No.

IN THE

Supreme Court of the United States

BANK OF AMERICA CORP., ET AL.,
Petitioners,

v.

CITY OF MIAMI, FLORIDA,
Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

In its prior decision in this case, this Court held that the Fair Housing Act (FHA) requires proof of proximate cause in the same way as other federal statutes with common-law roots. Following the relevant "directness principles," the Court held, generally limits recovery to injury at the "first step" of the causal chain. *Bank of America v. City of Miami*, 137 S. Ct. 1296 (2017).

On remand, the Eleventh Circuit held that the governing "directness principles" do *not* limit the length of the causal chain, but instead require only some "logical bond" or "meaningful and logical continuity" between a statutory violation and the claimed injury. Miami alleges that the terms of loans made to individual borrowers led, through a lengthy causal chain, to lost tax revenue. The Eleventh Circuit held that claim sufficiently "direct."

The question presented is:

Whether, under this Court's decisions in this and other proximate-cause cases, the FHA's proximate-cause element requires more than just some "logical bond" between a statutory violation and the claimed injury.

PARTIES TO THE PROCEEDING

Petitioners in this Court are Bank of America Corp.; Bank of America, N.A., in its own capacity and as successor by de jure merger with the entity formerly known as Countrywide Bank, FSB; Countrywide Financial Corp.; and Countrywide Home Loans, Inc. All were defendants-appellees below. The only respondent is the City of Miami, Florida, which was the plaintiff-appellant below.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Petitioners state:

1. Bank of America Corporation has no parent company. Berkshire Hathaway, Inc. beneficially owns more than 10% of Bank of America Corporation's outstanding common stock. No other publicly traded company owns more than 10% of Bank of America Corporation's stock.

2. Bank of America, N.A. is a wholly-owned subsidiary of BAC North America Holding Company. BAC North America Holding Company is a wholly-owned subsidiary of NB Holdings Corporation. NB Holdings Corporation is a wholly-owned subsidiary of Bank of America Corporation, the entity described in paragraph 1.

3. Countrywide Financial Corporation is a wholly-owned subsidiary of Bank of America Corporation, the entity described in paragraph 1.

4. Countrywide Home Loans, Inc. is a wholly-owned subsidiary of Countrywide Financial Corporation, the entity described in paragraph 3.

5. Countrywide Bank, FSB no longer exists; effective April 27, 2009, this entity, which converted its bank charter and became Countrywide Bank, N.A., merged into Bank of America, N.A., the entity described in paragraph 2.

RELATED PROCEEDINGS

Southern District of Florida:

City of Miami v. Bank of America Corp., No. 13-24506-CIV-DIMITROULEAS (Sept. 16, 2014).

U.S. Court of Appeals for the Eleventh Circuit:

City of Miami v. Bank of America Corp., No. 14-14543 (Sept. 1, 2015).

City of Miami v. Bank of America Corp., No. 14-14543 (May 3, 2019).*

Supreme Court of the United States:

Bank of America Corp. v. City of Miami, No. 15-1111 (May 1, 2017) (consolidated with *Wells Fargo & Co. v. City of Miami*, No. 15-1112).

* In the Eleventh Circuit on remand, the case was decided in a single opinion along with *City of Miami v. Wells Fargo & Co.*, No. 14-14544, but the two appeals were not formally consolidated.

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PETITION FOR A WRIT OF CERTIORARI

Petitioners Bank of America Corp., Bank of America, N.A., Countrywide Financial Corporation, and Countrywide Home Loans, Inc. (collectively, "Bank of America") respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

OPINIONS BELOW

The decision of the court of appeals (Pet. App. 1a-70a) is reported at 923 F.3d 1260. This Court's prior decision in this case is reported at 137 S. Ct. 1296. The Eleventh Circuit's prior decision in this case (Pet. App. 71a-122a) is reported at 800 F.3d 1262. The district court's decisions granting petitioners' motion to dismiss (Pet. App. 123a-140a) and denying Miami's motion for reconsideration (Pet. App. 141a-148a) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on May 3, 2019. A petition for rehearing was denied on August 26, 2019 (Pet. App. 149a). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Relevant statutory provisions are reprinted in the Appendix, *infra*, at Pet. App. 150a-153a.

