No. 24-832 2/1/2025

In the Supreme Court of the United States

RENEE ANNA NAJDA, ET AL., PETITIONERS

v.

CITIBANK, N.A., NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS SEPARATE TRUSTEE FOR PMT NPL FINANCING 2015-1, ET AL., RESPONDENTS.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Innovation led to investment advisors controlling unincorporated entities that collectively own trillions in real estate assets. Controversies over those assets are litigated nationwide. Investment advisors name trustees of unincorporated entities as plaintiffs—without disclosing the advisors' control and trustees' passivity—to increase the odds of complete diversity. In parallel, divergent interpretations of *Navarro Sav. Ass'n* v. *Lee*, 446 U.S. 458 (1980) emerged. Several circuit courts held that *Navarro* is a complex jurisdictional test: a trustee must have real and substantial control over an unincorporated entity for the trustee's citizenship to control for diversity. A chasm apart, the First Circuit affirmed a simple test: when a trustee of an unincorporated entity files a lawsuit, only her citizenship matters for diversity purposes.

If an investment advisor controls an unincorporated entity and through the entity's trustee invokes diversity jurisdiction, pursuant to 28 U.S.C. § 1332(a), does the trustee's or unincorporated entity's citizenship control?

Is *Navarro* a complex or simple jurisdictional test?

PARTIES TO THE PROCEEDING

Petitioners (appellants in the court of appeals) are Renee Najda and Andrew Najda.

Respondents (appellees in the court of appeals) are Citibank, N.A., not in its individual capacity but solely as separate trustee for PMT NPL Financing 2015-1; CitiMortgage, Inc.; PennyMac, Corp.; Specialized Loan Servicing, LLC; and PennyMac Loan Services, LLC.

RELATED PROCEEDINGS

United States District Court (D. Mass.):

Citibank, N.A. v. *Najda*, No. 14-cv-13593 (March 30, 2018)

United States Court of Appeals (1st Cir.):

Citibank, N.A. v. *Najda*, Nos. 19-1434, 20-1057, 23-1284, 23-1758 (July 12, 2024)

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Renee Najda and Andrew Najda (together, "Najdas" or "Petitioners") respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the First Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 3a-6a) is not reported. The order of the court of appeals remanding the matter the second time (Pet. App. 11a-13a) and the first time (Pet. App. 17a-18a) regarding diversity subject matter jurisdiction are not reported. The district court's second opinion on remand (Pet. App. 7a-10a) and first opinion on remand regarding diversity subject matter jurisdiction (Pet. App. 14a-16a) are not reported.

JURISDICTION

The judgment of the court of appeals was entered on July 12, 2024. A petition for panel rehearing or rehearing en banc was denied on September 4, 2024 (Pet. App. 1a-2a). On October 15, 2024, Justice Jackson extended the time within which to file a petition for a writ of certiorari to and including February 1, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves Article III, Section 2 of the United States Constitution, which provides:

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

This case also involves 28 U.S.C. § 1332, which provides:

> (a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between –
>
> (1) citizens of different States;

> (2) citizens of a State and citizens or subjects of a foreign state;
> (3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and
> (4) a foreign state, defined in section 1603(a) of this title, as plaintiff and citizens of a State or of different States.

STATEMENT

This case concerns the financial industry's nationwide manipulation of the jurisdictional test, under *Navarro Sav. Ass'n* v. *Lee*, 446 U.S. 458 (1980), for determining whether a trustee of an unincorporated entity is a real party when evaluating diversity jurisdiction, pursuant to 28 U.S.C. § 1332(a)(1). Four decades after *Navarro*, investment advisors control unincorporated entities and file diversity actions, naming trustees as plaintiffs—without disclosing the advisors' control and trustees' passivity—to gerrymander jurisdiction by manufacturing complete diversity and, therefore, artificially increase access to federal courts.

A. Nationwide shift from trustees to investment advisors controlling unincorporated entities

When *Navarro* was decided in 1980, trustees commonly managed business trusts containing real estate assets. Indeed, *Navarro* specifically addressed the jurisdictional analysis of "eight individual trustees of ..., a business trust organized under Massachusetts law." *Navarro*, 446 U.S. at 459. After *Navarro* was decided, Congress changed the tax treatment of certain unincorporated entities. Under subchapter M of chapter 1 of the Internal Revenue Code of 1986, an entity that qualifies as a real estate investment trust ("REIT") is entitled to preferential tax treatment. Post *Navarro*, state governments formalized new unincorporated entities to facilitate investments. In 1988, Delaware formalized its

common law around trusts and became the first state to create a judicially-secure unincorporated entity: the Delaware statutory trust. Since Congress changed the tax treatment of certain entities and states introduced new innovative entities, unincorporated entities became popular vehicles for passive investment. REITs alone "collectively own more than $4 trillion in gross assets across the U.S."[1] And 50.35% of American households are invested in REITs.[2]

Four decades after *Navarro*, investment advisors often control unincorporated entities, e.g. REITs and statutory trusts. An advisor, managing an entity's assets, can be external, an SEC-registered investment adviser, or an internal director employed by an entity. Trustees are passive vestiges of a bygone era. The shift of control from trustees to advisors is reflected in trust agreements that specify an advisor (or internal director) controls an entity's assets and is paid a management fee.

The financial industry's shift to investment advisors managing unincorporated entities has resulted in trustees of entities—a common litigant nationwide[3]—no longer being considered real parties under the *Navarro* test. Despite this, the industry still names trustees, without revealing their passive role, to artificially inflate access to federal courts for diversity actions that would otherwise be in state court. Leveraging a trustee's often single state citizenship to artificially boost the probability of complete diversity.[4] "Through its choice of

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[1] *See* National Association of Real Estate Investment Trusts ("Nareit"), https://www.reit.com/what-reit.

[2] *See* Nareit, https://www.reitsacrossamerica.com/united-states (citing Nareit Research Note, 170 Million Americans Own REIT Stocks, January 2024).

[3] Since January 2020, U.S. Bank, Deutsche Bank, and Wilmington Trust were a trustee and party in over 1300 diversity cases.

[4] Trustees are often national banks that are citizens of the state

[trustee], [an investment advisor] could manipulate federal-court jurisdiction, for example, opening the federal courts' doors in a State where [the unincorporated entity resides] ... by [selecting a trustee from] elsewhere." *Hertz Corp.* v. *Friend*, 559 U.S. 77, 85-86 (2010). Acknowledging a trustee's passive role would mean, under *Navarro*, that the citizenship of an unincorporated entity, often spanning many states, controls for evaluating whether a court has diversity jurisdiction. This would significantly and appropriately limit federal court access for unincorporated entities owning trillions in assets.

