No. 18-670

In the Supreme Court of the United States

SFR INVESTMENTS POOL 1, LLC, PETITIONER

v.

FEDERAL HOME LOAN MORTGAGE CORPORATION, ET AL.

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

BRIEF FOR THE RESPONDENTS IN OPPOSITION

NOEL J. FRANCISCO
Solicitor General
Counsel of Record
JOSEPH H. HUNT
Assistant Attorney General
MARK B. STERN
ABBY C. WRIGHT
Attorneys

Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTIONS PRESENTED

The Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) are federally chartered entities that buy mortgages that banks and other lending institutions have originated. They maintain some of those mortgages in their corporate portfolios, but place most into trusts that support mortgage-backed securities. Investors purchase certificates entitling them to a share of the cash flows from the mortgage payments, but do not acquire an ownership interest in the underlying mortgages themselves. Fannie Mae and Freddie Mac retain legal title.

In 2008, Fannie Mae and Freddie Mac were placed into conservatorship by the Federal Housing Finance Agency (FHFA or Agency), which succeeded to ownership of all of the assets and property previously owned by Fannie Mae and Freddie Mac. 12 U.S.C. 4617(b)(2)(A). Congress directed that "[n]o property of the Agency shall be subject to levy, attachment, garnishment, foreclosure, or sale without the consent of the Agency." 12 U.S.C. 4617(j)(3). The questions presented are as follows:

1. Whether the mortgages that underlie mortgage-backed securities are part of the "property of the Agency" that is protected from extinguishment during the Agency's conservatorship.

2. Whether the statutory provision that protects Agency property from extinguishment during conservatorship voids state-law foreclosure sales that would otherwise extinguish Agency mortgages, or instead allows such sales to occur while preserving the Agency mortgages as encumbrances on the properties.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Cases—Continued: Page

Statutes:

Miscellaneous: Page

In the Supreme Court of the United States

No. 18-670

SFR INVESTMENTS POOL 1, LLC, PETITIONER

v.

FEDERAL HOME LOAN MORTGAGE CORPORATION, ET AL.

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

BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-29a) is published at 893 F.3d 1136. The opinion of the district court (Pet. App. 30a-49a) is not published in the Federal Supplement but is available at 2016 WL 2350121.

JURISDICTION

The judgment of the court of appeals was entered on June 25, 2018. On September 12, 2018, the Chief Justice extended the time within which to file a petition for a writ of certiorari to and including November 22, 2018, and the petition was filed on November 21, 2018. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Congress chartered the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) to provide stability and support for the nationwide residential-

mortgage market. See *Lightfoot* v. *Cendant Mortg. Corp.*, 137 S. Ct. 553, 556 (2017); *City of Spokane* v. *Fannie Mae*, 775 F.3d 1113, 1114 (9th Cir. 2014).

Fannie Mae and Freddie Mac (collectively, the Enterprises) do not originate loans. See Pet. App. 6a. Instead, they buy mortgages originated by other lending institutions. The Enterprises maintain some of those mortgages in their corporate portfolios, in the same way a bank or finance company might hold a loan it has made and never sold. More often, though, the Enterprises pool mortgages into trusts that support mortgage-backed securities. See *id.* at 7a. Those mortgages are said to have been "securitized." *Ibid.* The Enterprises sell mortgage-backed securities for cash or exchange them for other consideration, typically mortgage loans. *Lightfoot*, 137 S. Ct. at 557. The purchasers of mortgage-backed securities do not acquire title to the mortgages, but instead are "entitl[ed] * * * to a contractually specified share" of the payments that the borrowers make on the underlying mortgages. Pet. App. 7a.

The Enterprise that issues the mortgage-backed security is the trustee, and it holds legal title to the mortgages in the trust pool. Pet. App. 7a. The trust agreements specify certain conditions, such as serious default, under which the Enterprises must or may remove loans from mortgage-backed security trusts. When such removal occurs, the Enterprise as guarantor of the mortgage must make a payment to the trust that reflects the full balance due and therefore is in substance equivalent to a prepayment of the mortgage. See C.A. Supp. E.R. 60, 92-96; D. Ct. Doc. 22 (Oct. 1, 2015).

