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No. _____

Supreme Court, U.S.
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In The
Supreme Court of the United States

ANTHONY MICHAEL BRANCH,
Petitioner,

v.

FEDERAL NATIONAL MORTGAGE ASSOCIATION,
ROBERTO PINA CARDOSO,
Respondents.

On Petition for Writ of Certiorari
to the Massachusetts Supreme
Judicial Court

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

This Court has determined that the loss of an individual's home constitutes a final, lasting deprivation of property entitling him/her to the protection of the due process clause. *Los Angeles v. David*, 538 U.S. 715, 717 (2003).

The questions presented involve not only the state-specific issues of foreclosure procedures in Massachusetts but also a national concern: whether homeowners nationwide are entitled to constitutional due process protections when their homes are taken in non-judicial foreclosure proceedings. The conflicting rulings between the Massachusetts Supreme Judicial Court and the Massachusetts Appeals Court, which ignored or misapplied fundamental due process principles, highlight a constitutional conflict that this Court is best positioned to resolve. This is not merely an issue of state procedural law; it is a matter of federal constitutional rights that warrant Supreme Court intervention.

Here, Rev. Anthony Michael Branch's home was foreclosed on, although his evidence showed a legally deficient notice of default was sent by an entity that masked the Federal National Mortgage Association as the property's owner. During Branch's various legal challenges to the foreclosure, he argued his evidence unsuccessfully, evidence that showed the foreclosure notice was legally deficient, the wrong party foreclosed, and the third-party purchaser could not intervene while the case was on appeal and take his property without allowing him to challenge the purchaser's title. The questions presented are:

1. Did the Massachusetts Supreme Judicial Court err in affirming the Housing Court's decision granting possession to Fannie Mae and the third-party purchaser without addressing the Federal constitutional arguments raised by the Petitioner and his ability to challenge the title of the third-party purchaser in the context of an unlawful foreclosure?
2. Did the deficient notice of default and the Massachusetts non-judicial foreclosure process fail to provide homeowners with the procedural safeguards required by Due Process?

LIST OF ALL PARTIES

All parties appear in the case caption on the cover page.

RELATED CASES

Pentagon Federal Credit Union v. Anthony Branch (Massachusetts Land Court, Suffolk County, No. 15SM001297 (Military Service Case, February 23, 2015)).

Petitioner Anthony Michael Branch, District of Massachusetts, United States Bankruptcy Court, No. 16-10039, (Chapter 7 discharge, May 15, 2016).

Federal National Mortgage Association v. Anthony Michael Branch, Southeastern Housing Court, Brockton, Massachusetts, No. 17-H83-SP-02483BR (Summary process eviction filed June 12, 2017, case administratively transferred to Metro South Housing Court, No. 18-H82-SP-0281, amended summary judgment entered May 4, 2018).

Federal National Mortgage Association & Roberto Pina Cardoso v. Anthony Michael Branch, Massachusetts Appeals Court, No. 2019-J-0333 (Single Justice Session), July 18, 2019 (Cardoso's appeal from a denial of intervention in the Housing Court was denied).

Federal National Mortgage Association v. Anthony Michael Branch (Massachusetts Appeals Court, No. 2019-P-0004, January 3, 2019, use and occupancy payments, decided as moot, SJC answered the questions in the *King* decision, September 21, 2020).

Federal National Mortgage Association v. Anthony Michael Branch, Massachusetts Appeals Court, January 25, 2022, 2021-J-0470 (Appeal bond affirmed).

Federal National Mortgage Association v. Anthony Michael Branch, Massachusetts Appeals Court, No. 2021-P-0899, May 23, 2023 (Main appeal in the summary process case dismissed as moot; further appellate review allowed under No. FAR 29376, and the case transferred to Supreme Judicial Court No. 13510).

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The opinion of the Massachusetts Supreme Judicial Court (Pet. App. A) is published at *Fannie Mae & another v. Anthony Michael Branch*, 494 Mass. 343 (2024). A timely motion for reconsideration was thereafter denied on September 5, 2024 (Pet. App B)—the unpublished Massachusetts Appeals Court decision dismissing the summary process case (Pet. App. C). The trial court's decision granting the third-party purchaser intervention (Pet. App. D) and the order and judgment granting Fannie Mae's motions for summary judgment and denying the petitioner's counterclaims (Pet. App. E).