B. Jurisdictional challenges, unaddressed by the district court, elicit two remands

This case exemplifies the financial industry's seismic shift from trustees to investment advisors controlling unincorporated entities that own assets. On June 6, 2016, Petitioners filed a motion to dismiss for lack of diversity jurisdiction, followed by a motion for reconsideration, that argued the original plaintiff, trustee Citibank, N.A. ("Citibank"), did not control the unincorporated entity SWDNSI Trust Series 2010-3 ("S-Trust"), a Delaware statutory trust. Doc. Nos. 150, 158. Rather, investment advisor PNMAC Capital Management, LLC ("PennyMac") controlled S-Trust. Citibank's role was "simply for purposes of collection." *Bullard* v. *Cisco*, 290 U.S. 179, 189 (1933). Since Citibank was a passive trustee, nondiverse S-Trust's citizenship controlled.[5] Not the trustee's. Petitioners and S-Trust shared Massachusetts citizenship. There was neither minimal nor complete diversity. Therefore, the district court lacked diversity subject matter jurisdiction "at the time of the action

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specified in their articles of association as their main office. *Wachovia Bank, Nat'l Ass'n* v. *Schmidt*, 546 U.S. 303, 318 (2006).

[5] *Americold Realty Tr.* v. *Conagra Foods, Inc.*, 577 U.S. 378, 383 (2016) ("unincorporated [entity] ... possesses the citizenship of all its members.").

brought." *Grupo Dataflux* v. *Atlas Global Group, L.P.*, 541 U.S. 567, 570 (2004); Fed. R. Civ. P. 12(h)(3).

The district court, in turn, denied the jurisdictional challenges without issuing conclusions of law or findings of fact addressing the subject matter defect. Doc. Nos. 157, 165. Petitioners followed-up with additional jurisdictional challenges.[6] The district court did not break its silence. The district court denied every jurisdictional challenge without issuing conclusions of law or findings of fact addressing the subject matter defect.

Petitioners appealed and, before the First Circuit, filed a motion to dismiss that argued the court lacked diversity jurisdiction because Citibank was a passive trustee of non-diverse S-Trust. The First Circuit denied the motion to dismiss "without prejudice to reconsideration by the panel that decides the merits of the appeal" rather than immediately order the parties to address the subject matter defect or promptly remand on the issue of jurisdiction. Pet. App. 20a. Merits briefing ensued with Petitioners' reply brief filed on January 6, 2021.

Twenty-three months after briefing concluded, the First Circuit remanded "to the district court for further fact finding and a determination whether there was minimal or complete diversity between the parties at the time the action was commenced." Pet. App. 18a. A weak jurisdictional challenge would not get a two-year review.

On remand, the district court held the "trustee['s] ... citizenship is all that matters for diversity" by quoting dictum from *Americold Realty Tr.* v. *Conagra Foods, Inc.*, 577 U.S. 378 (2016). Pet. App. 15a (quoting *Americold*, 577 U.S. at 383). In support of the simple test, the district court cited *U.S. Bank Trust, N.A.* v. *Dedoming*, 308 F. Supp. 3d 579 (D. Mass. 2018) that misquoted *Navarro*

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[6] Doc. No. 174 at 3-5; Doc No. 182 at 4-5; Doc. No. 204, motion for clarification on jurisdiction; Doc. No. 284, motion to certify jurisdictional question for interlocutory review; Doc. No. 337; Doc. No. 375.

by cropping to wrongfully conclude a trustee's citizenship controls merely because it is the plaintiff.[7] Pet. App. 15a. Applying the simple test, the district court made the conclusory finding that "it was clear from evidence adduced at the trial that Citibank had the customary powers to hold, manage, and dispose of assets for the benefit of others" "illuminated by no subsidiary findings or reasoning on all the relevant facts." Pet. App. 16a; *Atl. Thermoplastics Co.* v. *Faytex Corp.*, 5 F.3d 1477, 1479 (Fed. Cir. 1993). The district court failed to acknowledge evidence that investment advisor PennyMac controlled S-Trust or explain how it weighed that evidence.

"On review of the [district court's] Opinion" the First Circuit "remand[ed] [a second time] for the district court to identify and detail the 'evidence adduced at the trial that Citibank had the customary powers to hold, manage, and dispose of assets for the benefit of others,' referred to in the Opinion." Pet. App. 12a-13a. Notably, the First Circuit did not vacate or correct the district court's conclusion of law, based on dictum and cropping *Navarro*, that "when a trustee files a lawsuit or is sued in her own name, her citizenship is all that matters for diversity purposes." Pet. App. 15a (quoting *Americold*, 577 U.S. at 383). On remand the second time, the district court again misapprehended *Navarro* as holding, "the

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[7] Judge Young "distorted what the [*Navarro*] opinion[] stated by ... cropping" the five words "trustees who meet this standard" immediately preceding "sue in their own right, without regard to the citizenship of the trust beneficiaries." *Precision Specialty Metals, Inc.* v. *United States*, 315 F.3d 1346, 1357 (Fed. Cir. 2003); *Navarro*, 446 U.S. at 465-66; *Dedoming*, 308 F. Supp. 3d at 580. Not a one-off misquote. Judge Young also quoted the Tenth Circuit, "[w]hen a trustee is a party to litigation, it is the trustee's citizenship that controls for purposes of diversity jurisdiction" but cropped "as long as the trustee satisfies the real-party-in-interest test set out in *Navarro*," distorting the Tenth Circuit's opinion. *Dedoming*, 308 F. Supp. 3d at 580; *Conagra Foods, Inc.* v. *Americold Logistics, LLC*, 776 F.3d 1175, 1181 (10th Cir. 2015) aff'd 577 U.S. 378 (2016).

citizenship of the trustee(s) of a business trust determines whether diversity of citizenship exists." Pet. App. 8a. To buttress the conclusion, the district court quoted *Dedoming*, which had cropped *Navarro*. *Id.* The district court neither detailed trial evidence that Citibank had real and substantial control over S-Trust nor acknowledged evidence that PennyMac controlled S-Trust.

After two remands, the First Circuit issued the summary disposition "that tersely adopts the reasoning of [the district] court--and does so without further legal analysis [of *Navarro*] or even a full statement of the questions raised on appeal." Pet. App. 3a-6a; *Ricci* v. *Destefano*, 530 F.3d 88, 101 (2d Cir. 2008) (Cabranes, J., dissenting) rev'd 557 U.S. 557 (2009). To conclude there was diversity jurisdiction, the First Circuit overlooked investment advisor PennyMac's undisputed control[8] over unincorporated entity S-Trust and affirmed the district court's opinion, based on dictum, that *Navarro* is a simple jurisdictional test: "when a trustee files a lawsuit or is sued in her own name, her citizenship is all that matters for diversity purposes." Pet. App. 15a (quoting *Americold*, 577 U.S. at 383).

