No. 16-902

# In the Supreme Court of the United States

**REGINALD JONES,**
*Petitioner,*

**v.**

**WELLS FARGO BANK, N.A., d/b/a America's Servicing Company,**
*Respondent.*

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

## REPLY TO BRIEF IN OPPOSITION


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## PETITIONER'S REPLY TO RESPONDENT'S OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Petitioner, Reginald Jones ("Mr. Jones"), respectfully has requested that the Court issue a writ of certiorari to review the judgment of the United States Court of Appeals for the 4th Circuit. Respondent, Wells Fargo Bank, filed a brief in opposition to Mr. Jones's petition. Mr. Jones hereby replies to the points raised in Respondent's opposition.

## ARGUMENT

The lower court in this case blatantly disregarded applicable Supreme Court precedent in denying Petitioner recourse despite this Court's unanimous *Jesinoski* decision. The United States Supreme Court, in its *Jesinoski* ruling, settled a Circuit split regarding the act of invoking a TILA rescission, relying on the plain language of the TILA statute. The Court did not, however, completely address the effect of a TILA rescission. Though the effect is also unambiguously spelled out in 15 U.S.C. § 1635(b), courts are inconsistently ruling on this important consumer protection law.

Because the result in the case at bar directly conflicts with this Court's unanimous *Jesinoski* decision and federal consumer protection law, this Court should resolve the conflict and provide clear guidance to lower courts on this important matter of federal consumer protection law impacting consumers across the country. The protections afforded by TILA must be allowed where, as here, the consumer effectively rescinded the loan yet lost

his home by invalid foreclosure, in which the lender's right to foreclose was extinguished as a matter of law by the borrower's rescission.

## I. Contrary to Respondent's Assertion, Petitioner Neither Waived Nor Abandoned His Argument Against *Res Judicata*.

Respondent fails to address the central issue in this case: The foreclosure judgment against Petitioner's home was void in the first place, according to this Court's unanimous ruling in *Jesinoski v. Countrywide Home Loans*, Inc., 135 S. Ct. 790 (2015). If *res judicata* is inapplicable to a void foreclosure judgment, it is not something Petitioner could have waived. Respondent's waiver assertion is wrong, in any event. Mr. Jones indeed argued below that the doctrine of *res judicata* does not apply to this case because the underlying foreclosure judgment was illegal and void. There was no waiver of any argument, just as there was no proper judgment that would preclude a court from considering the effect of Mr. Jones's rescission in this case.

In Mr. Jones's brief to the Fourth Circuit, he argued:

> This court should review *de novo* a Fed. R. Civ. P. 12(b)(6) dismissal based on principles of res judicata. *Brooks v. Arthur,* 626 F.3d 194, 200 (4th Cir. 2010). The lower court erred in failing to declare that by operation of law on April 15, 2008, plaintiff's that debt and security instruments were extinguished. Plaintiff's debt and security instruments were extinguished by *operation of law* on April 15,

> 2008. The lower court in dismissing this matter on a motion to dismiss committed reversible error by failing to follow the unanimous Supreme Court holding in [*Jesinoski*].

Mr. Jones's arguments in the Fourth Circuit directly addressed why *res judicata* was not applicable to this case: There was no valid foreclosure judgment from which *res judicata* would arise.

Moreover, "it is claims that are deemed waived or forfeited, not arguments." *United States v. Pallares-Galan*, 359 F.3d 1088, 1095 (9th Cir. 2004); *see Lebron v. Nat'l R.R. Passenger Corp*., 513 U.S. 374, 379 (1995). Specifically, "[o]nce a federal claim is properly presented, a party can make any argument in support of that claim; parties are not limited to the precise arguments they made below." *Lebron*, 513 U.S. at 379; *Yee v. City of Escondido*, 503 U.S. 519, 534 (1992). *See also*, *U.S. Nat'l Bank of Oregon v. Ind. Ins. Agents of Am., Inc*., 508 U.S. 439, 447 (1993); *Borntrager v. Central States Southeast*, No. 08-2008 (8th Cir. 8-21-2009). "When an issue or claim is properly before the court, the court is not limited to the particular legal theories advanced by the parties, but rather retains the independent power to identify and apply the proper construction of governing law. *Kamen v. Kemper Financial Services, Inc.,* 500 U.S. 90, 99 (1991) (citing *Arcadia v. Ohio Power Co*., 498 U.S. 73, 77 (1990)); *see also Citizens United v. Fed. Election Comm'n*, 558 U.S. 310 (2010) (allowing plaintiffs to raise a new argument on appeal to support a "consistent claim" that a statute violated First Amendment rights);

