

No. _____

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

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NIKI-ALEXANDER SHETTY, et al.,

Petitioners,

v.

THOMAS BLOCK, et al.,

Respondents.

◆

**On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit**

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PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The Truth-in-Lending Act, 15 U.S.C. § 1635 (or “TILA”), requires that a borrower tell a lender within three years of her intent to rescind the loan. *Jesinoski v. Countrywide Home Loans*, 574 U.S. 259, 260 (2015). But TILA provides no time limit for suing a creditor to enforce a timely rescission. The lower courts have imported state statutes of limitations to bar such claims. The question this case presents is:

Can federal courts import state statutes of limitations to bar an action to enforce a timely TILA rescission when TILA itself has no such limitation period for such claims?

PARTIES TO THE PROCEEDING

NIKI-ALEXANDER SHETTY, ADINA ZAHARESCU, and the NIKI ALEXANDER FAMILY TRUST—the appellants below and the plaintiffs in the District Court.

THOMAS (“TOM”) BLOCK and S.B.S. TRUST DEED NETWORK—the appellees below and the defendants in the District Court.

STATEMENT OF RELATED CASES

Shetty et al. v. Block et al.

United States Court of Appeals for the Ninth Circuit

Case no. 22-51138

Entry of Judgment, August 22, 2023

Shetty et al. v. Block et al.

United States District Court for the Central District of California

Case no. 21-cv-7956-DMG

Entry of Judgment, January 27, 2021

Shetty et al. v. Block et al.

Superior Court of the State of California for the County of Los Angeles

Case no. 22STCV05079

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The opinion of the United States Court of Appeals for the Ninth Circuit is unpublished and is found in the Appendix to the Petition for Writ of Certiorari (or “Pet. App.”) on pages 1-3. The opinion of the United States District Court for the Central District of California is unpublished and found at Pet. App. 4-14. The Ninth Circuit order denying the petition for rehearing en banc is Pet. App. 15.



JURISDICTION

The court of appeals entered judgment on August 22, 2023. Pet. App. 1. Petitioners filed a petition for rehearing en banc, which the court of appeals denied on October 17, 2023. Pet. App. 15. Petitioners are filing this petition for a writ of certiorari ninety days later, on January 16, 2024. This Court has jurisdiction under 28 U.S.C. § 1254(1).



RELEVANT STATUTES

TILA’s rescission statute, 15 U.S.C. § 1635, provides:

§ 1635. Right of rescission as to certain transactions

(a) Disclosure of obligor’s right to rescind

Except as otherwise provided in this section, in the case of any consumer credit

transaction (including opening or increasing the credit limit for an open end credit plan) in which a security interest, including any such interest arising by operation of law, is or will be retained or acquired in any property which is used as the principal dwelling of the person to whom credit is extended, the obligor shall have the right to rescind the transaction until midnight of the third business day following the consummation of the transaction or the delivery of the information and rescission forms required under this section together with a statement containing the material disclosures required under this subchapter, whichever is later, by notifying the creditor, in accordance with regulations of the Bureau, of his intention to do so. The creditor shall clearly and conspicuously disclose, in accordance with regulations of the Bureau, to any obligor in a transaction subject to this section the rights of the obligor under this section. The creditor shall also provide, in accordance with regulations of the Bureau, appropriate forms for the obligor to exercise his right to rescind any transaction subject to this section.

(b) Return of money or property following rescission

When an obligor exercises his right to rescind under subsection (a), he is not liable for any finance or other charge, and any security interest given by the obligor, including any such interest arising by operation of law, becomes void upon such a rescission. Within 20

days after receipt of a notice of rescission, the creditor shall return to the obligor any money or property given as earnest money, downpayment, or otherwise, and shall take any action necessary or appropriate to reflect the termination of any security interest created under the transaction. If the creditor has delivered any property to the obligor, the obligor may retain possession of it. Upon the performance of the creditor's obligations under this section, the obligor shall tender the property to the creditor, except that if return of the property in kind would be impracticable or inequitable, the obligor shall tender its reasonable value. Tender shall be made at the location of the property or at the residence of the obligor, at the option of the obligor. If the creditor does not take possession of the property within 20 days after tender by the obligor, ownership of the property vests in the obligor without obligation on his part to pay for it. The procedures prescribed by this subsection shall apply except when otherwise ordered by a court.