The immediate result: a stark circuit split between the First Circuit and several other circuits. The broader consequence: a boon to the financial industry. Free to continue naming trustees of unincorporated entities as plaintiffs—without revealing the investment advisors' control—to manufacture complete diversity in thousands of cases nationwide that would otherwise be in state court. In the First Circuit, additionally free to name trustees as plaintiffs—without proving the trustee has real and substantial control over the unincorporated entity—to manufacture complete diversity.

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[8] Respondents, appellees below, did not dispute that PennyMac has real and substantial control over S-Trust. Nor introduced evidence to rebut PennyMac's undisputed control of S-Trust.

REASONS FOR GRANTING THE PETITION

"Due regard for the rightful independence of state governments, which should actuate federal courts, requires that they scrupulously confine their own jurisdiction to the precise limits which [Congress'] statute has defined." *Indianapolis* v. *Chase National Bank*, 314 U.S. 63, 77 (1941). "The limits upon federal jurisdiction, whether imposed by the Constitution or by Congress, must be neither disregarded nor evaded." *Owen Equip. & Erection Co.* v. *Kroger*, 437 U.S. 365, 374 (1978). The "fundamental precept that federal courts are courts of limited jurisdiction" does not yield to the financial industry's innovation—unincorporated entities controlled by investment advisors. *Id.*

Just as this Court in *Americold* reiterated the "rule that diversity jurisdiction in a suit by or against the entity depends on the citizenship of 'all [its] members'" twenty-six years after *Carden* v. *Arkoma Assocs.*, 494 U.S. 185 (1990), this Court should restate the 20th-century *Navarro* test to address the 21st-century practice of investment advisors controlling unincorporated entities that litigate through passive trustees to inflate the odds of complete diversity. *Americold*, 577 U.S. at 381 (quoting *Carden*, 494 U.S. at 195-96).

Absent this Court's review, investment advisors that control unincorporated entities will continue to name trustees as plaintiffs of diversity actions—without disclosing the advisors' control and trustees' passivity—to gerrymander diversity jurisdiction. This nationwide practice undermines federalism, as the financial industry usurps Congress' authority to "determine[], through its grants of jurisdiction, which suits [federal courts] courts can resolve." *Royal Canin U.S.A., Inc.* v. *Wullschleger*, 220 L.Ed.2d 289, 297 (U.S. 2025). "Questions of federalism ... are some of the most important legal issues that the Supreme Court must resolve." *United States* v.

Pleau, 680 F.3d 1, 24 (1st Cir. 2012). This case squarely presents the financial industry's use of investment advisors and how it affects diversity jurisdiction under *Navarro*, which is a crucial question of federal law that warrants resolution by this Court. Additionally, review would resolve the significant circuit split between several circuit courts and the First Circuit as to whether *Navarro* is a complex or simple jurisdictional test.

A. The First Circuit's decision is wrong

The First Circuit's "perfunctory disposition [affirming the district court] rests uneasily with the weighty issues presented by this appeal" and is enormously consequential. *Ricci*, 530 F.3d at 96 (Cabranes, J., dissenting). First, the First Circuit failed to acknowledge or weigh investment advisor PennyMac's control over S-Trust—and trustee Citibank's passivity—under the *Navarro* framework, to ascertain whether Citibank or S-Trust's citizenship controlled for diversity jurisdiction. Second, the First Circuit affirmed the district court concluding that trustee Citibank merely "acting for the trust in bringing ... [the] action" means the trustee's citizenship controls. Pet. App. 8a. A simple test for determining if the trustee is the real party for the jurisdictional analysis. The First Circuit's decision squarely conflicts with the Third Circuit, Fifth Circuit, Seventh Circuit, and Eleventh Circuit that held *Navarro* is a complex test. Thirty years after *Navarro*, this Court listed *Navarro* as one of the "[c]omplex jurisdictional tests." *Hertz*, 559 U.S. at 94 (cf. *Navarro*, 446 U.S. at 464 n.13).

1. The First Circuit erased the investment advisor's control of the unincorporated entity

When a trustee of an unincorporated entity sues it must be an "active trustee[] whose control over the assets held ... is real and substantial" to "invoke the diversity jurisdiction of the federal courts on the basis of [its] citizenship, rather than that of the [unincorporated entity's]

shareholders." *Navarro*, 446 U.S. at 458, 465. Restated, if the trustee is passive, not "manag[ing] the assets" or not "control[ling] the litigation" to a "real and substantial" degree, then the trustee is not the real party for the jurisdictional analysis and the unincorporated entity's citizenship controls. *Id.* Applying the test, this Court analyzed the trust's governing instrument to determine whether the trustee or trust beneficiaries possessed real and substantial powers. *Navarro*, 446 U.S. at 464.

Petitioners applied the *Navarro* test to address the 21st-century innovation of an investment advisor that manages an unincorporated entity but designates a trustee as the plaintiff in a case pursuant to 28 U.S.C. § 1332(a)(1). Before the First Circuit and district court, Petitioners argued and introduced evidence that investment advisor PennyMac managed S-Trust's assets. 1st Cir. No. 19-1434 Record Appendix A159, Form ADV at 4 (PennyMac had "sole investment discretion for [PennyMac Mortgage Investment Trust ("PMT") and subsidiary S-Trust] ... with respect to their respective assets and ma[de] all decisions affecting each client's assets"); A173, PMT 10-K ("SWDNSI Trust Series 2010-3 [S-Trust]" is a PMT "Entity"). Not trustee Citibank. PennyMac also controlled the litigation through its "Assistant General Counsel." A53, Doc. No. 63, D. Mass. Local Rule 16.1(D)(3) Cert. at 2. Not trustee Citibank.

Respondents did not dispute that PennyMac had real and substantial control over S-Trust. They did not challenge the evidence of PennyMac's control of S-Trust. Since investment advisor PennyMac controls unincorporated entity S-Trust, rendering trustee Citibank "a purely naked trustee," the investment advisor's control of S-Trust is material to determining, under *Navarro*, whether the trustee's or unincorporated entity's citizenship controls for evaluating whether there is complete diversity. *McNutt* v. *Bland*, 43 U.S. 9, 13-14 (1844).

Presented with this, the First Circuit and "District Court failed even to acknowledge the existence of contradictory evidence ... to explain whether [they considered the Petitioners' evidence that PennyMac, not trustee Citibank, controlled S-Trust] irrelevant, or how [they] weighed and balanced the [*Navarro* test's] factors [in light of the 21st-century innovation of advisors controlling unincorporated entities]." *Sabinsa Corp.* v. *Creative Compounds, LLC*, 609 F.3d 175, 183-88 (6th Cir. 2009). Neither court addressed PennyMac's control over S-Trust that rendered Citibank a passive trustee. The First Circuit affirmed the district court (Pet. App. 7a-10a, 14a-16a) that completely excised investment advisor PennyMac from the jurisdictional analysis. Hence, the opinions were based on clearly erroneous findings. As a result, the First Circuit did not apply *Navarro* to the 21st-century practice of investment advisors controlling unincorporated entities that litigate through passive trustees to inflate the odds of complete diversity.