The Housing and Economic Recovery Act of 2008 (HERA), Pub. L. No. 110-289, 122 Stat. 2654, established the Federal Housing Finance Agency (FHFA or

Agency) as the Enterprises' regulator, authorized FHFA to place the Enterprises into conservatorship, and defined FHFA's powers as conservator. 12 U.S.C. 4617(a). In September 2008, FHFA placed the Enterprises into conservatorships. See *Town of Babylon* v. *Federal Hous. Fin. Agency*, 699 F.3d 221, 227 (2d Cir. 2012).

HERA provides that, upon inception of a conservatorship, FHFA succeeds to "all rights, titles, powers, and privileges" of the entity in conservatorship "with respect to [its] assets," making all Enterprise assets "property of the Agency" for the duration of the conservatorship. 12 U.S.C. 4617(b)(2)(A) and (j)(2). This is known as the "succession provision." HERA protects those assets through a provision known as the "Federal Foreclosure Bar," which states that "[n]o property of the Agency shall be subject to levy, attachment, garnishment, foreclosure, or sale without the consent of the Agency, nor shall any involuntary lien attach to the property of the Agency." 12 U.S.C. 4617(j)(3).

HERA grants the conservator broad discretion in managing almost all types of conservatorship assets. FHFA may "transfer or sell any asset or liability of the regulated entity in default, and may do so without any approval, assignment, or consent with respect to such transfer or sale." 12 U.S.C. 4617(b)(2)(G). FHFA may use the proceeds from sales of those assets to "pay all valid obligations of the regulated entity." 12 U.S.C. 4617(b)(2)(H).

A HERA provision known as the "Trust Protection Provision" states that "mortgages held in trust" "shall not be available to satisfy the claims of creditors." 12 U.S.C. 4617(b)(19)(B)(i). Rather, the securitized mortgages "shall be held by the conservator * * * for

the beneficial owners of such mortgage[s]"—*i.e.*, for the mortgage-backed security-certificate holders—"in accordance with the terms of the [mortgage-backed security trust] agreement." 12 U.S.C. 4617(b)(19)(B)(ii).

2. This case involves five home loans secured by residential property in Nevada. Pet. App. 5a. Each of the properties is located in a community with a homeowners' association (HOA). *Ibid.* An Enterprise acquired each loan after origination, thereby taking ownership of a security interest in the underlying real estate. *Ibid.*

The borrowers later defaulted on their HOA assessments. Pet. App. 5a, 11a. Under Nevada law, an HOA obtains a superpriority lien on an individual homeowner's property for a limited amount of unpaid HOA dues. See Nev. Rev. Stat. Ann. § 116.3116(2) (LexisNexis 2018). The Nevada Supreme Court has construed state law to provide that a properly conducted foreclosure sale by an HOA under that provision extinguishes all other private interests in the underlying property, including first-recorded security interests. *SFR Invs. Pool 1* v. *U.S. Bank, N.A.*, 334 P.3d 408, 419 (Nev. 2014) (en banc). The HOAs here imposed liens on the properties and ultimately foreclosed.

Petitioner purchased each property through or after an HOA foreclosure sale. At the time of each HOA foreclosure, an Enterprise owned the corresponding mortgage and therefore maintained a protected security interest in the property. Petitioner contends, however, that it acquired title to the properties free and clear of all liens, including the Enterprises'.

3. a. In 2015, FHFA and the Enterprises (collectively respondents) asserted claims against petitioner seeking declaratory relief, to quiet title, and a permanent injunction. Respondents moved for summary

judgment, arguing that the Federal Foreclosure Bar preempted Nevada law and protected the Enterprises' property interests from extinguishment. Pet. App. 11a, 45a. Because the Federal Foreclosure Bar protects only "property of the Agency" against foreclosure, respondents sought to establish the continuing validity of their liens, but not to void the foreclosure sales insofar as they concerned other property-holders' interests.

The district court granted summary judgment to respondents. Pet. App. 30a-49a. The court held that FHFA had an interest in each property at the time of the foreclosure sales, and that the Federal Foreclosure Bar precluded those sales from extinguishing FHFA's interest in the properties without FHFA's consent. *Id.* at 45a-47a.

b. Petitioner appealed. Petitioner argued that the Federal Foreclosure Bar does not cover the mortgages at issue here because securitized mortgages are not property of the conservatorship. See Pet. C.A. Br. 23-25. Petitioner did not argue, however, that if securitized mortgages are protected by the Federal Foreclosure Bar, foreclosure sales involving such mortgages are void in their entirety. See Pet. 31 n.28 (acknowledging petitioner's failure to raise the issue).

