No.

IN THE

Supreme Court of the United States

DEBRA M. BROWN.

v.

FEDERAL NATIONAL MORTGAGE ASSOCIATION

PETITION FOR A WRIT OF CERTIORARI TO THE APPEALS COURT FOR THE COMMONWEALTH OF MASSACHUSETTS

PETITION FOR WRIT OF CERTIORARI

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Pro se

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QUESTION(S) PRESENTED

In 2018 petitioner discovered that a judgment issued by the Massachusetts Land Court ("Land Court") in 2009 ordered the sale of her property. The petition in the Land Court was filed by Federal National Mortgage Association's ("FNMA")' network attorneys in the name of a servicer. By statute in 1990, the Massachusetts legislature terminated the authority of the Land Court to issue such judgments. Yet the Land Court continued to issue such judgments. Petitioner was denied notice and all right to participate in the Land Court proceeding. When she discovered this "void judgment" she immediately filed a motion to vacate in the Housing Court in that this taking and the consequent Housing Court eviction proceeding violated her due process and equal protection rights guaranteed her by the U.S. and Massachusetts Constitutions.

Petitioner and FNMA agree that (1) loan was not in default at the time of the notice of default letter issued; (2) FNMA had no financial interest in the property and paid nothing for the taking of the property. FNMA does not agree that (1) due process was required. and (2) filing of false affidavits to obtain property amounts to fraud on the Court.

I. Whether FNMA as an instrumentality of the U.S. Government and/or state government can take private citizens' property without due process of law constituting a violation of the Fifth and Fourteenth Amendments of the United States Constitution,

PARTIES TO THE PROCEEDING

All the parties in this proceeding are listed in the caption.

STATEMENT OF RELATED CASES

U.S.C.A. proceeding, 21-1978 Brown v. Bank of America and Fannie Mae.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

STATUTES

RULES

CONST. PROVISIONS

OTHER AUTHORITIES

OPINIONS BELOW

The opinion of the Massachusetts Supreme Judicial Court ("SJC") decision denying the 211 § 3 petition dated May 16, 2023 (CA20A) and Motion for Reconsideration denied June 30, 2023, Massachusetts Court of Appeals decision (CA 1A); Northeast Housing Court decision (CA 7A), and Massachusetts Land Court decision (CA 10A).

JURISDICTION

This Court has jurisdiction over this matter, invoked under 28 U.S.C. § 1257(a). This petition is timely filed within 90 days of the SJC denial of Motion for Reconsideration on June 30, 2023 of their May 16, 2023 order serving as the final state court judgment pursuant to Supreme Court Rule 13.1

Rule 29.4(c)

28 U.S.C. §2403(b), which allows a state to intervene to defend the constitutionality of a state statute may apply.

RELEVANT PROVISIONS INVOLVED

U.S. Const. Amend. V:

> No person shall be… 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. Amend. XIV, sec. 1:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

12 U.S.C. §4617(a)(7) HOUSING AND ECONOMIC RECOVERY ACT

(7) Agency not subject to any other Federal agency
When acting as conservator or receiver, the Agency shall not be subject to the direction or supervision of any other agency of the United States or any State in the exercise of the rights, powers, and privileges of the agency

INTRODUCTION

This case presents the exceptionally important question of when the Federal National Mortgage Association ("FNMA") conducts a foreclosure (on behalf of the U.S. Treasury[1]) it is a government actor triggering a requirement for due process and (2) when

[1] In 2009 the U.S. Treasury contracted with FNMA declaring FNMA their financial agent and keeping the agreement confidential.
https://home.treasury.gov/sites/default/files/initiatives/financial-stability/procurement/faa/Financial_Agency_Agreements/Fannie%20Mae%20FAA%20021809.pdf

FNMA uses state courts to separate a citizen from their property those state court proceedings must allow for due process prior to dispossession. In this case FNMA entered documents into a land registry and two Massachusetts "specialty" courts to take a private citizen's home without allowing the homeowner any due process and those specialty courts issued judgments that did not allow for due process.[2]

FNMA successfully argued that (1) the Land Court judgment did not matter; (2) this matter has been fully litigated; (3) no due process was required; and (4) the Housing and Economic Recovery Act ("HERA") 12 U.S.C. §4617(a)(7) anti-injunction clause gave FNMA immunity from all state consumer protection laws arguing that these rights, powers and privileges expressly include the transfer or sale of any GSE asset without approval, assignment or consent and (4) submission of fraudulent affidavits does not amount to fraud on the court.

On June 23, 2021 this Court issued the first decision interpreting HERA, Collins v. Yellen 141 S.Ct. 1761 (2021). The decision held that (1) Federal Housing Finance Agency ("FHFA") was the government; (2) the directorship (leadership) of the FHFA was unconstitutional; (3) FHFA at all times was the executive branch of the federal government; (3) FHFA did not "step into the shoes" of FNMA as conservator; (4) by statute, FHFA's powers differ critically from those of most conservators and receivers

[2] Like in the story of Henny Penny - all the courts in the U.S. received the message that the **sky is falling** if anyone is allowed to keep their home after a fraudulent foreclosure by FNMA. The U.S. Constitution does not allow for the government taking of homes without due process and all judges are bound by the Constitution.

id 1791; (5) a party with an injury has standing to bring a claim for the violations by the director of the FHFA and (6) that HERA statute cannot be interpreted to allow for any violation of the U.S. constitution.[3]

The First Circuit issued a decision in June 2021[4] two weeks prior to this Court's decision in Collins that provided for the opposite – that FNMA is not the government. In the First Circuit FNMA continues to argue that (1) they are not an instrumentality of the U.S. Government; (2) no due process was required; and (3) the HERA 12 U.S.C. §4617(a)(7) anti-injunction clause gives FNMA immunity from all state consumer protection laws arguing that these rights, powers and privileges expressly include the transfer or sale of any GSE asset without approval, assignment or consent.[5] The SJC (CA21A) ignored the U.S. Supreme Court's decision in Collins and relied on the First Circuit's decision in Montilla ruling that (1) no need for FNMA

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[3] FNMA's arguments that they are not the government are contrary to constitutional rights. Abbott Lab v. Gardner 387 US 136, 155 (1967).

[4] On June 8, 2021 the United States Court of Appeals for the First Circuit reversed a decision of the Chief Judge of the District of Rhode Island that ruled that FNMA was required to provide due process prior to the taking of homes with non-judicial foreclosurv. Fed. Hous. Fin. Agency, 324 F.Supp. 3d 273, 284 (D.R.I. 2018). The First Circuit held that FNMA and FHFA were *not acting as the government* when they did so, citing the decision issued the same day by the First Circuit in Montilla v. Federal National Mortgage Ass'n, 999 F.3rd 751 (1st Cir. 2021), cert.denied, 142 S. Ct 1360 (2022) ("Montilla")

[5] In a case brought against FNMA by the Massachusetts Attorney General, the U.S. District Court dismissed the complaint (declared FNMA had immunity from all state consumer laws) merely speculating that the Complaint would "likely" not withstand a preemption analysis. Commonwealth v. FHFA 54 F.Supp.3d 94 (2014)

to answer the petition[6]; and (2) FNMA was not the government and no due process was necessary prior to the taking of the property.[7]

Since Collins v. Yellen, this Court has issued at least two other decisions limiting a federal agencies over-reaching power (West Virginia v. EPA 142 S. Ct. 2587 (2022) and Biden v. Nebraska 143 S. Ct. 2355 (2023) and one that recognizes that a state cannot take a private citizen's property. Tyler v Hennepin County 598 US 631 (2023).[8]

A. The Petition Filed with the SJC

The petition challenged the judiciary scheme Massachusetts has employed using land registries and specialty courts to transfer property ownership and possession in connection with "non-judicial" foreclosures. In Massachusetts any party can file documents in the Land Registry and can enter the Land Court and/or Housing Court to file a complaint and obtain a judgment without formal service of process on a defendant. To appeal a Housing Court decision a defendant must pay a bond and/or use and occupancy. The Housing Court regularly sets bond amounts and use and occupancy so high that defendants

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[6] The petition was filed in February 2021 and briefs submitted by the Petition in April 2021. FNMA obtained a stay rather than filing their brief. The SJC found that although the case was not moot, they decided that a responsive brief was not necessary for them to throw out the petition in May 2023.

[7] Related case 21-1978 was fully briefed in the U.S. Court of Appeals for the First Circuit in July 2022. No hearing date has been offered.

[8] Massachusetts is one of the states where the statute declared unconstitutional in Tyler also remains in force. To date there has been nothing by the legislature or the SJC to adhere to the Tyler decision.

cannot afford to pay and losing all rights of appeal[9]. There are no mechanics established to demonstrate ownership interest or even that the party is a legitimate entity. There are no mechanics set up to identify fraud in the registry before recordings and no audits. In Massachusetts anyone can get a free house from a homeowner if they know how to work the system.[10] While actions brought in the Land Court and Housing Court typically are filed by Massachusetts attorneys aka officers of the court there are no mandatory trainings in ethics or otherwise for attorneys and no mandates for court oversight of the case entry processes.[11]

In the Housing Court judges throw homeowners out of their homes with a filing of a 72-hour notice to quit without any representations about title to property. In landlord-tenant cases landlords have to give anywhere from thirty to ninety days-notice to

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[9] Petitioner was ordered to pay $1500.00 a month (amount of mortgage payments) in 2015 after Housing Court granted summary judgment for FNMA and has paid over 118,000.00 to date.