2. The First Circuit's outlier decision rejected the majority rule that a trustee must have real and substantial control over an unincorporated entity for the trustee's citizenship to control

Consistent with *Navarro* being a complex test, the Fifth Circuit held that a "[trustee] is the real party to the controversy (and therefore its citizenship is what matters in determining diversity jurisdiction) if its control over the [unincorporated entity's] assets is real and substantial." *Bynane* v. *Bank of N.Y. Mellon*, 866 F.3d 351, 356 (5th Cir. 2017) (citing *Navarro*, 446 U.S. at 465). To determine "the trustee ... has 'real and substantial' control," the Fifth Circuit examined "the Pooling and Service Agreement (PSA) for the trust" finding that "'all right, title, and interest in and to the Initial Mortgage Loans' were transferred to [the] trustee" and "the certificateholders have only limited rights to vote or otherwise control the operation of the trust." *Id.* at 357.

The Eleventh Circuit faced similar circumstances and reached the same conclusion as the Fifth Circuit. The Eleventh Circuit held that "'active trustees whose control over the assets held in their names is real and substantial' may 'sue in their own right.'" *CityPlace Retail, Ltd. Liab. Co.* v. *Wells Fargo Bank, N.A.*, No. 20-11748, 2021 U.S. App. LEXIS 21054, at *11 (11th Cir. July 15, 2021) (unpublished) (quoting *Carden*, 494 U.S. at 191). "By contrast, 'naked trustees who act as mere conduits for a remedy flowing to others' are not the real party to the controversy." *Id.* at *12 (quoting *Navarro*, 446 U.S. at 465). "Because this issue wasn't litigated below ... [the Eleventh Circuit] remand[ed] to the district court to make findings about whether ... [the] trustee, is the real party in interest." *Id.*

Likewise, the Third Circuit, recognizing *Navarro* is a complex jurisdictional test, held "[b]ecause the trustees who initiated the lawsuit 'possesse[d] certain customary powers to hold, manage, and dispose of' trust properties, the trustees were permitted 'to sue in their own right.'" *GBForefront, L.P.* v. *Forefront Mgmt. Grp., LLC*, 888 F.3d 29, 37 (3d Cir. 2018) (quoting *Navarro*, 446 U.S. at 464-66). Similarly, when evaluating whether "a trustee is a real party to the controversy for purposes of diversity jurisdiction" the Seventh Circuit concluded a "declaration of trust in fact vests all governance of the trust in the trustees." *Goldstick* v. *ICM Realty*, 788 F.2d 456, 458 (7th Cir. 1986).

Consistent with these circuit courts, district courts in the Second Circuit held "the 'proper' jurisdictional analysis 'begins by examining the scope of [the trustee's] authority as delineated by the Trust Agreement.' And courts uniformly dismiss cases for lack of subject matter jurisdiction when they cannot conduct that analysis." *Wilmington Sav. Fund Soc'y* v. *Okunola*, No. 18-CV-2084 (AMD) (PK), 2023 U.S. Dist. LEXIS 234905, at *7 (E.D.N.Y. Mar. 14, 2023) (alteration in original).

The Northern District of New York "dismissed for lack of subject matter jurisdiction" after the court found the "Delaware statutory trust seems precisely like the type considered by the Supreme Court in Americold, and U.S. Bank has failed to demonstrate that it is a real party to the controversy that can proceed in its own right and without reference to the citizenship of the trust's beneficiaries". *U.S. Bank Tr., N.A.* v. *Dupre*, No. 6:15-CV-0558 (LEK/TWD), 2016 U.S. Dist. LEXIS 127848, at *12 (N.D.N.Y. Sep. 20, 2016). And held in a separate case that "[w]hether the trustee possesses such [real and substantial] powers is a question that is resolved based on the underlying trust document." *U.S. Bank Nat. Ass'n* v. *Nesbitt Bellevue Prop., LLC*, 859 F. Supp. 2d 602, 606 (S.D.N.Y. 2012). Likewise, the Southern District of New York determined that the "Plaintiff ha[d] also not established citizenship of the trust, nor that the trustee was a 'real and substantial' party ... such that it's citizenship could be used to establish subject matter jurisdiction." *Wilmington Sav. Fund Soc'y, FSB* v. *Thomson*, No. 18-cv-3107 (NSR), 2019 U.S. Dist. LEXIS 106184, at *6-7 (S.D.N.Y. June 25, 2019).

The Eastern District of New York held the "Plaintiff is required to draw the Court's attention to specific documentation, i.e., the Trust Agreement or something else, which demonstrates (a) that Plaintiff's control over the trust assets is real and substantial to warrant the application of Plaintiff's ... citizenship; or (b) the citizenship of the beneficiaries of the Trust." *U.S. Bank Nat'l Ass'n* v. *Desrosiers*, No. CV 17-7338 (AKT), 2021 U.S. Dist. LEXIS 67910, at *17 (E.D.N.Y. Mar. 31, 2021). "In the end, [a trustee of an entity] cannot escape *Navarro's* requirement that its citizenship only controls if it is a real and substantial party in interest (as determined from the Trust Agreement). *U.S. Bank Nat'l Ass'n* v. *Tapler*, No. 19-cv-1101-ENV-ST, 2024 U.S. Dist. LEXIS 232981, at *33 (E.D.N.Y. Dec. 26, 2024).

A common thread is that courts review trust documents to measure if a trustee's powers are real and substantial—not simply evaluate if a trustee was the named party or holds assets—because this Court in *Navarro* reviewed trust documents. *Navarro*, 446 U.S. at 459 ("declaration of trust gives the respondents exclusive authority"). "*Navarro* certainly did not say that a trustee is the real party in interest [for diversity jurisdiction] as long as it holds title to trust assets. If that were what [this] Court had intended, it would have been wholly unnecessary for it to examine ... the trustee's powers to invest assets ... [and] control litigation strategy." *U.S. Bank Nat'l Ass'n* v. *Coop. Dist. of Spanish Fort*, No. 11-0401-WS-M, 2011 U.S. Dist. LEXIS 112026, at *14 (S.D. Ala. Sep. 29, 2011).

