

No.

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

JANOS FARKAS, PETITIONER

v.

OCWEN LOAN SERVICING, L.L.C.;
DEUTSCHE BANK TRUST
COMPANY AMERICAS, AS TRUSTEE FOR
RESIDENTIAL ACCREDIT
LOANS, INCORPORATED, MORTGAGE ASSET-
BACKED PASS-THROUGH
CERTIFICATES, SERIES 2006-QS9; POWER
DEFAULT SERVICES, INCORPORATED

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

PETITION FOR WRIT OF CERTIORARI

Janos Farkas, Pro Se
9600 Escarpment Blvd.
Suite 745-43
Austin, TX 78749
Tel: (512) 535-2987
Fax: (888) 241-7628
janos.farkas@yahoo.com

QUESTION PRESENTED

The Fifth and the Fourteenth Amendment of the Constitution says that no one shall be “deprived of life, liberty or without due process of law”

The question presented is as follows:

Does a federal court deprive a party's constitutional due process right when allowing only three days to respond to a dispositive motion?

PARTIES TO THE PROCEEDINGS

The petitioner is Janos Farkas.

Respondents are Ocwen Loan Servicing,
L.L.C.;

Deutsche Bank Trust Company Americas, as
trustee for Residential Accredit Loans,
Incorporated, Mortgage Asset-Backed Pass-
Through Certificates, Series 2006-QS-9;
Power Default Services, Incorporated

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION	1
STATUTORY/CONSTITUTIONAL PROVISIONS INVOLVED	1
STATEMENT	1
REASONS FOR GRANTING THE PETITION	3
I. THE FIFTH CIRCUIT HAS ENTERED A DECISION IN CONFLICT WITH ITS PRECEDENCE, THE DECISION OF ANOTHER UNITED STATES COURT OF APPEALS; AND THE UNITED STATES SUPREME COURT ON THE MATTER OF CONSTITUTIONAL DUE PROCESS RIGHTS.....	3
II. THE FIFTH CIRCUIT HAS DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS.....	5
CONCLUSION	5
APPENDIX A	6
APPENDIX B	8
APPENDIX C	15
APPENDIX D	17
APPENDIX F	19
APPENDIX G	28
APPENDIX H	30

TABLE OF AUTHORITIES

CASES

<i>Billington v. Underwood</i> , 613 F.2d 91 (5 th Cir. 1980).....	5
<i>Burciaga v. Deutsche Bank Nat'l Trust Co.</i> ; No. 16-40826, 2017 (5 th Cir. September 18, 2017);	4
<i>Carson Products Co. v. Califano</i> , 594 F.2d 453 (5 th Cir. 1983).....	5
<i>Cuellar v. Texas Employment Com'n</i> , 825 F.2d 930 (5 th Cir. 1987)	5
<i>duPont v. Southern Nat. Bank of Houston, Tex.</i> , 771 F.2d 874 (5 th Cir. 1985).....	5
<i>Fahle v. Cornyn</i> , 231 F.3d 193 (5 th Cir. 2000)	4
<i>Federal Deposit Ins. Corp. v. Bank of Coshatta</i> , 930 F.2d 1122 (5 th Cir. 1991);.....	4
<i>Findeisen v. North East Independent School Dist.</i> , 749 F.2d 234 (5 th Cir. 1997).....	4
<i>In re Compensation Under the Longshore and Harbor Workers' Compensation Act</i> , 889 F.2d 626 (5 th Cir. 1983)	5
<i>Jourdan v. Equitable Equipment Co.</i> , 889 F.2d 637 (5 th Cir. 1989)	4
<i>Merriman v. Security Ins. Co.</i> , 100 F.3d 1187 (5 th Cir. 1997).....	4
<i>Schaper v. City of Huntsville</i> , 813 F.2d 709 (5 th Cir. 1987).....	4
<i>Thibodeaux v. Bordelon</i> , 740 F.2d 329 (5 th Cir. 1984).....	5
<i>Woods v. Federal Home Loan Bank Bd.</i> , 826 F.2d 1400 (5 th Cir. 1987)	5

OPINIONS BELOW

The opinion of the court of appeals is an unpublished opinion, it is available on pacer.gov under case No. 17-20488. The order of the court is also available on pacer.gov under the same case number.

JURISDICTION

The date the judgment sought to be reviewed was entered on February 26, 2018. The order on denying the petition for rehearing was entered on the 3rd of April, 2018. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTORY/CONSTITUTIONAL PROVISIONS INVOLVED

Fifth and Fourteenth Amendment of the Constitution: no one shall be "deprived of life, liberty or without due process of law".

STATEMENT

This case presents the question whether a federal district court deprives a party's constitutional right

when allowing only three days^{1,2,3} to Respond to a dispositive motion?

1. The case was originally filed at the Harris County District Court and was subsequently removed by Counsel of Respondents on the ground of diversity to the District Court of the Southern District of Texas on the 22nd of December, 2016.

2. On January 17, 2017 the District Court held a pre-trial conference and Judge Hughes instructed Counsel of Respondents to “move to dismiss”. Petitioner was not suggested, instructed or ordered to file an Amended Complaint.