[10] The Massachusetts Registry of Deeds accepts filings from anyone onto a particular property record. The Land Court is a specialty court that allows parties to bring in a miscellaneous complaint for foreclosure and obtain a judgment without the named property owner's participation unless that property owner is in the military. Post-foreclosure evictions are conducted in the Massachusetts Housing Court a specialty court designed for hearing landlord/tenant matters and offering summary process not due process with only demonstrating that a party filed a 72-hour notice to quit.

[11] In Massachusetts there is no requirement for lawyers to have continuing legal education and/or annual ethics education.

quit.[12] Most cases are decided by the court declaring a default judgment in favor of plaintiff[13] or summary judgment in favor of plaintiff without a hearing or jury trial.

The SJC by dismissing the petition refused to consider the abnormalities of the registry and specialty courts that lead to unconstitutional deprivation of private property. By declaring that petitioner was allowed "due process" simply due to length of time in the judicial system – was an error of law.

REASONS FOR GRANTING THE PETITION

1. SETTLE THE QUESTION OF WHETHER FNMA CAN TAKE PRIVATE PROPERTY WITHOUT DUE PROCESS

A. Understanding The Nature Of Due Process

Due process prior to deprivation of property is required by the U.S. Constitution. In the earliest test to the Nation's new judiciary, the Supreme Court ruled:

> If a law be in opposition to the Constitution, if both the law and the Constitution apply to a particular case, so that Court must either decide the case comfortably to the law, disregarding the Constitution or comfortably to the Constitution, disregarding the law, the Court must determine which of these conflicting rules govern the case.

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[12] There is a "bench book" for judges that has these issues briefed but judges regularly ignore the bench book.

[13] Due to limited service obligation many homes can be taken without the property owner ever being aware.

> This is the very essence of judicial duty. **A law repugnant to the Constitution is void and all courts, as well as other departments are bound by the [Constitution**]. Marbury v. Madison 5 US 137 (1803)

This case presents a unique set of facts by virtue of the duration of any matter in the Courts without due process (Due process requires the opportunity to question witnesses under oath before an independent tribunal). What use is a court if the court does not administer judiciously – namely with the application of due process of law. In Massachusetts that concept is lost from the Land Registry to the SJC and everywhere in between.

Something cannot be deemed "fully litigated" with the absence of due process of law in any proceeding where it was required. Judgments issued without due process of law are void ab initio. Void is void. Due process by its' very name is timeless – there either is due process or there is none. The SJC's decision includes the following (1) she has had "an ample opportunity to contest the foreclosure;" (2) stating that she is "not entitled to due process;"(3) we conclude the appeal is not moot; and (4) "Brown is just unhappy with the results in those courts" – amounting to a decision that "due process" happens if a case lingers long enough in the court system. This decision is not judicious and cannot be allowed to stand as it is repugnant to the U.S. Constitution and the Massachusetts Constitution.

B. Due Process Includes Weighing the Private Interest v. Public Interest and in this case the Government had No Financial Interest

U.S. Const. Amend. V:

> No person shall be… 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. Amend. XIV, sec. 1:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

This Court has determined that the loss of an individual's home constitutes a final, lasting deprivation of property entitling him/her to the protection of the due process clause. Los Angeles v. David, 538 U.S. 715, 717(2003) (deprivation of even money is the deprivation of property for purpose of evaluating due process protection). Cleveland Board of Education v. Loudermill, 470 U.S. 532, 538;541 (1985) ("The point is straightforward: the Due Process Clause provides that certain substantive rights—life, liberty, and property—cannot be deprived except pursuant to constitutionally adequate procedures")(emphasis supplied). The Due Process Clause mandates that a sanction such losing one's home "should not be assessed lightly or without

fair notice and an opportunity for a hearing on the record." Roadway Express, Inc. v. Piper, 447 U.S. 752, 766-767(1980).

Individuals are entitled to procedural due process if the property/liberty interest at stake is deemed to be of such magnitude or importance that its loss can fairly be characterized as important; and it depends upon the extent to which the individual will be "condemned to suffer grievous loss." Morrissey v. Brewer, 408 U.S. 471, 481(1972) quoting Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123,168(1951)(Frankfurter, J., concurring). Goldberg v. Kelly, 397 U.S. 254, 262-263(1970).

This Court has outlined that once it is determined that the Due Process Clause applies to the proceedings below, "the question remains what process is due." Loudermill, 470 U.S. at 541 quoting Morrissey v. Brewer, 408 U.S. at 481. This Court's decision in Mathews v. Eldridge, 424 U.S. 319, 334-335(1976) dictates that the process due in any given instance is determined by **weighing "the private interest that will be affected by the official action" against the government's asserted interest, "including the function involved" and the burdens the government would face in providing greater safeguards.** Id. at 335. The Mathews calculus contemplates a judicious balancing of these concerns, through an analysis of "the risk of an erroneous deprivation" of the private interest if the process were reduced and the "probable value, if any, of additional or substitute procedural safeguards." Id. See Hamdi v. Rumsfeld, 542 U.S. 507, 528-529(2004). None of the Massachusetts Court's decisions did any balancing. (CA1A, CA7A, and CA 20A).

Factors roughly in order of priority that have been considered to be elements of a fair hearing: (1) an

unbiased tribunal; (2) notice of the proposed action and the grounds asserted for it; (3) an opportunity to present reasons why the proposed action should not have been taken; (4), (5) and (6) the right to call witnesses, to know the evidence against one, and to have decision based only on the evidence presented; (7) counsel; (8) and (9) the making of a record and a statement of reasons; (10) public attendance; and (11) judicial review. Friendly, "Some Kind of Hearing", 123 U.Pa.L.Rev. 1267, 1279-95 (1975). Massachusetts' highest court's dismissal of Brown's analysis of specialty courts not allowing for due process to be merely her "not being happy with results" should shock the conscious of this Court.

2. FNMA'S ACTIONS EXCEEDED THEIR AUTHORITY

FNMA was chartered by Congress to further governmental objectives related to **the secondary mortgage market** and national housing policies. In 2009 FNMA entered into an agreement with the U.S. Treasury to serve as their financial agent when conducting business.[14] (ftnt 1) FNMA has been under the control of FHFA and/or financial agent of the United States Treasury for thirteen years. In 2018 the first courageous Judge from the smallest state of Rhode Island District held:

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[14] In 2009 the U.S. Treasury contracted with FNMA declaring FNMA their financial agent and keeping the agreement confidential.
https://home.treasury.gov/sites/default/files/initiatives/financial-stability/procurement/faa/Financial_Agency_Agreements/Fannie%20Mae%20FAA%20021809.pdf

> "based on these facts, FNMA is an agency or instrumentality of the United States for the purpose of individual rights guaranteed against the federal government by the United States Constitution. *Sisti v. Fed. Hous. Fin. Agency*, 324 F. Supp. 3d 273, 277 (D.R.I. 2018) .R.I. 2018). See DOT v. Ass'n of Am. R.R., 135 S. Ct. 1225, 1232-1233 (U.S. 2015); Lebron v. National Railroad Passenger Corp., 513 U.S. 374 (1995).

The First Circuit **reversed that decision in 2021** determining that FNMA was not acting as an agency or instrumentality of the United States.

In Collins, this Court wrote that "every Court of Appeals has held that the *[anti-injunction clause] prohibits relief where the FHFA action at issue fell within the scope of the Agency's authority as conservator*, **but that relief is allowed if the FHFA exceeded that authority**." Id at 1776. Following Collins all courts: federal and state should be starting with an analysis if whether FNMA's action (such as taking properties directly) exceeded their chartered authority as a secondary market participant. If a court starts with the required analysis per Collins, state consumer protection laws receive their vitality back. FNMA attorney network agreements engaging foreclosure attorneys to represent FNMA in another entities' name is, was and always will be direct participation in the mortgage market. FNMA claiming ownership of property such as this petitioner's home is direct participation in the mortgage market and ultra vires.

3. THIS IS A MAJOR QUESTION

In Collins the Court opined "And there can be no question that FHFA's control over Fannie Mae and Freddie Mac can deeply impact the lives of millions of Americans by affecting their ability to buy **and keep their home**." Id. Collins This is a major-questions case.

Analysis of an agency's statutory authority "must be 'shaped, at least in some measure, by the nature of the question presented'—whether Congress in fact meant to confer the power the agency has asserted." West Virginia, 142 S. Ct. 2587, at 2608 (quoting FDA v. Brown & Williamson Tobacco Corp., 529 U.S. 120, 159 (2000)). Major-questions cases are those "in which the history and the breadth of the authority that the agency has asserted, and the economic and political significance of that assertion, provide a reason to hesitate before concluding that Congress meant to confer such authority." Id.

The major-questions doctrine is a constitutionally based clear-statement canon rooted in "both separation of powers principles and a practical understanding of legislative intent." Id. at 2609. The Court "presume[s] that Congress intends to make major policy decisions itself, not leave those decisions to agencies." And the Court exercises "common sense as to the manner in which Congress is likely to delegate a policy decision of . . . economic and political magnitude." Brown & Williamson, 529 U.S. at 133.

