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Appeal Number 23-13384

**UNITED STATES DISTRICT COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
No. 6 23-cv-01493-WWB-RMN

ELIEZER TAVERAS AND VALERIA TAVERAS
Defendants – Appellants,

v.

U.S. BANK, NATIONAL ASSOCIATION AS LEGAL TITLE TRUSTEE
FOR TRUMAN 2016 SC6 TITLE TRUST,
Plaintiff – Appellee

APPELLANTS REPLY BRIEF

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***CERTIFICATE OF INTERESTED PERSON AND
CORPORATE DISCLOSURE STATEMENT***

Appellants, Eliezer Taveras and Valeria Taveras (“Appellants”), *pro se*, and pursuant to Federal Rule of Appellate Procedure 26.1 and this Court’s Rule 26-1-1 hereby jointly certify for the best of their knowledge and belief, the following is a complete list of interested persons:

Federal Judge(s)

1. Berger, Wendy W., District Judge of the United States Court, Middle District of Florida.
2. Kid, Embry, Magistrate Judge of the of the United States Court, Middle District of Florida.

State Judge(s)

3. Alvaro, Chad K., circuit judge of the Circuit Court Of The Ninth Judicial Circuit In And For Osceola County, Florida;

Defendants/Appellants

4. Taveras, Eliezer is a person, a citizen of the United States and a permanent resident of Madrid, Spain.
5. Taveras, Valeria, is a person, a citizen of the United States and a permanent resident of Madrid, Spain.

Plaintiff/Appellee

6. U.S. Bank National Association (“US Bank”) is a subsidiary of U.S. Bancorp, with its main office located in Minneapolis, MN.
7. US Bank is the trustee of TRUMAN 2016 SC6 TITLE TRUST, whose beneficiaries are unknown.

Plaintiff/Appellee’s counsel

8. Diaz, Adam Alexander; Diaz Anselmo & Associates P.A.
9. Rader, Shawn G.; Lowndes, Drosdick, Doster, Kantor & Reed, PA

Amici and Others:

10. Bank of America, N.A. Defendant in this case and in related case, Taveras v. Bank of America; 6:21-cv-189.
11. Christiana Trust, A Division Of Wilmington Savings Fund Society, FSB, Not In Its Individual Capacity, But As Trustee Of ARLP Trust 4. Defendant in related case, Taveras v. Bank of America; 6:21-cv-189.
12. Liebler II, James Randolph – Attorney for Defendant Bank of America in related case, Taveras v. Bank of America; 6:21-cv-189.

13. Munyon, Lisa T. – Defendant in related case 6:23-cv-1305-WWB-EJK.
14. Office of the Attorney General Ashley Moody – Law Firm for Defendants in related case 6:23-cv-1305-WWB-EJK.
15. Reunion Resort & Club of Orlando – Defendant in this case.
16. Rushmore Loan Management Services (“Rushmore”) is purportedly a loan servicer, whose main office is located in Irvine, CA.
17. Servis One, Inc., DBA BSI Financial Services. Defendant in related case, Taveras v. Bank of America; 6:21-cv-189.
18. Schreiber, Margaret H. – Defendant in related case 6:23-cv-1305-WWB-EJK.
19. Schwieterman, Jessica – Assistant Attorney General and Counsel for Defendants in related case 6:23-cv-1305-WWB-EJK.
20. Silver, Jason David – Attorney for Defendant Christina Trust in related case, Taveras v. Bank of America; 6:21-cv-189.
21. Taub, Roy – Attorney for Defendant Servis One, Inc. in

related case, Taveras v. Bank of America; 6:21-cv-189.

22. Young, Tom – Defendant in related case 6:23-cv-1305-

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APPELLANTS REPLY BRIEF

Before this Honorable Court, the Appellants, Eliezer and Valeria Taveras, submit this reply to the response brief filed by U.S. Bank, National Association. This case is marked by profound procedural irregularities and substantive legal errors that have deeply impacted the Appellants' rights. The response brief overlooks essential facts and misapplies legal standards, particularly concerning jurisdiction and the alleged civil rights violations in state court proceedings. This reply aims to correct these misrepresentations and clarify the Appellants' rightful position, highlighting the severe implications of the lower courts' decisions. These decisions have not only jeopardized the Appellants' property rights but also undermined their fundamental civil rights, as protected under federal law. Additionally, the Appellants assert that there has been a continuous and systematic pattern of discriminatory conduct by the state court, profoundly affecting their ability to engage fairly in the legal process.

I. JURISDICTIONAL STATEMENT

The Appellee's question regarding the jurisdiction of this Court to review Judge Berger's remand order, is answered by the precedent

set by the Supreme Court in *BP p.l.c. v. Mayor and City Council of Baltimore*, 593 U.S. 576 (2021). Appellate courts possess the authority to review all grounds for removal included in a remand order if the removal is based, at least in part, on statutes such as the federal-officer removal statute or the civil-rights removal statute (28 U.S.C. § 1442 or § 1443 respectively).

In *BP plc v. Mayor & City Council of Baltimore*, the Supreme Court clarified that appellate courts have broad jurisdiction to review entirety of appealable remand orders. This ruling holds that if any part of the removal was premised on the federal-officer or civil-rights removal statutes, then the appellate court has jurisdiction to review the entire remand order. The Court's decision highlights the imperative for appellate courts to have the capability to comprehensively review remand orders to ensure that substantial federal interests, particularly those involving civil rights, are adequately protected and adjudicated. In applying this precedent to the current case, if the remand by Judge Berger touched upon issues that could be construed to involve civil rights, particularly under 28 U.S.C. § 1443, then this Court possesses the requisite jurisdiction to review all aspects of the remand order, including those based on

alleged deficiencies in federal question and diversity jurisdiction. This approach ensures that the appellate review process is thorough and reflective of all underlying legal and procedural nuances that might affect the outcome of the case.

Furthermore, this authority reinforces the appellate court's role in overseeing that lower courts adhere to the legal standards governing federal jurisdiction and remand, safeguarding the appellants' right to a fair and just legal process. It is essential for this Court to utilize its broad review powers to examine the entirety of the remand order to affirm or rectify any potential judicial oversights or misapplications of the law as articulated in the Supreme Court's directive. Thus, under the guidance of *BP plc v. Mayor & City Council of Baltimore*, this Court has not only the right but also the obligation to review the remand order in its entirety to ensure that justice is served in accordance with federal statutory and constitutional mandates. By fully leveraging this judicial review capability, the appellate court can provide a comprehensive legal assessment that aligns with both the letter and spirit of the law, ensuring that parties receive the judicial scrutiny necessary for a fair resolution of their federal and civil rights claims.

II. SUMMARY OF THE CASE BACKGROUND

In its response brief, US Bank cursorily dismisses the profound procedural and substantive complexities encapsulated within the seven-year litigation leading up to the second notice of removal as mere procedural formalities. This portrayal starkly contrasts with the reality, which was riddled with critical legal disputes and evidentiary challenges fundamentally affecting the trajectory of the case.

The foreclosure action, initiated by Christiana Trust and later transferred to U.S. Bank, took a significant turn with the Taveras' discovery of a purportedly counterfeit promissory note, raising fundamental questions about the authenticity and ownership of the note. Despite this, the litigation was marred by harsh judicial decisions, including severe court orders mandating the Taveras to travel monthly from Spain for case management conferences, and barring them from filing counterclaims in response to complaints. These judicial missteps prolonged the litigation, imposed undue financial and emotional burdens on the Taveras, and violated their civil rights to enforce contracts, to sue, and to receive equal protection under the law. This reply brief seeks to correct the omissions in the Appellee's brief, presenting a true portrayal of the

litigation's challenges and underscoring the need for this Court's corrective action.

III. ADDRESSING THE TWO-PRONG TEST FOR REMOVAL UNDER 28 U.S.C. § 1443

A. Prong One: Rights Stated in Terms of Racial Equality

The notices of removal clearly articulate that the Taveras' actions are grounded in civil rights laws that specifically address racial equality. This includes rights under the Civil Rights Act of 1866, which explicitly ensures that all citizens shall have **the same right to make and enforce contracts, to sue**, be parties, and give evidence, to inherit, purchase, lease, sell, hold, and convey real and personal property, and **to full and equal benefit of all laws and proceedings for the security of person and property** as is enjoyed by white citizens. Additionally, the notices reference the Fair Housing Act and the Civil Rights Act of 1964, which further solidify the foundation of their removal claim on laws providing for racial equality.

