

> Subject-matter jurisdiction, then, is an Art. III as well as a statutory requirement; it functions as a restriction on federal power, and contributes to the characterization of the federal sovereign. Certain legal consequences

> directly follow from this. For example, no action of the parties can confer subject-matter jurisdiction upon a federal court. Thus, the consent of the parties is irrelevant, California v. LaRue, 409 U. S. 109 (1972), principles of estoppel do not apply, Am. Fire & Casualty Co. v. Finn, 341 U. S. 6, 17-18 (1951), and a party does not waive the requirement by failing to challenge jurisdiction early in the proceedings.

Id. at 702. See also *Arbaugh v. Y & H Corp.*, 546 U.S. 500 (2006) (jurisdiction upheld). *Singer v. State Farm Mut. Auto. Ins. Co.*, 116 F.3d 373 (9th Cir. 1997) ("This is not to say that a defect in jurisdiction can be avoided by waiver or stipulation to submit to federal jurisdiction. It cannot.").

a. The District Court Lacks Jurisdiction Under Article III of the Constitution Over the Present State-Filed, Wrongfully Removed Action

Federal courts are "courts of limited jurisdiction," *Owen Equip. & Erection Co. v. Kroger,* 437 U.S. 365, 374 (1978) (jurisdiction lacking), as opposed to state courts, which are generally presumed to have subject-matter jurisdiction over a case.

Federal courts are limited to deciding "cases" and "controversies." U.S. Cons. Art. III, § 2. Indeed, "[n]o principle is more fundamental to the judiciary's proper role in our system of government than the constitutional limitation of federal-court jurisdiction to actual cases or controversies." *Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 37, 96 S.Ct. 1917, 48 L.Ed.2d 450 (1976).

See *D'Lil v. Best Western Encina Lodge & Suites*, 538 F.3d 1031, 1036 (9t Cir. 2008) ("A party invoking federal

jurisdiction has the burden of establishing that it has satisfied the "case-or-controversy" requirement of Article III of the Constitution; standing is a "core component" of that requirement.") (internal citations omitted); see also *Medina v. Clinton*, 86 F.3d 155, 157 (9th Cir. 1996) (linking Article III standing with subject-matter jurisdiction of federal courts).

No Article III "case or controversy" between "adverse litigants" exists between Taveras and Respondents regarding the court's lack of jurisdiction. *Moore v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 47 (1971). Both parties asserted that the federal court lacked jurisdiction. This should be enough reason for the federal court to abstain.

b. The District Court Should Have Abstained Under the Rooker-Feldman Doctrine

The Rooker-Feldman doctrine generally recognizes that federal district courts do not have jurisdiction to act as state appellate courts and precludes them from reviewing state court decisions. See generally *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280 (2005); *Dist. of Columbia Court of Appeals v. Feldman,* 460 U.S. 462 (1983); *Rooker v. Fid. Trust Co., 263 U.S.* 413 (1923). Because the doctrine involves subject matter jurisdiction, it predominates over other issues because, where it applies, the court cannot consider the merits of the case. See *Powell v. Powell*, 80 F.3d 464, 466-67 (11th Cir. 1996); *Garry v. Geils*, 82 F.3d 1362, 1365 (7th Cir. 1996). In another hand, Florida Statutes provide an implied cause of action to seek annulment of final judgment of foreclosure. Fla. Stat. § 702.036; thus, Taveras was seeking remedy in the right forum.

