

IN THE  
SUPREME COURT OF THE UNITED STATES

\_\_\_\_\_  
No. \_\_\_\_  
\_\_\_\_\_

JOANNA BURKE & JOHN BURKE,  
*Petitioners,*

v.

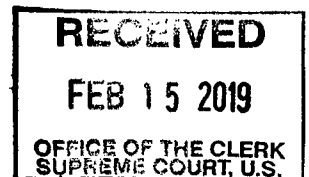
DEUTSCHE BANK NATIONAL TRUST CO.,  
*Respondent.*

\_\_\_\_\_

**APPLICATION TO THE HON. SAMUEL A. ALITO, JR.,  
FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE  
A PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE FIFTH  
CIRCUIT**

Petitioners hereby move, pursuant to Rule 13(5) of the Rules of this Court, for an extension of time of 59 days, to and including Friday, April 26, 2019, (as 60 days falls on a Saturday) for the filing of a petition for a writ of certiorari to review the decision of the United States Court of Appeals for the Fifth Circuit dated September 5, 2019, Unpub., amended on September 10, 2019 to Pub. (Exhibit 1) on which a timely petition for rehearing and for rehearing en banc was denied and finally a Motion to Amend the Judgment by Respondent was also denied. The final Order and Judgment was issued by the Fifth Circuit on November 28, 2019 (Exhibit 2). The jurisdiction of this Court is based on 28 U.S.C. § 1254(1).

1. The date within which a petition for Writ of Certiorari would be due, if not extended, is February 26, 2019.
2. The case presents substantial issues of law, including Rule 10 of the



Supreme Court of the United States, among which are:

- (1) Whether the Fifth Circuit correctly applied the well-established exception to the law-of-the-case doctrine for appellate decisions that commit clear error and, if followed, would work a manifest injustice;
- (2) Whether the US District Court correctly concluded that the Fifth Circuit Court of Appeals decision in the prior appeal was clearly erroneous to the extent it upheld an assignment by an entity purporting to act solely as a “nominee” for a dissolved principal with unknown successors;
- (3) Whether the decision to change the Opinion from Unpublished to Published is warranted based on the Fifth Circuits manifest departure from the Supreme Court of Texas precedent by relying on an Erie Guess;

“However, binding Texas Supreme Court precedent, as well as at least three Fifth Circuit decisions adhering to that precedent, compel the conclusion that the panel’s Erie guess about the validity of the assignment is clearly erroneous and, if followed, would work a manifest injustice.” The Hon. Judge Smith, - *See Deutsche Bank National Trust Co., v Joanna Burke, et al*, Civil action 4:11-cv-01658, Doc. 132, p. 3.

and;

- (4) Whether the Fifth Circuit Court of Appeals 3-Panel assignment was bias as detailed in the complaint, *e.g.* One of the complaints is whether the Hon. Judge Catharina Haynes should be sitting on the 2018 appeal, and as main author for the Panel, when she was also on the prior appeal decision, reversing and remanding the lower courts decision in favor of Deutsche Bank National Trust Co. (A copy of the full complaint would have been included in the Exhibits but as this

Application has to be provided to opposing counsel, this would need to be redacted entirely due to the sensitivity of this information. If this honorable Court requires the complaint, it can be provided, if instructed).

3. The Petitioners filed an official complaint regarding (4) above, in December, which was rebuffed by the Fifth Circuit and which had to be refiled again in January. This complaint was acknowledged on January 18, 2019 (Exhibit 3). No further communication has been received from the Fifth Circuit at the time of writing and submitting this Application. (The Petitioners had expected at minimum, a *formal* confirmation of the acceptance of this complaint).

4. The Petitioners recently wrote a letter to the US Supreme Court which was returned with a letter enclosed in response (Exhibit 4). In this letter, and due to the unusual circumstances, the Petitioners had asked for clarification as to whether the official complaint would automatically extend the time to file the Writ of Certiorari, including citing an example case (with exhibit evidence) where this has happened in the past (recalling the Mandate as a result of a complaint). In response to the reply letter, the Petitioners called the US Supreme Court and discussed the letter and this included the filing deadline date, on the morning of February 12, 2019. The Petitioners were told that it doesn't matter if the Fifth Circuit were to recall the mandate or decide on a rehearing (for example). Respectfully, the Petitioners did not expect that answer as the costs and the additional time and burden to file on all parties, including this Court, seems exceptional, on the basis that if the complaint at the Fifth Circuit Court of Appeals was overturned, the need for a petition of Writ of Certiorari, as outlined in the letter to this honorable Court, would be, in the

Petitioners understanding, moot.