The court of appeals affirmed the district court's judgment. Pet. App. 1a-29a. The court held that the Federal Foreclosure Bar applies to all mortgages the Agency holds, including mortgages that the Enterprises had placed into trust for the benefit of purchasers of mortgage-backed securities. *Id.* at 13a-18a. The court accordingly held that the Nevada HOA foreclosure sales did not convey the properties to petitioner free and clear of the Enterprises' mortgage interests, but instead left those interests intact. *Id.* at 29a.

ARGUMENT

Petitioner contends (Pet. 23-30) that the Federal Foreclosure Bar does not apply to mortgages that the Agency holds in trust for the benefit of purchasers of mortgage-backed securities. Petitioner argues (Pet. 30-33) in the alternative that, if the Federal Foreclosure Bar applies to such mortgages, it entirely voids the sale of real estate subject to an Agency lien, rather than allowing the sale to occur with the real estate remaining encumbered by the Agency's security interest.

The petition for a writ of certiorari should be denied. The court of appeals correctly rejected petitioner's argument regarding the Federal Foreclosure Bar's applicability to mortgages held in trust, and its decision does not conflict with any decision of this Court or another court of appeals. Petitioner's argument that the Federal Foreclosure Bar renders covered sales entirely void likewise does not warrant review. That argument was neither pressed nor passed upon below. It also lacks merit and does not implicate any conflict among the courts of appeals.

1. a. The court of appeals correctly held that mortgages held in trust by FHFA for the benefit of purchasers of mortgage-backed securities are not subject to foreclosure without FHFA's consent.[1] Under HERA's Federal Foreclosure Bar, "[n]o property of the Agency

---

[1] In its capacity as conservator, FHFA succeeded "immediately" and "by operation of law" to "all rights, titles, powers and privileges" of the Enterprises as to their "assets." 12 U.S.C. 4617(b)(2)(A)(i). Because all of the Enterprises' pre-conservatorship property thus became "property of the Agency," as that term is used in the Federal Foreclosure Bar, 12 U.S.C. 4617(j)(3), this brief refers to mortgages that were held by the Enterprises as "Agency" property.

shall be subject to * * * foreclosure" without FHFA's consent. 12 U.S.C. 4617(j)(3). Once the Enterprises were placed into conservatorship, the mortgages that the Enterprises had acquired became "property of the Agency" pursuant to HERA's directive that, when a conservatorship is established, the Agency "immediately succeed[s]" to "all * * * titles" of the entity in conservatorship "with respect to * * * [its] assets." 12 U.S.C. 4617(b)(2)(A)(i) and (j)(2).

The HERA term "property of the Agency" encompasses not only mortgages that the Enterprises had maintained in their corporate portfolios, but also mortgages that had been securitized. Although such mortgages are pooled together and held in trust, they are in all other respects identical to the non-securitized mortgages the Agency holds in its corporate portfolios. Certificate holders purchase the right to a future stream of income from borrower payments, not ownership of the securitized mortgages themselves. See *FHFA* v. *Nomura Holding Am., Inc.*, 873 F.3d 85, 100 (2d Cir. 2017), cert. denied, 138 S. Ct. 2679, and 138 S. Ct. 2697 (2018); *Paloian* v. *LaSalle Bank, N.A.*, 619 F.3d 688, 691 (7th Cir. 2010) (mortgage-backed security trustee "is the legal owner of the trust's assets," namely, the mortgages in trust).