JURISDICTION

The Massachusetts Supreme Judicial Court issued its decision on July 12, 2024, and denied the Petitioner's motion for reconsideration on September 4, 2024. (Appendix A). An extension of time to file the writ of certiorari was granted to and including February 2, 2025, on November 20, 2024, in Application number 24A293.

The jurisdiction of this Court will be invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution states in relevant part: "...nor shall any State deprive any person of life, liberty, or property, without due process of law[.]" The Fifth Amendment to the United States Constitution states in relevant part: "No person shall...be deprived of life, liberty, or property, without due process of the law."

STATEMENT OF THE CASE

In April 2009, Anthony Michael Branch ("Rev. Branch") purchased a home in Brockton, Massachusetts, financing \$103,050 through a Pentagon Federal Credit Union loan. However, in 2013, Rev. Branch experienced a medical setback, which led to financial difficulties and caused him to fall behind on his mortgage payments.

On August 7, 2009, Pentagon Federal Credit Union ("Pentagon") sent Rev. Branch a notice informing him that the Federal National Mortgage Association ("Fannie Mae") acquired his mortgage and note as an investor and that they, Pentagon, would remain involved in the property as

the loan servicer. In response to discovery during the summary process proceedings seeking a judgment for possession in favor of Fannie Mae, Pentagon Federal Credit Union admitted that Fannie Mae had been the investor in the loan since its inception.

On February 28, 2013, Pentagon mailed Rev. Branch a notice informing him that his loan was in default. (Pet. App. F-1). Fannie Mae rejected Rev. Branch's request for a loan modification. His request for an appeal was denied. On February 23, 2015, Pentagon, filed a Complaint under the Servicemembers Civil Relief Act proceeding in the Massachusetts Land Court.¹ In those proceedings, the plaintiff (Pentagon) was required to submit the 150-day right to cure default notice. Rev. Branch was not active in the military, so he had no right to be heard. Conversely, the notice used as evidence that a default occurred was entered into the court record and is preserved. On August 6, 2015, the Land Court issued its judgment, and Pentagon proceeded to schedule a sale of the foreclosed property. A foreclosure sale was scheduled but was subsequently canceled after Rev. Branch filed for Chapter 7 protection on January 7, 2016. The Bankruptcy Chapter 7 discharge was entered on June 22, 2016. However, before the Bankruptcy discharge on May 10, 2016, the attorney for Pentagon agreed to allow Rev. Branch to list and sell the property. (Pet. App. L-1). The Bankruptcy Court recognized this as an agreement. (Pet. App. L-1).

Rev. Branch submitted an offer to Pentagon, which Pentagon rejected as too low. Pentagon refused to allow Rev. Branch additional time to obtain additional offers.

In August 2016, Pentagon notified Rev. Branch of an impending foreclosure sale by mailing a notice to him and publication in a local newspaper. The auction sale was held on September 14, 2016. Pentagon was the only bidder and assigned its bid to Fannie Mae. However, Pentagon's Power of Attorney was dated October 12, 2016, and could not

¹ The Massachusetts Act, which provides a procedural framework for ascertaining whether mortgagors are entitled to protections under the SCRA, expressly permits only those defendants who assert entitlement to such rights to appear in equitable proceedings brought pursuant to the SCRA (servicemember proceedings). See St. 1943, G.L. c. 57 (1943), as amended through St. 1998, c. 142.

authorize the purchase as it was executed approximately four (4) weeks after the purported auction. Pentagon did not have a purchaser authorized at the auction. Under agency law, an agent (Pentagon) must have actual authority at the time of the transaction to bind the principal (Fannie Mae). Legal precedent does not allow for the after-the-fact ratification of a transfer of title to property. The Power of Attorney itself is evidence that Pentagon's agent did not have authority on the auction sale day. Massachusetts has caselaw that provides clear guidance; the *Ibanez*² decision clearly states that transfers of interest occur on the date and only on the date they occur and cannot be retroactively validated. Courts have consistently held that actions taken by an agent without proper authority are void or voidable. *Ford v. Unity Hospital*, 32 Mass. App. Ct. 441 (1992) (An agent must have actual authority at the time of the transaction.) *Bank of New York v. Bailey*, 460 Mass. 327 (2011). (Strict compliance with foreclosure procedures is required to ensure the validity of the sale.)