INTRODUCTION

On remand, largely ignoring this Court's instructions, the Eleventh Circuit has again allowed city and county governments to bring unprecedented claims under the Fair Housing Act (FHA), some

claiming damages in the hundreds of millions of dollars. The Eleventh Circuit's approach departs from any recognized concept of proximate cause. This Court should again grant certiorari and should disapprove that approach once and for all.

Miami is one of more than a dozen local governments suing mortgage lenders under the FHA without claiming to have experienced any discrimination. The injury these local governments assert is a decrease in their property-tax revenue, in some cases going back up to 15 years. They claim that fair-lending violations led to bad loans, some of which defaulted, which led some loan owners to foreclose, which sometimes led to neighborhood blight, which sometimes led to lower property values for the foreclosed property *and the neighboring ones*, which ultimately led to lower property-tax revenue.

This Court already considered Miami's allegations once, and unanimously rejected the Eleventh Circuit's previous holding that such an indirect causal chain satisfies the FHA's proximate-cause requirement. In *Bank of America Corp. v. City of Miami*, 137 S. Ct. 1296 (2017), this Court unanimously held that a plaintiff must allege not just a "foreseeable" chain of events—as the Eleventh Circuit had wrongly held—but a "direct" causal relationship. *Id.* at 1306. While the Court remanded for the lower courts to determine the "precise boundaries" of that directness inquiry in the FHA context, *id.*, this Court instructed the Eleventh Circuit to apply the *same* common-law "directness" principles that apply to other federal causes of action. *Id.* Three Justices agreed with the Court's proximate-cause analysis and would have taken the further step of rejecting Miami's claims

outright, because this Court's opinion left "little doubt" that Miami's "exceedingly attenuated" causal chain does not "satisfy the rigorous standard for proximate cause that the Court adopts." *Id.* at 1311 (Thomas, J., concurring in part and dissenting in part).

Disregarding this Court's reasoning, and directly rejecting the three-Justice concurrence, the same Eleventh Circuit panel held once again that Miami's multi-step causal chain satisfies the proximate-cause requirement. The court paid only lip service to the directness principles that this Court instructed it to apply, and it dismissed the length of the causal chain as almost entirely irrelevant. The court of appeals held that Miami need only show a "meaningful and logical continuity" between its injury and the defendants' actions. Pet. App. 21a-22a, 33a. That sort of "continuity" may qualify as a "relation," but it is not the "*direct* relation" this Court required. Indeed, that test appears to be *broader* than the foreseeability standard this Court unanimously rejected: a connection may be "meaningful and logical" without even being "foreseeable."

The court of appeals' decision is not only wrong, but dangerously so. It exposes lenders to a set of lawsuits seeking massive recoveries—where even a single plaintiff may claim to be seeking damages in the hundreds of millions of dollars from a single financial institution. It opens the door to a wide range of suits seeking to recover for economic injury far removed from the original loan or transaction. And it creates significant uncertainty about the proximate-cause inquiry that applies in suits under *other* federal statutes with common-law roots. This Court should

grant certiorari now, and make clear that it meant what it unanimously held the first time: FHA plaintiffs can only recover injury directly connected to a violation of the Act. They may point to "ripples of harm" that travel "far beyond the defendant's misconduct," but "nothing in the statute suggests that Congress intended to provide a remedy wherever those ripples travel." *Bank of America*, 137 S. Ct. at 1306.

STATEMENT

I. Federal statutes ordinarily allow recovery only for injury directly connected to a statutory violation.

Federal causes of action for damages presumptively include a proximate-cause requirement. *Proximate* cause requires that the injury not be too remote from the alleged tort, so that the courts are not inundated with cases trying to trace injuries back to every conceivable point of origin. "[T]he causes of an event go back to the dawn of human events, and beyond." *Prosser and Keeton on the Law of Torts* § 41, at 264 (5th ed. 1984) (*Prosser*). But even so, "[l]ife is too short to pursue every human act to its most remote consequences; 'for want of a nail, a kingdom was lost' is a commentary on fate, not the statement of a major cause of action against a blacksmith." *Holmes v. Sec. Inv'r Prot. Corp.*, 503 U.S. 258, 287 (1992) (Scalia, J., concurring) (citation omitted).