Clear-statement rules "ensure Congress does not, by broad or general language, legislate on a sensitive topic inadvertently or without due

deliberation." Spector v. Norwegian Cruise Line Ltd., 545 U.S. 119, 139 (2005) (plurality opinion).

1. The key major-questions factors are present here.

The Government's claimed authority to take private property without due process is a matter of great "economic and political significance." West Virginia, 142 S. Ct. at 2608. (quote from Collins v Yellen about mortgage market)

Congress enacted the HERA in 2008 as financial reform legislation in response to the subprime mortgage crisis and the collapse of the U.S. financial markets. HERA was intended to renew public faith in government-sponsored enterprises (GSEs) that provided home loans—namely Fannie Mae and Freddie Mac. Congress created Help for Homeowners ("HAMP") to keep homeowners in their homes – not strip them of their homes. As a new agency, the FHFA used its newfound authority to put Fannie Mae and Freddie Mac under conservatorship in 2008.[15]

FNMA was chartered by Congress to further governmental objectives related to the secondary mortgage market and national housing policies. The federal government maintains a substantial ownership interest in FNMA and FNMA is substantially funded by the federal government. The Board of Directors of FNMA are appointed by FHFA and FNMA has been under the control of FHFA and/or the United States Treasury for thirteen years.

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[15]https://www.investopedia.com/terms/h/housing-and-economic-recovery-act-hera.asp

This broad assertion of power is also "unheralded. This novel power is also a transformative expansion" of the Secretary's authority. Util. Air Regul.Grp. v. EPA, 573 U.S. 302, 324 (2014) (UARG).

FNMA engaged directly in the mortgage market creating an attorney network that took their orders, not the servicers; and took ownership of properties directly – exactly what their charter never allowed. They served as a financial agent for the U.S. Treasury in the taking of properties and were contractually bound to adhere to all state laws. On the contrary, FNMA created attorney referral networks to keep the identity of FNMA a secret in court proceedings in Massachusetts. FNMA entered into an agreement to be the financial agent of the U.S. Treasury to take homes without letting anyone know of the agreement.

"FHFA as conservator was charged with *reorganizing, rehabilitating or winding up [FNMA] affairs* 12 U.S.C §4617(a)(2). In fact, FHFA expanded FNMA affairs, embraced a nationwide litigation campaign to further insulate FNMA actions from judicial scrutiny, engaging courts to determine that (1) FHFA is not a government actor; (2) HERA gave FHFA and FNMA immunity from all state consumer protection laws: and (3) "Congress intended FHFA to "exercise [its]rights, powers, and privileges" as conservator without being "subject to the direction or supervision of any other agency of the United States or any state. Congressional intent appeared to be establishing programs to save homes not destroy them.

Under the FHFA conservatorship FNMA has exponentially increased their interests in the U.S.

mortgage market.[16] The taking of homes with non-judicial foreclosures – a business prohibited by FNMA's own charter should be excluded from HERA's anti-injunction clause because (1) prohibited by FNMA charter and (2) un-constitutional acts or acts repugnant to the constitution cannot be allowed. The great success of FNMA's legal campaign that they are not the government throughout the United States' federal and state court systems has led to lawlessness, particularly in states that are "non-judicial."[17] In fact Congressional intent was made known in the following:

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[16] By 2009, Fannie Mae, Freddie Mac, and FHLB provided 90% of the financing for new mortgages. This was more than double their share of the mortgage market prior to the 2008 crisis. Private mortgage financing had simply dried up. https://www.thebalance.com/fannie-mae-vs-freddie-mac-3305695 by Kimberly Amadeo sourced to Fannie Mae and FHFA reports.

[17] "The Framers recognized that, in the long term, structural protections against abuse of power were critical to preserving liberty." Bowsher, 478 U. S., at 730. Their solution to governmental power and its perils was simple: divide it. To prevent the "gradual concentration" of power in the same hands, they enabled "[a]mbition . . . to counteract ambition" at every turn. The Federalist No. 51, p. 349 (J. Cooke ed. 1961) (J. Madison). At the highest level, they "split the atom of sovereignty" itself into one Federal Government and the States. Gamble v. United States, 139 S. Ct. 1960 (2019) (slip op., at 9) (internal quotation marks omitted). They then divided the "powers of the new Federal Government into three defined categories, Legislative, Executive, and Judicial." Chadha, 462 U. S., at 951. They did not stop there. Most prominently, the Framers bifurcated the federal legislative power into two Chambers: the House of Representatives and the Senate, each composed of multiple Members and Senators. Art. I, §§2, 3. The Framers viewed the legislative power as a special threat to individual liberty, so they divided that power to ensure that "differences of opinion" and the "jarrings of parties" would "promote deliberation and circumspection" and "check excesses in

In response to the waves of foreclosures, Congress made foreclosure mitigation an explicit part of the Emergency Economic Stabilization Act (EESA), designed to address the nation's economic crisis.[ftnt omitted] Two of EESA's stated goals are to "preserve homeownership" and "protect home values." [ftnt omitted] In addition, EESA instructs the Treasury Secretary to take into consideration "the need to help families keep their homes and to stabilize communities." [ftnt omitted] It also includes express directions to create mortgage modification programs. Congressional Oversight Panel October Oversight Report: An Assessment of Foreclosure Mitigation Efforts After 6 Months. October 9, 2009. Submitted under Section 125(b)(1) of Title 1 of the Emergency Economic Stabilization Act of 2008, Pub. L. No. 110-343.[18]

Demonstrating that FHFA's administration of FNMA is also " 'incompatible' with 'the substance of Congress' regulatory scheme.' " UARG, 573 U.S. at 322 (quoting Brown & Williamson, 529 U.S. at 156).

> The major questions doctrine rests on "separation of powers principles and a practical understanding of legislative intent" that "presume[s] . . . Congress intends to make major policy decisions itself." West Virginia, 142 S. Ct. at 2609. Those principles apply regardless of whether an agency is regulating private actors

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the majority." See The Federalist No. 70, at 475 (A. Hamilton); see also id., No. 51, at 350. Id. 591 US_(2020)

[18]https://www.govinfo.gov/content/pkg/CPRT-111JPRT52671/pdf/CPRT-111JPRT52671.pdf

> or administering a congressionally created benefit program. In both contexts, "an agency literally has no power to act . . .unless and until Congress confers power upon it." La. Pub. Serv. Comm'n v. FCC, 476 U.S. 355, 374 (1986). So what matters is not whether the agency is regulating private parties or administering benefits, but whether it is exercising the type of power that courts would expect Congress to clearly delegate.
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> Unlike the Government's narrow view, the Court has recognized that major-questions cases "arise[ ] from all corners of the administrative state." West Virginia, 142 S. Ct. at 2608. Notably, King v. Burwell, 576 U.S. 473, 485–86 (2015), applied the doctrine to a government-benefit program—a federal tax-credit program under the Affordable Care Act—because those tax credits "involved billions of dollars in spending each year," "affect[ed] . . . millions of people," and presented a question of deep "economic and political significance." For the same reasons, the doctrine applies here.

4. FNMA'S IS REPONSIBLE FOR THEIR CONTRACTORS ACTIONS

FNMA's use of foreclosure network attorneys to represent FNMA while dictating that the foreclosure network attorneys file documents in all courts in the names of servicers is unlawful, ultra vires and criminal. Furthermore, FNMA relies on the "honor system" for all their contractors to comply with local laws. On July

27, 2020 the FHFA-OIG issued a report "Oversight by FNMA of Compliance with Forbearance Requirements Under the CARES act and Implementing Guidance by Mortgage Servicers. The report stated the following:

> "We learned from the Enterprises that neither views its responsibilities to include testing whether its servicers comply with legal and regulatory requirements. According to the Enterprises, their long-standing business relationships with mortgage servicers, the servicers' familiarity with the Enterprises' servicing requirements, and their continual contact with servicers give them confidence that servicers are well-informed of their legal and contractual obligations under the CARES Act and implementing guidance. The Enterprises rely on representations and warranties made by each servicer that it complies with applicable law and regulations. A breach of these representations and warranties ***can lead*** an Enterprise to invoke contractual remedies. In addition, each Enterprise reported to us that it obtains an annual certification from each servicer that it complies with applicable law and regulations. **FHFA advised us that it considered this oversight acceptable.** FHFA-OIG Report March 30, 2020: FHFA Faces a Formidable Challenge: Remediating the Chronic and Pervasive Deficiencies in its Supervision Program Prior to Ending the Conservatorships of Fannie Mae and Freddie Mac.[19]

[19] FNMA conducted foreclosures through their attorney networks. Contractors hired through an app. There were no background

In Massachusetts (according to the First Circuit and the SJC) (1) FNMA is not the government; (2) FNMA is not tethered to Constitutional constraints; (3) FNMA is entitled to free houses without any demonstrated financial interest (i.e. standing to appear in Massachusetts courts); (4) no registry fees, real estate transfer regulations or consumer protection laws apply to FNMA and (5) fraud is not a problem.

