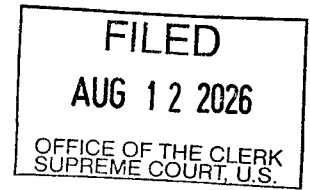


26-5745 **ORIGINAL**
No. _____

**IN THE SUPREME COURT OF THE
UNITED STATES**



JOSEF M. LAMELL, *PETITIONER*

v.

U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR
CSMC MORTGAGE-BACKED TRUST 2007-3, AND PHH
MORTGAGE CORPORATION, *RESPONDENTS*.

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

PETITION FOR A WRIT OF CERTIORARI

Josef M. Lamell, *pro se*
Petitioner,

QUESTIONS PRESENTED

Question 1 – Whether Respondents Had Authority to Enforce a Private Agreement to Which They Were Not Parties

To establish their entitlement as nonparties to enforce the release terms of Petitioner's private agreement with CIT against him, it was incumbent on Respondents to provide legally-sufficient evidence to satisfy the burden of proof placed on them under Texas law. The opinions below do not identify how or with what evidence and legal predicates that burden was satisfied under governing Texas law.

Question 2 – Whether Rights That had Become Void or Time-Barred Under Texas Law May Nevertheless Be Judicially Recognized as Enforceable

Even if Respondents were entitled to invoke Petitioner's private agreement with CIT in state court against him in federal court, the courts below nevertheless authorized foreclosure and collection after effectively holding that Texas law had already rendered the Deed of Trust and power of sale void and collection remedies time-barred. Respondents do not identify any governing Texas law, doctrine, or legally sufficient evidence establishing the legal predicates necessary to justify treating those rights as still enforceable.

The foregoing Questions Presented arise from an irreconcilable tension between rulings issued by the district court in the same decision.

The findings in the first part of the district court's decision below (the "Core Findings") are well supported by governing Texas law and

precedent and establish unequivocally that limitations for Respondents' foreclosure and collection remedies expired over a decade ago. The mandatory legal consequences thus compelled under Texas law are that their Deed of Trust lien and rights to foreclosure and collection had become respectively void and time-barred. These findings were affirmed on appeal and are not contested.

Yet, later in that same decision, the district court construed the wording of Petitioner's prior agreement settling litigation with CIT in state district court (the "CIT Settlement") in which Respondents were not parties to either the litigation or the agreement—to effectively reach an enforcement result seemingly incompatible with its own methodical findings in the first part of its decision. Without reference to any governing Texas law or established legal predicate, the district court nevertheless ruled that Respondents were still entitled to invoke the release terms of that agreement to enforce foreclosure and collection against Petitioner as if limitations had not expired and the lien had not become void.

PARTIES TO THE PROCEEDING

Pursuant to Supreme Court Rule 14, the undersigned Petitioner, Josef M. Lamell, certifies that the following listed persons are parties to this proceeding. This representation is made so that the judges of this court may evaluate possible disqualification or recusal.

Petitioner:	Counsel for Petitioner:
Josef M. Lamell, a/k/a J. M. Arpad Lamell, a/k/a Arpad Lamell	Josef M. Lamell, <i>pro se</i> , Houston, TX

Respondents:	Counsel for Respondents:
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PHH Mortgage Corporation, Individually and as Successor-in-Interest to OCWEN Loan Servicing, LLC. PHH Mortg. Corp. is a subsidiary of Onity Group, Inc. which trades on the NYSE under the ticker symbol: ONIT	Christopher D. Kratovil Dykema Gossett PLLC, 1717 Main Street, Suite 4200, Dallas, Texas 75201

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No. _____

IN THE SUPREME COURT OF THE
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JOSEF M. LAMELL, *PETITIONER*

v.

U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR CSMC
MORTGAGE-BACKED TRUST 2007-3, AND PHH MORTGAGE
CORPORATION, *RESPONDENTS*.

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

PETITION FOR A WRIT OF CERTIORARI

OPINIONS BELOW

The *Opinion* of the United States Court of Appeals appealed from appears at Appendix A to the petition and is unpublished. The prior *Opinion* of the Court of Appeals appears at Appendix B to the petition and is unpublished. The *Memorandum Opinion and Order* and *Final Judgment* of the District Court appear respectively at Appendix C and

at Appendix D to the petition and is reported as *U.S. Bank Nat'l Ass'n v. Lamell*, No. H-19-2402, 2025 WL 329214 (S.D. Tex. Jan. 29, 2025). The denial of *Petitioner's Petition for Panel Rehearing* appears at Appendix E to the petition. The Notice of Petitioner's Bankruptcy Case filing appears at Appendix G to the petition.

JURISDICTION

The court of appeals' *Opinion* was entered on March 16, 2026. Petitioner's timely petition for rehearing was denied on April 23, 2026. An extension of time to file the petition for a writ of certiorari to September 20, 2026 was granted on June 8, 2026. A notice of Trustee's sale issued setting a sale for August 4, 2026. The sale was withdrawn after Petitioner filed bankruptcy on August 3, 2026. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- 28 U.S.C. § 1254(1)
- 28 U.S.C. § 1652
- TEX. CIV. PRAC. & REM. CODE § 16.035(d)
- TEX. BUS. & COM. CODE § 3.118(a)
- TEX. BUS. & COM. CODE § 26.01(a)
- TEX. PROP. CODE § 51.002

STATEMENT OF THE CASE

This case presents an unusually direct example of a federal court issuing rulings and decrees that substantially alter rights controlled exclusively by state law without identifying legally sufficient evidence and necessary state-law predicates supporting those rulings. The rulings and decrees below conflict with Texas law and Supreme Court precedent as to enforcement of contracts by nonparties and the finality of limitations statutes in mortgage enforcement. The methodology and issues in this case have wider implications for any federal adjudication involving rights in these and other areas controlled by state law.

The Questions Presented arise from the district court having ordered and decreed that Respondents had a first lien security interest under the Deed of Trust authorizing them to enforce foreclosure and collection against Petitioner, even though its own contemporaneous findings clearly establish that limitations expired long ago. The legal consequences compelled by these findings under Texas law that the Deed of Trust lien and foreclosure had become void and collection time-

barred ¹ create the tension that lies at the heart of this Petition.