One way in which proximate cause cuts off the threat of unlimited liability is through "a demand for some direct relation between the injury asserted and the injurious conduct alleged." *Holmes*, 503 U.S. at 268-69. This directness inquiry asks "whether the

harm alleged has a sufficiently close connection to the conduct the statute prohibits." *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 133 (2014).

Federal statutes generally incorporate this common-law principle: unless Congress says otherwise, federal statues are read not to reach "every harm that can be attributed directly or indirectly to the consequences" of a defendant's action. *E.g.*, *Associated Gen. Contractors of Cal., Inc. v. Carpenters*, 459 U.S. 519, 529-30, 535-36 (1983); *Holmes*, 503 U.S. at 271-74; *Lexmark*, 134 S. Ct. at 1390. Congress, like the common law, presumptively recognizes that "'the judicial remedy cannot encompass every conceivable harm that can be traced to alleged wrongdoing,'" and thus limits recovery to injury with a "sufficiently close connection to the conduct the statute prohibits." *Lexmark*, 134 S. Ct. at 1390 (quoting *Associated Gen. Contractors*, 459 U.S. at 536). After all, violations of federal statutes often "cause ripples of harm to flow through the Nation's economy," but that does not mean Congress intended to "provide a remedy wherever those ripples travel." *Bank of America*, 137 S. Ct. at 1306; *see also Holmes*, 503 U.S. at 266 n.10.

A plaintiff therefore cannot recover monetary damages when the connection between the harm and the wrongful conduct is "too 'tenuous and remote.'" *Prosser* § 43, at 297; *see also* 1 Thomas M. Cooley, *A Treatise on the Law of Torts* § 50, at 108 (4th ed. 1932) (Cooley) ("in law the immediate and not the remote cause of any event is regarded," and thus "the law always refers the injury to the proximate, not to the remote cause"). And as this Court has explained, citing one "leading treatise on damages," "[w]here the

plaintiff sustains injury from the defendant's conduct to a third person, it is too remote" to support recovery. *Associated Gen. Contractors*, 459 U.S. at 532 n.25 (quoting 1 J. Sutherland, *A Treatise on the Law of Damages* 55-56 (1882) (Sutherland) (emphasis omitted)). Justice Holmes called this "[t]he general tendency of the law, in regard to damages at least, … not to go beyond the first step." *Southern Pac. Co. v. Darnell-Taenzer Lumber Co.*, 245 U.S. 531, 533-34 (1918); *see also Holmes*, 503 U.S. at 271; *Associated Gen. Contractors*, 459 U.S. at 534.

Thus, this Court has consistently applied these common-law directness principles to a range of federal statutes to limit recovery to damages with a close causal connection to a statutory violation. In *Associated General Contractors*, for instance, this Court held that while a "literal reading" of the Clayton Act's cause of action would "encompass every harm that can be attributed directly or indirectly to the consequences of an antitrust violation," Congress intended the statute to be "construed in light of its common-law background," which includes a "proximate cause" requirement that focuses on "the directness or indirectness of the asserted injury." 459 U.S. at 529, 531, 540. The Court therefore rejected a claim that depended on a "chain of causation" that included "several somewhat vaguely defined links." *Id.* at 540.

Similarly, in *Holmes*, this Court interpreted the Racketeer Influenced and Corrupt Organizations Act (RICO) to incorporate the same common-law understanding, holding that background proximate-cause principles limited recovery to injury with "some direct relation between the injury asserted and the

injurious conduct alleged." 503 U.S. at 265-66, 268. It therefore found no proximate cause when the defendant defrauded a broker-dealer, leading to its insolvency, which in turn injured its customers. *Id.* at 270-72; *accord Apple, Inc. v. Pepper*, 139 S. Ct. 1514, 1527 (2019) (Gorsuch, J., dissenting) (noting that there is "nothing surprising" about the caselaw, including *Bank of America*, holding that if a statutory violation injures a tenant who therefore cannot pay his rent, the "landlord can't sue … because the landlord's harm derives from the harm to the [tenant]").

In short, this Court has consistently held that proximate cause requires proof of direct injury. An attenuated causal chain between a statutory violation and the claim for damages will not do.

II. This Court holds, in this case, that these common-law directness principles apply to the Fair Housing Act, rejecting the Eleventh Circuit's foreseeability-only standard.