Only the First Circuit has concluded that *Navarro* is a simple test. The First Circuit affirmed the district court's opinion that "when a trustee files a lawsuit or is sued in her own name, her citizenship is all that matters for diversity purposes." Pet. App. 15a (quoting *Americold*, 577 U.S. at 383). "But [], the [quote] is dictum, and does not control the outcome here. [*Americold*] was [about the citizenship of an unincorporated entity], not [about whether a trustee's or unincorporated entity's citizenship controlled in a case filed by a trustee of an unincorporated entity]." *Royal Canin*, 220 L.Ed.2d at 307. "[This] Court did not undo *Navarro's* test ... in that single-sentence dictum [in *Americold*]." *Okunola*, 2023 U.S. Dist. LEXIS 234905, at *9. "This Court has often stated that 'drive-by jurisdictional rulings'—asserting or denying jurisdiction 'without elaboration,' or analysis of whether anything 'turn[ed] on' the ruling—should be accorded 'no precedential effect.'" *Royal Canin*, 220 L.Ed.2d. at 307 (quoting *Wilkins* v. *United States*, 598 U.S. 152, 160 (2023)). The First Circuit wrongly affirmed the district court's use of dictum from *Americold*.

Neither the First Circuit nor district court reviewed trust documents, as *Navarro* did, for evidence trustee Citibank had real and substantial control over S-Trust. Neither acknowledged Citibank had relinquished the chance to prove it had substantial powers over S-Trust: Citibank stipulated to the exclusion of all trust documents and evidence of the trustee's authority. A755, Nov. 2, 2017 Hr'g Tr. 41:6-8 ("we didn't produce [the trust documents during discovery] and ... we would not be introducing it at trial"). The First Circuit's simple review conflicts with the Third, Fifth, Seventh, and Eleventh Circuits' deep reviews that apply *Navarro* as a complex test.

B. The First Circuit's decision warrants this Court's review

The First Circuit's decision warrants this Court's review. The adverse consequence of not considering the investment advisor's control over the unincorporated entity is a jurisdictional loophole that is inconsistent with *Navarro*. The financial industry freely names trustees, without revealing the investment advisors' control and trustees' passivity, to fabricate access to federal courts for actions that would otherwise be in state court. While the citizenship of the unincorporated entity, often spanning many states and, therefore, non-diverse, is not used as the controlling citizenship as required under *Navarro*.

Without this Court's intervention, federal courts will continue to suffer the burden of dockets clogged with diversity actions brought by passive trustees of non-diverse unincorporated entities controlled by investment advisors. A burden magnified by protracted litigation over jurisdiction. This case is a harbinger of future challenges to diversity jurisdiction in cases brought by trustees of unincorporated entities that are controlled by investment advisors, not by passive trustees. Years of litigation over whether the case belongs in federal or state

court. This case cleanly presents the important question of whether a trustee's or unincorporated entity's citizenship controls when a trustee of an entity, controlled by an investment advisor, files a diversity action. This case is an ideal vehicle for this Court to ensure the Consitution's and Congress' jurisdictional boundaries are adhered to even as the financial industry innovates.

As to *Navarro's* complexity, the First Circuit affirming the district court's "result [that quoted dictum to hold *Navarro* is a simple test] ... go[es] against th[e] clear weight of authority and create[s] a circuit split." *G.P.* v. *Garland*, 103 F.4th 898, 903 (1st Cir. 2024). The First Circuit's profound error "impair[s] the certainty of [this Court's] jurisdictional rules." *Grupo*, 541 U.S. at 582. The existence or non-existence of diversity, and consequently subject matter jurisdiction, must be consistent. The geographical location of litigants that are trustees of unincorporated entities should not result in variation. "This uncertainty in such an important area of federal jurisdiction [diversity jurisdiction], in which rules should be clear, is extremely lamentable." *See, e.g.*, Wright & Miller, Federal Practice and Procedure 175 (2003 Supp.). A circuit split on a fundamental jurisdictional issue—whether *Navarro* is a complex or simple test—should be resolved to ensure uniform procedural order among all lower courts. *See* U.S. Sup. Ct. R. 10(a).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

RENEE NAJDA
ANDREW NAJDA

FEBRUARY 2025

APPENDIX A

United States Court of Appeals
For the First Circuit

Nos. 19-1434
20-1057
23-1284
23-1758

CITIBANK, N.A., not in its individual capacity but solely as separate trustee for PMT NPL FINANCING 2015-1,

Plaintiff/Counter-Defendant - Appellee,

v.

RENEE ANNA NAJDA; ANDREW NAJDA,

Defendants/Counter-Plaintiffs - Appellants,

CITIMORTGAGE, INC.; PENNYMAC LOAN SERVICES, LLC; PENNYMAC, CORP.; SPECIALIZED LOAN SERVICING LLC,

Counter-Defendants - Appellees,

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.,

Counter-Defendant,

ANY AND ALL OCCUPANTS,

Defendant.

Before

Barron,* Chief Judge,
Lynch, Howard, Kayatta, Gelpí,
Montecalvo, Rikelman and Aframe, Circuit Judges.

ORDER OF COURT

Entered: September 4, 2024

The petition for rehearing having been denied by the panel of judges who decided the case and the petition for rehearing en banc having been submitted to the active judges of this court and a majority of the judges not having voted that the case be heard en banc, it is ordered that the petition for rehearing and petition for rehearing en banc be denied.

By the Court:

Maria R. Hamilton, Clerk

* Chief Judge Barron is recused and did not participate in the determination of this matter.

APPENDIX B

United States Court of Appeals
For the First Circuit

Nos. 19-1434
20-1057
23-1284
23-1758

CITIBANK, N.A., not in its individual capacity but solely as separate trustee for PMT NPL FINANCING 2015-1,

Plaintiff/Counter-Defendant - Appellee,

v.

RENEE ANNA NAJDA; ANDREW NAJDA,

Defendants/Counter-Plaintiffs - Appellants,

CITIMORTGAGE, INC.; PENNYMAC LOAN SERVICES, LLC; PENNYMAC, CORP.; SPECIALIZED LOAN SERVICING LLC,

Counter-Defendants - Appellees,

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.,

Counter-Defendant,

ANY AND ALL OCCUPANTS,

Defendant.

Before

Kayatta, Lynch and Howard,
Circuit Judges.

JUDGMENT

Entered: July 12, 2024

By order entered June 9, 2023, this court remanded these consolidated appeals to the district court for a second time for limited proceedings relating to the issue of the district court's subject-matter jurisdiction. The district court on September 7, 2023, issued its second "Opinion and Order" concerning this issue (the "Second Opinion and Order"). We ordered supplemental briefing, which is now complete. We assume the parties' familiarity with the case history and issues.

We bypass any question about this court's statutory appellate jurisdiction. See United States v. Pedró-Vidal, 991 F.3d 1, 4 (1st Cir. 2021) ("The long-standing rule in this circuit is that 'bypassing jurisdictional questions to consider the merits is appropriate where, as here, the jurisdictional question is statutory' and does not arise under Article III of the federal constitution.") (quoting Sinapi v. R.I. Bd. of Bar Exam'rs, 910 F.3d 544, 550 (1st Cir. 2018)).