In arguing that securitized mortgages are not property of the Agency, petitioner invokes a different provision of HERA—the Trust Protection Provision—which states that mortgages held in trust "shall be held by the conservator * * * for the beneficial owners of [the] mortgage" under the terms of the trust agreement and are "[un]available to satisfy the claims of creditors generally." 12 U.S.C. 4617(b)(19)(B)(i)-(ii). Petitioner con-

tends (Pet. 25) that the statute's description of securitized mortgages as "held in trust" by FHFA is incompatible with FHFA's having a property interest in such mortgages. That is incorrect, because "[i]n American law, a trustee is the legal owner of the trust's assets." *Paloian*, 619 F.3d at 691; see *SEC* v. *American Bd. Of Trade, Inc.*, 654 F. Supp. 361, 366 (S.D.N.Y. 1987) ("A trustee * * * holds legal or equitable title to the property placed in his possession."); see also *In re Tower Park Props., LLC*, 803 F.3d 450, 459-460 (9th Cir. 2015) ("The legally protected interest in [trust] properties * * * rests with the trustee, not the beneficiary."). The Trust Protection Provision simply articulates a narrow directive concerning the management of securitized assets and provides additional protection to ensure that those assets are not liquidated to pay the Enterprises' debts. It would make little sense for Congress to bar the Agency from disposing of such loans to pay the Enterprises' debts, while allowing such interests to be extinguished entirely at foreclosure sales pursuant to state law.

The court of appeals' decision thus does not, as petitioner contends (Pet. 17), "massively expand[] the scope of the Foreclosure Bar." To the contrary, the court below read the Federal Foreclosure Bar as written to protect all "property of the Agency" from extinguishment without FHFA's consent. 12 U.S.C. 4617(j)(2). The court simply declined to except from that general bar Agency property that FHFA holds in trust for the benefit of purchasers of mortgage-backed securities.

Petitioner's interpretation of the Federal Foreclosure Bar would subvert the effective implementation of HERA. Congress enacted HERA because Fannie Mae and Freddie Mac were at risk of collapse, which would

have posed a "systemic danger" to the national economy. *Perry Capital LLC* v. *Lew*, 70 F. Supp. 3d 208, 215 (D.D.C. 2014), aff'd in part, rev'd in part, 848 F.3d 1072 (D.C. Cir. 2017). The statute could not achieve its intended purpose if it protected against foreclosure only the small portion of the Enterprises' assets that are not securitized, while leaving $4.6 trillion of those assets vulnerable to extinguishment via foreclosure. Stripping valuable protection from Enterprise-issued mortgage-backed securities also could diminish the value of those securities and make them more volatile. And mortgage-backed securities constitute an asset class that is particularly ill-suited to diminished value and increased volatility, because banks depend on the stability of mortgage-backed securities to meet capital requirements; indeed, federal banking regulations treat them as especially low risk. See U.S. Gov't Accountability Office, GAO 17-93, *Mortgage-Related Assets: Capital Requirements Vary Depending on Type of Asset* 7, 22 (2016). The prominence of mortgage-backed security investments on financial-institution balance sheets likely explains why Congress granted *greater* protection to the Enterprises' "mortgages held in trust" through the Trust Protection Provision.

b. Petitioner does not contend that the court of appeals' interpretation of the Federal Foreclosure Bar conflicts with any decision of this Court or another court of appeals. Indeed, no other court of appeals has addressed the application of the Federal Foreclosure Bar to securitized mortgages.

Petitioner instead contends that the practical consequences of the decision below render it so exceptionally important as to warrant this Court's review even in the absence of a circuit conflict. But many of petitioner's

predictions of harm are premised not on the holdings of the court below, but on petitioner's current contention (not pressed or passed on below) that, where the Federal Foreclosure Bar applies, it entirely prevents foreclosures from occurring. For example, petitioner asserts (Pet. 18) that the court of appeals' decision renders real estate encumbered by securitized mortgages "immune from foreclosure." In fact, the court's interpretation of the Federal Foreclosure Bar allows extinguishment of non-Enterprise interests, as happened in this case. The court's decision simply prevents extinguishment of Enterprise liens on the underlying properties without FHFA's consent.

Petitioner's argument (Pet. 27-30) that the decision below "draws the statute into substantial constitutional doubt," Pet. 27, is likewise based on petitioner's erroneous view that, if the Federal Foreclosure Bar applies here at all, it prohibits all foreclosures on any real estate that is subject to a securitized mortgage held in trust by FHFA. The decisions that petitioner cites assert that delay of foreclosure and "diminishment of distinct investment-backed expectations" could at some point effect a compensable taking. *Matagorda Cnty.* v. *Russell Law*, 19 F.3d 215, 225 (5th Cir. 1994); see *Simon* v. *Cebrick*, 53 F.3d 17, 24 (3d Cir. 1995). But the decision below creates no legal obstacle to the exercise of a lienholder's right to foreclose, as evidenced by this case (and many others) in which foreclosure sales occurred even though the property was encumbered by an Agency lien.