The lower court's aforementioned final order and decree was based on having construed—at Respondent's request—the language of a settlement agreement between Petitioner and CIT Bank, N.A. (the "CIT Settlement" – Appendix F) to conclude: (a) Respondents were successors and assigns of CIT ² and, (b) entitled as such to enforce its release terms to overcome Petitioner's affirmative limitations defense against their foreclosure and collection claims.

However, neither conclusion is supported by the wording of the agreement or by any legally conclusive evidence. In fact, the very same evidence and findings of fact the courts below relied on to make the centrally-important findings that establish limitations had expired—which findings led directly to the Deed of Trust having become void—also show beyond doubt that both conclusions are factually and legally

¹ Although TEX. BUS. & COM. CODE § 3.118(a) does not employ the "becomes void" language used in TEX. CIV. PRAC. & REM. CODE § 16.035(d), it provides that an action to enforce an accelerated note must be commenced within six years after acceleration. Accordingly, Petitioner uses the terms "time-barred," "barred by limitations," or "effectively barred" with respect to collection remedies, while reserving the term "void" for the deed of trust lien and power of sale as expressly provided by § 16.035(d).

² Unless otherwise noted, references herein to CIT refer to CIT Bank, N.A. which did not exist until after it was formed on August 3, 2015 (App.H–p.21).

erroneous. Moreover, the district court failed to identify or show satisfaction of any necessary legal predicate or governing Texas legal authority to justify either its conclusions or its order that followed authorizing foreclosure. Particularly troubling is that its conclusions, order, and decree that followed go against established precedent of the Texas Supreme Court, its own prior decision in another case, and the affirmation of that decision by the Fifth Circuit Court of Appeals.

The failure alone of the courts below to rationalize the essential impossibility of enforcing a Deed of Trust that had become void without identifying any Texas legal predicate for support, creates sufficient tension to warrant consideration of the Questions Presented.

REASONS FOR GRANTING THE PETITION

A. Introduction

Although arising from a mortgage dispute, this case presents recurring questions extending beyond mortgage litigation to the very methodology federal courts employ to recognize and enforce rights that exist exclusively under the purview of state law. Not only do the opinions below conflict with existing Texas law and Supreme Court precedent, they presume to enforce substantial property and contract

rights for Respondents that had become void under Texas law as if they were still valid, while at the very same time nullifying Petitioner's still valid legal rights as if they were not valid—all without identifying any support in governing Texas law or doctrine.

However, this petition does not seek to reweigh facts or factual conclusions generally as to whether Respondents should prevail. Instead, it questions whether the lower courts' legal conclusions reached without any identified legal basis under Texas law can be upheld. To the extent evidence and factual detail is discussed, it is to highlight methodological concerns as to whether federal courts may issue rulings that go against Texas law with respect to property and contractual rights that are exclusively within its purview.

In particular, the application of inconsistent methodologies to the same body of facts and evidence to issue findings and rulings that contradict each other creates significant tension. They implicate fundamental principles of federalism under *Erie* and *Butner* ³ and affect

³ *Erie Railroad Co. v. Tompkins*, 304 U.S. 64 (1938) and *Butner v. U.S.*, 440 U.S. 48 (1979) (establishing that in federal courts, except in matters governed by Federal Constitution or by acts of Congress, the law to be applied in any civil case is the law of the state.) (See also 28 U.S.C. § 1652 concerning the primacy, applicability, and

a broad range of disputes involving property, contracts, secured credit, waiver, and other rights defined and controlled primarily by state law.

B. The Courts Below Recognized and Affirmed Core Findings Establishing That Limitations Had Expired

In its *Memorandum Opinion and Order* and *Final Judgment*, the district court found acceleration occurred on June 4, 2010 (App.C–p.8, 13), was tolled for not more than 755 days ⁴ (App.C–p.24), and was not abandoned (App.C–p.23). To reach these findings (the “Core Findings”), it undertook an exhaustive and detailed review of a wide range of documents, testimony, and evidence in the Record.

The legal consequences of these Core Findings are clear enough: “On the expiration of the four-year limitations period, the real property lien and a power of sale to enforce the real property lien become void.” TEX. CIV. PRAC. & REM. CODE § 16.035(d); *Holy Cross Church of God in Christ v. Wolf*, 44 S.W.3d 562, 567 (Tex. 2001) See also TEX. BUS. & COM. CODE § 3.118(a): “an action to enforce the obligation of a party to pay a note payable at a definite time must be commenced within six

enforceability of state law with respect to substantive property rights and the burdens attached to those rights.)

⁴ The base four and six-year limitations applicable respectively to foreclosure and collection were extended by the 755 days tolled to a period ending in mid-2016.

years after the due date or dates stated in the note or, if a due date is accelerated, within six years after the accelerated due date.”

The above Core Findings were affirmed on appeal and are not contested. As compelled by Texas statutory law, they establish that the Deed of Trust lien and Respondents’ powers of sale/foreclosure thereunder had become void and collection barred by July of 2016,⁵ more than ten years ago and long before Respondents sued Petitioner.

C. The Courts Below Still Permitted Respondents to Proceed with Enforcement Despite the Statutory Consequences of Expired Limitations

Despite the Deed of Trust having become void and collection time-barred, the district court nevertheless ordered and decreed that:

... that certain Deed of Trust ... provides [Respondents] with a first lien security interest ... secur[ing] ... the outstanding balance of the Note ... attorneys’ fees; and costs of court and that [Respondents] may proceed with foreclosure on the property as provided in the Deed of Trust and Texas Property Code § 51.002 (App.D–p.2)

However, as shown above and more fully in the following sections, this decree and order directly contradict the district court’s own findings

⁵ Limitations for judicial foreclosure, non-judicial foreclosure, and collection expired respectively on March 3, June 28, and June 4, of 2016 (App.H–p.2 ¶No.74). These dates are uncontested.

establishing at the very same time that the Deed of Trust—together with its “first lien security interest”—had become void long ago under Texas law. Not only are they not supported by any identified legal basis under Texas law and, as such, essentially unsubstantiated, they go against well-established Texas and U.S. Supreme Court precedent.