We apply de novo review to the legal framework and legal conclusions underpinning the district court's jurisdictional analysis. See Bower v. EgyptAir Airlines Co., 731 F.3d 85, 90 (1st Cir. 2013) ("We review the district court's conclusion that it had subject matter jurisdiction over the complaint de novo."); accord Amoche v. Guarantee Tr. Life Ins. Co., 556 F.3d 41, 48 (1st Cir. 2009) ("The

ultimate question of whether jurisdiction exists is subject to de novo review.").

However, the district court's jurisdictional analysis "may turn on or be influenced by [its] role as the decider of disputed facts." Amoche, 556 F.3d at 48. "There may be [] cases in which the key facts are disputed and the district court resolves the dispute; in those situations, appellate review of that portion of the district court's assessment of subject matter jurisdiction composed of factual findings would be for clear error." Id. (citing Skwira v. United States, 344 F.3d 64, 72 (1st Cir. 2003), Valentín v. Hosp. Bella Vista, 254 F.3d 358, 365 (1st Cir. 2001)).

Thus, to the extent there are factual findings reflected in the district court's jurisdiction related rulings, "while its ultimate assessment of jurisdiction remains subject to de novo review," id., clear error deference applies as to the findings, see, e.g., Padilla-Mangual v. Pavía Hosp., 516 F.3d 29, 32 (1st Cir. 2008) (treating finding on domicile as a "mixed question of law and fact" subject to clear error review) (internal quotation marks omitted). This means that we review for clear error the district court's finding that the plaintiff-appellee ("Citibank Trustee") had the "customary powers" of a trustee and thus was the "real party" in interest for jurisdictional purposes. See Amoche, 556 F.3d at 48.

Applying this deferential standard, we have considered the district court's jurisdictional analysis and the arguments raised in various filings before and after the remand. Even if the record leaves some room for doubt, we "must accept the court's findings and the conclusions drawn therefrom unless the whole of the record leaves us with 'a strong, unyielding belief that a mistake has been made.'" Valentín, 254 F.3d at 365 (quoting Cumpiano v. Banco Santander, 902 F.2d 148, 152 (1st Cir. 1990)). Under this rubric, we discern no clear error, and thus must reject Appellants' argument that federal subject-matter

jurisdiction was lacking at the outset of the underlying action.

Finally, turning to the merits, after carefully reviewing the merits arguments in Appellants' original opening brief, we discern no abuse of discretion or reversible error as to the challenged district court rulings. For instance, none of Appellants' evidentiary challenges establish any abuse of discretion. See Lawes v. CSA Architects & Engineers LLP, 963 F.3d 72, 90 (1st Cir. 2020) (applying abuse-of-discretion review to expert exclusion); United States v. Altvater, 954 F.3d 45, 52 (1st Cir. 2020) ("Normally, we would review a challenge to the exclusion of evidence for abuse of discretion."); United States v. Lara, 181 F.3d 183, 195 (1st Cir. 1999) ("We review challenges to the admission of evidence for abuse of discretion."). As a further example, Appellants also have not shown any reversible error as to the district court's conclusions that Citibank Trustee held the relevant note and gave sufficient notice under relevant provisions of law (again, these are just examples, and the foregoing should not be read to imply that the court considered anything less than all of the challenges Appellants developed in their opening brief).

The judgment of the district court is **AFFIRMED**. See Local Rule 27.0(c). Any remaining motions or requests, to the extent not mooted by the foregoing, are **DENIED**.

By the Court:

Maria R. Hamilton, Clerk

APPENDIX C

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 14-13593-GAO

CITIBANK, N.A., not in Its Individual Capacity but Solely as Separate Trustee for PMT NPL FINANCING 2015-1,
Plaintiff,

v.

RENEE ANNA NAJDA, a/k/a RENEE NAJDA, and ANDREW NAJDA,
Defendants and Counterclaimants,

v.

CITIBANK, N.A., not in Its Individual Capacity but Solely as Separate Trustee for PMT NPL FINANCING 2015-1, and CITIMORTGAGE, INC.,
Counterclaim Defendants.

OPINION AND ORDER
September 7, 2023

O'TOOLE, D.J.

On June 9, 2023, the Court of Appeals remanded this case for the limited purpose of clarifying whether Citibank, N.A., is properly considered to be of diverse citizenship from the defendants so that diversity of citizenship jurisdiction was properly invoked under 28 U.S.C. § 1332(a)(1). This Court requested that the parties submit their respective views on the question. Their

responses are papers 498 through 502 on this Court's docket. Their principal responses are attached hereto for convenience as Exhibit A (Defs.' Mem. (dkt. no. 498)) and Exhibit B (Pl.'s Mem. (dkt. no. 500)). This Court concludes that Citibank's proposition is correct. The complaint is filed by Citibank as Trustee of the identified Trust. In their counterclaim, the defendants sued Citibank as Trustee. The Trust itself is not named or included as a party litigant.

The jurisdictional allegations agreed to by both Citibank and the Najdas demonstrated that diversity jurisdiction existed at the outset of the case, their positions having respectively been recited in their pleadings, Citibank in its complaint and the Najdas in their counterclaim. Their positions were consistent with the holding of Navarro Savings Association v. Lee, 446 U.S. 458, 464 (1980), that the citizenship of the trustee(s) of a business trust determines whether diversity of citizenship exists for purposes of § 1332.

Other First Circuit District Judges have followed the rule established by *Navarro*. See U.S. Bank Trust, N.A. v. Dedoming, 308 F. Supp. 3d 579 (D. Mass. 2018); 1900 Cap. Trust III by U.S. Bank Trust Nat'l Ass'n v. Sidelinger, Civ. No. 2:19-CV-220-DBH, 2021 WL 864951 (D. Me. Mar. 8, 2021); Ibanez v. U.S. Bank Nat'l Ass'n, C.A. No. 11-11808-RGS, 2011 WL 5928583 (D. Mass. Nov. 29, 2011). As Judge Young succinctly put it:

> Here, U.S. Bank Trust, N.A. is acting solely in its capacity as trustee of LSF9 Master Participation Trust. The trustee is acting for the trust in bringing and maintaining this action. Thus, the citizenship of U.S. Bank Trust, N.A., as trustee, is controlling for the purposes of diversity analysis. See U.S. Bank, Nat'l Ass'n v. UBS Real Estate Sec. Inc., 205 F. Supp. 3d 386, 411 (S.D.N.Y. 2016).

Dedoming, 308 F. Supp. 3d at 580.