Petitioner is also mistaken in suggesting (Pet. 17-19) that the question presented impacts "vast numbers" of superpriority foreclosure sales. Pet. 19. Securitized

loans are rarely connected to HOA foreclosure sales because the Enterprises remove non-performing loans from mortgage-backed security pools as a matter of course. See C.A. Supp. E.R. 60; D. Ct. Doc. 22. And borrowers who default on mandatory HOA assessments also often default on their mortgages themselves. As a result, to the extent the mortgages at issue in HOA foreclosures were ever securitized, they are commonly removed from mortgage-backed security trusts before foreclosure occurs.[2]

Petitioner is likewise wrong in suggesting that the question presented has exceptional importance because of asserted practical difficulties in determining whether an Enterprise has a property interest in a mortgage. HERA and Nevada law permit liens to be recorded in the name of a servicer or agent, as the liens in this case were. Pet. App. 24a; see *In re Montierth*, 354 P.3d 648, 651 (Nev. 2015) (en banc) (following the approach set forth in the Restatement (Third) of Property: Mortgages (1997)). Even when a mortgage or deed of trust is not recorded in an Enterprise's name, however,

---

[2] The record does not contain evidence that the mortgages on the five properties that are the subjects of this case were securitized as the time of the HOA sales. See FHFA C.A. Br. 16 n.3. While the courts below agreed with FHFA and the Enterprises that the Federal Foreclosure Bar applies to mortgages held by the Agency regardless of whether those mortgages are securitized, FHFA and the Enterprises noted that, if the Federal Foreclosure Bar were rendered inapplicable by securitization, further proceedings would be necessary to determine whether the mortgages in this case were securitized. *Ibid.* In their brief in the court of appeals, FHFA and the Enterprises stated that "[t]he Enterprises are prepared to show, if necessary, that several [encumbered properties] were not" securitized. *Ibid.*

FHFA has repeatedly and publicly committed to respond to inquiries from potential foreclosure-sale buyers about whether particular properties are encumbered by Enterprise liens.[3]

2. a. Petitioner contends (Pet. 30-33) that, if the Federal Foreclosure Bar encompasses securitized mortgages held by the Agency as trustee, foreclosure sales on properties encumbered by such mortgages are void in their entirety, so that purchasers may unwind foreclosure sales rather than take title encumbered by an Enterprise mortgage lien. Petitioner did not raise this argument below, however, see Pet. 31 n.28; the court of appeals did not address it; and the government is not aware of any party that has raised the argument in another case. This Court ordinarily declines to consider issues that were neither pressed nor passed on below. See *United States* v. *Williams*, 504 U.S. 36, 41 (1992); see also *Cutter* v. *Wilkinson*, 544 U.S. 709, 718 n.7 (2005) ("[W]e are a court of review, not of first view.").

There is no sound reason to depart from the Court's usual practice here. In asserting that its prior failure to raise its void-in-its-entirety argument should be excused, petitioner states that, "[b]ecause [controlling

---

[3] See Appellees' Br. at 19 n.6, *Alessi & Koenig* v. *Federal Hous. Fin. Agency*, No. 18-16166 (9th Cir. Oct. 22, 2018); Appellees' Br. at 38 n.5, *7290 Sheared Cliff Lane UN 102 Trust* v. *Federal Nat'l Mortg. Assoc.*, No. 18-16190 (9th Cir. Oct. 24, 2018); Appellees' Br. at 41 n.8, *Ditech Financial, LLC* v. S*aticoy Bay Series 8829 Cornwall Glen*, No. 18-16199 (9th Cir. Nov. 26, 2018); Fed. Hous. Fin. Agency Amicus Br. at 15-16, *Nationstar Mortg., LLC* v. *Guberland, LLC—Series 3*, No. 70546 (Nev. Oct. 9, 2018); Appellees' Supp. Br. at 6-7, *SFR Invs. Pool 1, LLC* v. *Green Tree Servicing LLC*, No. 72010 (Nev. Oct. 12, 2018).