Furthermore, as demonstrated below, the record substantiates that the Taveras were systematically denied the ability to enforce these constitutionally guaranteed rights within the state court

system. The evidence presented, including detailed affidavits and legal documentation, illustrates a pattern of discriminatory practices and procedural barriers that effectively thwarted their efforts to assert their rights as delineated under federal civil rights statutes [Appendix 01-141, 629]. This denial is not merely procedural but reflects a substantive obstruction to the enforcement of rights that are fundamental to racial equality. These experiences underscore the necessity of removal to federal court, as the state court proceedings did not provide an impartial or effective forum for addressing violations rooted in racial discrimination, directly contravening the protective intent of Section 1443.

B. Prong Two: Inability to Enforce Rights in State Court

The filings highlight numerous instances where the state court's actions—or inactions—effectively barred the Taveras, who are US Citizens of Latin origin, from enforcing their rights as provided under federal law. Notably, the state court consistently denied the Taveras the ability to challenge the authenticity of the promissory note and other critical documents, which they claim were forged [Appendix 01-252, 394 ¶ 3]. This refusal includes specific instances where motions were denied without hearing, which significantly impairs their ability

to present their case and is a direct impediment to enforcing their civil rights.

The allegations further detail systemic issues within the state court system, described as a pattern or practice of conduct that disproportionately affects foreclosure defendants, particularly those of racial minorities. This includes discriminatory practices by the court's judges, assistants, and other personnel, which align with racial bias and directly affect the Taveras' ability to receive a fair trial.

C. Detailed Accounts of State Court Actions Preventing the Taveras from Exercising Legal Rights:

The state court consistently denied the Taveras the opportunity to present evidence or contest the authenticity of the alleged forged documents. Specifically, motions to strike sham pleadings were denied without hearings, effectively barring the Taveras from demonstrating the forgery claims related to critical documents in the foreclosure action[Appendix, 01-394 ¶ 3].

The amended notice of removal and responses highlight a pattern of conduct in the state court that disproportionately impacts defendants based on race. This includes discriminatory handling of cases, as evidenced by the state court's refusal to allow the Taveras

to file counterclaims or assert defenses that would challenge unlawful or fraudulent actions by the foreclosure plaintiffs.

The Taveras were subjected to excessive and onerous requirements, such as being forced to travel monthly from Spain to Florida for case management conferences [Appendix 01-252, 261, see also 01-663 ¶ 1]. This requirement was enforced under the threat of dismissal of their claims and defenses if they failed to appear, placing an unreasonable burden on them and disproportionately affecting their ability to maintain their defense. These actions not only placed an excessive financial and emotional strain on the Taveras but also appeared tailored to exhaust their ability to defend their rights effectively.

Judges issued orders that were arbitrary and served no legitimate legal purpose, further illustrating a bias against the Taveras. This included rulings that prevented them from fully engaging in their defense and accessing the court to challenge the foreclosure proceedings adequately [see Appendix 01-252, barring Appellants from setting an evidentiary hearing on a motion to strike sham pleadings, allowing the first futile amendment]. These judicial missteps unnecessarily prolonged the litigation, which should have

concluded in 2018 due to standing issues, inflicting severe financial, emotional, and physical tolls—including a heart attack on one of the Appellants. This glaring omission in the Appellee's brief not only undermines the integrity of their arguments but also skews the portrayal of a litigation marred by substantive and procedural injustices, which this reply seeks to rectify.

The state court's orders repeatedly placed the Taveras at a disadvantage, such as by allowing numerous amendments to the complaint by the plaintiff to continue the foreclosure action despite significant evidentiary disputes that typically would warrant dismissal or at least a serious reconsideration of the case's basis [Appendix 01-8, 234, 584].

Specific court orders barred the Taveras from filing counterclaims that included allegations of unlawful filing of false documents or records against real property, which restricted their legal recourse and ability to challenge the foreclosure's legitimacy based on factual disputes about the documentation. Additionally, the state court barred the Taveras from filing a counterclaim in response to a new amended complaint, based on a previous order prohibiting them from seeking such a remedy granted under Florida Rules of

Civil Procedure 1.170 [Appendix 01-670], in direct violation of Appellants due process rights and civil rights to enforce contracts, to sue, and to full and equal benefit of all laws and proceedings for the security of person and property as is enjoyed by white citizens.

The application of what the Taveras refer to as the “Florida Policy” within the state court system, which allegedly supports systemic fraud by foreclosure plaintiffs at the expense of foreclosure defendants, particularly those from minority backgrounds. This policy was argued to facilitate a hostile legal environment that denies equal protection and due process to defendants like the Taveras.

The court's handling of procedural aspects, such as the setting of hearings and management of case schedules, was biased against the Taveras [Appendix 01-629]. This is illustrated by the court’s differential treatment, giving preference to the plaintiff’s motions over those filed by the Taveras, and by not providing the Taveras equal opportunity to present their case.

In a striking display of the discriminatory challenges faced by the Taveras in the state court proceedings, an attorney openly argued that the Taveras had immigrated to the United States to unjustly enrich themselves. This baseless and prejudicial assertion not only

tainted the proceedings with overt discrimination but also went uncorrected by the presiding judge, further exemplifying the systemic bias encountered by the Taveras. Such remarks underscore the hostile environment in which the Taveras were compelled to defend their civil rights, directly impacting their ability to receive a fair and impartial hearing. This failure of the court to intervene in the face of discriminatory rhetoric starkly illustrates the very barriers to justice the Taveras sought to overcome by removing the case under 28 U.S.C. § 1443, asserting their rights to enforce contracts and challenge discriminatory practices in a forum free from bias.

IV. OVERCOMING TEMPORAL CONSTRAINTS IN REMOVAL UNDER SECTION 1443

The issue of timeliness in the context of removal under 28 U.S.C. § 1443 is nuanced and should be understood in light of the fundamental rights it seeks to protect. The legal framework, as established in *Georgia v. Rachel*, 384 U.S. 780 (1966) underscores the necessity to consider the broader implications of ongoing state proceedings when they operate under a racially discriminatory application of laws. This section argues that the pervasive nature of the alleged discrimination justifies an exception to typical temporal

constraints for removal.

In the seminal case of *Georgia v. Rachel*, the Supreme Court articulated that the mere pendency of state proceedings, if racially discriminatory, could justify removal when it's clear that the defendants federally protected civil rights would be violated. This principle is crucial in understanding the Taveras' removal under Section 1443, given the historical context and ongoing nature of the alleged violations which did not merely cease but persisted throughout the litigation.

The relevance of this principle is starkly illustrated in the recent summary judgment hearing where the state judge acknowledged the claim of forgery but ruled that even assuming the forgery to be true, the Taveras had ratified the forged note through subsequent actions. This judicial stance, while ostensibly procedural, effectively strips the Taveras of their right to a fair trial on critical issues affecting the validity of the foreclosure itself. The judge's decision to overlook a fundamental dispute about the authenticity of a critical document underlines the systemic issues that Section 1443 aims to remedy.

In assessing the temporal constraints for removal under Section 1443 as highlighted in *Georgia v. Rachel*, it becomes imperative to

consider not just the timeline of events, but the persisting risks and implications of civil rights violations throughout the litigation process. The decision in *Georgia v. Rachel* underscores the necessity of federal intervention when state proceedings **threaten** the substantive rights guaranteed under federal civil rights laws. This framework is particularly relevant to the Taveras' situation where, even at the summary judgment phase, the handling of their claims—especially regarding the acknowledged issues of document forgery—exemplifies **the ongoing risk** of civil rights violations. Such risks are not merely procedural nuances but are indicative of systemic issues that could repeatedly infringe upon the Taveras' federally protected rights. This ongoing risk justifies a flexible approach to the timing of removal, ensuring that protections under Section 1443 are robustly upheld to prevent any substantive miscarriage of justice.

On October 18, 2023, Judge Alvaro held a hearing and granted the Appellee's motion for summary judgment. After citing the requirements of standing to be entitled to summary judgment, Judge Alvaro concluded:

And the question then is whether or not that presumption of standing is rebutted or overcome by Defendant's affidavit wherein they take the position that the note is forged. **The**

allegation that the note is forged does not create a disputed issue for trial, even assuming the truth of that allegation. Even if the defendant's signature was a forgery, the loan was, as argued by the plaintiff, ratified in any number of ways, which are not in dispute. They **ratified** the loan by making payments from 2006, 2007, and 2008. Defendant **ratified** the loan by requesting a loan modification from the Bank of -- Bank of America and not raising any alleged forgery at that time. They did not raise the claim of forgery in this foreclosure action until 2018... I would say all that sworn evidence goes to the issue of the alleged forgery, which the Court has already determined that even if true, Defendants ratified that forgery by virtue of their subsequent conduct over the course of years.