Additionally, federal courts do not have exclusive

jurisdiction for civil claims under federal RICO. Under this Court's opinion in *Gulf Offshore Co. v. Mobil Oil Corp.*, analysis of state-court jurisdiction over a federal cause of action "begins with the presumption that state courts enjoy concurrent jurisdiction." 453 U.S. 473 (1981) at 478. Nevertheless, federal courts "cannot overturn an injurious state-court judgment" *Exxon Mobil* at 292–93. The action was properly filed in state court and unproperly removed to federal court. Abusing its discretion, the district court dismissed the action with prejudice. That was a clear error, a dismissal with prejudice is a disposition on the merits, which only a court with jurisdiction may render. See, e.g., *Fredericksen v. City of Lockport*, 384 F.3d 438, 438 (7th Cir. 2004) (holding "a suit dismissed for lack of jurisdiction cannot also be dismissed 'with prejudice'; that's a disposition on the merits, which only a court with jurisdiction may render"). See also *Martinez v. Richardson,* 472 F.2d 1121, 1126 (10th Cir.1973) ("It is fundamental ... that a dismissal for lack of jurisdiction is not an adjudication of the merits and therefore ... must be without prejudice."). This rule has deep common law roots and is preserved now in Fed. R. Civ. P. 41(b), which provides as follows:

> (b) Involuntary Dismissal: Effect Thereof. For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against the defendant. Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join a party

> under Rule 19, operates as an adjudication upon the merits, (emphasis added).

The important state issue which needs to be resolved by the state court and with which the federal court has interfered: Whether the foreclosure judgment entered is void as a matter of law for the state court's lack of jurisdiction at all times during the pendency of the foreclosure action. The jurisdiction of Florida courts is defined by constitution and statute. Fla. Const., Art. V, § 1. In addition, since "[i]t is conferred ... by a constitution or a statute, subject matter jurisdiction cannot be created by waiver, acquiescence or agreement of the parties." *Chapoteau v. Chapoteau*, 659 So. 2d 1381, 1384 (Fla. 3d DCA 1995).

The U.S. district court erred in taking jurisdiction over the present case and entering a void judgment, and the Eleventh Circuit erred in asserting that appeal is necessary, because this case is of important state interest, and under Rooker Feldman, the court must abstain from inference with state judicial proceedings.

c. The District Court Should Have Abstained Under the Younger Doctrine

Under the Younger doctrine, a federal District Court must abstain from hearing a federal case when that case interferes with state judicial proceedings. See *Middlesex County Ethics Comm. v. Bar Assn.*, 457 U.S. 423, 437, 102 S. Ct. 2515, 2524 (1982). Upon removal of the complaint from state court, the district court should have abstained under Younger and should have remanded the complaint to the state court, because 28 U.S.C. Section 1441 is to be strictly construed against removal.

In *Sprint Commc'ns, Inc. v. Jacobs*, 134 S. Ct. 584, 187 L. Ed. 2d 505 (2013) the Court defined the civil

proceedings to be included under Younger: "Circumstances fitting within the Younger doctrine... 'civil enforcement proceedings,' and 'civil proceedings involving certain orders that are uniquely in furtherance of the state courts' ability to perform their judicial functions.'." *Sprint*, at 588.

In his complaint properly filed in state court, Taveras has challenged under Fla. Stat. § 702.015 and Fla. R. Civ. P. 1.115(e). Enforcement of Fla. Stat. § 702.015 and Fla. R. Civ. P. 1.115 is critical to ensure that only a holder in due course of a promissory note initiates foreclosure proceedings.

In re Amendments to the Fla. R. Civ. P., 44 So. 3d 555, 556, 559 (Fla. 2010) the Florida Supreme Court held:

> [t]he primary purposes of this amendment are (1) to provide incentive for the plaintiff to appropriately investigate and verify its ownership of the note or right to enforce the note and ensure that the allegations in the complaint are accurate; (2) to conserve judicial resources that are currently being wasted on inappropriately pleaded "lost note" counts and inconsistent allegations; (3) to prevent the wasting of judicial resources and harm to defendants resulting from suits brought by plaintiffs not entitled to enforce the note; and (4) to give trial courts greater authority to sanction plaintiffs who make false allegations.[3]

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[3] Although the Florida Supreme Court modified, Fla. R. Civ. P. 1.110(b) the language requiring verification of the foreclosure complaint under penalty of perjury was removed from this Rule and incorporated into the new Rule § 1.115(e).