I. Question 1 – Whether Respondents Had Authority to Enforce a Private Agreement to Which They Were Not Parties

A. Under Texas Law, Burdens of Proof Must be Satisfied and Evidence Must be Legally Sufficient

- 1) Texas Law Places the Burden of Proof on Claimants to Prove Their Claims with Credible Evidence

The burden of proof is on the claimant to establish its right as a third party to enforce contract terms. *See Raleigh v. Illinois Dep't of Revenue*, 530 U.S. 15, 21 (2000) “the burden of proof is an essential element of the claim itself; one who asserts a claim is entitled to the burden of proof that normally comes with it.” *First Bank v. Brumitt*, 519 S.W.3d 95 (Tex. 2017) establishes further that “a person seeking to establish third-party-beneficiary status must demonstrate that the contracting parties ‘intended to secure a benefit to that third party’ and ‘entered into the contract directly for the third party's benefit.’ ”

Likewise in *Basic Capital Management, Inc. v. Dynex Commercial, Inc.*, 348 S.W.3d 894 (2011), the Supreme Court affirmed that “The intention to contract or confer a direct benefit to a third party must be clearly and fully spelled out or enforcement by the third party must be denied.”⁶ The lower court’s decisions comport with none of this precedent.

2) Implied Third-Party-Beneficiary Rights Are Strongly Disfavored

As held in *Tawes v. Barnes*, 340 S.W.3d 419, 425 (Tex. 2011): “In the absence of a clear and unequivocal expression of the contracting parties’ intent to directly benefit a third party, courts will not confer third-party beneficiary status by implication.” Neither Respondents nor the lower courts have identified any such “unequivocal expression.”

3) Doubt Must be Resolved Against Third-Party Enforcement

As *Tawes* lays out further: “All doubts must be resolved against conferring third-party beneficiary status” ultimately concluding that “The controlling factor is the absence of any sufficiently clear and unequivocal language demonstrating an intent to directly benefit the

⁶ See also *MCI Telecommunications Corp. v. Texas Utilities Electric Co.*, 995 S.W.2d 647, 651 (Tex. 1999), “The intention to contract or confer a direct benefit to a third party must be clearly and fully spelled out or enforcement by the third party must be denied.”

alleged beneficiary.” Thus, where any doubt exists, no such intent can be inferred and enforcement by the third party would not be allowed. The emphasis in *Tawes* that doubts “must be resolved against conferring third-party beneficiary status,” works as a rule of legal sufficiency, not merely as a rule of evidence.

The opinions below do not identify or show how or with what evidence Respondents satisfied their burden of proof as to enforcing the agreement or established the intent of both CIT and Petitioner to secure any benefit at all for Respondents, let alone the release of Petitioner’s affirmative defense of limitations.

B. Respondents’ Request That the Court Recognize Them as Successors to CIT Based on the Plain Language of the CIT Settlement Cannot be Satisfied

In *Plaintiffs’ Second Amended Complaint*, Respondents asked the district court to “construe the provisions of the settlement agreement and determine whether, under the plain language of the agreement, Plaintiffs are ‘successors and assigns’ who were released of claims by Defendant.” (App.H–pp.23-24 ¶No.32). As shown previously, the district court accommodated their request by finding they were entitled (App.C–pp.27-28), as CIT’s successors and assigns, to enforce its releases to

override the statutory becoming-void consequences of its own Core Findings as to acceleration, abandonment, and tolling.

Looking more closely at the CIT Settlement (App.F–pp.1-9), it becomes clear Respondents’ request cannot be “construed” from its wording alone. While the agreement applies to successors and assigns generally, it does not identify or mention Respondents at all. Nor does it mention the Deed of Trust or revival of it from void condition, collection or servicing of the Note, limitations, or Petitioner’s limitations defense. Because it does not mention Respondents at all, the only thing “plainly” evident from its wording is that they were not parties to it. It certainly does not establish them as successors and assigns and cannot inform any decision as to their rights or connection to the agreement or CIT.

C. Respondents Provided no Proof of a Successor or Assign Connection to CIT in the Servicing of the Note

Although Respondents claim to be beneficiaries of the CIT Settlement, they offered no legally-cognizable evidence to prove their claim. As shown above, they relied instead on the court to construe from its “plain language” that they were CIT’s “successors and assigns.”

- 1) The Event Timeline Reflected in the Record Effectively Nullifies Respondents’ Successorship Claim

The district court's own findings of fact show Respondents began servicing the note on November 1, 2013.⁷ They also show CIT did not exist at all until it was created two years later on August 3, 2015 as the product of a corporate merger (App.H–p.21).⁸ Given these two facts, the conclusion that Respondents' right to enforce the CIT Settlement derived from having become successors to CIT nearly two years before CIT came into existence is patently implausible.

The aforementioned event sequence actually establishes two facts that compel denial of Respondents' successorship claim: (a) They were not successors to CIT in the servicing of the note because they were already servicing the note long before CIT was even created, and (b) Since Respondents were already servicers of the Note years before CIT was formed, CIT could not have been a servicer itself nor could it have

⁷ Respondents took over servicing effective on November 1, 2013 pursuant to a "Mortgage Servicing Rights Purchase and Sale Agreement" concluded on June 13, 2013 by which Ocwen acquired servicing rights from OneWest Bank, FSB, (App.H–p.9) followed by the formal, RESPA notice of servicing transfer from OneWest to Ocwen issued on October 16, 2013 (App.H–p.11). After the effective date of the transfer on November 1, 2013, OneWest FSB—subsequently re-chartered as OneWest Bank, N.A. on February 20, 2014 (App.H–p.12)—no longer had any servicing rights or interest whatsoever in the Note or with Respondents.