(Emphasis added). A copy of the hearing transcript was already submitted to this court.

The focus of this appeal is not to contest the specifics of the state court's decision but to underscore the systemic and ongoing violations of the Taveras' civil rights, which expose them to significant risks within the state judicial system. The following discussion delves into relevant Florida caselaw, further illuminating how these legal precedents substantiate the necessity for federal oversight to ensure justice and equality in the enforcement of their rights.

Under Florida law, the principle that 'the mortgage follows the note' establishes a clear legal framework whereby enforcement rights associated with the mortgage are intrinsically linked to the

possession and ownership of the promissory note. This foundational legal principle, as highlighted in *Riggs v. Aurora Loan Services, LLC*, 36 So. 3d 932, 933 (Fla. 4th DCA 2010) and *Johns v. Gillian*, 134 Fla. 575, 184 So. 140 (1938), mandates that a party seeking to foreclose must substantiate its standing by demonstrating that it is the legitimate holder of the note.

Moreover, Florida jurisprudence stipulates that a substituted plaintiff in a foreclosure inherits only the standing of the original plaintiff, and cannot independently establish standing if the original plaintiff was deficient in this regard. *Progressive Express Ins. Co. v. McGrath Community Chiropractic*, 913 So. 2d 1281 (Fla. 2d DCA 2005). Consequently, when the court's summary judgment in this case took the allegations of forgery as given yet proceeded on the grounds of 'ratification', it significantly impacted the legitimacy of the foreclosure action. Standing, a cornerstone of subject matter jurisdiction as established in *McLean v. JP Morgan Chase Bank Nat. Ass'n*, 79 So. 3d 170 (Fla. 4th DCA 2012), dictates that without valid standing at the inception, any subsequent judicial decisions, including those pertaining to enforceability, are rendered jurisdictionally defective.

Christiana Trust, lacking the original note, was deficient in standing to initiate the foreclosure action. Consequently, US Trust, as the substituted plaintiff, inherited this lack of standing, a situation not rectifiable by subsequent procedural developments. This judicial oversight underscores a fundamental flaw, affirming the necessity of appellate review to address these significant procedural and substantive due process violations.

In Florida, the inviolability of subject matter jurisdiction, which cannot be waived or artificially created by agreement of the parties, underpins the judicial system. The lack of standing implicates subject matter jurisdiction and can be contested at any point in the legal process. This principle, upheld by the Florida Supreme Court in decisions such as *Lovett v. Lovett*, 93 So. 2d 169 (Fla. 1922), and reaffirmed in *Paulucci v. General Dynamics Corp.*, 842 So. 2d 797 (Fla. 2003), along with *Berek v. Metropolitan Dade County*, 396 So. 2d 756 (Fla. 3d DCA 1981), emphasizes that judgments void of subject matter jurisdiction are void ab initio and remain open to challenge at any time

In the Taveras' case, the denial of a fair opportunity to contest the alleged forgery closely mirrors the injustices highlighted in

landmark civil rights cases such as *Gideon v. Wainwright*, 372 U.S. 335 (1963). In *Gideon*, the Supreme Court emphasized the fundamental right to a fair trial, which is deeply rooted in the concept of due process under the 14th Amendment. Similarly, the Taveras were denied critical procedural rights, akin to those denied in *Gideon*, by not being allowed to fully contest the authenticity of crucial documents during the pendency of the foreclosure action and at summary judgment stage. This denial not only impairs their ability to defend against the foreclosure but also sets a concerning precedent where procedural shortcuts can lead to substantial rights violations, particularly impacting minority rights in judicial processes. Such actions by the court can potentially undermine the very foundations of justice and equality that the civil rights laws strive to protect.

Moreover, the court's interpretation of "ratification" in the Taveras' case presents a perilous precedent that significantly undermines defendants' rights in foreclosure disputes. By determining that making mortgage payments and engaging with the lender (the actual lender) to seek loan modifications constitute ratification of any prior forgeries, the court effectively strips

defendants of their legitimate right to challenge fraudulent or unlawful claims. This interpretation contradicts foundational legal principles evident in cases such as UCC Article 3, which governs negotiable instruments and requires that endorsements and alterations be explicitly authorized. The application of "ratification" in this context not only deprives the Taveras of their right to a substantive defense but also erodes the due process guarantees intended to protect all parties in legal disputes. This could lead to a broader erosion of rights for defendants who might unwittingly "ratify" fraudulent actions by attempting to negotiate or comply in good faith with creditors, setting a dangerous precedent in both state and federal contexts.

The broader implications of the decisions observed in the Taveras' state court case extend well beyond the immediate parties and resonate with the foundational principles of civil rights protections nationwide. Such instances where significant evidence of forgery and procedural misconduct are dismissed serve not only as a detriment to the individuals directly involved but also erode public trust in the judiciary's capacity to safeguard minority rights against systemic biases. This is reminiscent of the concerns raised in *Shelley*

v. Kraemer, 334 U.S. 1 (1948), where the Supreme Court recognized that judicial enforcement of racially restrictive covenants constituted state action and thus violated the 14th Amendment. Just as *Shelley* highlighted the courts' role in either perpetuating or combatting racial discrimination, the Taveras' experiences underscore the critical role of federal oversight, such as through § 1443 removals, in ensuring that civil rights are not compromised by local judicial interpretations. It is essential for the structural integrity of civil rights protections that federal courts remain vigilant guardians, particularly when state court actions risk undermining these rights and advancing systemic discrimination.

V. UNCONTESTED REMOVAL GROUNDS AND WAIVER OF APPELLATE ARGUMENTS

US Bank's failure to challenge the Taveras' removal under 28 U.S.C. § 1443 in their Motion to Remand constitutes a waiver of any such objections. The Eleventh Circuit has consistently held that issues not raised at the district court level are considered waived and cannot be raised for the first time on appeal. In *Behr v. Campbell*, No. 18-12842 (11th Cir. 2021), the court reaffirmed that arguments not presented initially in the lower court proceedings are generally

deemed waived. This principle was further supported in *United States v. Stein*, No. 14-15621 (11th Cir. 2020), where the court emphasized the necessity of raising all pertinent objections in the initial pleadings to preserve them for appellate review. By not amending its Motion to Remand to address the Amended Notice of Removal, US Bank effectively forfeited any challenge to the propriety of the removal under Section 1443.

Similarly, US Bank did not contest the application of the Revival Doctrine in its Motion to Remand, nor did it amend the motion after the Taveras filed their Amended Notice of Removal. The Revival Doctrine, which allows for a renewed removal period when significant changes to the case alter its nature, was clearly outlined by the Taveras. By failing to address this argument, US Bank has waived its right to dispute this basis for removal. The precedent set in *Behr v. Campbell and United States v. Stein* underscores that failure to object to a pivotal argument in the lower court results in waiver. Thus, the revival doctrine stands uncontested and validates the timeliness of the Taveras' removal action.

Notably, US Bank's omission to amend its Motion to Remand after the Taveras submitted their Amended Notice of Removal further

solidifies the waiver of any objections to both the removal under Section 1443 and the revival doctrine. The Eleventh Circuit's decision in *Dupree v. Owens*, No. 21-12571 (11th Cir. 2024), reinforces the notion that arguments not raised or contested in the initial stages cannot be introduced on appeal. This procedural oversight by US Bank, coupled with the precedents highlighting the necessity of timely objections, means that their failure to address these grounds in the remand motion precludes any subsequent challenge. Consequently, the appellate court should recognize these uncontested grounds for removal as valid and affirm the lower court's decision to deny the remand based on these waived arguments.

In their initial brief, the Taveras argued that the "Rush Motion" served as the "other paper" under 28 U.S.C. § 1446(b), triggering the 30-day period for removal. This critical assertion was not contested by US Bank in its Response Brief filed in the appellate court. The Eleventh Circuit in *United States v. Stein*, underscores that arguments not presented initially are considered waived. This procedural principle is crucial for maintaining judicial efficiency and ensuring that all relevant issues are addressed promptly. By failing to challenge the Taveras' argument regarding the Rush Motion in

their Response Brief, US Bank has waived any objection to this basis for removal. The Eleventh Circuit's ruling in *Stein* supports the application of the waiver doctrine in this context, reinforcing that the removal was timely and proper based on the uncontested significance of the Rush Motion.