Procedural due process mandates that Rev. Branch receive full legal protections at every stage of the foreclosure process. Any deprivation of property must strictly adhere to established legal procedures to ensure fundamental fairness. If the agent lacked proper authority, the foreclosure sale was inherently void, as it failed to comply with the legal safeguards designed to protect homeowners from arbitrary and unlawful takings. This violation deprived Rev. Branch of his constitutional right to due process, rendering the foreclosure sale legally defective and unenforceable. The Courts did not enforce Rev. Branch's procedural due process rights.

On November 15, 2016, a foreclosure deed granting the property to Fannie Mae was recorded with the Plymouth County registry of deeds. On April 6, 2017, Fannie Mae served Rev. Branch with a (14) fourteen-day notice to quit, followed on June 5, 2017, by a summary process summons and complaint, which sought both possession and use and occupancy payments. A trial date was set for June 28, 2017. On June 19, 2017, Rev. Branch filed his answer in a timely manner, demanding a jury trial and discovery requests, and he brought a number of counterclaims. In his answer, Rev. Branch asserted the notice sent to him was faulty. (Pet. App. I-1, Brief of Appellant).

² U.S. Bank Nat. Ass'n v. Ibanez, 458 Mass. 637 (2011)

The trial date was continued because Rev. Branch requested discovery. In November 2017, Fannie Mae moved for partial summary judgment on its claim for possession and on Rev. Branch's counterclaims.

On March 21, 2018, the motion judge ruled in Fannie Mae's favor on all issues, entering a judgment for possession and dismissing Rev. Branch's counterclaims. The motion judge found that the 150-day right-to-cure notice, dated June 30, 2014, "advised Branch of his right to assert in a separate court action, or to bring a court action, to allege any defense to acceleration and foreclosures. See Huerta Affidavit at Exhibit 2 and Defendant's Opposition at Exhibit D." The motion judge was incorrect. Respectfully, the record evidence (App. F-1) has no such language. Rev. Branch further contested the notice of his right to cure as inadequate in a motion for reconsideration with a supporting affidavit, which detailed that the 150-day right-to-cure notice did not meet the legal requirements of his mortgage to no avail. It appears the motion judge improperly weighed the evidence and relied exclusively on the affidavits of the foreclosing entity in favor of Fannie Mae, violating Rev. Branch's right to a fair hearing.

Rev. Branch appealed the grant of summary judgment. Rev. Branch was ordered to pay Fannie Mae for the use and occupancy of his home to allow his appeal to proceed.³ Rev. Branch was ordered to pay Fannie Mae \$1,800 per month for use and occupancy. Rev. Branch appealed from that order; that appeal took over four years to resolve.⁴ On December 10, 2018, during the pendency of Rev. Branch's appeals, Fannie Mae sold the subject property to Roberto Pina Cardoso using a quitclaim deed.

On February 28, 2019, Fannie Mae filed a motion with the Massachusetts Appeals Court to dismiss Rev. Branch's appeal and requested the Appeals Court to vacate their use and occupancy order. Rev. Branch opposed dismissal and took no position on use and occupancy. On March 25, 2019, the Appeals Court issued an order denying Fannie Mae's motion to dismiss the appeal without prejudice and vacated

³ "...a postforeclosure mortgagor remaining in possession of the property to pay use and occupancy to the purchaser of the property 'as rent' pending the appeal if his or her bond has been waived." *Bank of N.Y. Mellon v. King*, 485 Mass. 37, 53 (Mass. 2020)

⁴ *Branch v. Federal Nat'l Mtge. Ass'n*, 491 Mass. 1009, 1009-1011 (2022).

the use and occupancy payments as requested by Fannie Mae.