* * * *

(f) Time limit for exercise of right

An obligor's right of rescission shall expire three years after the date of consummation of the transaction or upon the sale of the property, whichever occurs first, notwithstanding the fact that the information and forms required under this section or any other disclosures required under this part have not been delivered to the obligor, except that if (1)

any agency empowered to enforce the provisions of this subchapter institutes a proceeding to enforce the provisions of this section within three years after the date of consummation of the transaction, (2) such agency finds a violation of this section, and (3) the obligor's right to rescind is based in whole or in part on any matter involved in such proceeding, then the obligor's right of rescission shall expire three years after the date of consummation of the transaction or upon the earlier sale of the property, or upon the expiration of one year following the conclusion of the proceeding, or any judicial review or period for judicial review thereof, whichever is later.

(g) Additional relief

In any action in which it is determined that a creditor has violated this section, in addition to rescission the court may award relief under section 1640 of this title for violations of this subchapter not relating to the right to rescind.

(h) Limitation on rescission

An obligor shall have no rescission rights arising solely from the form of written notice used by the creditor to inform the obligor of the rights of the obligor under this section, if the creditor provided the obligor the appropriate form of written notice published and adopted by the Bureau, or a comparable written notice of the rights of the obligor, that was properly completed by the creditor, and

otherwise complied with all other requirements of this section regarding notice.



INTRODUCTION

This case calls on the Court to interpret the Truth-in-Lending Act or, rather, rules not in the statute. TILA allows borrowers three years to give notice of their rescission of loans. It provides no limitation period for actions borrowers file to enforce the rescission.

Even so, courts have tried to “fill the gap” by borrowing state statutes of limitations. This practice goes against a cardinal rule of statutory construction – courts should not read into statutes language that is just not there. Congress alone legislates. Courts must limit themselves to construing the language Congress enacted. This petition allows this Court to stress that constraint again and curb the practice of judges trying to “fix” statutes.



STATEMENT OF THE CASE

I. The Complaint

This petition arises from a motion to dismiss petitioners’ complaint. The allegations of that complaint are crucial.

Niki-Alexander Shetty (“Shetty”) and the other plaintiffs filed the complaint on July 19, 2021. Pet. App. 4. It stated a claim to enforce a rescission under the

Truth in Lending Act (TILA) *Ibid.* It also asserted claims under California law. *Ibid.* Thomas Block was the principal named defendant. Pet. App. 1-2.

The complaint alleged that Adina Zaharescu, Shetty's wife, took out a loan in December 2005. Pet. App. 6. The loan was used to build a home on a lot she owned. *Ibid.* The purported lender was New Haven Financial, Inc. ("New Haven"). *Ibid.*

On December 29, 2005, New Haven sent Zaharescu loan documents, which she signed. Pet. App. 6. She received blank documents back. *Ibid.* New Haven then told her that the loan would not be funded in time. Zaharescu obtained another loan. *Ibid.* She could still use the loan funds for other purposes, such as paying the loan. *Ibid.*

In February 2008, Zaharescu could not make the loan payments because she was healing from childbirth complications. Pet. App. 6-7. Her husband also could not return home due to immigration issues. *Ibid.*

In July 2008, New Haven gave Zaharescu a copy of its loan file. Pet. App. 7. She learned for the first time that the lender's name, payment start dates, and the address of the property securing the loan had been changed. *Ibid.* She sent a TILA rescission letter to New Haven on July 7, 2008. *Ibid.* That rescission was less than three years after the consummation of the loan and timely under TILA. *Jesinoski v. Countrywide Home Loans, Inc.*, 574 U.S. 259, 792-793 (2015) ("*Jesinoski*").

The loan documents indicated that the Emrek Family Trust issued the loan and was the beneficiary under the deed of trust. Pet. App. 8. On July 7, 2011, that trust sold the loan to Thomas Block, a debt buyer. *Ibid.* Block's first action to enforce the loan was a notice of default, which he had issued on April 26, 2021. Pet. App. 8-9.

The complaint sought a judgment to enforce the TILA rescission and damages under TILA and California law.

II. The motion to dismiss.

Block moved to dismiss the complaint for failure to state a claim. Pet. App. 11-12. He argued that a four-year statute of limitations governed the TILA claim, and this statute ran as soon as New Haven denied Zaharescu's TILA rescission. *Ibid.* The District Court agreed with Block and dismissed the complaint.