In light of the newly articulated significance of the Rush Motion in this appellate brief, Appellants respectfully submit that, if the Court finds that this pivotal element was not adequately addressed in the initial notice of removal and response to the motion to remand, it should remand the case to the district court. Appellants ask for specific instructions to allow for the amendment of the removal notice or for reconsideration with an expanded record that includes a thorough analysis of the Rush Motion's impact on the timing and propriety of their removal. This conditional request is essential to ensure that the district court fully considers all pertinent facts and legal arguments in reassessing the jurisdictional and procedural grounds for our removal under 28 U.S.C. § 1443.

VI. JURISDICTIONAL ERRORS AND THEIR IMPLICATIONS

The district court's decision that the Taveras' removal was untimely overlooks the flexible nature of 28 U.S.C. § 1443 regarding

ongoing civil rights violations and the specific events triggering removal. Notably, the statute does not prescribe a strict deadline for removal in cases involving continuous violations, which in the Taveras' case, were exacerbated by US Trust's motion on August 9, 2023. This motion introduced significant new information, marking a pivotal moment that should reset the removal timeline under the revival doctrine. This doctrine supports the idea that new developments can rejuvenate the right to removal, especially when they substantially affect the claimant's federal rights. The district court's failure to appreciate this flexibility, the critical nature of the August 9 motion, and the revival doctrine's relevance represents a jurisdictional oversight that merits correction. This error underscores the need for federal courts to adapt procedural rules to protect substantive civil rights effectively. The appellate court should recognize the timeliness of the Taveras' removal in this broader context, ensuring that procedural nuances do not hinder access to justice for significant federal rights issues.

VII. CHALLENGING THE BASIS FOR SANCTIONS: A QUESTION OF BAD FAITH

The district court's sanction against the Appellants stemmed

from a fundamental misinterpretation of the law and facts concerning the Notice of Removal. In its motion for remand, U.S. Bank inaccurately characterized the removal as an attempt to avoid state court proceedings, citing timeliness and lack of federal question or diversity as grounds [Appendix, 07]. This misrepresentation overlooks the Appellants' clear invocation of 28 U.S.C. § 1443, which specifically addresses civil rights protections. Such an oversight not only misguides the judicial analysis but also undermines the legitimacy of the removal that was substantively grounded in preventing racial discrimination and ensuring enforcement of federally protected rights.

Further scrutiny reveals that the district court likely relied solely on the motion for remand without a comprehensive review of the Appellants' initial and amended notices of removal or their detailed response to the motion for remand [Appendix, 28]. This procedural oversight raises significant due process concerns, as the sanctions were imposed without full consideration of the Appellants' arguments and the substantive legal basis provided in their filings. The reliance on an incomplete review, as suggested by the record, contravenes the principles upheld in *Babb v. Secretary, Department*

of *Veterans Affairs*, No. 16-16492 (11th Cir. 2020), where the Eleventh Circuit emphasized the necessity for thorough procedural fairness and judicial diligence in evaluating the parties' submissions.

The imposition of sanctions presupposes the existence of bad faith in the conduct of the party being sanctioned. However, the record reflects a consistent assertion of civil rights violations and concerns over document authenticity, which are serious legal issues that merit judicial consideration rather than punitive measures. The Appellants' removal under 28 U.S.C. § 1443 was driven by documented instances of state court actions that potentially compromised their ability to protect their civil rights.

The recent Eleventh Circuit decision in *United States v. Tahji Alonzo Orr*, No. 23-13945 (11th Cir. 2024) reinforces the need for precise and well-founded judicial reasoning when imposing such consequential measures. The court clarified that sanctions should only follow clear evidence of bad faith or improper conduct, neither of which has been convincingly demonstrated in this case.

The Appellants urge this Court to consider the serious implications of sanctions that were potentially grounded on misinterpretations of both the nature of their legal claims and the

procedural rights at stake. As this appeal addresses foundational issues of civil rights and procedural equity, it is imperative that the appellate review carefully reassesses the sanctions imposed, ensuring that they are not only justified but also aligned with the principles of fairness and justice that underpin our legal system.

In light of these considerations, the Appellants request a reevaluation of the sanctions based on a full and fair understanding of the case's complex legal landscape. This is not only crucial for the Taveras but also for upholding the integrity of the judicial process in civil rights contexts, where the stakes extend beyond the immediate parties to impact broader legal standards and rights protections.

VIII. URGENT NEED FOR JUDICIAL INTERVENTION TO PREVENT ONGOING HARASSMENT AND PROTECT FUNDAMENTAL RIGHTS

The Taveras' ordeal is marked by undeniable evidence of forgery and fraudulent conduct [Appendix 01-141, 158, 561] that was not only recognized but also implicitly acknowledged by the state court during its proceedings. This acknowledgment came at a critical juncture—the state court's decision to grant summary judgment—despite the court's awareness of the forged nature of key documents underpinning the foreclosure.

The record clearly shows that the purported promissory note was intentionally mailed from Texas to Florida to initiate the foreclosure against the Taveras [Appendix 01-61]. This act of mailing forged documents across state lines not only constitutes mail fraud under federal law but also highlights the premeditated nature of the fraud perpetrated against the Taveras. Despite the ongoing claims of forgery, US Bank repeatedly filed verified complaints that contained contradictory statements [Appendix 01-234, Appendix 01-584]. These complaints asserted the authenticity of the same documents previously acknowledged as forged, misleading the court and opposing counsel. Affidavits were executed by individuals associated with US Bank, who attested to the authenticity of documents they knew, or should have known, could not be legitimately verified. This reckless disregard for truth not only misled the court but also perpetuated the fraud against the Taveras.

Despite clear evidence of forgery and fraudulent conduct impacting the legitimacy of the foreclosure proceedings against them, the Taveras continue to face severe personal, financial, and emotional hardships. These hardships stem from aggressive post-judgment actions by US Bank, including seeking deficiency judgments –

granted by the state court – and imposing undue procedural burdens like depositions and the mandatory submission of Fact Information Sheets. Such actions not only exacerbate the Taveras' distress but also highlight a disturbing disregard for their rights and well-being by the state and district courts.

The lower courts' failure to acknowledge and act against the perpetration of fraud and potential criminal activities has left the Taveras vulnerable to continued legal harassment. This inaction is particularly egregious given the state court's acknowledgment of the forged documents used in the foreclosure process. The courts' refusal to intervene effectively condones the use of judicial processes to perpetuate injustice against the Taveras, thereby undermining the integrity of the legal system and the protective mandate it is supposed to uphold.

Judicial precedents affirm the responsibility of the courts to protect litigants from fraudulent practices and ensure fair treatment under the law. Cases such as *United States v. Throckmorton* 98 U.S. 61 (1878) and *Hazel-Atlas Glass Co. v. Hartford-Empire Co.* 322 U.S. 238 (1944) underscore the court's duty to prevent the misuse of its procedures in furtherance of fraudulent schemes. These precedents

demand a proactive approach when there is clear evidence of wrongdoing, especially when such actions threaten the fundamental rights and security of individuals.

In light of these considerations, the Taveras urgently request this Honorable Court to: Recognize the failure of the lower courts to protect them from ongoing legal harassment and the malicious exploitation of judicial processes. Issue immediate orders to halt all current and future actions by US Bank that seek to exploit the forged documentation and the erroneous judgments derived therefrom. Consider the imposition of a permanent injunction against US Bank to prevent any further harassment or legal action against the Taveras based on the disputed promissory note and the associated foreclosure judgment. Direct a thorough investigation into the actions of all parties involved, potentially referring the matter to appropriate federal or state agencies for a full investigation of the criminal allegations including forgery, perjury, mail fraud, and subordination to perjury.

The ongoing harm inflicted on the Taveras by US Bank, in conjunction with state court actions, underscores the urgency of addressing the wrongful remand. Despite the federal court's

jurisdiction triggered by the notice of removal, the state court, lacking jurisdiction, proceeded to issue rulings detrimental to the Taveras. It granted a judgment totaling \$1,853,216.29, including a deficiency judgment against Valeria Taveras for \$908,216.29. Furthermore, US Bank assumed ownership of the subject property and on August 1, 2024, evicted a tenant, notably a recently returned military veteran, underscoring the severe and ongoing impact of these legal missteps. These actions not only highlight the state court's disregard for federal jurisdiction but also the profound and continuing damages suffered by the Taveras, making a compelling case for this Court's intervention to rectify the jurisdictional and procedural errors inherent in the remand.