On April 8, 2019, Cardoso initiated his own summary process case against Rev. Branch, alleging that "Plaintiff has superior right to possession. The property was foreclosed and (sic.) Plaintiff is the new owner." Cardoso did not request use and occupancy payments in his filing. Rev. Branch filed an answer, a discovery demand, a request for a jury trial, and counterclaims. Cardoso was granted leave to extend the time to respond to discovery. On August 20, 2019, without responding to discovery, Cardoso filed a motion to dismiss the summary process action without prejudice, which the court granted on September 11, 2019.⁵

On September 17, 2020, a panel of the Massachusetts Appeals Court held that the dispute over use and occupancy payments owed to Fannie Mae was moot, as Fannie Mae no longer sought those payments after selling the property to Cardoso, the court also "grant Cardoso leave to file, and the Housing Court leave to consider, a motion to intervene or to substitute Cardoso as the plaintiff in the summary process action." Cardoso thereafter filed such a motion on November 3, 2020. Rev. Branch opposed on due process grounds, arguing that allowing post-judgment intervention while a case is on appeal would significantly disrupt his due process rights, undermining the fairness of the proceedings. The motion judge concluded that Cardoso "should be allowed to intervene as a party as of right," and "be joined with [Fannie Mae]." He also ordered Rev. Branch to pay use and occupancy payments to Cardoso of \$1000 a month as a condition of Rev. Branch's appeal. The motion judge's decision to add Cardoso as a plaintiff, rather than substituting him as the sole plaintiff, was explicitly intended to preserve the Rev. Branch's right to challenge Cardoso's title.

On May 23, 2023, the Massachusetts Appeals Court decided the full appeal. It ruled that the "second judge implicitly denied Cardoso's request to be substituted as the plaintiff in the summary process action and rather merely added him as [a] plaintiff, specifically reserving the right of

⁵ The SJC decision incorrectly states that Cardoso was prompted to dismiss his summary process case in November 2020 after the Housing Court allowed Cardoso's intervention. Cardoso had dismissed his case over a year earlier without prejudice, reserving the right to refile after the resolution of the Fannie Mae litigation.

the homeowner to challenge the validity of Cardoso's title." (App. C-1). *Fannie Mae v. Branch*, No. 21-P-899, 7 (Mass. App. Ct. May. 23, 2023). The Massachusetts Appeals Court preserved Rev. Branch's procedural due process protections, allowing him to challenge the validity of Cardoso's claim to title in his home. Failure to provide Rev. Branch the ability to challenge Cardoso's title would violate Rev. Branch's procedural due process, as it would deprive him of a meaningful opportunity to contest the basis of the claim against his property.

Despite this ruling, Cardoso sought further appellate review from the Massachusetts Supreme Judicial Court. In those proceedings, Cardoso agreed in his brief that the foreclosure notice did not strictly comply with the mortgage but argued that Rev. Branch received two other notices that were in compliance. Rev. Branch vehemently disagreed with that argument. The two purported notices did not comply with paragraph 22 of the mortgage or applicable law. The purported notices failed to include the "right to cure the default" information required by G.L. c. 244, § 35A. The second notice, dated June 12, 2013, is addressed to a P.O. Box not associated with Rev. Branch. Paragraph 15 of Rev. Branch's Mortgage requires that "Any notice to Borrower...shall be deemed to have been given...when mailed first class mail...delivered to Borrower's notice address..." Rev. Branch did not receive the notice. Moreover, any such affidavit asserting these notices were compliant is not factual. Rev. Branch's mortgage did not allow multiple notices, nor does state law.

On July 12, 2024, the state's highest court overruled the Appeals Court and found Cardoso's intervention proper, the original judge's finding in favor of Fannie Mae during the summary judgment phase proper, and Rev. Branch's counterclaims lacked evidence. The court found no unfairness. Specific to the foreclosure notice, the court found its strict compliance standard for pre-foreclosure notices, as established in *Pinti v. Emigrant Mtge. Co.*, 472 Mass. 226 (2015) did not apply to Rev. Branch.