It should be noted that the substantive validity of a claim is not a factor in determining the question of diversity jurisdiction. That is clear from the plain language of § 1332(a)(1): "The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between . . . citizens of different States[.]" Section 1332 does not require any demonstration of a plaintiff's probable success as a substantive matter. A properly diverse plaintiff for purposes of determining federal subject matter jurisdiction may have no valid claim at all, but that is a matter of subsequent adjudication, most commonly by a motion by a defendant to dismiss the claim for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). The defendants did not move to dismiss the original complaint under Rule 12(b)(6) or to require the presence of additional parties, such as the Trust as an entity, and accordingly the record is sparse as to the parties' views (if they had any) about what powers Citibank did or did not have as trustee or whether the Trust needed to be formally added as an additional plaintiff. But Navarro has essentially answered that question. In any event, whether an additional party or parties might have been required to be added or substituted as plaintiffs, the outcome of that question would have no effect on whether the parties actually named were of diverse citizenship or not, for purposes of subject matter jurisdiction under § 1332.

Further, to the extent it may be thought necessary to go beyond determining the citizenship of the parties and the amount in controversy based upon the uncontroverted factual allegations of the complaint, (i) the suit was brought by Citibank as Trustee, (ii) while Citibank remained in the case as a party plaintiff, it maintained suit in its own name without objection by the defendants,

(iii) Citibank was named as the assignee in the Assignment of Mortgage from PennyMac Corporation that was attached to the complaint, and (iv) Citibank was identified as the entity for which the servicer acted when serving foreclosure-related materials attached to the complaint. Citibank appears to have controlled the litigation until Christiana Trust was formally substituted as the plaintiff. It thus appears that as far as the parties were concerned Citibank both had and exercised the customary powers to hold, manage, and dispose of assets for the benefit of others.

In sum, the original named plaintiff when the case was commenced was Citibank, N.A., as Trustee. The Trust was not a named party to the complaint.

Accordingly, what mattered in the assessment of whether diversity jurisdiction under § 1332 existed was Citibank's citizenship, which, it was not disputed, was in New York.

George A. O'Toole, Jr.
United States District Judge

APPENDIX D

United States Court of Appeals
For the First Circuit

Nos. 19-1434
20-1057

CITIBANK, N.A., not in its individual capacity but solely as separate trustee for PMT NPL FINANCING 2015-1,

Plaintiff/Counter-Defendant - Appellee,

v.

RENEE ANNA NAJDA; ANDREW NAJDA,

Defendants/Counter-Plaintiffs - Appellants,

CITIMORTGAGE, INC.; PENNYMAC LOAN SERVICES, LLC; PENNYMAC, CORP.; SPECIALIZED LOAN SERVICING LLC,

Counter-Defendants - Appellees,

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.,

Counter-Defendant,

ANY AND ALL OCCUPANTS,

Defendant.

Before

Kayatta, Lynch and Howard,
Circuit Judges.

ORDER OF COURT

Entered: June 9, 2023

By order entered December 30, 2022, this court remanded these consolidated appeals to the district court for limited proceedings relating to the issue of the district court's subject-matter jurisdiction. The district court issued an "Opinion and Order" concerning this issue (the "Opinion"). We ordered supplemental briefing, which is now complete.

To begin, we note that after the issuance of the Opinion, Appellants filed a new notice of appeal in the district court case, which led to the docketing of a separate, third appeal. When remanding these two consolidated appeals, this court retained jurisdiction over them. We deem this notice to be a filing consistent with and in aid of this court's administration of the case, but we take up the Opinion in the context of these two consolidated appeals.

On review of the Opinion and the supplemental briefing, we conclude that a second remand is appropriate. See, e.g., United States v. Twp. of Brighton, 282 F.3d 915, 919 (6th Cir. 2002) ("We recognize that a second remand further prolongs this already lengthy litigation, but a second remand is the only result consistent with this court's first remand of the matter to the district court."). Specifically, we remand for the district court to identify and detail the "evidence adduced at the trial that Citibank had the customary powers to hold, manage, and dispose of assets for the benefit of others," referred to in

the Opinion. See Navarro Sav. Ass'n v. Lee, 446 U.S. 458, 464 (1980); see also BRT Mgmt. LLC v. Malden Storage LLC, No. 22-1389, 2023 WL 3579390, at *5 (1st Cir. May 22, 2023) (vacating and remanding, when information was lacking, "to give the parties one more chance to establish that the district court has subject matter jurisdiction").

The inquiry into whether the trustee and nominal plaintiff was the "real party" to the litigation, like all questions of diversity subject-matter jurisdiction, looks to the facts as they stood at the outset of the suit. See Grupo Dataflux v. Atlas Glob. Grp., L.P., 541 U.S. 567, 570–71 (2004) ("This time-of-filing rule . . . measures all challenges to subject-matter jurisdiction premised upon diversity of citizenship against the state of facts that existed at the time of filing."). Accordingly, in our view, the most relevant evidence would be that which establishes the powers of Citibank as trustee vis-à-vis the trust on whose behalf Citibank first filed suit. Relevant state law, trust documents, or other indicia of control could support such a finding; by contrast, pleaded facts unsupported by competent evidence would not be of any weight.

The district court shall report its findings and conclusions to this court, in written form, within ninety days of this order. See Fed. R. Civ. P. 52. This court retains jurisdiction over the appeal. The matter is **REMANDED** for further proceedings consistent with this order.

By the Court:

Maria R. Hamilton, Clerk

APPENDIX E

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 14-13593-GAO

CITIBANK, N.A., not in Its Individual Capacity but Solely as Separate Trustee for PMT NPL FINANCING 2015-1,
Plaintiff,

v.

RENEE ANNA NAJDA, a/k/a RENEE NAJDA, and ANDREW NAJDA,
Defendants and Counterclaimants,

v.

CITIBANK, N.A., not in Its Individual Capacity but Solely as Separate Trustee for PMT NPL FINANCING 2015-1, and CITIMORTGAGE, INC.,
Counterclaim Defendants.

OPINION AND ORDER
February 27, 2023

O'TOOLE, D.J.

On September 9, 2014, Citibank, N.A., as Trustee for the Benefit of SWDNSI Trust Series 2010-3, brought suit against Renee Anna and Andrew Najda to foreclose on real property located at 71 Flint Road in Concord, Massachusetts. Subject matter jurisdiction in this Court was based on diversity of citizenship. 28 U.S.C. § 1332. The case was tried to a jury and to the Court in November

2017, with both finding against the Najdas on the various claims and counterclaims. The Najdas appealed and the appeal is pending. In December 2022, the Court of Appeals remanded the case to this Court for a determination as to whether minimal or complete diversity between the parties existed at the time the action was commenced, with instructions that the Court address both "statutory diversity" and "constitutional diversity."