Therefore, there is no question whether this foreclosure case is of important state interest; consequently, there should not be any question as to the application of the Younger Doctrine to the present case.

This action is of important state interest under the Younger Doctrine. Wrongful foreclosure issues are considered important state interests; *Prindable v. Association of Apartment Owners of 2987 Kalakaua*, 304 F. Supp. 2d 1245, 1262 (D. Haw. 2003) (finding foreclosure and ejectment proceedings are important state interests under the *Younger* doctrine). See also *Gray v. Pagano*, 287 Fed. Appx. 155, 157-158 (3rd Cir. 2008) (affirming district court's abstention under Younger where state-court foreclosure action was pending and "[any relief that could be granted by the district court would directly impact Pennsylvania's interest in protecting the authority of its judicial system". On *Doscher v. Menifee Circuit Court*, 75 Fed. Appx. 996 (6th Cir. 2003) the Sixth District also affirmed the district court's application of Younger abstention and finding important state interest in mortgage foreclosure.

d. The Action Was Wrongfully and Fraudulently Removed from State Court

In the context of actions removed from state court, a federal court is presumed to lack subject matter jurisdiction and the party invoking federal jurisdiction bears the burden of persuasion on jurisdiction. "It is to be presumed that a cause lies outside [of federal courts'] limited jurisdiction, and the burden of establishing the contrary rests upon the party asserting jurisdiction." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994) (citations omitted) (jurisdiction lacking).

See also *Adventure Outdoors, Inc. v. Bloomberg,* 552

F.3d 1290, 1294 (11th Cir. 2008) ("A removing defendant bears the burden of proving proper federal jurisdiction.") (citation omitted). *Hart v. FedEx Ground Package Sys. Inc.,* 457 F.3d 675, 679 (7th Cir. 2006) ("In general, of course, the party invoking federal jurisdiction bears the burden of demonstrating its existence.") (citations omitted). *Abrego Abrego v. The Dow Chemical Co.*, 443 F.3d 676, 682–83 (9th Cir. 2006) (citing *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir.1992)) ("In cases removed from state court, the removing defendant has 'always' borne the burden of establishing federal jurisdiction, including any applicable amount in controversy requirement.").

Because removal infringes upon state sovereignty and implicates central concepts of federalism, removal statutes are construed narrowly, with all doubts resolved in favor of remand. See Adventure Outdoors, 552 F.3d at 1294 ("Any doubts about the propriety of federal jurisdiction should be resolved in favor of remand to state court."); *University of South Alabama v. American Tobacco Co.*, 168 F.3d 405, 411 (11th Cir. 1999) (explaining that strict construction of removal statutes derives from "significant federalism concerns" raised by removal jurisdiction). "The existence of federal jurisdiction is tested at the time of removal." *Adventure Outdoors*, 552 F.3d at 1295.

Here, it was right on the face of the district court that removal was improper because right after removal the Defendants filed their motion to dismiss on the grounds of lack of jurisdiction.

As this Court stated: "tampering with the administration of justice in [this] manner. . . involves far more than an injury to a single litigant. It is a wrong

against the institutions set up to protect and safeguard the public." *Chambers v. NASCO, Inc.,* 501 U.S. 32, 44 (1991).

III. THE ORDER IS DENIAL OF DUE PROCESS

The District Court's order departs from the essential requirement of the law, which resulted in a miscarriage of justice. The district court acted contrary to Taveras' constitutional rights, including his right to due process protected by the Fifth Amendment to the U.S. Constitution and Article I, § 9 of the Florida Constitution.

The Due Process Clause of the Constitution requires that litigants be given a meaningful opportunity to be heard. *Boddie v. Connecticut*, 401 U.S. 371, 377 (1971). By entering the Order, the district court deprived Taveras of his constitutional right of seeking remedy in the right forum.

The Fifth Amendment of the Constitution requires "due process of law" before any person can be "deprived of life, liberty, or property" and the concept of property includes statutory entitlements. *Johnson v. U.S. Dept of Agric.*,734 F.2d 774 (11th Cir. 1984).