This standard requires that notices of default strictly adhere to the mortgage terms, particularly paragraph 22, which outlines specific requirements for notifying borrowers of their rights and obligations. The Massachusetts Supreme Judicial Court has limited the retroactive application of his standard, as clarified in *Federal Nat'l Mtge. Ass'n v. Marroquin*, 477 Mass. 82 (2017), to notices sent after the *Pinti* decision (July 17, 2015) or in cases where the issue

was timely raised before the *Pinti* decision. However, as noted by the Appeals Court panel chief in the Rev. Branch's appeal, "...Pinti will apply where the issue was raised and preserved, even if the notice was sent before. And the SJC seemed to acquiesce to that." Conversely, in *Bank of New York v. Bailey*, 460 Mass. 327 (2011), the Massachusetts Supreme Judicial Court held that strict compliance with foreclosure procedures is necessary to ensure the validity of a sale.

On August 12, 2024, under Mass. R. App. P. 27, Rev. Branch filed a motion for reconsideration to correct misapprehensions and facts that stand in the way of his having superior possessory rights of his home. (Pet. App. K-1). The SJC denied reconsideration.

In doing so, the SJC failed to adequately address the violations of Rev. Branch's due process rights, particularly his ability to challenge the legitimacy of the foreclosure process and the intervenor's claim to his home.

REASON FOR GRANTING PETITION

1. Federal courts and state supreme courts are divided on the level of due process protection required in non-judicial foreclosure proceedings. This Court should grant a writ of certiorari to resolve critical legal questions regarding strict compliance with foreclosure laws and protecting homeowners' rights. This case presents an opportunity for guidance to ensure a uniform national standard, preventing arbitrary state foreclosure practices from depriving homeowners of property without procedural safeguards.

The Fourteenth Amendment's due process clause provides that no State may "deprive any person of life, liberty, or property, without due process of law." U.S. Const. Amend XIV, § 1. "Under the Due Process Clause's requirements, procedural due process ensures the state will not deprive a party of property without engaging fair procedures to reach a decision, while substantive due process ensures the state will not deprive a party of property for an arbitrary reason." *Pater v. City of Casper*, 646 F.3d 1290, 1293 (10th Cir. 2011) (internal quotation marks omitted).

The Massachusetts Supreme Judicial Court ("SJC") focused on the third-party purchaser, not any due process or procedural fairness regarding Rev. Branch. The record

reflects irregularities in the foreclosure process that have deprived Rev. Branch of a fair opportunity to protect his property rights. In this case, the 'risk of erroneous deprivation' hinges on the adequacy of the procedural safeguards of the Massachusetts non-judicial foreclosure process and statutory scheme. The evidence of a deficient foreclosure notice⁶ was relied on to take Rev. Branch's home, resulting in an erroneous deprivation, which would weigh in favor of procedural protection under this Court's *Mathews v. Eldridge* ruling. *Mathews v. Eldridge*, 424 U.S. 319 (1976).

Without a doubt, this case involves a fundamental due process issue that strikes at the core of property rights protected by the Fourteenth Amendment. The deprivation of an individual's home, which this Court has recognized as a "final, lasting deprivation of property" (*Los Angeles v. David*, 538 U.S. 715, 717), requires strict procedural safeguards. This Court has repeatedly held that property cannot be taken without notice and an opportunity to be heard, as established in *Fuentes v. Shevin*, 407 U.S. 67 (1972). The conflicting decisions between the Massachusetts Appeals Court and the Massachusetts Supreme Judicial Court on whether a homeowner, like Petitioner, has the constitutional right to challenge the third-party purchaser's title further underscores the need for clarity on the due process standards required in non-judicial foreclosure proceedings.

Without this Court's intervention, there is a real risk of arbitrary and unjustified property deprivations across the nation, particularly in non-judicial foreclosure states, where procedural safeguards are often minimal. This raises a national critical issue of whether the Fourteenth Amendment's due process protections apply to non-judicial foreclosure proceedings where third parties may take possession of a property without sufficient procedural fairness. Historically, this Court has provided guidance on critical constitutional issues to maintain consistency across jurisdictions.