5. FNMA CANNOT USE NON-JUDICIAL STATUTE FOR TAKING PRIVATE PROPERTY

The right to cross-examine and confront adverse witnesses and their evidence implies the right to marshal and adduce one's own evidence in support of a position on a contested fact issue such as (1) whether the foreclosure was void because there was no pre-deprivation hearing Sniadach v. Family Fin. Corp., 395 U.S. 337, 89 S.Ct.1820 (1969); and (2) the precise amount of the debt due respondents under the note, if plaintiff's liability was established. 441 U.S. 418, 423(1979). See Hamdi v. Rumsfeld, 542 U.S. at 534. A law student's article summarized the issues and concluded with the question:

> "Courts must consider whether homeowners due process rights are too high a price to pay for protecting the secondary mortgage market?" William E. Eye, Are Fannie Mae and Freddie Mac State Actors? State Action, Due Process,

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checks or due diligence on contractors hired and no supervision. There was also no supervision over the creation of mortgage pools, designation of custodians and document retention for the investors.

and Nonjudicial Foreclosure, 65 Emory L. J. 107 (2015).[20]

Pre-deprivation due process is not difficult to administer and should determine whether FNMA has standing to bring a foreclosure and offer a mortgagor the opportunity to present evidence, confront and cross-examine persons who supplied information upon which the foreclosure action is grounded that inter alia: (1) whether FNMA (or anyone) is the current holder of the mortgage and authorized to exercise the power of sale; (2) whether FNMA [or anyone] provided all required pre-foreclosure notices under state and federal law and the mortgage documents; (3) whether FNMA [or anyone] sent a notice of default that strictly complies with Paragraph 22 of the mortgage; (4) whether FNMA acted in good faith in their review and offers of loan modifications; and (5) **whether the borrower was in default or they were not in default.** They should have a neutral informal hearing officer make a determination based on applicable law prior to the termination of a party's property interest.

Courts have held that when the Government forecloses, it may not use a state's non-judicial option. Anderson v. Alaska Housing Finance Corp., 462 P.3rd 19 (Alaska 2020); foreclosure of Farmers Home Admin ("FmHA") mortgage subject to due process

[20]Available at: https://scholarlycommons.law.emory.edu/elj/vol65/iss1/3 Many other articles have been written: see Goldman, The Indefinite Conservatorship Of Fannie Mae And Freddie Mac Is State Action.J. Bus &Sec. L. 11,26 (2016); Summers, Fannie Mae and Freddie Mac's Subversion of State Consumer Protection Law under the Guise of HERA: Post-Foreclosure Litigation in Massachusetts, 20 U.PA.J.L. & Social Change 273 (2017)

constraints); Ricker v. United States, 417 F. Supp. 133 (D.Me. 1976), order supplemented 434 F. Supp. 1251 (D. Me. 1976).

> "It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." *Davis* v. *Michigan Dept. of Treasury*, 489 U. S. 803, 809 (1989). Where the statute at issue is one that confers authority upon an administrative agency, that inquiry must be "shaped, at least in some measure, by the nature of the question *Williamson Tobacco Corp.*, 529 U. S. 120, 159 (2000). In the ordinary case, that context has no great effect on the appropriate analysis. Nonetheless, our precedent teaches that there are "extraordinary cases" that call for a different approach—cases in which the "history and the breadth of the authority that [the agency] has asserted," and the "economic and political significance" of that assertion, provide a "reason to hesitate before concluding that Congress" meant to confer such authority. *Id.*, at 159–160. presented"—whether Congress in fact meant to confer the power the agency has asserted. *FDA* v. *Brown & Williamson Tobacco Corp.*, 529 U. S. 120, 159 (2000). *West Virginia v. EPA 597 U.S. (2022)*

6. FNMA CONFUSING THE COURTS: THESE FEDERAL AGENCIES ARE HIDING ELEPHANTS IN MOUSEHOLES;[21] STATE COURTS CONFUSED?

One of the Judiciary's most solemn duties is to ensure that acts of Congress are applied in accordance with the Constitution in the cases that come before us. To help fulfill that duty, courts have developed certain "clear-statement" rules. These rules assume that, absent a clear statement otherwise, Congress means for its laws to operate in congruence with the Constitution rather than test its bounds. In this way, these clear-statement rules help courts "act as faithful agents of the Constitution." A. Barrett, Substantive Canons and Faithful Agency, 90 B. U. L. Rev. 109, 169(2010) (Barrett). West Virginia v. EPA 142 S. Ct. 2587.

FNMA's taking properties has led to the largest toxic plume of the federal and state courts leading to the most widespread distrust of the judiciary in the country's history. Judges issuing decisions in cases where they had a financial interest in one of the parties – namely banks have

[21] Courts must look to the legislative provisions on which the agency seeks to rely "'with a view to their place in the overall statutory scheme.'" *Brown & Williamson*, 529 U. S., at 133. "[O]blique or elliptical language" will not supply a clear statement. *Ante*, at 18; see *Spector* v. *Norwegian Cruise Line Ltd.*, 545 U. S. 119, 139 (2005) (plurality opinion) (cautioning against reliance on "broad or general language"). Nor may agencies seek to hide "elephants in mouseholes," *Whitman* v. *American Trucking Assns., Inc.*, 531 U. S. 457, 468 (2001) West Virginia v. EPA 597 U.S. (2022)

> infected every level of the judiciary. All this for the legend of Henny Penny – the sky is falling! A government that takes homes at whim would not be considered democratic or a republic. Unlawful takings are done by dictators and royals.[22]

In Biden v. Nebraska 142 S.Ct. 2355 (2023) the majority held:

> Supreme Court precedent – old and new – required that Congress speak clearly before a Department Secretary can unilaterally alter large sections of the American economy. Id. at page 2380.

In West Virginia Chief Justice Roberts wrote:

> All of these regulatory assertions had a colorable textual basis. And yet, in each case, given the various circumstances, "common sense as to the manner in which Congress [would have been] likely to delegate" such power to the agency at issue, Brown & Williamson, 529 U. S., at 133, made it very unlikely that Congress had actually done so. Extraordinary grants of regulatory authority are rarely accomplished through "modest words," "vague terms," or "subtle device[s]." Whitman, 531 U. S., at 468. Nor does Congress typically use oblique or elliptical

[22] This analysis should be conducted throughout the judiciary. Judges that act like dictators and/or royals with out regard to stare decisis or U.S. Supreme Court decisions should be reprimanded and/or removed but certainly not upheld.

> language to empower an agency to make a "radical or fundamental change" to a statutory scheme. MCI Telecommunications Corp. v. American Telephone & Telegraph Co., 512 U. S. 218, 229 (1994). Agencies have only those powers given to them by Congress, and "enabling legislation" is generally not an "open book to which the agency [may] add pages and change the plot line." E. Gellhorn & P. Verkuil, Controlling Chevron-Based Delegations, 20 Cardozo L. Rev. 989, 1011 (1999). Id at 19
>
> Thus, in certain extraordinary cases, both separation of powers principles and a practical understanding of legislative intent make us "reluctant to read into ambiguous statutory text" the delegation claimed to be lurking there. Utility Air, 573 U. S., at 324. To convince us otherwise, something more than a merely plausible textual basis *for* the agency action is necessary. The agency instead must point to "clear congressional authorization" for the power it claims. Ibid.
>
> "In extraordinary cases . . .there may be reason to hesitate" before accepting a reading of a statute that would, under more "ordinary" circumstances, be upheld. 529 U. S., at 159. Or, as we put it more recently, we "typically greet" assertions of "extravagant statutory power over the national economy" with "skepticism." Utility Air, 573 U. S., at 324.

In Collins, Justice Gorsuch wrote in his concurring opinion:

> One of the Judiciary's most solemn duties is to ensure that acts of Congress are applied in accordance with the Constitution in the cases that come before us. To help fulfill that duty, courts have developed certain "clear-statement" rules. **These rules assume that, absent a clear statement otherwise, Congress means for its laws to operate in congruence with the Constitution rather than test its bounds**. In this way, these clear-statement rules help courts "act as faithful agents of the Constitution." A. Barrett, Substantive Canons and Faithful Agency, 90 B. U. L. Rev. 109, 169(2010) (Barrett).

7. Fraud Vitiates Everything – There is No Time Bar

A. "Fraud on the Court is not fraud between the parties or fraudulent documents, false statements or perjury[23]" The qualifying conduct must be shown to have actually deceived the court that entered the judgment"

FNMA argues that fraudulent documents, false statements or perjury don't make fraud on the Court. Like the U.S. Supreme Court wrote in West Virginia this appears to be a Freudian slip.

The Government attempts to downplay the magnitude of this "unprecedented power over American industry." Industrial Union Dept., AFL–CIO

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[23] FNMA submitted a brief citing United States v. Smiley, 553 F.33d 1137, (8th Cir. 2009) for the precedent that fraud does not matter.

v. American Petroleum Institute, 448 U. S. 607, 645 (1980) (plurality opinion).

But this argument does not so much limit the breadth of the Government's claimed authority as reveal it. On EPA's view of Section 111(d), Congress implicitly tasked it, and it alone, with balancing the many vital considerations of national policy implicated in deciding how Americans will get their energy. Id.

i. Laches Does Not Apply

The standard for fraud on the Court was set by this Court in Hazel-Atlas Glass 322 US 238 (1944)[24] that laches does not apply:

> [T]ampering with the administration of justice in the manner indisputably shown here 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, institutions in which fraud cannot complacently be tolerated consistently with the good order of society. Surely it cannot be that preservation of the integrity of the judicial process must always wait upon the diligence of litigants. The public welfare demands that the agencies of public justice be not so impotent that they must always be mute to helpless victims of deception and fraud.