This case involves a legal theory that even the court below called "ambitious." Pet. App. 2a, 71a. This Court previously granted review in this case and held that in allowing it to go forward, the Eleventh Circuit had applied an erroneously broad concept of proximate cause.

1. Starting in 2008, and with increasing frequency in more recent years, local governments across the country have been bringing lawsuits against financial institutions, trying to replace tax revenue these local governments lost during the most recent financial crisis. These claims, brought by private counsel, have

largely latched onto the FHA as their vehicle of choice. The asserted FHA claims do not seek to combat segregation, promote integration, or compensate victims of housing discrimination. Instead, the local-government plaintiffs simply seek money that they contend they lost as an indirect result of discrimination against local residents.

These suits involve claims for staggering amounts of money. At least sixteen cities and local governments have brought such FHA suits. Most of them have filed multiple, nearly-identical lawsuits against different lenders. And the damages claimed are astronomical, ranging from the hundreds of millions to even billions of dollars in *individual suits against individual lenders*. *See* pp. 15-16, *infra*.

2. Miami's complaint in this case is similar to the numerous other local-government FHA cases. Miami does not allege any effect on residential segregation or integration in Miami. In fact, it focuses on loans made to borrowers in neighborhoods that already had "substantial concentrations of minority households." 15-1111 J.A. 64. Instead, Miami alleges that statistical disparities exist between loan terms and performance across predominantly white, African-American, and Latino neighborhoods and borrowers, *e.g.*, that so-called "predatory loans are disproportionately located in minority neighborhoods," or that the "time to foreclosure" is faster "in African-American and Latino neighborhoods." 15-1111 J.A. 75, 84.

The complaint alleges that the disparate impact results from various lending policies. For instance, Miami alleges that Bank of America created

incentives to lend to "low income" borrowers through loans insured by the Federal Housing Administration, a program designed to expand credit opportunities for underserved borrowers. 15-1111 J.A. 72. Miami alleges that such loans have "higher risk" features and that disproportionately issuing such loans to minorities amounted to lending in a "discriminatory manner." 15-1111 J.A. 68 n.23. Notably, Miami alleges that these loans were largely made between 2004 and 2008—before the financial crisis.

Miami claims that the statistical disparities allegedly created by Bank of America's lending practices set in motion a lengthy causal chain that ultimately cost Miami money. The complaint alleges that less-favorable loan terms led some minority homeowners to default unnecessarily or prematurely; that some of those defaults led to vacancies and foreclosures at the properties securing the loans; that foreclosures led to decreased property values at both the secured property and neighboring properties; and that those decreases in property value led to lower property-tax revenue. Pet. App. 10a; 15-1111 J.A. 88-92; *see also Bank of America*, 137 S. Ct. at 1311 (Thomas, J., concurring in part and dissenting in part).

Like other municipal plaintiffs, Miami seeks a massive recovery. As to its property-tax injury alone, Miami purports to have identified 3,326 relevant Bank of America loans that resulted in foreclosure, and cites a study estimating that all homes within 449 feet of such foreclosures may decline in value between $3,500 and $7,600. 15-1111 J.A. 91-92, 95. These allegations thus seek to make Bank of America liable

for taxes related to hundreds of millions of dollars in property devaluations at *neighboring properties alone*.

3. The district court dismissed Miami's complaint, holding, as relevant here, that Miami failed to allege injuries that were proximately caused by Bank of America's alleged conduct. Pet. App. 134a-135a, 139a. The court held that the FHA, like other statutes with common-law roots, bars recovery of economic losses that are "too remote from the defendant's unlawful conduct." Pet. App. 133a (internal quotation marks omitted). The court emphasized just how long a causal chain Miami would need to forge, and described the numerous intervening actors and acts that could "break the causal chain." Pet. App. 134a.[1]

4. The Eleventh Circuit reversed. It agreed with Bank of America that there are "several links in th[e] causal chain" connecting the alleged FHA violation to Miami's alleged injuries. Pet. App. 107a; *see also* Pet. App. 102a (noting that Miami is "at least one step removed from the defendant's discriminatory conduct"). But the court held that proximate cause under the FHA turns only on the "foreseeability" of the asserted injury, rejecting Bank of America's argument that the FHA incorporates the same directness principles that apply to other federal statutes like RICO and the antitrust laws. Pet. App. 102a-105a. The court justified this uniquely expansive proximate-cause inquiry based largely on the principle that the FHA should be given "a generous construction." Pet. App. 105a (quoting

[1] Miami sought leave to file an amended complaint, which the district court denied. Pet. App. 147a.