This Court has consistently held that due process requires a fair opportunity to contest claims in a property

⁶ The third-party purchaser concedes the notice was not in strict compliance but attempts to rely on two other letters. The defects in these notices are not minor irregularities but fundamental violations of the mortgage contract and statutory due process safeguards.

dispute. In *Fuentes v. Shevin*, 407 U.S. 67 (1972), this Court emphasized the importance of notice and an opportunity to be heard before property is taken. This Court held that procedural safeguards are necessary to prevent the arbitrary deprivation of property. Rev. Branch was deprived of his property without proper procedural safeguards, including a legally sufficient foreclosure notice and the opportunity to contest the third-party purchaser's title. The Massachusetts Supreme Judicial Court failed to enforce these protections, allowing a summary process eviction without fully addressing his due process claims. The ruling effectively permits private entities to use self-serving affidavits as conclusive evidence without affording homeowners meaningful recourse, contradicting *Fuentes's* emphasis on procedural fairness.

Beyond the specific facts of this case, the decision in this petition could affect the due process rights of homeowners across the country, particularly in states that use non-judicial foreclosure procedures. Many states rely on affidavits and other potentially unreliable evidence in foreclosure proceedings without adequate judicial oversight. The Court's intervention would provide much-needed clarity on the minimum due process safeguards required to protect property owners facing foreclosure. If left unresolved, these inconsistencies risk widespread arbitrary deprivations of property without a meaningful opportunity to contest the foreclosure process or third-party claims, contrary to this Court's established precedent in cases like *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950) and *Fuentes v. Shevin*.

While requiring plaintiffs in foreclosure actions to prove legal ownership of the underlying note and mortgage would create an administrative burden, it is a burden that is basic to all civil litigation – standing to sue. See *Warth v. Seldin*, 422 U.S. 490, 498 (1975) (standing “is [a] threshold question in every federal case, determining the power of the court to entertain the suit”); *Alpine Associates, Inc. v. KP&R, Inc.*, 802 P.2d 1119 (Colo. 1990) (it is necessary for the plaintiff to prove, in addition to the basic elements of its case, its status as an assignee). The proper burden of proving standing was ignored by the Massachusetts Supreme Judicial Court.

Rev. Branch asserted that the evidence showed that Fannie Mae was the owner of the note and mortgage, not Pentagon as the noteholder.⁷

In this case, if the agent lacked lawful authority, the sale constituted a fundamental violation of due process by unlawfully stripping Rev. Branch of his property rights without strict adherence to statutory foreclosure requirements. This case presents grave constitutional concerns regarding whether Massachusetts, a non-judicial foreclosure state, can deprive homeowners of their property based on statutory conclusive presumptions derived from foreclosing entities' affidavits. These affidavits often assert compliance with statutory and contractual notice obligations and ownership of the promissory note and mortgage, with judicial involvement after the foreclosure and limited to the summary process to evict the homeowner. This reliance on affidavits without strict judicial scrutiny increases the risk of erroneous deprivations of property.

Massachusetts courts' failure to scrutinize foreclosure procedures effectively sanctions unconstitutional takings, reinforcing the urgent need for this Court's intervention. The summary process case is judicial enforcement triggering state action because the state court is enforcing the rights of private parties. *Shelley v. Kraemer*, 334 U.S. 1 (1948).

⁷ The SJC ruled: "Branch next argues that Pentagon could not foreclose on the property because it was the loan servicer but not the actual mortgage note holder..." In his Motion for Reconsideration, Rev. Branch sought to correct this fundamental misapprehension of fact, asserting that the misrepresentations made by Pentagon and FNMA were deceptive. Specifically, he argued that FNMA had owned both the mortgage and the promissory note since the loan's inception but failed to record the assignment in the Registry of Deeds. This omission is legally fatal to the initiation of the foreclosure process. ("The note and mortgage are inseparable; the former as essential, the latter as an incident.") *Carpenter v. Longan*, 83 U.S. (16 Wall.) 271 (1872).