[24] This First Circuit agreed that Hazel-Atlas Glass set the standard. Roger Edwards, LLC v. Fiddes & Son 427 F3rd 129 (2005)

> Equitable relief against fraudulent judgments is not of statutory creation. It is a judicially devised remedy fashioned to relieve hardships which, from time to time, arise from a hard and fast adherence to another court-made rule, the general rule that judgments should not be disturbed after the term of their entry has expired. Created to avert the evils of archaic rigidity, this equitable procedure has always been characterized by flexibility which enables it to meet new situations which demand equitable intervention, and to accord all the relief necessary to correct the particular injustices involved in these situations. Fraud vitiates the most solemn contracts, documents and even judgments. U.S. v. Throckmorton 98 US 61 (1878)

In Bullock v. United States 763 F2d 1115 (10th Cir. 1985) the Court explained the standard that FNMA presents:

> "Fraud on the court (other than fraud as to jurisdiction) is fraud which is directed to the judicial machinery itself.
>
> It is thus fraud where the court or a member is corrupted or influenced or influence is attempted or where the judge has not performed his judicial function – thus where the impartial functions of the court have been directly corrupted. The basic decisions of the Supreme Court are *Throckmorton*, *Hazel-Atlas*, and *Universal Oil Products*, cited above. These cases

> considered the basic issues raised in cases to set aside judgments and demonstrate with Marshall v. Holmes, 141 U.S. 589, 35 L. Ed. 870, 12 S. Ct. 62, the nature of the fraud and the proof required for relief as set out in the preceding paragraph. As to actions for relief from fraud on the court it is generally held that the doctrine of laches as such does not apply. Id.
>
> We cannot easily understand how, under the admitted facts, Hazel should have been expected to do more than it did to uncover the fraud. But even if Hazel did not exercise the highest degree of diligence Hartford's fraud cannot be condoned for that reason alone. This matter does not concern only private parties.[25]

This Court wrote in Hazel-Atlas:

> Truth needs no disguise. The article, even if true, should have stood or fallen under the only title it could honestly have been given -- that of a brief in behalf of Hartford, prepared by Hartford's agents, attorneys, and collaborators.[26]

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[25] As in Hazel, this matter does not concern only private properties – it involved the government taking of private property without due process and using the Massachusetts Courts to obtain possession.

[26] The "article" in this matter is the non-compliant notice of default letter, the original false assignment of mortgage created by FNMA lawyers, all recordings and court filings using the charade that BAC Home Loans had an interest in the original note or mortgage.
.

> We have, then, a case in which undisputed evidence filed with the Circuit Court of Appeals in a bill of review proceeding reveals such fraud on that Court as demands, under settled equitable principles, the interposition of equity to devitalize the 1932 judgment despite the expiration of the term at which that judgment was finally entered. Did the Circuit Court have the power to set aside its own 1932 judgment and to direct the District Court likewise to vacate the 1932 decree which it entered pursuant to the mandate based upon the Circuit Court's judgment?
>
> So also could the Circuit Court of Appeals have dismissed the appeal had it been aware of Hartford's corrupt activities in suppressing the truth concerning the authorship of the article. The total effect of all this fraud, practiced both on the Patent Office and the courts, calls for nothing less than a complete denial of relief to Hartford for the claimed infringement of the patent thereby procured and enforced.[27]

FNMA's use of attorney networks to conceal its' identity in court proceedings and property assignments is fraud on the court.

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[27] The same analysis applies to this matter.

8. FNMA HAD NO FINANCIAL INTEREST AT STAKE BEFORE OBTAINING OWNERSHIP AND POSSESSION OF THE PROPERTY.

Q. So if the trust holds nothing, then it holds nothing? A. Yes. **Q. Do you know the amount of consideration FNMA paid at foreclosure? A. I want to say it was in the ballpark of 297,000. Q. So what would be the actual amount FNMA paid. A. It was the consideration given. Q So what does that mean? What's the difference between paid and consideration given? So no money exchanged hands? A. That's right. I mean, we basically – you know, we took ownership of the property. Q. And in doing so, you did not receive any consideration? A. Well, the property. Q. You didn't pay any consideration? A. Right.** (APP 79, page 233) **A. The property is reverted into Fannie Mae's REO inventory. Q. But no money exchanges hands A. Correct.** Q. Because Fannie Mae buys the property for itself A. Essentially. (Deposition testimony of Terrence Evans, FNMA vice-president in discovery during the Housing Court proceeding)[28]

[28] The mortgage balance was 254,000 and the house was valued at 400,000. No accounting was ever provided or allowed. This type of state action was condemned by the unanimous court in Tyler v. Hennepin County 598 US 631 (2023) and Massachusetts has the same statute allowing state taking of private property. Petitioner has made payments of 1500.00 per month for seven years and house is now valued at 600,000 – which results in a free house and financial windfall to FNMA from the SJC decision that renders petitioner and her family homeless.

There are no exigent circumstances that justify the lack of an evidentiary hearing before a Judge in the Housing Court, particularly where this evidence was presented.

The SJC[29] in prior rulings has recognized the role of the Housing Court includes a higher burden where property rights are in the balance:

> Whenever it becomes apparent to a court in a summary process action that a plaintiff may not be the owner or lessor of the property at issue, the court is obligated to inquire into the plaintiff's standing and, if it determines that the plaintiff lacks standing, it must dismiss the action for lack of subject matter jurisdiction, regardless of whether any party raises an issue of standing. See HSBC, 464 Mass. at 199-200; Mass. R. Civ. P. 12 (h) (3). Although dismissals for lack of subject matter jurisdiction are ordinarily without prejudice because they typically do not involve an adjudication on the merits, in cases where a lack of standing is also fatal to the merits of the plaintiff's claim, as here, dismissal must be with prejudice. See Abate v. Fremont Inv. & Loan, 470 Mass. 821, 828, 836 (2015) (dismissal with prejudice appropriate in try title action where determination of standing "effectively negate[d] the merits of [plaintiff's] claim"). Where the complaint is dismissed with prejudice for lack of subject matter jurisdiction,

[29] The SJC changed "over" in 2021 due to the death of former Chief Justice Gantz and retirement of several justices. Most of the decisions issued by the Court to protect homeowners were issued by the Gantz court and are now not recognized by the new court.

> the plaintiff cannot file a new summary process complaint against the tenant unless he or she subsequently becomes the owner or lessor of the property.

Rental Property Mgt. Svs. et al. v. Hatcher, 479 Mass. 542, 547 (2018). (This decision is not enforced.) [30]

In addition to the loss of property adverse judgments are lasting marks on plaintiff's integrity, honor and character. For where a person's good name, reputation, honor or integrity is at stake because of what the government is doing to him, notice and an opportunity to be heard are essential. Wisconsin v. Constantineau, 400 U.S. 433 (1971). As a title-theory state, even though a property has a mortgage, they have not lost all rights to their property.

> **The doctrine of standing implements this requirement by insisting that a litigant "prove that he has suffered a concrete and particularized injury that is fairly traceable to the challenged conduct, and is likely to be redressed by a favorable judicial decision."** Hollingsworth v. Perry, 570 U. S. 693, 704 (2013); Lujan v. Defenders of Wildlife, 504 U. S. 555, 560–561 (1992).Two aspects of standing doctrine are relevant here. **First, standing requires an "'injury in fact'" that must be "concrete and particularized," as well as "'actual or imminent.'"** Id., at 560. It cannot be "' "conjectural or

[30] Petitioner filed a Motion for Reconsideration with the SJC including a copy of the U.S. Treasury Agreement with FNMA and citation of the Hatcher ruling which was also denied.

hypothetical.'" " Ibid. Second, a grievance that amounts to nothing more than an abstract and generalized harm to a citizen's interest in the proper application of the law does not count as an "injury in fact." And it consequently does not show standing. Hollingsworth, supra, at 706; see also Lance v. Coff-man, 549 U. S. 437, 439–441 (2007) (per curium) (describing this Court's "lengthy pedigree" in refusing to serve as a forum for generalized grievances). In other words, a plaintiff cannot establish standing by asserting an abstract "general interest common to all members of the public," id., at 440, "no matter how sincere" or "deeply committed" a plaintiff is to vindicating that general interest on behalf of the public, Hollingsworth, supra, at 706–707. Justice Powell explained the reasons for this limitation. He found it "inescapable" that to find standing based upon that kind of interest "would significantly alter the allocation of power at the national level, with a shift away from a democratic form of government." United States v. Richardson, 418 U. S. 166, 188 (1974) (concurring opinion). He added that "[w]e should be ever mindful of the contradictions that would arise if a democracy were to permit general oversight of the elected branches of government by a nonrepresentative, and in large measure insulated, judicial branch." Ibid.; see also Schlesinger v. Reservists Comm. to Stop the War, 418 U. S. 208, 222 (1974); Warth v. Seldin, 422 U. S. 490, 500 (1975). Cf. Federal Election Comm'n v. Akins, 524 U. S. 11, 21–25 (1998) (finding standing where a group of voters

> suffered concrete, though wide-spread, harm when they were prevented from accessing publicly disclosable voting-related material). Carney v. Adams, 141 S.Ct. 493 (2020).