⁸ The court's reference in Fn.39 at p.10 (App.C–p.10 Fn.39) is to CIT Group, Inc.'s SEC filing 8-K/A, Item 2.01 (App.H–p.21). This filing says nothing at all about servicing rights and does not prove the legal entitlement the court ultimately recognized.

come into servicing rights upon its formation. Since it was never a servicer, it is difficult to conclude CIT would have been interested in securing any benefit for Respondents. Neither the opinions below, nor the “plain language” of the agreement offer any evidence or explanation to establish any intent to confer any benefit on Respondents as required under *Raleigh*, *Brumitt*, *Basic Capital*, *MCI*, and *Tawes*.

The factual contradictions surrounding the district court’s conclusion that Respondents are successors of CIT expose doctrinal gaps it has not adequately addressed. Regardless, the mere existence of these contradictions establishes *ipso facto* the very doubt that, under *Tawes*: “must be resolved against conferring third-party beneficiary status.” Therefore, Respondents cannot claim any third-party right to invoke the CIT Settlement to override Petitioner’s limitations defense and enforce foreclosure and collection against him and his property.

2) Even More Evidence Shows Respondents Are Not CIT’s
“Successors and Assigns” in the Servicing of the Note

The district court failed to recognize that the very same evidence that supports its Core Findings also shows Respondents were actively servicing the note long before CIT was even created. Indeed, their own account statements and letters prove CIT was not a servicer at any

point in the unbroken OneWest → Ocwen → PHH servicing sequence.⁹

The absence of any notice announcing a transfer of servicing to or from CIT (as required under the Deed of Trust ¹⁰ and RESPA both) adds even more doubt to the unresolved doubt that already exists as to Respondents' status as successors or assigns entitled to enforce the CIT Settlement. Again, under *Tawes*, that doubt must be resolved against conferring third-party enforceability of the agreement on them.

Although the district court noted Petitioner's mention of CIT in his state court filing of April 9, 2019 that might imply it was a servicer,¹¹ it does not establish *per se* that CIT was ever a servicer of the Note nor does it make it so. Nor could it supersede CIT's far more authoritative representations "from the horse's mouth" in its own state court filings that it was not a servicer and had no interests in servicing

⁹ See Ocwen-issued "Mortgage Account Statement(s)" for January 20 (App.H-p.15), February 17 (App.H-p.18), March 17 (App.H-p.19), and April 17 (App.H-p.20) and "Mortgage Assistance Resources" letters issued January 22 (App.H-p.16), and February 10 (App.H-p.17) of 2014

¹⁰ "If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing." (App.H-pp.13-14 ¶20)

¹¹ "Accordingly, he seeks specific declarations ... as to each of the foreclosure or collection actions that had formerly been available to CIT." (the district court's reference is to *Plaintiff's Third Supplement to Plaintiff's Supplemental Petition* (App.H-p.22 ¶10))

the note.¹² As is clear from the evidence reviewed above, Respondents could not have been CIT's successors or assigns in servicing of the Note.

3) Selective and Inconsistent Treatment of Evidence Reveals Problems in the District Court's Analytical Approach

As shown above, the district court failed to recognize that the same evidence it analyzed and relied on to support its Core Findings contradicts its further findings. To have focused so narrowly on the specific details of the evidence before it without recognizing the relationship of that evidence to other evidence and the import of that same evidence on other findings and conclusions exemplifies a conflicted methodology. This narrow focus has led directly to grants of successorship and third-party entitlement that contradict and undermine its otherwise well-supported Core Findings.

¹² CIT formally represented in motions and responses filed in state court on April 24 & 25, 2019 that: Lamell's claims against CIT were moot. There was "nothing to adjudicate" concerning CIT's rights to service or enforce the loan on Respondents' behalf. (App.H-p.01 ¶1); "Lamell's new causes of action are not valid cause of action at all." (App.H-p.04 ¶1); CIT was not the current servicer of the Note. (App.H-p.04 ¶3); Ocwen Loan Servicing, LLC was the servicer. (App.H-p.6 ¶2); Petitioner's declaratory requests as to limitations relate to claims CIT had not brought and actions/inactions of other parties [i.e. Respondents] that were not before the court and not justiciable as to CIT. (App.H-p.05); "CIT cannot speak for the rights of the investor or current servicer or what they intend to do in the future." (Ibid.); Neither Ocwen nor US Bank, N.A. are before the Court. They currently own and service the loan and the lien. Not CIT(Ibid.)

D. The Opinions Below Do Not Provide Legally Sufficient Support For Respondents' Claimed Entitlement

As shown above, Texas law places the burden on Respondents to establish entitlement as third parties to enforce the CIT Settlement for their own benefit. Yet the opinions below recognized Respondents' enforcement rights without providing the evidence or legal predicates necessary to satisfy that burden. The failure to explain how or by what authority that burden was satisfied is fatal to the grant of their claim.

E. Conclusion as to **Question 1**

The lower courts' conclusions that Respondents were successors to CIT in the servicing of the Note and thus entitled to enforce the releases of the CIT Settlement are conflicted in the facts and methodology employed, ultimately arriving at contradictory decisions. The burden of proof necessary to establish nonparty enforcement rights has not been satisfied under *Raleigh*, *Basic Capital*, *Brumitt*, and *MCI*. Furthermore, *Tawes* clearly establishes that, because of the substantial doubt that surrounds them, the conclusions cannot be upheld.

II. **Question 2 – Whether Rights That Had Become Void or Time-Barred Under Texas Law May Nevertheless Be Judicially Recognized as Enforceable**

The district court's Core Findings put into effect the very legal

consequences required under Texas statutory law: when limitations expire, the Deed of Trust and power of sale become void and collection barred. Once its Core Findings established the expiration of limitations, further litigation no longer turned on whether or not Petitioner raised or released his limitations defense in the first place. Instead, the controlling question became whether the courts below can authorize Respondents to enforce foreclosure under the first lien security interest of a Deed of Trust that had already become statutorily void.