Prompt and decisive intervention by this Court is imperative to restore the Taveras' faith in the judicial system and to prevent further **INJUSTICE**. It is essential that the judiciary act as a guardian of justice and not merely as a bystander in the face of evident abuse and misconduct.

CONCLUSION

Now that this Court possesses evidence that amounts to forgery, perjury, mail fraud, and various other unlawful and likely criminal

acts—and crucially, **evidence demonstrating how the state court addressed such egregious conduct, granting summary judgment**—it faces a decisive moment. Affirming the district court's decision would risk endorsing a precedent that tacitly condones the erosion of foundational constitutional protections. This decision has the profound capacity to either strengthen or undermine public trust in the judicial safeguards that protect every citizen's due process and civil rights. It is imperative that this Court carefully considers these implications

In light of these critical concerns, the Taveras respectfully urge this Court to reverse the district court's remand order, recognizing the grave errors in dismissing their legitimate civil rights claims. It is essential for this Court to grant relief that not only addresses the immediate injustices faced by the Taveras but also sets a precedent for the rigorous protection of civil rights in similar cases. Accordingly, the Taveras respectfully request this Honorable Court to grant the following relief:

- i. Reverse the District Court's Remand Order: Affirm the appropriateness of removal under 28 U.S.C. § 1443, based on the civil rights violations demonstrated and other

grounds, and reverse the sanctions imposed on the Taveras, acknowledging the misinterpretations of their removal intentions and the procedural irregularities that led to their assessment.

- ii. Award Monetary Damages: Compensate the Taveras for the civil rights violations substantiated throughout these proceedings, recognizing the profound personal, emotional, and financial toll these violations have imposed.
- iii. Grant Declaratory Relief: Issue a declaration affirming the Taveras' rights under the applicable civil rights statutes, thereby setting a judicial precedent that acknowledges and rectifies the injustices they have endured.
- iv. Issue a Permanent Injunction: Enjoin further discriminatory enforcement actions against the Taveras, thus providing them with long-term protection from ongoing and future civil rights abuses. This injunction should specifically prohibit US Bank from pursuing or continuing the foreclosure action in state court, thereby providing the Taveras with comprehensive protection

against ongoing and potential future violations of their civil rights. This measure is crucial to prevent further harm and abuse under the guise of legal proceedings, ensuring that the Taveras are shielded from any further actions that would undermine their rights as established under federal civil rights laws.

- v. Order Payment of Legal Fees: Mandate the payment of attorney's fees and legal costs incurred throughout this appeal and associated proceedings, based on statutory and equitable grounds for such an award, as the Taveras' pursuit of justice serves a public interest in upholding civil rights protections.
- vi. Appoint a Special Master: Appoint a special master to oversee any remand proceedings, ensuring that they are conducted in strict compliance with this Court's directives and with a commitment to the fair administration of justice.
- vii. Refer for Further Investigation: Direct the appropriate federal or state agency to conduct a thorough investigation into the conduct underlying the Taveras' civil rights

claims, ensuring accountability and remedial action for any unlawful activities uncovered.

CERTIFICATE OF COMPLIANCE (FRAP 32)

IT IS HEREBY CERTIFIED that this document complies with the type-volume limitation set forth in FRAP 32. The document contains 6194 words, excluding the parts of the document exempted by Fed. R. App. P. 32(f). This document has been prepared in a proportionally spaced typeface using Microsoft Word, 14-point Bookman Old Style font.

Dated, August 3, 2024,

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CERTIFICATE OF FILING AND SERVICE

I hereby certify that on this 3rd day of August 2024, I caused this Motion to be filed electronically with the Clerk of the Court using the CM/ECF System, which will send notice of such filing to all registered CM/ECF users. In addition, a copy of the foregoing, together with all exhibits, declarations, affidavits and all pertinent documentation has been sent to Appellee, c/o its counsel Adam Alexander Diaz via electronic mail to: ADiaz@dallegal.com.

/s/ Eliezer Taveras

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TAB D

[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 23-13384

Non-Argument Calendar

U.S. BANK, NATIONAL ASSOCIATION AS
LEGAL TITLE TRUSTEE FOR
TRUMAN 2016 SC6 TITLE TRUST,

Plaintiff-Appellee,

versus

VALERIA TAVERAS,
a.k.a. Valeria Rosa Taveras,
ELIEZER TAVERAS,
a.k.a. Eliezer Taveras, Sr.,

Defendants-Appellants,

REUNION RESORT & CLUB OF
ORLANDO MASTER ASSOCIATION, INC. et al.,

Defendants.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 6:23-cv-01493-WWB-EJK

Before BRANCH, LUCK, and WILSON, Circuit Judges.

PER CURIAM:

In 2006, defendants Valeria Taveras and her husband Eliezer Taveras took out a mortgage to purchase a home in Florida. By 2008, they had failed to make payments and defaulted on their mortgage. In the intervening years, they have fought the foreclosure actions brought against them in state court, including by attempting and failing to remove the case to federal district court. *See U.S. Bank, Nat'l Ass'n v. Taveras*, No. 6:19-cv-1307-Orl, 2019 WL 11505056, at *3 (M.D. Fla. Sept. 11, 2019).

On the eve of a dispositive motion hearing in 2023 in state court, the Taverases attempted to remove their case to federal district court for the second time. The district court rejected the attempted removal and remanded the case back to Florida state

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court. The district court also sanctioned the Taverases for what it held to be an objectively unreasonable removal attempt and awarded costs and fees to U.S. Bank. The Taverases appealed both holdings of the district court. After careful review, however, we affirm both the district court's remand and its order awarding costs and fees to the plaintiff.

I. Background

In 2006, Valeria Taveras and Eliezer Taveras borrowed money from Bank of America, N.A. to purchase a property in Kissimmee, Florida. The Taverases defaulted on the loan in early 2008, and Bank of America, N.A. filed suit in state court for foreclosure in 2009. Sometime in 2009, the foreclosure action was dismissed for lack of prosecution.

In 2016, the noteholder, now Christiana Trust, renewed the foreclosure action in state court.¹ In 2019, the Taverases attempted to remove the case to federal court based on diversity jurisdiction. *See Taveras*, 2019 WL 11505056, at *3. The district court remanded the case because it determined that it did not have diversity jurisdiction and the Taverases' notice of removal was untimely.

On July 13, 2023, U.S. Bank moved for summary judgment in state court. This motion was scheduled to be heard on August 23, 2023. Two days before the hearing, the Taverases again attempted to remove the underlying action to the federal district

¹ Bank of America, N.A. assigned the note to Christiana Trust in 2014. The current plaintiff, U.S. Bank, appears to have become the noteholder in 2018.

court. The initial notice of removal asserted two grounds for subject matter jurisdiction: federal question jurisdiction pursuant to 28 U.S.C. § 1331² and civil rights jurisdiction pursuant to 28 U.S.C. § 1443.³

U.S. Bank moved to remand the case to state court and for costs and fees pursuant to 28 U.S.C. § 1447(c).⁴ U.S. Bank argued

² The Taverases referred to this statute in their notice of removal as 42 U.S.C. § 1331, but their amended notice corrected the error and referred to 28 U.S.C. § 1331 and federal question jurisdiction.

28 U.S.C. § 1331 provides, “The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.”

³ The Taverases alleged that the district court had original jurisdiction under § 1443 because Florida law concerning foreclosure actions established a “policy” that denied them their rights under the Civil Rights Act of 1866 by nullifying terms of their 2006 mortgage. They also alleged that a pervasive “policy of racial discrimination” privileged foreclosure plaintiffs by depriving defendants of rights under the Equal Protection Clause, the Civil Rights Acts of 1866 and 1964, and the Fair Housing Act. They stated that this “Policy” grants foreclosure plaintiffs, who are usually the noteholders, a “litigation privilege” to commit fraud and “an absolute defense” against the pleadings and motions of defendants, who are usually the homeowners. They alleged that Florida policy accordingly guaranteed “racial disparities that are substantial and consistent.”

Under § 1443, a defendant who “is denied or cannot enforce . . . a right under any law providing for the equal civil rights of citizens” in state court may remove the case. 28 U.S.C. § 1443(1).

⁴ “An order remanding the case may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal.” 28 U.S.C. § 1447(c).

that the pleadings raised no federal question, there is no diversity of citizenship and, in the alternative, the notice of removal was untimely to remove on the basis of diversity. Further, U.S. Bank contended Eleventh Circuit precedent foreclosed federal question jurisdiction because the defendants cannot create such jurisdiction by raising a federal defense.⁵ With respect to its request for costs and fees, U.S. Bank asserted that the Taverases had raised the same removal arguments in their failed 2019 removal, and no facts had changed since to warrant a different result. U.S. Bank did not address the Taverases' argument for civil rights removal under § 1443(1).