The Land Court judgment was void rendering all that followed void ab initio. FNMA did not have standing to bring an action in the Housing Court because the void judgment happened before the purported foreclosure and FNMA had no injury or financial interest in the property.

The SJC in this case did not adhere to the SJC decision in Hatcher:

> "Where a plaintiff seeks to evict a tenant without the standing to do so...and where that conduct is not inadvertent but by design or part of a pattern or practice, the Court has the inherent authority in the exercise of its sound discretion to impose appropriate sanctions, including attorney's fees and other costs, in order to ensure the fair administration of justice in summary process actions and to deter such conduct in the future." Rental Property Management Services v. Hatcher, 479 Mass. 542 (2018)[31]

The SJC also refused to recognize SJC precedent set in U. S. Bank v. Ibanez 458 Mass 637 (2011) and Bevilacqua v. Rodriguez 460 Mass 782 (2011) for the principal that you cannot sell what you don't own.

9. FNMA'S ACTIONS VOID

Justice Gorsuch in his concurring opinion in Collins sounded the alarm on the Court's majority decision. He wrote:

> "Today the Court sounds the call to arms and declares a constitutional violation only to head for the hills as soon as its' faced for meaningful relief." He aptly reasoned "the only lesson I can devine is that the Courts opinion today is a product of its unique context – a retreat prompted by the prospect that affording a more traditional remedy here could mean unwinding or disgorging hundreds of millions of dollars that have already changed hands."
> Citing FTC v. Rerbvoid co. 343 U.S. 470, 487 (1952) he wrote "fewer things could be more perilous to liberty than some "fourth branch" [of government] that does not answer even to the one executive official who is accountable to the body politic." In footnote 1 – Justice Gorsuch writes: the FHFA director is accountable to no one. The idea that whether acts are void or not turns on a label rather than the functions an officer is assigned and who he is accountable to should not be taken seriously. **Void is void.**
>
> Citing this Court's decisions in Seilla Law and Bowsher "the officials could not be entrusted with executive power from day one and the challenged actions are void."
>
> In this world, real people are injured by actions taken without lawful authority "The Framers

> did not rest our liberties on…minutiae like some guessing game about what might have transpired in some other timeline. Free Enterprise Fund v. Public Accounting Oversight Board 561 U.S. 477, 500 (2010).

The fact that FNMA continues to argue void is not void; fraud does not matter; it is entitled to free houses, along with all the equity contained therein; and with immunity from all laws and the U.S. Constitution should move this Court to take action.

CONCLUSION

This case presents a question of extraordinary importance: whether federal and state actors can take property without due process. In Massachusetts the highest court erred as a matter of law by its refusal to acknowledge that judgments issued without due process are void judgments.

> In the world we inhabit, where individuals are burdened by unconstitutional executive action, they are entitled to relief. Justice Gorsuch concurring opinion in Collins citing Lucia v. Securities and Exchange Commission 138 S.Ct. 2044 (2018).

This Court's resolution of the question presented is urgently required and petitioner prays that this Court will grant the petition.

Respectfully submitted,

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APPENDIX

Appeals Court of Massachusetts.

FEDERAL NATIONAL MORTGAGE ASSOCIATION

v.

Debra M. BROWN.

19-P-286

Entered: February 11, 2020.

By the Court (Kinder, Henry & Ditkoff, JJ.[1])

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

The defendant, **Debra** M. **Brown** (borrower), appeals from the orders denying her motions in the Housing Court to vacate a judgment pursuant to Mass. R. Civ. P. 60 (b) (4), 365 Mass. 828 (1974), and to stay execution. Concluding that the borrower has failed to

show that the Housing Court judgment was void or to demonstrate error in the form of the execution, we affirm.

1. Motion to vacate judgment. A party may move for relief from a judgment on the ground that "the judgment is void." Mass. R. Civ. P. 60 (b) (4).[2] "[W]e review de novo the denial of a rule 60 (b) (4) motion." Dumas v. Tenacity Constr. Inc., 95 Mass. App. Ct. 111, 114 (2019).[3]

The borrower argues that a Land Court judgment issued in 2009 pursuant to the Massachusetts Soldiers' and Sailors' Civil Relief Act in favor of BAC Home Loans Servicing, L.P. (not the plaintiff here) and against the borrower is void under HSBC Bank USA, N.A. v. Matt, 464 Mass. 193 (2013). Even if we assume the dubious proposition that this judgment was void, the borrower provides no argument that the Housing Court judgment in favor of plaintiff Federal National Mortgage Association was void, except for her oft-repeated conclusory claim that "all that followed the void judgment is a nullity." To the contrary, "a servicemember proceeding is neither a part of nor necessary to the foreclosure process; it simply ensures that a foreclosure will not be rendered invalid for failure to provide the protections of the [Federal Servicemembers Civil Relief Act] to anyone so entitled, an assurance that also could be obtained at a postforeclosure action to quiet title under G. L. c. 240, § 6." Matt, supra at 197.[4]

Furthermore, none of the several courts that adjudicated the borrower's rights have relied on the Land Court judgment. The Housing Court decision in 2015, our decision in 2017, and the decision of the United States Court of Appeals for the First Circuit do not mention the Land Court at all. The decision of the

United States District Court for the District of Massachusetts mentions the Land Court solely to reject the borrower's argument that Bank of America filed a false affidavit in that action; it did not rely on the Land Court judgment in reaching its decision. Accordingly, as the Housing Court judgment was not void, the judge properly denied the borrower's motion to vacate.[5]

Execution. The borrower's challenge to the execution's inclusion of other occupants (specifically, her daughter) does not appear to be properly before us. The borrower did not appeal the July 27, 2018, order extending the execution to other occupants. See Mass. R. A. P. 3 (c), as appearing in 430 Mass. 1602 (1999) ("The notice of appeal shall specify the party or parties taking the appeal and shall, in civil cases, designate the judgment, decree, adjudication, order, or part thereof appealed from").[6] The borrower's motion to stay did not raise this issue.

In any event, Housing Court Administrative Regulation no. 1-17(1) (2017) permits an execution against other occupants who, as here, "are members of the defendant's immediate family (spouse, children, or other familial relation)." The borrower's conclusory statement that the regulation is unconstitutional without any argument, identification of the relevant constitutional provision, or even identification of which constitution the regulation purportedly violates does not rise to the level of appellate argument. See Butler v. Turco, 93 Mass. App. Ct. 80, 89 (2018).[7]

Orders entered August 17, 2018, affirmed.

Footnotes

1The panelists are listed in order of seniority.

2Rule 60 applies here. See Rule 11(b) of the Uniform Summary Process Rules (1980).

3Contrary to the claim of the plaintiff, the denial of a rule 60 motion is not interlocutory and may be appealed immediately. See Boston Redev. Auth. v. Charles River Park "C" Co., 402 Mass. 1004, 1005 (1988). The grant of a rule 60 motion, by contrast, generally is interlocutory. See McDonnell v. McDonnell, 39 Mass. App. Ct. 932, 933 (1995).

4The borrower concedes that she was not a servicemember.

5We reject the borrower's claim that the recording of the Land Court judgment in the registry of deeds constituted a binding admission that any future summary process proceedings would be void if that judgment was void. "[T]here is nothing magical in the act of recording an instrument with the registry that vests an otherwise meaningless document with legal effect." Bevilacqua v. Rodriguez, 460 Mass. 762, 771 (2011).

6We cite to the Massachusetts Rules of Appellate Procedure in effect during the relevant time period. The rules were wholly revised, effective March 1, 2019. See Reporter's Notes to Rule 1, Mass. Ann. Laws Court Rules, Rules of Appellate Procedure, at 446 (LexisNexis 2019). The substantive requirements of rule 3 (c), at issue in this case, are unchanged. See Mass. R. A. P. 3 (c) (1), as amended, 481 Mass. 1604 (2019).

7The borrower's request for attorney's fees is, of course, denied.

Judgment of Summary Process For Plaintiff		**Docket Number 12H77SP003422**	**Commonwealth of Massachusetts Housing Court Department**
	RE: Federal National Mortgage Association vs. Debra M Brown Aka Debra M. Bauhaus et al		
	Plaintiff(s) who are parties to this Judgment: Federal National Mortgage Association		Northeast Housing Court Fenton Judicial Center 2 Appleton Street Lawrence, MA 01840 (978)689-7833
	Defendant(s) who are parties to this Judgment: Debra M Brown Aka Debra M. Bauhaus Robert T Brown		Premises Address: 99 Homestead Circle South Hamilton, MA 01982

After coming before the court, the issues having been duly tried or heard, and a finding or verdict having been duly rendered, IT IS ORDERED AND ADJUDGED by the court (Kerman, J.) that the Plaintiff(s) named above recover of the Defendant(s) named above Judgment in summary process for possession of the premises listed above and money

damages as follows:

Date of Breach, Demand or Complaint	09/10/2012
Date Judgment Entered	10/07/2015
Pre Judgment Interest as provided by law from 09/10/2012 to	$.00
Damages	$0.00
Double or Treble Damages Awarded by Court	$
Filing Fee & Surcharge	$0.00
Other Costs Awarded by Court	$0.00
Other Costs	$0.00
Court Ordered Attorney Fees	$
Judgment Total Payable to Plaintiff(s)	$0.00

Further orders of the court:
Execution is stayed 60 days

Entered and notice sent on October 7, 2015.