precedent] could only be overturned by the Ninth Circuit sitting en banc or this Court," petitioner "did not attempt to challenge [existing circuit precedent] before the panel in its case." Pet. 31 n.28. But petitioner could have sought en banc review to afford the court of appeals an opportunity to address the question. In any event, petitioner is wrong in contending that the Ninth Circuit in *Berezovsky* v. *Moniz*, 869 F.3d 923 (2017), had previously rejected petitioner's void-in-its-entirety argument. The Ninth Circuit held in *Berezovsky* that an HOA foreclosure sale could not extinguish an Enterprise's property interest. *Id.* at 933. In affirming the district court's decision to that effect, the court in *Berezovsky* did not consider any argument that the Federal Foreclosure Bar invalidated the foreclosure sale in its entirety, because neither party had raised such an argument.

b. HERA does not support petitioner's argument that a foreclosure sale of assets subject to an Enterprise lien is void in its entirety. The Federal Foreclosure Bar simply prohibits "property of the Agency" from being "subject to * * * foreclosure." 12 U.S.C. 4617(j)(3). It does not prohibit sales that leave the Agency's property —its mortgage lien—intact. Because the Federal Foreclosure Bar protects only the *Agency's* property interests, HERA does not prevent a foreclosure from going forward and extinguishing the homeowner's title and all non-Enterprise liens. States may choose to mandate, as a matter of their own laws, that foreclosure sales conducted under circumstances like these will be treated as void; but nothing in HERA compels that result.

As petitioner observes, the decision below reflects the understanding that the relevant "property of the Agency" in this case is "the mortgage lien, not the real

estate in which the Enterprises have a property interest by virtue of the lien." Pet. 32. Petitioner disputes that view of the statute. See *ibid.* Petitioner appears to acknowledge, however, that a mortgage held in an Enterprise's corporate portfolio *is* "property of the Agency" under HERA. See Pet. 23-24.

c. Petitioner suggests (Pet. 19-22) that the application of the Federal Foreclosure Bar is unfair unless sales of encumbered properties are entirely voided. That suggestion elides the fact that petitioner consciously gambled in purchasing these properties at foreclosure sales. Before the Nevada Supreme Court issued its 2014 decision in *SFR Investments*, federal and lower state courts differed on whether, under Nevada law, a properly conducted foreclosure on an HOA superpriority lien could extinguish a first deed of trust. See *SFR Invs. Pool 1* v. *U.S. Bank, N.A.*, 334 P.3d 408, 413 (en banc) (holding that superpriority liens can extinguish a first deed of trust); *Bourne Valley Court Trust* v. *Wells Fargo Bank, N.A.*, 80 F. Supp. 3d 1131, 1136 (D. Nev. 2015) (observing that, before the Nevada Supreme Court decided *SFR Investments*, purchasing property at an HOA foreclosure sale was a "risky investment."), vacated, 832 F.3d 1154 (9th Cir. 2016). In addition, the Federal Foreclosure Bar was on the books, and no court had endorsed the view that securitized mortgages fall outside that bar. Because risks of purchasing property at foreclosure sales are well known and baked into the price, few foreclosed properties are sold at market value. There is consequently no unfairness to purchasers of HOA-foreclosed property in giving the Federal Foreclosure Bar its most natural reading.

d. Petitioner's void-in-its-entirety argument does not implicate a circuit conflict. As noted above, neither

the decision in this case nor any prior decision of the Ninth Circuit has addressed that argument. And while one court of appeals has accepted an argument analogous to petitioner's in interpreting a similar provision in the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), Pub. L. No. 101-73, 103 Stat. 183, see *CAP Holdings, Inc.* v. *Lorden*, 790 F.3d 599 (5th Cir. 2015), no court of appeals has addressed whether the Federal Foreclosure Bar in HERA voids all foreclosure sales involving encumbered property.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

NOEL J. FRANCISCO
Solicitor General
JOSEPH H. HUNT
Assistant Attorney General
MARK B. STERN
ABBY C. WRIGHT
Attorneys

MARCH 2019