After U.S. Bank filed its motion to remand, the Taverases filed an amended notice of removal again asserting diversity jurisdiction under 28 U.S.C. § 1332, that the request was timely, and that the "Revival Doctrine Exception" excused their late removal.⁶ They also alleged that U.S. Bank had acted in bad faith to prevent a timely removal. Finally, the Taverases responded to the motion to remand and argued that § 1443 removals are not subject to timeliness restrictions.

⁵ In their amended notice of removal, discussed below, the Taverases clarify that they asserted federal question jurisdiction under § 1331 because they believe that U.S. Bank's claims are preempted by the Fair Debt Collection Practices Act, 15 U.S.C. §1692 *et seq.*

⁶ The "revival doctrine" allows an otherwise-late removal when new claims in an amended pleading reveal a new and different ground for removal than the one previously waived by the defendant. *See Dudley v. Eli Lilly and Co.*, 778 F.3d 909, 913 n.2 (11th Cir. 2014).

Rejecting the Taverases' arguments for jurisdiction, the district court granted the motion to remand. The district court concluded that it did not have diversity jurisdiction because, as U.S. citizens domiciled in Spain, the Taverases did not satisfy any of the statutory grounds to qualify for diversity jurisdiction.⁷ Further, the district court agreed with U.S. Bank that the notice of removal was untimely, and that the Taverases had failed to prove that U.S. Bank had acted in bad faith to justify the untimely removal. Indeed, the district court specifically found that the Taverases waived their bad faith argument by failing to explain or support it with legal citations and that, regardless of waiver, § 1332(a) does not support removals in diversity over a year after the case has been filed. Finally, the district court rejected the argument that their preemption defense raised a federal question because the Taverases only address the argument in "one conclusory sentence." The district court did not address the Taverases' argument for civil rights removal under § 1443(1).⁸ Regardless, the district court ultimately awarded costs and fees to U.S. Bank pursuant to 28 U.S.C. § 1447(c) because it found that, when considered "in context of [the Taverases'] earlier attempted removal," the Taverases had "no objectively reasonable basis for removal."

⁷ In their amended notice of removal, the Taverases stated that they had moved from Florida to Madrid, Spain in November 2018.

⁸ We construe failure to address a ground for removal as an implicit denial. *Schleider v. GVDB Ops., L.L.C.*, 121 F.4th 149, 156 (11th Cir. 2024) ("[A] district court's failure to address a ground for removal constitutes an implicit denial of that ground.").

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The Taverases timely appealed. In a prior order, we determined that we had jurisdiction to review this appeal. We determined that we may review the entire order because one of the grounds listed for removal was § 1443, and 28 U.S.C. § 1447(d) expressly allows for appellate review of remand of a removal based on § 1443. *See also BP P.L.C. v. Mayor of Balt.*, 593 U.S. 230, 238 (2021) (holding that if a removal notice cites § 1443 then an appellate court may review the entirety of a remand order on appeal). We found that we had jurisdiction because, even though the district court did not expressly address § 1443, the remand order included an “implicit determination that removal was not warranted under § 1443.”

II. Standard of Review

We review issues of removal jurisdiction *de novo*. *Henson v. Ciba-Geigy Corp.*, 261 F.3d 1065, 1068 (11th Cir. 2001). We may affirm the district court’s decision for reasons different than those stated by the district court. *Alabama v. Conley*, 245 F.3d 1292, 1293 n.1 (11th Cir. 2001) (upholding a remand order, even though it failed to address the defendant’s § 1443 arguments for removal).

We review awards of attorney’s fees and costs for abuse of discretion. *Legg v. Wyeth*, 428 F.3d 1317, 1320 (11th Cir. 2005). “An error of law is an abuse of discretion.” *Id.* “Therefore, an award of attorneys’ fees based on a legally erroneous remand order constitutes an abuse of discretion.” *Id.* We consider the objective reasonableness of the removing party’s efforts, based on the

pleadings and any affidavits submitted by the parties. *Id.* at 1320, 1322.

III. Discussion

The Taverases raise two issues on appeal. First, they argue that the district court improperly remanded this case to Florida state court because it did not properly consider their argument that the court had jurisdiction pursuant to § 1443. Second, they argue that the district court abused its discretion in awarding costs and fees to U.S. Bank under 28 U.S.C. § 1447(c) because their attempted removal was not objectively unreasonable when it was made. Both arguments fail. Accordingly, we affirm the district court's remand order and order awarding costs and fees to U.S. Bank.

A. The district court properly remanded the case to state court

The Taverases argue that the district court improperly remanded this case to Florida state court because it overlooked their arguments for § 1443 removal.⁹ U.S. Bank responds that the Taverases fail to satisfy the test for § 1443 removal.

Federal district courts are courts of limited jurisdiction, and only civil actions over which the district courts “have original jurisdiction” may be removed from state to federal court. 28 U.S.C.

⁹ By failing to brief their arguments that the court had jurisdiction in diversity under § 1332 or federal question under § 1331, we need not address those arguments on appeal. *Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 680 (11th Cir. 2014) (“Issues not clearly raised in the briefs are considered abandoned.”).

§ 1441(a); *Caterpillar Inc. v. Williams*, 482 U.S. 386, 393 (1987). Therefore, a case removed from state to federal district court “shall be remanded” if the district court lacks subject matter jurisdiction. 28 U.S.C. § 1447(c). We may affirm a remand order that fails to address a defendant’s § 1443 removal if we find that “removal jurisdiction under § 1443 d[oes] not exist.” *Conley*, 245 F.3d at 1293 n.1. Indeed, we construe a failure to address a ground for removal as an implicit denial of that ground. *Id.* (noting that we “allowed [the plaintiff’s] appeal to proceed to the extent he is challenging the district court’s implicit determination that removal based on § 1443 was improper”); *Schleider*, 121 F.4th at 156 (“[W]e have previously determined that a district court’s failure to address a ground for removal constitutes an implicit denial of that ground.”).

In *Georgia v. Rachel*, 384 U.S. 780, 788 (1966), the Supreme Court established a two-prong test for § 1443 removal. First, the defendant must show that the right he relies upon arises under a federal law “providing for specific civil rights stated in terms of racial equality.” *Id.* at 792. Second, he must show that he has been denied or cannot enforce that right in state court. *Id.* at 794.

The Supreme Court has previously held that prong one is satisfied by asserting a violation of the Civil Rights Acts of 1866 and 1964, *id.* at 786–93, 789 n.12, and we have held that the Fair Housing Act also satisfies this prong. *Sofarelli v. Pinellas County*, 931 F.2d 718, 724–25 (11th Cir. 1991). Generally applicable rights do not qualify. See *Rachel*, 384 U.S. at 792 (no jurisdiction under § 1443 for due process and the First Amendment); *Conley*, 245 F.3d at

1295–96 (no jurisdiction under § 1443 for equal protection and 42 U.S.C. § 1983); *Sunflower Cty. Colored Baptist Ass’n v. Indianola Mun. Separate Sch. Dist.*, 369 F.2d 795, 796 (5th Cir. 1966) (no jurisdiction under § 1443 for fair trial right).¹⁰ Claims based on national origin also do not qualify for § 1443 removal. *See Chapman v. Houston Welfare Rts. Org.*, 441 U.S. 600, 623 n.41 (1979) (§ 1443 enacted under Congress’s powers under the Thirteenth Amendment, limiting removal to “racially based claims of inequality”).