A. The Opinions Below Conflict With Texas Law and the Fifth Circuit's Own Recognition That Removal of a Limitations Bar Does Not Revive a Void Lien

1) Precedent Supports the Permanence of Statutory Becoming-Void Consequences

The district court determined that limitations had expired and that the Deed of Trust had therefore become void under §16.035(d). The Fifth Circuit nevertheless held that Petitioner's release of his limitations defense permitted Respondents to foreclose. But removal of the limitations bar does not revive the lien. In *Houston Prime Investments, Ltd. v. Community Loan Servicing, L.L.C.*, No. 24-20171, 2026 WL 507786, at *2 (5th Cir. Feb. 24, 2026), the Fifth Circuit itself recently distinguished between revival of an otherwise time-barred

claim and revival of the lien itself. The district court had stated the distinction directly: although §16.069 could “revive or extend” limitations on the creditor's foreclosure counterclaim, removal of that limitations bar “cannot revive a void lien.” The Fifth Circuit affirmed, holding that the creditor “cannot foreclose on a lien that no longer exists.” See *The Cadle Co. v. Butler*, 951 S.W.2d 901, 909 (Tex. App.—Corpus Christi 1997, no pet.). *Houston Prime* expressly relied on *Bitterroot Holdings, LLC v. Bank of New York Mellon*, No. 14-CV-804 (RCL), 2017 WL 10181041, at *11–12 (W.D. Tex. Aug. 4, 2017)(“A void lien is forever void. It is no more. It has ceased to be.”), and *Morlock, LLC v. Petteway*, No. 4:21-CV-03202, 2024 WL 4265811, at *7 (S.D. Tex. Sept. 23, 2024), which similarly held that revival of an otherwise untimely foreclosure claim cannot revive the lien that § 16.035(d) has already rendered void.

The same distinction controls here. Removal of a limitations bar is not revival of the lien. Even assuming Petitioner's release eliminated his ability to assert limitations as a defense, the opinions below identify no Texas statute, contractual provision, or other rule of law by which that release restored the separate property interest that §16.035(d) had

already rendered void. Yet the opinions below still authorized foreclosure even after the Deed of Trust became void and “ceased to be.” Because the opinions identify no Texas authority supporting that conclusion, the opinions rest on a presumed entitlement rather than on any identified rule of Texas law.

2) Not Even the Legislature Itself Can Change the Permanent Consequences Brought on by Operation of its Own Statutes

Reflecting the permanence of the Deed of Trust’s “forever void” status, *Jackson v. Widnall*, 99 F.3d 710, 715 (5th Cir. 1996), citing *F.D.I.C. v. Belli*, 981 F.2d 838, 842–43 (5th Cir.1993), held that in the absence of express legislative intent to the contrary, subsequent extensions of a statutory limitation period—even by the legislature itself—will not revive claims previously barred.¹³ Where the legislature itself cannot undo or restore to enforceable condition a lien that had already become void under the law—even by going so far as to change the law itself—it is hard to see how Petitioner could have done so in a

¹³ The Fifth Circuit held similarly in *Resolution Tr. Corp. v. Seale*, 13 F.3d 850, 853 (5th Cir. 1994) that “the federal government has no right to pursue a case after old limitations periods have expired. *Guaranty Tr. Co. v. United States*, 304 U.S. 126, 142, 58 S.Ct. 785, 793, 82 L.Ed. 1224 (1938). Subsequent extensions of a limitations period will not revive barred claims in the absence of a clear expression of contrary legislative intent. *Belli*.”

private settlement with CIT. Particularly not when CIT had no interest or involvement in the lien, its servicing, or limitations, or any authority to act on Respondents' behalf in that regard as already shown above.

The courts below have offered no counter to *Bitterroot* or to this further precedent. Accordingly, Respondents' foreclosure and collection claims must remain respectively void and time-barred by operation of Texas' Limitations Statutes.

B. The Treatment of Petitioner's Declaratory Request Conflicts with the Fifth Circuit's Prior Decision in this Matter

Petitioner's purported claim against CIT in state court sought only declaratory relief related to his proposition that limitations had expired. As shown *Supra at* p.16 Fn.12, CIT answered by representing that his requests were moot and "[did] not present a justiciable controversy" because: (a) it was not the loan servicer, (b) it possessed no servicing or enforcement rights, and (c) there was "nothing to adjudicate" concerning its authority or interests with respect to the Note, limitations, foreclosure, or collection. CIT argued further that: "a judicial decision reached without a case or controversy is an advisory opinion, which is barred by the separation of powers provision of the Texas Constitution. Tex. Const. art, II § 1; see *Southwestern Elec. Power Co. v. Grant*, 73

S.W.3d 211 (Tex. 2002.)” (App.H–p.10 ¶2).

As to the nature and effect of Petitioner’s actual request and citing *Kaspar Wire Works, Inc. v. Leco Engineering & Machine, Inc.*, 575 F.2d 530 (5th Cir. 1978) extensively in its prior *Opinion* (App.B–pp.10-12),¹⁴ the Fifth Circuit characterized Petitioner’s request as an “anticipatory defense to a potential claim” and “not really a claim at all” in any coercive sense. Because Petitioner’s request sought only prospective declaratory relief rather than the adjudication of an existing coercive claim, it was not in itself determinative of any substantive right.

The limited legal effect of stand-alone declaratory relief is recognized in Texas case law as well. In *Martin v. Martin, Martin & Richards, Inc.*, 989 S.W.2d 357, 359 (Tex.1998) (per curiam), the Texas Supreme Court—citing Restatement (Second) of Judgments § 33 cmt. c (1982)—explained that a plaintiff seeking only declaratory relief is ordinarily not viewed as asserting a coercive claim and that such relief generally does not merge or bar subsequent coercive claims. Thus, by

¹⁴ Insofar as Petitioner’s requests for declaratory relief as to limitations in state court were raised against CIT which, by its own admission, was not a servicer and had nothing to do with limitations, and in respect of claims that CIT had not raised in the first place, his requests were moot and non-justiciable.

definition, the release of Petitioner's non-claim for declaratory relief cannot be transformed into the release of an actual claim. It certainly cannot be transformed into a claim entirely different in scope and effect to reverse or nullify the becoming-void consequences of expired limitations compelled under governing Texas law and doctrine.