The complaint alleges that Citibank is chartered under the National Bank Act with a usual place of business in New York and that it commenced the action solely in its capacity as trustee for the benefit of SWDNSI Trust Series 2010-3, a Delaware Statutory Trust ("the Trust"). The complaint further alleges that the Najdas are individuals who reside at the subject property in Massachusetts. In their answer and counterclaim, the Najdas admitted they resided at the property in Massachusetts and answered that they were without sufficient information or knowledge to admit or deny the allegations as to Citibank's citizenship. However, in their counterclaim, the allegations as to the citizenship of Citibank mirror Citibank's allegations.

There is no dispute that the Najdas were citizens of Massachusetts at time the action commenced. The only question is the citizenship of Citibank in its capacity as trustee for the Trust at the time the action was commenced. Citibank contends that, as a trustee filing suit in its own name, its citizenship is what controls for purposes of diversity jurisdiction. The Najdas, acting pro se, contend that Citibank is a passive trustee without control over the Trust, and therefore it is the citizenship of each of the Trust beneficiaries that controls.

"[W]hen a trustee files a lawsuit or is sued in her own name, her citizenship is all that matters for diversity purposes." Americold Realty Tr. v. Conagra Foods, Inc., 577 U.S. 378, 383 (2016) (citing Navarro Sav. Ass'n v. Lee, 446 U.S. 458, 462–466 (1980)); accord id. at 382

("[W]hen a trustee files a lawsuit in her name, her jurisdictional citizenship is the State to which she belongs." (emphasis omitted)). Further, to the extent it is necessary to analyze Citibank's role as trustee at the time of filing, it was clear from evidence adduced at the trial that Citibank had the customary powers to hold, manage, and dispose of assets for the benefit of others. See Navarro, 446 U.S. at 464; see also U.S. Bank Tr., N.A., as Tr. for LSF9 Master Participation Tr. v. Dedoming, 308 F. Supp. 3d 579, 580 (D. Mass. 2018); McLarnon v. Deutsche Bank Nat'l Tr. Co., as Tr. for HarborView Mortg. Loan Tr. Mortg. Loan Pass-Through Certificates, Series 2007-5, Civil Action No. 15-11799-FDS, 2015 WL 4207127, at *2–3 (D. Mass. July 10, 2015). Citibank brought suit solely in its capacity as the trustee of the Trust, and it acted for the benefit of the Trust in prosecuting the action. Consequently, Citibank's citizenship controls for the purposes of the diversity analysis. Citibank's assertion that its usual place of business was New York was reasserted by the Najdas in their own pleadings. It was a citizen of New York for diversity purposes. See Wachovia Bank v. Schmidt, 546 U.S. 303, 307 (2006).

With respect to both "constitutional diversity" and "statutory diversity," the case at the commencement of the action was "between Citizens of different States." See U.S. Const. art. III, § 2; 28 U.S.C. § 1332(a)(1). Based on the pleadings, the Najdas were citizens of Massachusetts and Citibank was not. Accordingly, there was complete diversity of citizenship of the parties.

/s/ George A. O'Toole, Jr.
United States District Judge

APPENDIX F

United States Court of Appeals
For the First Circuit

Nos. 19-1434
20-1057

CITIBANK, N.A., not in its individual capacity but solely as separate trustee for PMT NPL FINANCING 2015-1,

Plaintiff/Counter-Defendant - Appellee,

v.

RENEE ANNA NAJDA; ANDREW NAJDA,

Defendants/Counter-Plaintiffs - Appellants,

CITIMORTGAGE, INC.; PENNYMAC LOAN SERVICES, LLC; PENNYMAC, CORP.; SPECIALIZED LOAN SERVICING LLC,

Counter-Defendants - Appellees,

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.,

Counter-Defendant,

ANY AND ALL OCCUPANTS,

Defendant.

Before

Lynch, Selya and Kayatta,
Circuit Judges.

ORDER OF COURT

Entered: December 30, 2022

These consolidated cases came to be heard on appeal from the United States District Court for the District of Massachusetts.

Upon consideration whereof, it is now ordered that the matter be remanded to the district court for further fact finding and a determination whether there was minimal or complete diversity between the parties at the time the action was commenced; the matters of both constitutional diversity and statutory diversity should be addressed. The district court shall report its findings and conclusions to this court, in written form, within sixty days of this order. This court retains jurisdiction over the appeal.

The pending motion to dismiss is **DENIED**, but without prejudice to later revisitation of the arguments set out therein if appropriate. The matter is **REMANDED** for further proceedings consistent with this order.

By the Court:

Maria R. Hamilton, Clerk

APPENDIX G

United States Court of Appeals
For the First Circuit

No. 19-1434

CITIBANK, N.A., not in its individual capacity but solely as separate trustee for PMT NPL FINANCING 2015-1,

Plaintiff/Counter-Defendant - Appellee,

v.

RENEE ANNA NAJDA; ANDREW NAJDA,

Defendants/Counter-Plaintiffs - Appellants,

CITIMORTGAGE, INC.; PENNYMAC LOAN SERVICES, LLC; PENNYMAC, CORP.; SPECIALIZED LOAN SERVICING LLC,

Counter-Defendants - Appellees,

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.,

Counter-Defendant,

ANY AND ALL OCCUPANTS,

Defendants.

ORDER OF COURT

Entered: February 7, 2020

The appellants' motion to stay the appeal is denied. The appellants' motion to dismiss is denied without prejudice to reconsideration by the panel that decides the merits of the appeal. The appellants should present their jurisdictional arguments in their opening brief, which is currently due on February 10, 2020.

By the Court:

Maria R. Hamilton, Clerk

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

RENEE ANNA NAJDA, et al.,

Petitioners,

v.

CITIBANK, N.A., not in its individual capacity but solely as separate trustee for PMT NPL FINANCING 2015-1, et al.

Respondents.

CERTIFICATE OF WORD COUNT

I, Andrew Najda, hereby certify that the Petition for a Writ of Certiorari in the above-captioned case contains 4731 words, excluding the parts of the brief that are exempted by Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Andrew Najda
Andrew Najda

February 1, 2025

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

RENEE ANNA NAJDA, et al.,

Petitioners,

v.

CITIBANK, N.A., not in its individual capacity but solely as separate trustee for PMT NPL FINANCING 2015-1, et al.

Respondents.

CERTIFICATE OF SERVICE

I, Andrew Najda, hereby certify that three copies of the Petition for Writ of Certiorari to the United States Court of Appeals for the First Circuit was served on:

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Citibank, N.A., not in its individual capacity but solely as separate trustee for PMT NPL FINANCING 2015-1, PennyMac Loan Services, LLC, PennyMac Corp., Specialized Loan Servicing, LLC

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CitiMortgage, Inc.

Service was made by first-class mail on February 1, 2025.

/s/ Andrew Najda
Andrew Najda