2. Deficient notice of default and the Massachusetts non-judicial foreclosure process failed to provide homeowners with the procedural safeguards required by Due Process

In *U.S. v. Henderson*, the Fifth Circuit ruled that a defective notice of acceleration issued by the government violated due process. See 707 F.2d at 856–57. While this decision involved government action, its principles apply to private foreclosing entities and Fannie Mae, as due process protections ensure that homeowners receive proper notice before losing their property.

There, the government's notice stated that the only way to avoid foreclosure was to pay the loan's entire outstanding balance plus interest. *Id.* at 855. State law, however, provided that homeowners could avoid foreclosure by simply paying the past-due amount. *Id.* at 855–56. On appeal from eviction proceedings for failing to pay any amount, the court held that the government's notice "r[an] afoul of appellants' fundamental due process rights" because it "virtually assure[d] that appellants, unless otherwise informed, would believe they were unable to save their home from the auctioneer's block." *Id.* at 857. Although the court agreed with the government that it "was under no obligation to provide [the homeowners] with its interpretation of the applicable statutory provisions," it noted, "the government nonetheless may not affirmatively misrepresent the obligations of a debtor." *Id.* at 856.

Here, the Massachusetts Supreme Judicial Court effectively permits misleading notices to serve as the basis for depriving a homeowner of their property. This is fundamentally unfair to Rev. Branch, as he was misled into believing he had no right to challenge the foreclosure. The notice issued by Pentagon, which failed to inform him of his rights, was relied upon throughout the judicial process, denying him a fair opportunity to contest the foreclosure.

Under Massachusetts General Laws Chapter 183, Section 21 (G.L. c. 183, § 21), a notice of default must meet specific statutory requirements. Failure to include mandatory elements, such as the precise default amount, cure period, or other statutory language, could render the foreclosure invalid.

This Court has also suggested that an administrative agency's misleading statements may offend "traditional notions of fairness." To illustrate the improper events that

resulted in the loss of Rev. Branch's home, he provides the notices and errors.

- **February 28, 2013, Notice** – This 30-day notice was improperly directed to U.S. servicemembers, despite Rev. Branch not being one, rendering it inapplicable and misleading. The notice failed to comply with G.L. c. 244, § 35A, omitting the required five-language header under 209 CMR §§ 56.03 and 56.04. It also contained impermissible language suggesting a foreclosure proceeding, which does not exist in Massachusetts' non-judicial foreclosure system. The SJC previously invalidated similar notices in *Aurora Loan Servs., LLC v. Murphy*, 88 Mass. App. Ct. 726 (2015) and *Fannie Mae v. Marroquin*, 477 Mass. 90 (2017), both of which held that misleading or conditional language on acceleration and reinstatement rendered notices void.
- **June 12, 2013, Notice** – This notice was misaddressed to a P.O. Box not associated with Rev. Branch, in direct violation of Paragraph 15 of the mortgage, which requires delivery to the borrower's notice address. No proof of mailing or receipt exists, and any affidavit asserting compliance is factually incorrect. Additionally, the notice unlawfully demanded late charges and fees, which are expressly prohibited under G.L. c. 244, § 35A. Acceptance of this deficient notice would create a due process concern by allowing foreclosure to proceed despite undisputed noncompliance with statutory and contractual requirements.
- **June 30, 2014, Notice** – While this notice purported to provide a 150-day cure period, it included the same impermissible demand for late fees and failed to include critical mortgage language regarding the right to reinstate after acceleration and the right to bring legal action. These omissions violate both the mortgage contract and statutory law. If the Court permits such a defective notice to justify foreclosure, it would erode due process protections by enabling mortgagees to deprive homeowners of property without adhering to the notice requirements that form the foundation of lawful foreclosure.

The Fourteenth Amendment's guarantee of procedural due process is meant to protect persons not from deprivation itself but from the mistaken or unjustified deprivation of life, liberty, or property. See U.S. Const. amend. XIV, § 1.