Nevertheless, the lower courts treated Petitioner's release of that non-claim as something it was not—a fully-coercive and dispositive release of his affirmative limitations defense against Respondents' foreclosure claim. They did not explain how his “not really a claim at all” request for declaratory relief in state court could become a completely different claim in federal court with materially different legal consequences, nor did they identify the legal mechanism or procedure that could make such a transformation possible.

The unexplained and legally-unsupported transition in the nature and essential legal effect of Petitioner's release from one court to another bears on and undermines the continuing enforceability of Respondents' asserted rights.

C. The *Opinions* Below Do Not Identify Any Legal Basis for Treating the Release as a Waiver

The district court's references to *American* ¹⁵ and *Griffin* ¹⁶ to support that the statute of limitations may be waived by agreement before or after limitations expire do not apply. This is because there is no agreement between Respondents and Petitioner that provides for a release of his affirmative defense of limitations.

In referring to waiver in its grant of enforcement, the opinions below expand it beyond its recognized limits and purpose. While waiver may relinquish a defense, it is not unlimited and does not itself supply a Texas legal basis for enforcement where none otherwise exists. See *Brooklyn Savings Bank v. O'Neil*, 324 U.S. 697, 704 (1945) (“[W]aiver of a right so charged or colored with the public interest will not be allowed where it would thwart the legislative policy which it was designed to effectuate”). If a right is voided by statute, waiver cannot override that voiding to create a new substantive right. Where a claim is barred and extinguished by limitations, a sound legal basis is still required before enforcement may proceed. *FDIC v. Belli*, 981 F.2d 838 (5th Cir. 1993);

¹⁵ *American Alloy Steel, Inc. v. Armco, Inc.*, 777 S.W.2d 173, 177 (Tex. App.—Houston [14th Dist.] 1989)

¹⁶ *Griffin v. BAC Home Loans Servicing, LP*, 2011 WL 675285, at *2 (S.D. Tex. Feb. 16, 2011) (*Opinion*, p.7)

Resolution Tr. Corp. v. Seale, 13 F.3d 850 (5th Cir. 1994).

Ultimately, release or waiver can only relinquish existing legal rights. Neither one can have any effect on rights that no longer exist nor can either one create new rights. The opinions below fail to identify any Texas doctrine explaining how a release of any kind or by anyone can restore, preserve, or continue rights that Texas law had already required to become void and unenforceable years before the CIT Settlement was executed and years before Respondents filed this suit.

Accordingly, reliance on waiver does not resolve the absence of a governing Texas legal basis to reconcile or justify application of the release provisions of the CIT Settlement to override the statutory consequence of the Deed of Trust and power of sale having become void upon expiration of limitations.

D. The Courts Below Have Failed to Identify any Agreement or Authority Under Texas Law to Authorize Enforcement of a First Lien Security Interest Under a Deed of Trust That Had Already Become Void

As identified at the outset, this case revolves around a Deed of Trust that the district court's own Core Findings effectively relegated to "forever void" and "is no more" status. Not only is the Deed of Trust "no more," it has been "no more" ever since July of 2016. Notwithstanding

the district courts' ruling that foreclosure can proceed, nothing it has found or argued changes the fact that Respondents' Deed of Trust is void. Indeed, the courts below have not identified any Texas law, satisfied legal predicate, mechanism, or procedure that can be invoked to authorize enforcement of the first lien security interest in a Deed of Trust that had long since become forever void.

E. Summing Up – The *Opinions* Below Have not Identified Any Legal Authority, Predicate, or Mechanism Allowing Foreclosure to Proceed After a Deed of Trust had Already Become Void

Under each of the following presumptions, the opinions below assumed the existence of legal authority but never identified it:

- Even if Respondents possessed third party rights to invoke the release of Petitioner's request for declaratory relief in the CIT Settlement Agreement against him in this action, the opinions below show no support authorizing that release to reach Petitioner's current affirmative limitations defense.
- Even if the release in that Agreement could somehow be construed to reach Petitioner's defense, the opinions below likewise failed to identify any legal basis that would permit a private release to preserve or restore rights that Texas law had already required to become void or time-barred.
- Finally, even if every prior premise were accepted, the opinions below still never identified any governing Texas statute, decision, or settled doctrine authorizing foreclosure under a Deed of Trust that had already become void under Texas law.

The result is not simply an unsupported conclusion; it rests on no identified Texas doctrine or authority that authorizes it. Ultimately, even if one were to accept every premise favorable to Respondents, the fact remains that no legal basis or Texas rule is shown to explain or justify how or why a Deed of Trust that Texas law required to become void could nevertheless still remain enforceable in this case.

Petitioner's foregoing reference to *Bitterroot* puts any such possibility to rest: a void lien is “forever void. It is no more. It has ceased to be.” Most significantly, the Fifth Circuit itself has now recognized the distinction the opinions below failed to address: revival of an otherwise untimely foreclosure claim does not revive the lien that § 16.035(d) has rendered void. *Houston Prime*, 2026 WL 507786, at *2. That conclusion comports with *Bitterroot* and *Morlock* and follows *Cadle’s* recognition that expiration of limitations causes the lien to “cease to exist.” As stated earlier, the opinions below identify no Texas authority, doctrine, or predicate explaining why a private release should produce the opposite result here.

III. Federalism, Methodology, and the Necessity of Satisfying Governing Legal Predicates

Parts I and II highlight the tension created by the essential

contradictions between the district court's fully-substantiated Core Findings establishing that limitations had in fact expired, and its further unsubstantiated and contradictory conclusions authorizing Respondents to enforce their claims as if limitations had not expired. Where its Core Findings were fully supported by conclusive and unequivocal evidence and Texas governing law, its further contradictory findings identified no similar legal or evidentiary support.

Accordingly, the broader question raised by this tension is whether a federal court may override and effectively nullify the legal consequences or restrictions of Texas law as to contractual and property rights without a recognized legal basis for support.