Prong two requires that the defendant provide a “firm prediction” that his federal civil rights will be denied or unenforceable in state court. *Rachel*, 384 U.S. at 800, 804 (holding that § 1443 applies “only if it can be predicted by reference to a law of general application that the defendant will be denied or cannot enforce” those rights). The adverse action that the plaintiff cites can be a facially neutral exercise of state power employed for a discriminatory purpose that implicates federal civil rights law. *Sofarelli*, 931 F.2d at 720–22, 724–25 (sheriff’s refusal to allow the plaintiff to use a public roadway, while facially neutral, ultimately violated federal civil rights law because the defendants sought to prevent the sale and delivery of a mobile home to a minority owner). But we require that the denial be “manifest in a formal expression of state law.” *Johnson v. Mississippi*, 421 U.S. 213, 219 (1975) (quotation marks omitted). Accordingly, only rarely will a

¹⁰ *Bonner v. City of Prichard*, 661 F.2d 1206, 1207 (11th Cir. 1981) (en banc) (holding that all decisions from the Fifth Circuit Court of Appeals issued before September 30, 1981, are binding precedent in the Eleventh Circuit).

plaintiff's complaint qualify for § 1443 removal. See *Greenwood v. Peacock*, 384 U.S. 808, 828–29 (1966) (denying removal even for several judicially recognized federal civil rights absent “the rare situations where it can be clearly predicted . . . that those rights will inevitably be denied by the very act of bringing the defendant to trial in the state court”) In *Rachel*, removal under § 1443 was warranted because the plaintiff's federal civil right to full and equal enjoyment of a place of public accommodation under the Civil Rights Act of 1964 was likely to be denied because she was being prosecuted in state court under a state law that conflicted with that Act. 384 U.S. at 804. In contrast, *Johnson* held removal was not warranted because the defendants had been arrested and charged with violating state laws against boycotting, and they could not point to a specific provision of federal civil rights law violated by the state's prosecution. 421 U.S. at 221–22.

Here, the Taverases satisfy the first prong because they have invoked 42 U.S.C. § 1981, § 1982; the Fair Housing Act; and the Civil Rights Act of 1964; all of which qualify under the first prong. *Rachel*, 384 U.S. at 786–93, 789 n.12; *Sofarelli*, 931 F.2d at 724–25.

Their contentions, however, cannot satisfy the second prong because they have failed to demonstrate that their federal civil rights will be predictably denied by the Florida courts. First, no cited federal civil rights law grants mortgagors a right to default on a loan, nor does any immunize them from foreclosure actions for doing so. *Greenwood*, 384 U.S. at 828–29; *Rachel*, 384 U.S. at 782–83, 804–05. Thus, like *Johnson*, the Taverases have not credibly

argued that any federal law is being violated by the state action. 421 U.S. at 221–22. Instead, the Taverases cite to general federal civil rights laws and argue that they are the victims of discrimination because the state courts have repeatedly ruled against them. But the Taverases alleged no facts to suggest that the otherwise facially neutral foreclosure action was filed for a prohibited discriminatory purpose. *See Sofarelli*, 931 F.2d at 720–22, 724–25. Indeed, the Taverases have conceded that they stopped paying the mortgage according to its terms and agree that the mortgage allows for foreclosure in such a situation.

Thus, the Taverases fail the *Rachel* test on the second prong and do not qualify for removal under § 1443. Accordingly, we affirm the district court’s remand of the case to state court.

B. The district court did not abuse its discretion in granting U.S. Bank’s motion for costs and fees

The remaining issue that we must decide is whether the district court abused its discretion in awarding U.S. Bank costs and fees pursuant to § 1447(c) for the Taverases’ improper removal under § 1443.¹¹ The Taverases argue that their attempted removal was not objectively unreasonable because their case is complex and “marked by a nuanced interplay of state and federal legal issues,

¹¹ Just as the Taverases do not address the propriety of their removal based on federal question jurisdiction pursuant to § 1331 or diversity jurisdiction pursuant to § 1332, they also do not contest the district court’s discretion in granting costs and fees on those grounds. Accordingly, we need not address them. *See Sapuppo*, 739 F.3d at 680.

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their ongoing rights violations, and the evolving factual backdrop,” and that they followed the procedural requirements for removal. Specifically, the Taverases address the purported propriety of removal under § 1443, which they note that the district court did not address.

“[T]he standard for awarding fees should turn on the reasonableness of the removal.” *Martin v. Franklin Capital Corp.*, 546 U.S. 132, 141 (2005). Further, the Supreme Court specifically endorsed taxing costs and fees for “frivolous[]” additions of § 1443 to other grounds for removal, *BP P.L.C.*, 593 U.S. at 246, and we have held elsewhere that “where there is no good faith effort to determine if jurisdiction is present” then “sanctions are appropriate.” *Fitzgerald v. Seaboard Sys. R.R., Inc.*, 760 F.2d 1249, 1251 (11th Cir. 1985). However, “[a]bsent unusual circumstances, courts may award attorney’s fees under § 1447(c) only where the removing party lacked an objectively reasonable basis for seeking removal.” *Martin*, 546 U.S. at 141.

Here, the district court did not abuse its discretion in taxing costs and fees to the Taverases. The Taverases object that the district court did not adequately analyze their arguments for § 1443 removal in the order to remand and to award costs and fees, which necessarily shows that awarding costs and fees was inappropriate. The district court’s order, admittedly, did not address the Taverases’ § 1443 argument in remanding the case and awarding costs and fees. Our cases have consistently held, however, that a district court’s silence on a ground for removal is an implicit denial

on that ground. *Conley*, 245 F.3d at 1293 n.1; *Schleider*, 121 F.4th at 156. Accordingly, the district court denied the Tavareses' § 1443 arguments for removal as a matter of law.

The only remaining question relevant to whether the district court abused its discretion in taxing costs and fees to the Taverases is whether the Taverases had an objectively reasonable basis for believing that they could remove pursuant to § 1443. See *Martin*, 546 U.S. at 141. We explained above that they did not. Further, their decision to attempt a second removal based on § 1443 and on the eve of a dispositive motion hearing implicates the type of “gamesmanship” for which the Supreme Court explicitly endorsed awarding costs and fees pursuant to § 1447(c). See *BP P.L.C.*, 593 U.S. at 246. Accordingly, the district court did not abuse its discretion in taxing costs and fees to the Tavareses.¹²

¹² We also deny the Taverases' outstanding motions on our docket because they are not relevant to the issue on appeal before us.

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IV. Conclusion

For the reasons stated above, we affirm the district court's remand and awarding of costs and fees to U.S. Bank.

AFFIRMED.

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
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May 09, 2025

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 23-13384-GG

Case Style: U.S. Bank, NA as legal title trustee for Truman v. Valeria Taveras, et al

District Court Docket No: 6:23-cv-01493-WWB-EJK

Opinion Issued

Enclosed is a copy of the Court's decision issued today in this case. Judgment has been entered today pursuant to FRAP 36. The Court's mandate will issue at a later date pursuant to FRAP 41(b).

Petitions for Rehearing

The time for filing a petition for panel rehearing or rehearing en banc is governed by 11th Cir. R. 40-2. Please see FRAP 40 and the accompanying circuit rules for information concerning petitions for rehearing. Among other things, **a petition for rehearing must include a Certificate of Interested Persons.** See 11th Cir. R. 40-3.

Costs

Costs are taxed against Appellant(s) / Petitioner(s).

Bill of Costs

If costs are taxed, please use the most recent version of the Bill of Costs form available on the Court's website at www.ca11.uscourts.gov. For more information regarding costs, see FRAP 39 and 11th Cir. R. 39-1.

Attorney's Fees

The time to file and required documentation for an application for attorney's fees and any objection to the application are governed by 11th Cir. R. 39-2 and 39-3.

Appointed Counsel

Counsel appointed under the Criminal Justice Act (CJA) must submit a voucher claiming compensation via the eVoucher system no later than 45 days after issuance of the mandate or the filing of a petition for writ of certiorari. Please contact the CJA Team at (404) 335-6167 or cja_evoucher@ca11.uscourts.gov for questions regarding CJA vouchers or the eVoucher system.

Clerk's Office Phone Numbers

General Information: 404-335-6100

Case Administration: 404-335-6135

CM/ECF Help Desk: 404-335-6125

Attorney Admissions: 404-335-6122

Capital Cases: 404-335-6200

Cases Set for Oral Argument: 404-335-6141

OPIN-1 Ntc of Issuance of Opinion

TAB E

In the
United States Court of Appeals
For the Eleventh Circuit

No. 23-13384

U.S. BANK, NATIONAL ASSOCIATION AS
LEGAL TITLE TRUSTEE FOR
TRUMAN 2016 SC6 TITLE TRUST,

Plaintiff-Appellee,

versus

VALERIA TAVERAS,
a.k.a. Valeria Rosa Taveras,
ELIEZER TAVERAS,
a.k.a. Eliezer Taveras, Sr.,

Defendants-Appellants,

REUNION RESORT & CLUB OF
ORLANDO MASTER ASSOCIATION, INC. et al.,

2

Order of the Court

23-13384

Defendants.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 6:23-cv-01493-WWB-EJK

ORDER:

The motion of Appellants to stay the issuance of the mandate pending a petition for writ of certiorari is DENIED.