The District Court found it was bound by the Ninth Circuit's decision in *Hoang v. Bank of Am.*, 910 F.3d 1096 (9th Cir. 2018) ("*Hoang*"). There, the Ninth Circuit agreed that TILA had no statute of limitations for actions to enforce a rescission. *Id.*, at 1098: "TILA does not include a statute of limitations outlining when an action to enforce such a rescission must be brought." But the Ninth Circuit then decided that without "a statute of limitations in TILA, courts must borrow the most analogous state law statute of limitations and apply that limitation period to TILA rescission enforcement claims." *Ibid.*

The District Court concluded a four-year statute of limitations for breach of contract applied to Shetty's TILA rescission claim. Pet. App. 11-12. It found that under the California four-year statute, the limitations period began when the creditor did not respond to the TILA rescission notice. Pet. App. 12.

The court granted the motion to dismiss because "the statute of limitations for enforcement of rescission began to run at the latest 20 days after Zaharescu recorded her notice of rescission on September 25, 2008." Pet. App. 1. Since Shetty and the other plaintiffs sued in 2021, the four-year statute of limitations had run. *Ibid.*

III. The Ninth Circuit affirms the dismissal.

The Ninth Circuit affirmed the dismissal in a memorandum opinion. Pet. App. 2-3. It agreed that California's four-year statute of limitations for rescission of contracts applied. Pet. App. 2. It also agreed this statute began to run in 2008 when New Haven did not act to rescind the loan and cancel the deed of trust. Pet. App. 3. It did not address the petitioners' argument that *Hoang* violated the rules of statutory construction and should be overruled. *Ibid.*

Petitioners moved for rehearing en banc, contending that *Hoang* should be overruled because it imported a statute of limitations into TILA even though Congress had chosen not to include one. The Ninth

Circuit denied rehearing en banc on October 17, 2023.
Pet. App. 15.

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**REASONS WHY THE
PETITION SHOULD BE GRANTED**

I. *Hoang* disregards two rules of statutory construction.

This Court’s interpretation of statutes follows two principles. First, judges must apply clear statutory language as it is written. “Where the statute’s language is plain, the sole function of the courts is . . . to enforce it according to its terms.” *Lamie v. United States Tr.*, 540 U.S. 526, 534 (2004). Second, courts cannot read into statutes exceptions that are just not there. *NLRB v. S.W. Gen., Inc.*, 137 S.Ct. 929, 939 (2017).

Courts have no business rewriting statutes. “The Supreme Court and this Court have warned on countless occasions against judges ‘improving’ plain statutory language in order to better carry out what they perceive to be the legislative purpose.” *In re Bracewell*, 454 F.3d 1234, 1240 (11th Cir. 2006).

Hoang rewrote TILA. It inserted a judge-made statute of limitations when Congress made a different choice. Congress decided no such statute of limitations should apply to TILA rescission actions because TILA is silent on the issue. The Ninth Circuit refused to honor Congress’ choice. *Hoang* should not control because it disregarded Congress’ decision. It should be overruled.

II. Other factors dictate this Court should grant certiorari to disapprove *Hoang*.

Congress showed in TILA that it knew how to insert time limits when it wanted. For example, 15 U.S.C. § 1635(a) gives a borrower three days to rescind a loan. Section 1635(f) grants a borrower three years from the loan's consummation to tell the creditor she has rescinded. Section 1635(b) mandates that a creditor has twenty days from notice of the borrower's rescission to return any money it obtained from the borrower and release any lien on the borrower's property.

Congress imposed at least three specific time limits in TILA. It knew what it was doing when it did not create a limitations period for actions to enforce a TILA rescission. Its choice was clear. Courts cannot override that choice by importing state statutes of limitations.

This Court also has declined to use state statutes of limitation when they would interfere with federal legislation. *City of Oneida v. Oneida Indian Nation of N.Y. State*, 470 U.S. 226, 240 (1985). Here, petitioners gave timely notice to their creditor that they were rescinding under TILA. Under *Jesinoski*, that rescission voided the loan and the deed of trust on petitioners' home. 574 U.S. at 263-264. Because the loan no longer existed, it could not be enforced. *Ibid*.

Yet, if a California statute of limitations is applied, it will not matter. The creditor can still collect on the loan and even foreclose because petitioners cannot enforce their rescission rights. This result undermines TILA rescission rights and contradicts the statute's

goal. A federal court should not import a California statute of limitations to deprive petitioners of their statutory rights.

Finally, TILA should be interpreted uniformly, no matter where a borrower may sue. Under *Hoang*, however, federal courts do not apply a single statute of limitations. Instead, they may follow multiple statutes, depending on the states involved. A TILA rescission may be timely in California but not in Washington. Again, borrowing a state statute of limitations weakens a federal statute. It should not be allowed.



CONCLUSION

For these reasons, petitioners respectfully ask the Court to grant their petition for a writ of certiorari.

Respectfully submitted,

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