A. The Failure of the Courts Below to Address the Doctrinal Gaps in Their Findings Raises Concerns of Federalism

The findings of the courts below culminate in conclusions of enforceability built on a series of transitions that go from one legal premise to another legal premise, each of which represents an unexplained doctrinal gap. As shown in the foregoing sections none of these transitions are supported by governing legal authority or predicate that would provide a "legal bridge" to cross over the doctrinal gaps created. The transitions at issue go from:

- a void deed of trust to enforcing foreclosure;
- nonparty status to contractual enforcement;
- release to waiver;
- waiver to continued enforceable security rights;
- non-coercive declaratory relief to a coercive affirmative defense

Such unsupported transitions confuse what federal courts can or actually must do when addressing rights that had become “forever void” under state-law. They point to the broader federalism problem where a federal court elects to bypass the legal consequences of Texas State Law without a legal basis in Texas State Law for support.

B. The Courts Below Applied Different Analytical Frameworks to Interdependent Questions

1) The District Court Employed a Detailed Evidentiary and Legal Review to Formulate its Core Findings

As it relates to Question 1, the district court engaged in a careful and methodical process to reach its Core Findings as to acceleration, tolling, and abandonment. Its decision identified: (a) governing Texas legal standards and authority—citing over two-dozen state and federal decisions, (b) applied those standards to its factual findings, and (c) explained how the results supported its conclusions. The analytical approach employed to develop its Core Findings was thorough and

dense with factual detail and legal authority. In establishing that limitations expired, the Core Findings led directly to the legal consequence that the Deed of Trust and power of sale/foreclosure thereunder and collection rights had become void and time-barred.

2) The District Court Did Not Exhibit a Similarly Careful Methodology to Develop its Further Conclusions

As to Question 2, the approach was materially different from that seen in Question 1. Despite the statutory becoming void consequence of the Core Findings developed by the foregoing detailed methodology employed by the district court in addressing Question 1, the district court's further finding that Respondents were successors of CIT and thus entitled to enforce the releases of its agreement exhibited no detailed review, methodology, or supporting Texas law at all.

Instead, it concluded Respondents were successors of CIT based only on its own bare assertion. It did not identify any supporting law or precedent. It did not point to any unequivocal ¹⁷ evidence beyond the agreement itself—which was “unequivocal” only in that it did not

¹⁷ See *Tawes*' requirement for unequivocal evidence leaving no doubt.

mention Respondents or Petitioner's "not valid" claims ¹⁸ against CIT at all. It did not point to any evidence showing affirmatively that CIT was a servicer and that Respondents were successors to CIT in servicing the Note. And it made no effort to resolve the essential impossibility of their having become successors to CIT before it had even come into existence.

As shown above, the analytical (a), (b), (c) methodology employed by the district court to formulate its Core Findings that established limitations had expired was thorough. In marked contrast, the framework and methodology employed to reach its conclusions authorizing continuing enforcement were conclusory, presumptive and unsupported. Indeed, they were essentially cursory in not applying either (a), (b), or (c) as above.

3) The Inconsistent and Narrow Treatment of Essential Evidence is Materially Significant

The lower courts' narrow treatment of servicing-history evidence extends beyond a mere dispute concerning historical facts. The same findings of fact and evidence relied on to adjudicate Respondents' acceleration, abandonment, and tolling claims effectively nullify the

¹⁸ As identified *Supra* at p.16 Fn.12

rationale invoked later to establish Respondents' status as successors or assigns entitled to enforce the CIT Settlement.

Where the district court's findings of fact were essential to its Core Findings, it never explained why the very same findings were not just as relevant to its analysis of the related issues of successorship and Respondents' corresponding right to enforce the CIT Settlement. Instead the court relied on generalized and unrelated notions of corporate succession that, by its own admission, shed no light on the actual succession of servicing rights. (App.C–pp.27-28)

At the very least, such discrepancies create unresolved doubt as to whether Respondents satisfied the threshold burden Texas law places on claimants seeking third-party enforcement rights. Because Texas law resolves such doubts against conferring third-party-beneficiary status, the opinions below never demonstrated a legal basis sufficient to rule Respondents were entitled to invoke the settlement agreement.

C. The Combined Effect of the Analytical Deficiencies

The deficiencies discussed above are not isolated errors arising within separate areas of law. They reflect a common methodology by which substantial rights and legal consequences controlled by Texas

law were recognized and enforced as valid for Respondents' benefit—despite having become “forever” void under Texas statutes—while at the same time substantial rights and legal consequences were effectively overridden and nullified to Petitioner's detriment despite having been established by the very same Texas statutes. The methodology employed to do so without reference to a recognized legal basis or predicate under Texas law for support is highly problematic.

In effect, the opinions below compressed multiple independent legal inquiries into a single conclusion. In doing so, they bypassed distinct questions concerning Respondents' authority to invoke the CIT Settlement, the legal effect of the CIT Settlement itself, and the governing Texas law or legal doctrine required to preserve or restore rights that had become void or time-barred under Texas law. Each of these questions required separate analysis and authority which the opinions failed to address. These deficiencies present a basic federalism question: whether a federal court may alter, override, or effectively nullify state-created property and contract rights without reference to any governing state law, predicate, or doctrine authorizing it to do so.

Moreover, the foregoing methodological questions are no longer

merely retrospective. They now have concrete consequences for the administration of a pending federal bankruptcy case.

D. Federalism Concerns

That federal courts must adhere to and apply state law in matters of property and contract law is well-established. They may not, in general, enlarge, reshape, or nullify such state-created rights. Moreover, the same rules requiring unequivocal proof before property rights may be created or enforced also require unequivocal proof before nonparties may enforce contracts and before extinguished rights may be treated as continuing to exist. Yet the decisions below departed from these principles in granting Respondents' third party enforcement rights, successorship status, enforcement and foreclosure claims as if the Deed of Trust and their enforcement rights had not become void or barred. In effect, they have nullified the legal consequences of their own Core Findings without regard to the factual contradictions embodied in their own findings of fact as to those claims and without identifying any legal basis under governing Texas law for support. Absent such support, they cannot rely on the force of their own unsupported conclusions alone to overcome the dictates of Texas Statutory law and precedent.