3. During the said conference the Court did not Rule on filing dates and/or deadlines. On the day of the conference the Court entered a Management Order stating; “1. By January 27, 2017, Ocwen Loan Serving, LLC, will move.”; “2. By February 3, 2017, Janos Farkas will respond.”

4. On January 24, 2017 the District Court entered an order denying Petitioner’s Motion for Leave without stating a reason. The Order affirmed the deadlines (“All deadlines subsist”) set in the January 17, 2017 Order. On January 24,

¹ Even assuming the use of overnight courier. The District Court knew that Petitioner had no electronic filing/notification because denied his petition for it. The District Court was also aware that Petitioner lives more than 150 miles away.

² Plaintiff was not entitled to additional 3 days to respond, because the Management Order specified a fixed deadline and FED. R. CIV. P. 6(d) do not apply when a fixed time to act is set. See Fed. R. Civ. Proc. 6 – 2009 Notes of Advisory Committee

³ Assuming the use of overnight courier. Three-day mail service would allow one day for Petitioner to respond to the dispositive motion.

2017 the Court also denied Petitioner's Motion for Permission to Electronic File.

6. Counsel of Respondent's has filed the Rule 12(c) Motion for Judgment on the Pleading and served Petitioner with US mail, what he has received on the 30th of January, 2017.

7. On February 3, Petitioner has filed a timely response to Defendants Rule 12(c) motion, in which he could not properly articulate his argument due to the short deadline ordered.

8. The District Court ultimately granted Respondents dispositive motion.

9. The Court of Appeals for the Fifth Circuit⁴ did not address the point of error raised by Petitioner's regarding the District Court depriving his constitutional due process rights and affirmed the District Court in its Judgment.

10. The motion for rehearing was denied.

REASONS FOR GRANTING THE PETITION

I. The Fifth Circuit has entered a decision in conflict with its precedence, the decision of another United States court of appeals; and the United States Supreme Court on the matter of constitutional due process rights

The Fifth Circuit has continually⁵ followed the Supreme Court's decision by quoting:

⁴ Hereinafter "Fifth Circuit"

⁵ *Burciaga v. Deutsche Bank Nat'l Trust Co.*; No. 16-40826, September 18, 2017, p. 15 (5th Cir. September 18, 2017); *Fahle*

"The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)

More specifically the Fifth Circuit in *Carson Products Co. v. Califano*, 594 F.2d 453 (5th Cir. 1979) this Court has stated:

The opportunity for response must come "at a meaningful time and in a meaningful manner."⁶ (emphasis added)

The Fifth Court has overlooked that Petitioner was not given a meaningful time when he was given only three days – even with the use of overnight courier - to respond to Respondents Motion for Judgment on the Pleadings.

v. Cornyn, 231 F.3d 193, 196 (5th Cir. 2000); *Merriman v. Security Ins. Co.*, 100 F.3d 1187, 1192 (5th Cir. 1997); *Federal Deposit Ins. Corp. v. Bank of Coushatta*, 930 F.2d 1122, 1130 (5th Cir. 1991); *Jourdan v. Equitable Equipment Co.*, 889 F.2d 637, 640 (5th Cir. 1989); *Findeisen v. North East Independent School Dist.*, 749 F.2d 234, 237 (5th Cir. 1997); *Schaper v. City of Huntsville*, 813 F.2d 709, 716 (5th Cir. 1987); *Woods v. Federal Home Loan Bank Bd.*, 826 F.2d 1400, 1410 (5th Cir. 1987); *Cuellar v. Texas Employment Com'n*, 825 F.2d 930, 933 (5th Cir. 1987); *duPont v. Southern Nat. Bank of Houston, Tex.*, 771 F.2d 874, 880 (5th Cir. 1985); *Thibodeaux v. Bordelon*, 740 F.2d 329, 334 (5th Cir. 1984); *In re Compensation Under the Longshore and Harbor Workers' Compensation Act*, 889 F.2d 626, 631 (5th Cir. 1983); *Billington v. Underwood*, 613 F.2d 91, 95 (5th Cir. 1980); *Carson Products Co. v. Califano*, 594 F.2d 453, 459 (5th Cir. September 18, 2017

⁶ Citing *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)

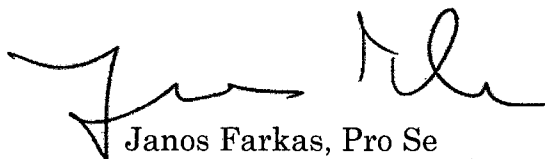
II. The Fifth Circuit has departed from the accepted and usual course of judicial proceedings

The Fifth Circuit did not address at all the point of error raised by Petitioner's regarding the District Court depriving his constitutional due process rights which was also re-urged in the motion for rehearing.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Janos Farkas, Pro Se
9600 Escarpment Blvd.
Suite 745-43
Austin, TX 78749
Tel: (512) 535-2987
Fax: (888) 241-7628
janos.farkas@yahoo.com

APPENDIX A

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS**

No. 4:16-CV-0320

JANOS FARKAS, Plaintiff

v.

**Ocwen Loan Servicing, LLC et al.,
Defendants**

[Entered: January 17, 2017]