_____
Susan M Trippi
Clerk - Magistrate

COMMONWEALTH OF MASSACHUSETTS

NORTHEAST HOUSING COURT

FEDERAL NATIONAL MORTGAGE ASSN

Plaintiff No. 12-SP-3422

- v.-

DEBRA M. BROWN

Defendant

RULINGS AND ORDER

In this post-foreclosure summary process case, the plaintiff Federal National Mortgage Association moves for summary judgment [Doc.#55, 62, 63, 64, 67, 68] on its claim for possession of the subject premises and on the merits of the defendant's affirmative defenses [Doc.#5]. The defendant cross moves to dismiss or for summary judgment [Doc.#57, 61, 65, 66]. After hearing, and after considering the summary judgment record, I deny the motion by the defendant and I allow the plaintiff's motion.

The defendant in this case filed ort May 27, 2010, an affirmative suit no. ES-CV-2010-01136-B in the Essex County Superior Court, to determine unlawful and stop enforcement of the foreclosure sale that was conducted on May 10, 2010. That case was removed on the basis of diversity jurisdiction by the Bank of

America Corporation and the Federal National-Mortgage-Association on June 25, 2010, as no. 10-CV-11085-GAO to the Federal District Court, which on March 31, 2011, and April 4, 2011, dismissed the suit, on the merits, under FRCvP Rule 12(b)(6). On appeal no. 11-1363 the First Circuit Court of Appeals affirmed the judgment of dismissal on May 7, 2012, and on petition no. 12-178 the United States Supreme Court denied certiorari on October 9, 2012 [Doc.#64].

The prior adjudication has res adjudicata effect and now bars the defendant's claims in this case that the foreclosure sale that was conducted (more than five years ago) on May 10, 2010, was unlawful. See my rulings in U. S. National Association v. McDermott. N.E.Hsg.Ct. No. 12-SP-2006 (March 12, 2013), aff'd 87 Mass.App. 1103, 24 N.E.3d 1061 (2015) (R.l:28 decision); FNMA v. Nkwah, N.E.Hsg.Ct. No. 12-SP-1488 (June 20, 2013); HSBC v. Pailes, N.E.Hsg.Ct. No. 11-SP-0361 (September 16, 2013); JP Morgan v. Mancia, N.E.Hsg.Ct. No. 13-SP-2655 (December 11, 2013).

In the Interest of completeness, I state my view that there is no merit to the defendant's claim that MERS lacked standing to foreclose. See my rulings in FNMA v. McArdle, N.E.Hsg.Ct No. 14- SP-1199 (March 25, 2015). See, Bank of New York v. Wain, 85 Mass.App. 498, 502-504, 11 N.E.3d 633, 637-639 (2014); Shea v. FNMA, 87 Mass.App. 901, 31 N.E.3d 1122 (2015) (rescript).

I also state my view that there is no merit to the claim that there was no default. The record shows that on August 18, 2008, when the Notice of Intention to Foreclose was sent the defendant was at least one, probably two months' payments behind, and that her last payment was credited to her account on August 18, 2008, such that when the foreclosure sale occurred

(almost twenty-one months later) on May 10, 2010, there was a considerable sum ($16,475.29 as of April 16, 2010) owed [Doc.#57 Exh.B, C, D; Doc.#62 Exh.A; Doc.#63 Exh.E].

There is merit to the claim that the pre-foreclosure Notice of Intention to Foreclose by Countrywide Home Loans dated August 18, 2008, upon which the plaintiff relies [Doc.#55 Exh.D; Doc.#57 Exh.E; Doc.#63 Exh.D] failed to comply with the requirements of the statute, Gen.L. c.244 §35A, and with the terms of the mortgage, §22 [Doc.#55 Exh.B]. See, Pinti v. Emigrant Mortgage Co., Inc., 472 Mass. 226, 33 N.E.3d 1213 (2015) . See my rulings and order in FNMA v. Vasauez. N.E.Hsg.Ct No. 12-SP-2167 (October 6, 2015).

However, under the ruling in U.S. Bank v. Schumacher, 467 Mass. 421, 5 N.E.3d 882 (2014), the failure to comply with the statute does not affect the validity of the foreclosure, and under the law of res adjudicata, the claim of failure to comply with the mortgage cannot now be raised.

ORDER

The motion by the plaintiff for summary judgment [Doc.#55, 62, 63, 64, 67, 68] is allowed and the cross motion by the defendant [Doc.#57, 61, 65, 66] is denied. Enter judgment for the plaintiff for dismissal on the merits of the defendant's affirmative defenses and for possession of the subject premises. The issuance of execution is stayed 60 days.

_____

David D. Kerman

Associate Justice

October 6, 2015

COMMONWEALTH OF MASSACHUSETTS
LAND COURT
DEPARTMENT OF THE TRIAL COURT

Suffolk
_____ss.

Land Court Use Only

LET JUDGMENT ISSUE:

Chief Justice

COMPLAINT TO FORECLOSE MORTGAGE

PLAINTIFF:
Name
BAC Home Loans Servicing, L.P.

City or Town of Residence
Piano, TX

DEFENDANT:
Name
Debra M. Brown

City or Town of Residence Interest
South Hamilton, MA Owner

1. Your Plaintiff is the assignee and holder of a mortgage with the statutory power of sale given by Robert T. Brown, Jr. and Debra M. Bauhaus, a/k/a Debra M. Brown to Mortgage Electronic Registration Systems, Inc. dated May 16, 2005 recorded at the Essex County (Southern District) Registry of Deeds at Book 24316. Page 21 covering* 99 Homestead Circle.

South Hamilton. (street and number) (and city and town) (Unit No, and Condo. Name if a Condominium)
and more particularly described in said mortgage.
LAND COURT USE ONLY

JUDGMENT

Under the provisions of the Servicemembers Civil Relief Act, as amended, this cause came on to be heard and thereupon, upon consideration thereof, it appearing to the court that the record owner is not entitled to the benefits of said Act, it is

ORDERED and ADJUDGED that the plaintiff be authorized and empowered to make an entry and to sell the property covered by the mortgage as set forth in this complaint in accordance with the powers contained in said mortgage.

By the Court.
Attest:
(SEAL)

DEBORAH J. PATTERSON
RECORDER

NOTE: Wherever the singular is used herein, it shall be deemed to mean and include plural where applicable.

* A metes and bounds description of the property is not necessary

MASSACHUSETTS FORECLOSURE DEED BY CORPORATION

Bank of America, NA s/b/m BAC Home Loans Servicing, L.P.

a national association having its usual place of business at PO Box 9000, 475 Crosspoint Parkway, Getzville, NY 14068

the current holder by assignment of a mortgage

from Robert T. Brown Jr. and Debra M. Bauhaus a/k/a Debra M. Brown

to Mortgage Electronic Registration Systems, Inc.

dated May 16, 2005 and recorded with the Essex County (Southern District) Registry of Deeds at Book 24316, Page 21, by the power conferred by said mortgage and every other power for TWO HUNDRED NINETY-SEVEN THOUSAND SEVEN HUNDRED SEVENTY-ONE AND 46/100 ($297,771.46) DOLLARS paid, grants to Fannie Mae a/k/a Federal National Mortgage Association, organized and existing under the laws of the United States of America P.O. Box 650043, Dallas, TX 75265-0043, the premises conveyed by said mortgage.

The grantee is exempt from paying the Massachusetts state excise stamp tax by virtue of 12 United States Code §1452(e), §1723a, or §1825.

WITNESS the execution and the seal of said limited partnership this 19 day of September 2011.

Bank of America, NA s/b/m BAC
Home Loans Servicing, L.P.
By Jill Wosnak, Vice President

State of California

Ventura County, ss. 19 Sept. 2011

On this 19 day of September, 2011, before me, the undersigned notary public, personally appeared Jill Wosnak, proved to me through satisfactory evidence of identification, which were A Driver License (form of identification), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (~~he~~) (she) signed it voluntarily for its stated purpose.

Capacity: (as Vice President
of Bank of America, NA s/b/m BAC Home Loans Servicing, L.P.)

_____.(Affix Seal)
Notary Signature
My commission expires: Dec 10 2014

CHAPTER 183 SEC. 6 AS AMENDED BY CHAPTER 497 OF 1969

Every deed presented for record shall contain or have endorsed upon it the full name, residence and post office address of the grantee and a recital of the amount of the full consideration thereof in dollars or the nature of the other consideration therefor, if not delivered for a specific monetary sum. The full consideration shall mean the total price for the conveyance without

deduction for any liens or encumbrances assumed by the grantee or remaining thereon. All such endorsements and recitals shall be recorded as part of the deed. Failure to comply with this section shall not affect the validity of any deed. No register of deeds shall accept a deed for recording unless it is in compliance with the requirements of this section.

ASSIGNMENT OF BID

California
Ventura, ss.