This Court repeatedly emphasized that "procedural due process rules are shaped by the risk of error inherent in the truth-finding process." *Mathews v. Eldridge*, 424 U.S. 319, 344 (1976). Such rules "minimize substantively unfair or mistaken deprivations of life, liberty, or property by enabling persons to contest the basis upon which a State proposes to deprive them of protected interests." *Id.* The requirement that governments generally provide a fair process before confiscating property is a rule, not a suggestion—Massachusetts' foreclosures and summary evictions process conflict with decades of Supreme Court precedent and core constitutional protection.

Applying the *Mathews* test, the deprivation of Rev. Branch's home without adequate notice and procedural safeguards represents a clear violation of due process. The Massachusetts Supreme Judicial Court's decision overlooked these fundamental principles, allowing the foreclosure to proceed based on procedurally defective notices, which failed to meet the *Mathews* standard for fairness.

During the summary process proceedings and finally on appeal before the SJC, the courts dismissed Rev. Branch's claim that Fannie Mae had held the mortgage and note since the loan's inception, so Pentagon could not foreclose on the property. The court allowed Fannie Mae's judgment for possession to evict Rev. Branch without Pentagon having to resolve the question of ownership of the mortgage and note. Their affidavits of compliance were deemed sufficient, although self-serving. Rev. Branch's constitutional challenge was ignored. Massachusetts Supreme Judicial Court's decision cavalierly disregards the due process requirements demanded by this Court and virtually all others presented with mortgage and note cases.

A. Without the Supreme Court's intervention, procedural due process is lost

The Supreme Court should intervene because the Massachusetts state courts have demonstrated an unwillingness to protect federal constitutional rights in foreclosure proceedings. This is not exclusive to Massachusetts, as this Court is inundated with similar applications from across our nation. It is imperative that this Court clarify the minimum due process standards required in non-judicial foreclosure states, ensuring that homeowners are not deprived of their property without proper procedural protections, as required under the Fifth

and Fourteenth Amendments. See U.S. Const. amends. V, XIV.

This Court has long recognized that federal intervention is warranted when state courts fail to uphold constitutional protections. *Allen v. McCurry*, 449 U.S. 90 (1980) (quoting *Monroe v. Pape*, 365 U.S. 167, 176 (1961)) affirms that federal courts may step in where state courts are unable or unwilling to protect federal rights. In *Younger v. Harris*, 401 U.S. 37 (1971), this Court held that federal intervention is necessary for "exceptional circumstances," such as when state law is "flagrantly and patently violative of express constitutional prohibitions" or when there is "bad faith, harassment, or . . . other unusual circumstances that would call for equitable relief." *Id.* at 46-54. Similarly, in *Mitchum v. Foster*, 407 U.S. 225, 230 (1972), this Court reaffirmed the need for federal oversight where state actions threaten constitutional protections.

This Court has determined that the loss of an individual's home constitutes a final, lasting deprivation of property entitling him/her to the protection of the due process clause. *Los Angeles v. David*, 538 U.S. 715, 717(2003) (deprivation of even money is the deprivation of property for the purpose of evaluating due process protection). The Massachusetts courts' actions violate due process and the fundamental right to a fair hearing, as public interest is always implicated when constitutional rights are at stake. See *Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005). Given the evidence in this case that showed apparent non-compliance with Rev. Branch's mortgage and Massachusetts statutory scheme regarding foreclosures, it appears there is an unwillingness to enforce federal constitutional protections in foreclosure cases; this Court's intervention is essential to prevent irreparable harm and uphold due process.

CONCLUSION

The Supreme Judicial Court's decision, conflicting with the Massachusetts Appeals Court, highlights serious due process deficiencies in Massachusetts' non-judicial foreclosures and raises a broader national concern. Without uniform safeguards, homeowners across the country face arbitrary property deprivations in foreclosure proceedings. This Court's intervention is essential to uphold due process nationwide and prevent states from stripping homeowners of their property without meaningful procedural protections.

The petition for a writ of certiorari should be granted for all of the foregoing reasons.

Dated: February 2, 2025 Respectfully submitted,
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