*Engquist v. Oregon Dept. of Ag.*, 478 F.3d 985, 996 n. 5 (9th Cir. 2007) (holding that court may hear new arguments on appeal if they are "intertwined with the validity of the claim"); *United States v. Pallares–Galan*, 359 F.3d 1088, 1095 (9th Cir. 2004) ("[I]t is claims that are deemed waived or forfeited, not arguments."). Thus, the Court may consider new legal arguments raised by the parties relating to claims previously raised in the litigation. Mr. Jones never waived a claim; *res judicata* is a claim raised by Respondent below and addressed by Mr. Jones below and herein.

The lender's right to foreclose was extinguished by operation of law on April 15, 2008, when Mr. Jones rescinded the loan. No party could obtain any rights or interest to enforce contracts that were made void after this date. As Mr. Jones argued below, *res judicata* does not apply here, whether it is a new argument or not. Respondent's arguments in opposition fail to have merit.

## II. Respondent's Claim that Petitioner Has Presented No Compelling Reason for Granting Certiorari Misreads the Court's Rule and Ignores the Important Unsettled Federal Question Post-*Jesinoski*: Recourse Where a Consumer's Rescission is Effective as a Matter of Law Per *Jesinoski* But Foreclosure Unlawfully Occurred.

Respondent's assertion that Petitioner failed to fulfill the requirements of Supreme Court Rule 10 is simply incorrect. Rule 10 provides:

Considerations Governing Review on Certiorari Review on a writ of certiorari is not a matter of right, but of **judicial discretion**. A petition for a writ of certiorari will be granted only for compelling reasons. The following, **although neither controlling nor fully measuring the Court's discretion**, indicate the character of the reasons the Court considers: (a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power; (b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals; (c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided **an important federal question in a way that conflicts with relevant decisions of this Court**. A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.

(emphasis added). Respondent failed to acknowledge that Rule 10 provides guidelines for parties while leaving the grant of certiorari completely within the Court's discretion whether or not the guidelines are followed. In any event, Petitioner has met the Rule's requirements and indeed presented an important federal question decided by the Fourth Circuit Court of Appeals that conflicts with the Supreme Court's unanimous *Jesinoski* decision.

Respondent also ignores the purpose of the law Petitioner is striving to enforce here: The federal Truth in Lending Act ("TILA"). 15 U.S.C. § 1635. The issue presented in the case at bar is a matter of national importance, affecting people's homes nationwide. "Congress enacted TILA 'to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit, and to protect the consumer against inaccurate and unfair credit billing and credit card practices.'" *Paatalo* (quoting *Hauk v. JP Morgan Chase Bank USA*, 552 F.3d 1114, 1118 (9th Cir. 2009) (quoting 15 U.S.C. § 1601). "To effectuate TILA's purpose, a court must construe 'the Act's provisions liberally in favor of the consumer' and **require absolute compliance** by creditors." *Id*. (quoting *In re Ferrell*, 539 F.3d 1186, 1189 (9th Cir. 2008) (emphasis added). TILA provides special rescission rights for loans secured by a borrower's principal dwelling. 15 U.S.C. § 1635(a). This Court left an important question unanswered in its *Jesinoski* decision, which has wreaked havoc on the stability of federal foreclosure law.

Finally, Respondent presents a *non sequitur*, i.e., that there is no evidence that the issue presented herein affects numerous homeowners. The fact is that most homeowners who are foreclosed upon lack resources to bring a lawsuit to combat the foreclosure in cases like this one, much less than to pursue costly appeals. Moreover, the *Jesinoski* decision is recent and not likely something the average foreclosed upon homeowner would learn of in the normal course.

Consumer protection law codified by TILA requires that certiorari be granted. Courts, lenders and homeowners need the additional guidance.

**CONCLUSION**

For all of the reasons set forth above and in Petitioner's Petition for Writ of Certiorari, certiorari must be granted.

Dated: March 23, 2017

Respectfully submitted,

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