For good and valuable consideration, I, Wosnak, Vice President, Bank of America, NA s/b/m BAC Home Loans Servicing, L.P., hereby assign Bank of America, NA s/b/m BAC Home Loans Servicing, L.P.'s bid and all of its right, title and interest in and to and under a Memorandum of Sale of Real Properly by Auctioneer, dated May 10, 2010 in connection with premises situated at 99 Homestead Circle, South Hamilton (Hamilton), MA 01982 which is the subject of a mortgage given by Robert T. Brown Jr. and Debra M. Bauhaus a/k/a Debra M. Brown to Mortgage Electronic Registration Systems, Inc. dated May 16, 2005 and recorded with Essex County (Southern District) Registry of Deeds in Book 24316, Page 21 to:

Fannie Mae a/k/a Federal National Mortgage Association,
organized and existing under the laws of the United States of America
P.O. Box 650043, Dallas, TX 75265-0043

This Assignment is made without recourse, and subject to all terms and conditions contained in the said Memorandum of Sale, and Additional Terms, and Notices of Mortgagee's Sale of Real Estate.

Bank of America, NA s/b/m BAC Home Loans Servicing, L.P.

By Jill Wosnak, Vice President

State of California

Ventura, ss. 19 Sept. 2011

On this 19 day of September, 2011, before me, the undersigned notary public, personally appeared Jill Wosnak, proved to me through satisfactory evidence of identification, which were A Driver License (form of identification), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (~~he~~) (she) signed it voluntarily for its stated purpose.

Capacity: (as Vice President
of Bank of America, NA s/b/m BAC Home Loans Servicing, L.P.)

_____, (Affix Seal)
Notary Signature
My commission expires: Dec 10 2014

AFFIDAVIT

I, Neil W. Heiger, Esquire, of Harmon Law Offices PC as attorneys for Bank of America, NA s/b/m BAC Home Loans Servicing, L.P. make oath and say that the principal and interest obligation mentioned in the mortgage above referred to were not paid or tendered or performed when due or prior to the sale, and that BAC Home Loans Servicing, L.P. caused to be published on April 15, 2010, April 22, 2010 and April 29, 2010 in the Hamilton-Wenham Chronicle, a newspaper having a general circulation in South Hamilton, a notice of which the following is a true copy. (See attached Exhibit A)

I also complied with Chapter 244, Section 14 of the Massachusetts General Laws, as amended, by mailing the required notices certified mail, return receipt requested.

Pursuant to said notice at the time and place therein appointed BAC Home Loans Servicing, L.P. sold the mortgaged premises at public auction by Eve M. Katz, a licensed auctioneer, to BAC Home Loans Servicing, L.P. for TWO HUNDRED NINETY-SEVEN THOUSAND SEVEN HUNDRED SEVENTY-ONE AND 46/100 ($297,771.46) DOLLARS bid by BAC Home Loans Servicing, L.P., being the highest bid made therefore at said auction. Said bid was then assigned by Bank of America, NA s/b/m BAC Home Loans Servicing, L.P. to Fannie Mae a/k/a Federal National Mortgage Association, as evidenced by assignment of bid to be recorded herewith as Exhibit 'B'.

By: _____
Neil W. Heiger, Esquire

Commonwealth of Massachusetts

Middlesex, ss May 29, 2012

On this 29 day of May 2012, before me, the undersigned notary public, personally appeared Neil W. Heiger, Esq. proved to me through satisfactory evidence of identification, which were personal knowledge, to be the person whose name is signed on the preceding or attached document, who swore or affirmed to me that the contents of the document are truthful and accurate to the best of his/her knowledge and belief.

Capacity: (as _____
of _____

_____ (Affix Seal)
Notary Signature

My commission expires: _____

Supreme Judicial Court for the Commonwealth of Massachusetts

RE: Docket No. FAR-27329

FEDERAL NATIONAL MORTGAGE ASSOCIATION
vs.
DEBRA M BROWN & another

Housing Court. Northeast No. 12H77SP003422
A.C. No. 2019-P-0286

NOTICE OF DENIAL OF APPLICATION FOR FURTHER APPELLATE REVIEW

Please take note that on October 22, 2020, the application for further appellate review was denied.

Francis V. Kenneally, Clerk

Dated: October 22, 2020

To: Victor Shapiro, Esquire
Marina Plummer, Esquire
Matthew Carbone, Esquire
Thomas J. Walsh, Esquire
Thomas J. Santolucito, Esquire
Debra M. Brown, Esquire
Robert T. Brown
Grace C. Ross

492 Mass. 1001
Supreme Judicial Court of Massachusetts.

Debra BROWN

v.

FEDERAL NATIONAL MORTGAGE ASSOCIATION & another.[1]

SJC-13067
May 16, 2023

Attorneys and Law Firms

The case was submitted on briefs.

Debra Brown, Beverly, pro se.

Opinion

RESCRIPT

The petitioner, **Debra Brown**, appeals from a judgment of a single justice of this court denying her petition pursuant to G. L. c. 211, § 3. We affirm.

More than twelve years ago, the respondent, Federal National Mortgage Association (FNMA), acquired title to **Brown's** home following a foreclosure sale in May 2010. **Brown** has been contesting the foreclosure sale, and the ensuing summary process action, ever since, in both the State and Federal courts. See, e.g., **Brown** v. Federal Nat'l Mtge. Ass'n, 481 Mass. 1036, 116 N.E.3d 30 (2019); Federal Nat'l Mtge. Ass'n v. **Brown**, 97 Mass. App. Ct. 1103, 2020 WL 633798, S.C., 486 Mass. 1106, 157 N.E.3d 608 (2020), cert. denied, —— U.S. ——, 141 S. Ct. 2703, 210 L.Ed.2d 871 (2021); Federal Nat'l Mtge. Ass'n v. **Brown**, 91 Mass. App. Ct. 1122, 2017 WL 2130255, S.C., 478 Mass.

1108, 94 N.E.3d 853 (2017). In her most recent filing in the county court -- i.e., the G. L. c. 211, § 3, petition at issue here -- she argued that the government has taken her property without due process. More specifically, and among other things, she claims that her due process rights under the Fifth Amendment to the United States Constitution have been violated because, throughout the foreclosure process and the summary process action, she has never had an evidentiary hearing or an opportunity to confront and cross-examine adverse witnesses. The single justice denied the petition without a hearing.

After **Brown's** appeal was entered in this court, and after **Brown** had filed her brief, FNMA filed a motion to stay the appeal, with **Brown's** assent, which the court allowed. The basis for the stay was several then-pending appeals in the United States Court of Appeals for the First Circuit involving the issue whether FNMA is a State actor such that a nonjudicial foreclosure sale would violate a mortgagor's Fifth Amendment due process rights. See, e.g., Montilla v. Federal Nat'l Mtge. Ass'n, 999 F.3d 751, 754 (1st Cir. 2021), cert. denied, —— U.S. ——, 142 S. Ct. 1360, 212 L.Ed.2d 322 (2022). Here, as in those cases, FNMA had conducted a nonjudicial foreclosure of the mortgage, and the issue in those cases thus related directly to **Brown's** claims regarding her due process rights. The Federal court subsequently concluded that FNMA is not a State actor and therefore not subject to Fifth Amendment due process claims. See id. (affirming District Court's holding that FNMA and Federal Housing Finance Agency are not subject to Fifth Amendment claims of homeowners whose mortgages had granted lenders right to nonjudicially foreclose).

While awaiting the Federal court's resolution of the cases, FNMA filed a motion to extend the filing date for its brief, in June 2021. The court denied the *1002 motion without prejudice, indicating that FNMA could renew the motion after the First Circuit had finally resolved the cases. No further action took place in the case -- neither party sought to lift the stay, or notified this court that the Federal court actions had been finally resolved, and FNMA never sought a further extension of time to file its brief. In May 2022, this court issued a notice directing the parties **727 to file status reports and to address the issue whether the appeal should be dismissed on the basis of mootness. In response to the notice, **Brown** filed a status letter arguing that the appeal is not moot; FNMA filed a status letter arguing that it is.

12Although we conclude that the appeal is not moot, and will not dismiss it on that basis, it is clear that the single justice did not err or abuse her discretion in denying relief. **Brown** has had ample opportunity to contest the foreclosure, and the ensuing summary process action, and has, as noted supra, done so in a myriad of courts. As we have previously stated, that **Brown** is unhappy with the results in those courts "does not mean that those remedies were inadequate." **Brown**, 481 Mass. at 1037, 116 N.E.3d 30. "Our general superintendence power under G. L. c. 211, § 3, is extraordinary and to be exercised sparingly, not as a substitute for the normal appellate process or merely to provide an additional layer of appellate review after the normal process has run its course." Id., quoting Votta v. Police Dep't of Billerica, 444 Mass. 1001, 1001, 826 N.E.2d 199 (2005). Moreover, it is clear after the decision in the Montilla case that **Brown** is not

entitled to any more process, pre- or postforeclosure, than what she has already received.

Judgment affirmed.

Footnote

1Federal Housing Finance Agency

SUPREME JUDICIAL COURT
for the Commonwealth
Case Docket

DEBRA BROWN vs. FEDERAL NATIONAL MORTGAGE ASSOCIATION & another
SJC-13067

***

06/30/2023	#30	DENIAL of Motion for Reconsideration. (By the Court).

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