DAVID J. SMITH
Clerk of the United States Court of
Appeals for the Eleventh Circuit

ENTERED FOR THE COURT - BY DIRECTION

TAB F

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT IN
AND FOR OSCEOLA COUNTY, FLORIDA

CASE NO: 2016CA000916

U.S. BANK, NATIONAL ASSOCIATION AS LEGAL TITLE
TRUSTEE FOR TRUMAN 2016 SC6 TITLE TRUST,
Plaintiff,

VS.

VALERIA TAVERAS, ELIEZER TAVERAS, ET. AL.,
Defendants

****EXCERPT OF RULING****

DATE: OCTOBER 19, 2023

REPORTER: HAYDEE MEDINA

1 APPEARANCES

2 ON BEHALF OF THE PLAINTIFF, U.S. BANK, NATIONAL
3 ASSOCIATION AS LEGAL TITLE TRUSTEE FOR TRUMAN 2016 SC6
4 TITLE TRUST:

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(Appeared via videoconference)

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8 ASSOCIATION AS LEGAL TITLE TRUSTEE FOR TRUMAN 2016 SC6
9 TITLE TRUST:

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13 ON BEHALF OF THE DEFENDANT, ELIEZER TAVERAS, PRO SE:
14 Eliezer Taveras

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E-mail: etaveras2020@gmail.com
(Appeared via videoconference)

16 ON BEHALF OF THE DEFENDANT, VALERIA TAVERAS, PRO SE:

17 Valeria Taveras
18 Calle De Sorrolla, 19
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Madrid, Spain 28029

19 E-mail: valtaveras@yahoo.com
(Appeared via videoconference)

20 Also Present: Judge Chad Alvaro; Melissa Burr, Clerk

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PROCEEDINGS

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STIPULATION

The hearing was taken via videoconference in which all participants attended remotely, on THURSDAY the 19th day of October 2023 at approximately 2:59 p.m.; said hearing was taken pursuant to the FLORIDA Rules of Civil Procedure.

1 PROCEEDINGS

2 THE COURT: All right. Thank you. Okay. This
3 is the ruling of the Court. To be entitled to a
4 judgment of foreclosure, a plaintiff must prove its
5 standing as well as the other elements of mortgage
6 foreclosure, namely an agreement, which is typically
7 represented by the note in mortgage, a default, an
8 acceleration of the amount due, and the amount due.
9 To be entitled to summary judgment, Plaintiff must
10 carry its burden of demonstrating these elements on
11 the undisputed summary judgment evidence and that
12 Plaintiff is entitled to judgment as a matter of
13 law. Under the Ortiz case relied upon by the
14 plaintiff, if the lender "files with the Court, the
15 original note in the same condition as the copy
16 attached to the complaint, then such evidence is
17 sufficient to show that the lender actually
18 possessed the note when it filed the complaint and
19 this has standing to bring the foreclosure action."
20 I have reviewed the original note filed on July 13th
21 of 2023, and it is in the same condition as the copy
22 of the note attached to the complaint at the time
23 that it was filed on August 23rd of 2023, and on the
24 date of the filing of the original complaint.
25 Accordingly, pursuant to Ortiz, a presumption arises

1 that Plaintiff actually possessed the note when it
2 filed this action. And that is a presumption of
3 standing. And the question then is whether or not
4 that presumption of standing is rebutted or overcome
5 by Defendant's affidavit wherein they take the
6 position that the note is forged. The allegation
7 that the note is forged does not create a disputed
8 issue for trial, even assuming the truth of that
9 allegation. Even if the defendant's signature was a
10 forgery, the loan was, as argued by the plaintiff,
11 ratified in any number of ways, which are not in
12 dispute. They ratified the loan by making payments
13 from 2006, 2007, and 2008. Defendant ratified the
14 loan by requesting a loan modification from the Bank
15 of -- Bank of America and not raising any alleged
16 forgery at that time. They did not raise the claim
17 of forgery in this foreclosure action until 2018,
18 despite the fact that the note in its present form
19 was attached to the complaint when it was filed in
20 2016, meaning the alleged forgery was not raised
21 until 12 years after the note was made. All those
22 undisputed facts establish a ratification of the
23 loan on the term set forth in the challenged note,
24 despite the allegation that the note is forged.
25 Plaintiff obtains its standing as a holder in the

1 note endorsed in blank, despite the alleged forgery
2 by virtue of the ratification. But additionally,
3 summary judgment evidence would also support a
4 finding standing based on ownership due to the
5 assignment of the note and purchase agreement
6 related to the -- rather assignment of the mortgage
7 and the purchase agreement related to the note. That
8 note and mortgage also constitute the agreement
9 between the lender and the defendants as to that
10 element -- as to that particular element of the
11 cause of action. To address the other elements,
12 namely default and the amounts owed, those elements
13 are further established by the affidavit filed in
14 support of Plaintiff's motion and there -- notably,
15 there is no countervailing summary judgment evidence
16 denying the existence of the default. And there is
17 no countervailing summary judgment evidence putting
18 in dispute the amounts alleged to be owed. Court
19 therefore finds that the plaintiff has carried its
20 burden of demonstrating it's entitled to summary
21 judgment of foreclosure, unless one, there's a
22 disputed issue of material fact with respect to the
23 defendant's affirmative defenses, or if pursuant to
24 those affirmative defenses, Plaintiff is entitled --
25 is not entitled to judgment as a matter of law. The

1 defendant's countervailing summary judgment evidence
2 fails to demonstrate a disputed issue of material
3 fact as nearly -- or I would say all that sworn
4 evidence goes to the issue of the alleged forgery,
5 which the Court has already determined that even if
6 true, Defendants ratified that forgery by virtue of
7 their subsequent conduct over the course of years.
8 In summary, Plaintiff has sufficiently demonstrated
9 that it is entitled to judgment as a matter of law,
10 has refuted each of the affirmative defenses raised
11 by the defendants, and given that the countervailing
12 summary judgment evidence goes to forgery and
13 nothing more, the defendants necessarily failed to
14 carry their burden of providing some evidence in
15 support of their affirmative defenses and positions
16 as required by the summary judgment standard that
17 now prevails in the state of Florida. Accordingly,
18 Plaintiff's motion for summary judgment is granted
19 at the Count I of the Second Amended Complaint. And
20 the Court will enter final summary judgment of
21 foreclosure, liquidating Plaintiff's damages in the
22 amount set forth in the affidavit supporting the
23 motion to include attorney's fees as set forth in
24 the affidavit of attorney's fees filed in support of
25 the motion. And the Court will further find those

1 attorney's fees to be reasonable based on the
2 uncontested expert witness affidavit finding them
3 reasonable. Does the plaintiff have a proposed
4 final judgment?

5 MR. DIAZ: We did not bring one. We didn't
6 know if you wanted to put specific findings of fact
7 or use the standard judgment.

8 THE COURT: I'll use a standard judgment. Does
9 the plaintiff have any specific requests with
10 respect to sale date, keeping in mind that you may
11 want to liquidate further attorney's fees?

12 MR. TAVERAS: Our --

13 MR. DIAZ: We do 45 days.

14 THE COURT: All right. Then I'll enter a
15 summary final judgment once provided by the
16 plaintiff setting the case for sale within 40 -- or
17 45 -- approximately 45 days. I'm not going to give
18 you that date now because it will run from the date
19 I get the final judgment. So look for that date in
20 the final judgment that is actually entered. All
21 right.

22 MR. DIAZ: And would Your Honor like us to e-
23 mail that final judgment to you in Word form?

24 THE COURT: Yes. That'll be e-mailed to my
25 divisional e-mail address, which will go to my

1 judicial assistant and she, in turn, will get that
2 to me. All right. Thank you all very much for your
3 time and consideration in this matter. Court is in
4 Recess.

5 THE REPORTER: Your Honor, may I please get Mr.
6 Walson's first name?

7 (HEARING CONCLUDED AT 4:33 P.M.)
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C E R T I F I C A T E

STATE OF FLORIDA)

COUNTY OF ORANGE)

I, HAYDEE MEDINA, Court Reporter and Notary Public
for the State of Florida at Large, do hereby certify
that I was authorized to and did report the foregoing
proceeding, and that said transcript is a true record of
the said proceeding.

I FURTHER CERTIFY that I am not of counsel for,
related to, or employed by any of the parties or
attorneys involved herein, nor am I financially
interested in said action.

Submitted on: November 28, 2023.



HAYDEE MEDINA

Court Reporter, Notary Public