5. The Petitioners have been extremely active during the period since the Order from the Fifth Circuit was finalized at the end of November 2018. The Petitioners currently have two new law suits in US District Court for the Southern District of Houston, (*Joanna Burke, et al v Ocwen Loan Servicing, LLC*, and *Joanna Burke, et al v Hopkins Law, PLLC, et al*) seeking relief from foreclosure as well as specific injury claims and ethics violations which is the civil action directly naming opposing counsel. (See Exhibit 5, showing the 2019 Trial Schedule [16] for both civil actions, received after attendance at the Scheduled Pretrial Hearing in Courtroom 703 last week, February 6<sup>th</sup>, 2019).

6. The Petitioners currently have three interventions ongoing in courts around the country in order to gain evidence to assist with 5. above;

(a) *CFPB v. Ocwen, et al.*, Case No. 9:17-cv-80495 in the U.S. District Court for the Southern District of Florida, West Palm Beach Division [Doc. 220] filed January 4, 2019;

(b) *Parra v. Ocwen Loan Servicing, LLC*; Case No. 1:18-cv-05936 in the U.S. District Court for the Northern District of Illinois, Eastern Division [Doc. 29 and Doc. 30] filed January 16, 2019;

(c) *In Re Syngenta AG MIR 162 Corn Litigation*, Case No. 2:14-md-02591 in the U.S. District Court for the District of Kansas [Doc. 4065 and Doc. 4066] filed on January 17, 2019.

7. The Petitioners have also been canvassing for Amici for this Petition at the Supreme Court since last year, as it is well known that Amicus Brief(s) can assist the Court in any decision. (A list would have been included in the Exhibits but as this

Application has to be provided to opposing counsel, this would need to be redacted entirely due to the sensitivity of this information. If this honorable Court requires the list, it can be provided, if instructed).

8. The Petitioners have also been actively seeking counsel to represent them pro bono to file the Writ of Certiorari, but to-date have not been successful. (A list would have been included in the Exhibits but as this Application has to be provided to opposing counsel, this would need to be redacted entirely due to the sensitivity of this information. If this honorable Court requires the list, it can be provided, if instructed).

As a result of the foregoing, time has gone quickly and hence the additional requested time is now requested to fully research the legal issues and to prepare an appropriate petition, allow for scheduling a professional printer proficient in US Supreme Court Writ of Certiorari petitions, including direct delivery of the same, for consideration by this Court.

The filing, if this request for time is granted, will most likely be submitted by the Petitioners as pro se's due to reasons as stated herein. However, it is important that this "pro se" status is clarified. The arguments to be presented are the views of the now *former* Magistrate Judge, with a 40-year legal history, and by his own words;

"This opinion unavoidably assumes a posture of defiance that is profoundly uncomfortable for the author. **After nearly forty years of working within this circuit at the bar or on the bench**, every natural instinct is to salute and obey. Nevertheless, in view of the long common law tradition and precedents just described, it is difficult to imagine that

jurists of reason could debate whether MERS was a party to the 2011 assignment.” The Hon. Judge Smith, - *See Deutsche Bank National Trust Co., v Joanna Burke, et al*, Civil action 4:11-cv-01658, Doc. 132, p. 26, Conclusion.

Secondly, the pro bono filings, responses and en banc submissions on Appeal were crafted by the respected legal firm of Hagens Berman Sobol Shapiro, LLP, who have achieved wins in class action lawsuits after the financial crisis in 2008, pertaining to homeowners and whistleblowers who were injured by the Banks (see <https://www.hbsslaw.com/success-record#> and type in “foreclosure” in search to provide 2 pages of results). Unfortunately, their hard work, including a request for an oral hearing was ultimately snubbed by the Fifth Circuit, based on the law-of-the-case doctrine.

Petitioners have not discussed this motion with opposing counsel as they have a known history of objecting to every single filing or motion. The Petitioners do not anticipate any change in that position and hence it would be prudent to assume they will be opposed to this Application, for reasons set forth herein.

For the foregoing reasons, petitioner hereby requests that an extension of time to and including April 26, 2019, be granted within which petitioner may file a petition for a Writ of Certiorari.

Respectfully submitted,



---

Joanna Burke  
*Pro Se*  
46 Kingwood Greens Dr  
Kingwood, Texas, 77339  
Tel: (281) 812-9591  
Email: kajongwe@gmail.com



---

John Burke  
*Pro Se*  
46 Kingwood Greens Dr  
Kingwood, Texas, 77339  
Tel: (281) 812-9591  
Email: alsation123@gmail.com

February 13, 2019

*Pro Se Applicants*