The Equal Protection Clause provides that no "State" shall "deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1. While the Equal Protection Clause itself applies only to state and local governments, this Honorable Court affirmed "This Court's approach to Fifth Amendment equal protection claims has always been precisely the same as to equal protection claims under the Fourteenth Amendment." *Weinberger v. Wiesenfeld,* 420 U.S. 636, 638 n.2 (1975).

The district court did not follow the normal course of the law by denying Taveras equal protection of the law and due process. "Due process of law requires that the proceedings shall be fair, but fairness is a relative, not an absolute concept. . . . What is fair in one set of circumstances may be an act of tyranny in others." *Snyder v. Massachusetts*, 291 U.S. 97, 116, 117 (1934). The dismissal was not in the interest of justice. The dismissal under the doctrine of improper claims splitting was only beneficial to Respondents, but an act of tyranny against Taveras.

The fact that one or two previous actions were filed by Taveras in federal court and dismissed without prejudice for lack of jurisdiction is no bar to seeking remedy in the right forum, "[a]t common law dismissal on a ground not going to the merits was not ordinarily a bar to a subsequent action on the same claim." *Costello v. United States*, 365 U.S. 265, 285 (1961).

A dismissal for lack of subject-matter jurisdiction is not a judgment on the merits, and thus not entitled to claim preclusive effect. *Hughes v. United States*, 71 U.S. 232, 237 (1866) ("In order that a judgment may constitute a bar to another suit, it . . . must be determined on its merits. If the first suit was dismissed for . . . the want of jurisdiction, . . . the judgment rendered will prove no bar to another suit."); *Smith v. McNeal,* 109 U.S. 426, 431 (1883) (same); see generally Restatement (First) of Judgments § 49 (1942) (explaining that a judgment is not preclusive "where the judgment is based on the lack of jurisdiction of the court . . . over the subject of the action.")

By the federal court's failure to remand to the state court the lawsuit seeking review of a foreclosure

judgment, by taking jurisdiction over the case and dismissing the lawsuit on the basis of improper claim splitting, the federal court deprived the state of Florida of the opportunity to resolve important state issues and deprived Taveras of his due process right under the Fifth Amendment.

Now, the fact that Taveras filed his motion to set aside the district court's order dismissing the case, giving the court a fair opportunity to correct its own error, is no bar to seek mandamus after the court's denial of this motion (Appendix D).

The petition for writ of mandamus was filed in the Eleventh Circuit before Respondents tried to evict Taveras and his family from home, and the Court itself has held that wrongfully ejecting a person from her residence constitutes an irreparable injury. *See Johnson v. U.S. Dep't of Agric.*, 734 F.2d 774, 789 (11th Cir. 1984); however, it failed to act promptly to prevent this irreparable injury.

The clear abuse and manipulation of the legal system by Respondents, the clear abuse of discretion by the district court, the constitutional error, and the interference with the state litigation further favor mandamus.

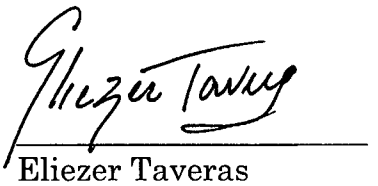
Allowing the Eleventh Circuit Order to stand deprives Taveras of his due process right to challenge the foreclosure judgment entered by the state court, despite the fact that a lawful foreclosure complaint was never filed during the pendency of the underlined action.

CONCLUSION

For the foregoing reasons, Petitioner, Eliezer Taveras, requests this Honorable Court to grant

certiorari to the Order of the United States Court of Appeals for the Eleventh Circuit, filed August 29, 2022, App. A; or in the alternative, summarily reverse the decisions below for lack of jurisdiction and remand to the Eleventh Judicial Circuit In And For Miami-Dade County, Florida, Case 2022-003365-CA-01, from which this action was wrongfully removed.

Respectfully submitted,



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February, 2023