The resulting uncertainty regarding what legal predicates are necessary for continued enforceability of rights that had become void presents an important federal question that extends beyond this case and affects recurring questions as to how federal courts determine the existence and enforceability of state-created real-property rights.

IV. Importance

Judicial opinions serve not only to resolve disputes, but to articulate the legal principles that will guide future courts, litigants, and property owners in the adjudication of property, contract, and other rights. Because this case puts into question the basic responsibility of federal courts to observe and adhere to state-created rights, it should be taken up so that any lingering question may be resolved by this Court.

A. The Opinions Below Conflict With Governing Texas Law, Precedent of the U.S. Supreme Court, and a Directly On-Point Fifth Circuit Decision Recognizing That Removal of a Limitations Bar Does Not Revive a Void Lien

Not only do the opinions below conflict with TEX. CIV. PRAC. & REM. CODE § 16.035(d) and TEX. BUS. & COM. CODE ANN. § 3.118(a), they establish conflicts in areas of property and contract rights with decisions of the Texas Supreme Court in *Holy Cross*, *Brumitt*, *MCI*, *Basic Capital*, *Martin*, *Southwestern Elec.* and *Tawes*, and with U.S.

Supreme Court decisions in *Erie*, *Butner*, *Guaranty Trust*, *Brooklyn*, and *Raleigh*. They also conflict directly with the Fifth Circuit's recent decision in *Houston Prime*, which distinguished revival of an otherwise time-barred foreclosure claim from revival of the lien itself and held that foreclosure cannot proceed on "a lien that no longer exists."

The conflict is especially pronounced because *Houston Prime* arose from the same Houston Division of the Southern District of Texas and was decided below by the same district and magistrate judges who decided this instant case. There, Magistrate Judge Bryan held that although §16.069 could revive or extend limitations on the creditor's foreclosure counterclaim, removal of that limitations bar "cannot revive a void lien." Judge Lake adopted that recommendation after considering the parties' objections, and the Fifth Circuit affirmed. The rule applied there is straightforward: **removal of a limitations bar is not revival of the lien**. Even so, the opinions below permitted foreclosure based upon release of Petitioner's limitations defense without identifying any Texas-law mechanism by which release of that defense restored the lien that §16.035(d) had already rendered void.

B. The Questions Presented Affect Recurring Questions of Third-Party Contract Enforcement

Disputes concerning who may enforce contractual rights arise routinely in foreclosure, commercial lending, securitization, and asset-transfer transactions. The decisions herein permitted enforcement of the releases of the CIT Settlement by Respondents—who were neither parties to the agreement nor successors of CIT—without identifying any legal basis or satisfaction of Texas legal predicates necessary to do so. Clarification by this Court will promote uniformity and predictability in areas of law that affect millions of contractual relationships.

C. The Questions Presented Affect the Finality of Texas Limitations Statutes and Property Rights

Many states attach substantive consequences to the expiration of limitations periods. In Texas, expiration of the relevant foreclosure limitations period renders the lien and power of sale void. Yet the decisions below recognized continuing enforceability of rights that had become void and unenforceable under well-established Texas law without reference to any Texas legal predicate for authority. If left standing, the ability to override state law and authority without proper legal support under Texas law affects the stability and predictability of critical rights far beyond just this case and just this State.

D. The Questions Presented Concern Burden Allocation in the Recognition of Legal Rights

State law places the burdens of proof upon claimants seeking to establish contractual rights, property rights, beneficiary status, or authority to enforce. Yet the courts below recognized substantial rights without clearly identifying how the burden attached to those rights was satisfied. Clarification concerning the relationship between burden allocation and judicial recognition of rights would have significance in a broad range of federal and state-law disputes.

E. The Questions Presented Address the Scope and Finality of The CIT Settlement

The decisions below conflict with the Texas Supreme Court's decision in *Martin* concerning the legal effect of declaratory relief. By construing the CIT Settlement's release of Petitioner's "not-a-claim-at-all" request for declaratory relief as also releasing his later affirmative limitations defense, the courts below effectively transformed the former into a coercive claim without identifying any basis in the agreement or governing Texas law for doing so. That construction also conflicts with the prior court of appeals' characterization of Petitioner's original requests for declaratory relief (App.B–pp.10–12). The courts below

nevertheless permitted Respondents to invoke that release to foreclose as though the Deed of Trust and power of sale had not become void, creating a further conflict with Texas limitations statutes. These interrelated conflicts, reached without an identified basis in governing Texas law, reinforce the federalism and methodological concerns presented by this case and warrant this Court's review.

F. The Questions Presented Are Relevant to Ongoing Bankruptcy Proceedings

Shortly before the filing of this petition, Petitioner commenced a bankruptcy proceeding (App.G). The treatment of Respondents' asserted secured claim, and the continued administration of that case, now depend in large part upon the same questions of Texas law presented here. Those questions therefore have immediate consequences extending beyond the foreclosure judgment itself and affect the orderly administration of a pending federal bankruptcy proceeding.

CONCLUSION

The courts below allowed Respondents to enforce significant contractual and property rights without providing a legal basis for such enforcement while at the same time effectively nullifying Petitioner's

right to raise an affirmative defense against Respondent's enforcement claims. These decisions conflict directly with the courts' own Core Findings establishing concurrently that Respondents' rights had become void as a direct result of the expiration of limitations periods under Texas statutory law. Yet, nothing in the opinions below identifies the legal predicates or governing doctrine necessary to establish the continuing enforceability of those rights by Respondents as if limitations had not in fact expired.

The Questions Presented concern recurring and important issues affecting the relationship between federal adjudication and state-created rights and therefore warrant this Court's review.

The petition for a writ of certiorari should be granted.

Date: August 24, 2026

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Josef M. Lamell', written over a horizontal line.

Josef M. Lamell *pro se*
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