Trafficante v. Metro Life Ins. Co., 409 U.S. 205, 209 (1972)).

5. This Court granted certiorari and unanimously rejected the Eleventh Circuit's approach to proximate cause.[2] The Court held that "foreseeability alone does not ensure the close connection that proximate cause requires." *Bank of America*, 137 S. Ct. at 1306. After all, the "housing market is interconnected with economic and social life," and an FHA violation therefore may "cause ripples of harm to flow far beyond the defendant's misconduct. Nothing in the statute suggests that Congress intended to provide a remedy wherever those ripples travel." *Id.* (citation omitted). Moreover, allowing indirect but foreseeable suits would "risk massive and complex damages litigation." *Id.* (citation omitted).

This Court therefore held, citing cases including *Holmes* and *Associated General Contractors*, that the FHA's proximate-cause requirement incorporates the same "directness principles" that this Court has "repeatedly applied … to statutes with common-law foundations." *Id.* (citation omitted). The Court recognized that, in requiring "some direct relation between the injury asserted and the injurious conduct alleged," the "general tendency, … in regard to damages at least, is not to go beyond the first step" in the causal chain. *Id.* (citation omitted). The Court remanded for the Eleventh Circuit to apply these "directness principles" in the first instance. *Id.*

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[2] This Court also held that Miami's "claimed injuries [fell] within the zone of interests that the FHA arguably protects," and that Miami "is an 'aggrieved person' able to bring suit under the statute." 137 S. Ct. at 1301.

Three Justices, concurring in relevant part, agreed with the majority's proximate-cause standard, but they would have applied that standard to the facts of this case. Doing so, the concurrence explained, requires rejecting Miami's "exceedingly attenuated" causal chain. *Id.* at 1311-12 (Thomas, J., concurring in part and dissenting in part). "[T]he majority opinion," Justice Thomas explained, "leaves little doubt that neither Miami nor any similarly situated plaintiff can satisfy the rigorous standard for proximate cause that the Court adopts and leaves to the Court of Appeals to apply." *Id.* at 1311.

III. The Eleventh Circuit holds, on remand, that the FHA requires only some "meaningful and logical continuity" between the alleged statutory violation and the injury, no matter how extended the causal chain.

The court of appeals did not take the hint. The remand lasted more than two years, but came to the same result. After additional briefing but no oral argument, the same Eleventh Circuit panel again held that Miami's allegations satisfy the FHA's proximate-cause requirement.

The court began its discussion of the governing "directness principles" by dissecting the phrase "some direct relation" (which this Court used not only in *Bank of America* but in multiple proximate-cause decisions under multiple statutes, going back to *Holmes*). Based on dictionary definitions of "some" and "relation"—but *not* "direct"—the court concluded that "some direct relation" encompasses *any* "logical bond" or "meaningful and logical continuity" between

the alleged statutory violation and injury. Pet. App. 21a-22a.

Next, the court of appeals rejected the principle that the FHA's proximate-cause requirement bars suits "beyond the first step" in the causal chain, *Bank of America*, 137 S. Ct. at 1306. While the court recognized, as it had in its prior decision, Pet. App. 102a, 107a, that Miami alleged a multi-step causal chain, it dismissed "step-counting" as being "of limited value." Pet. App. 33a. The court inferred that if this Court had thought the first-step inquiry determinative, it would not have remanded, but would have resolved the proximate-cause issue itself. Pet. App. 30a.

The court then turned to a policy-driven inquiry into how broadly to construe the FHA and whether or not tracing the multi-step causal chain in this FHA case would be "administratively infeasible." Pet App. 40a-62a. Based largely on Miami's conclusory promises that "Hedonic regression" can isolate the tax loss caused by a given foreclosure (though *not* by a given fair-lending violation), the court concluded that Miami's indirect tax losses will be "readily calculable." Pet. App. 43a-47a.

The court recognized that its directness inquiry was different—and far broader—than the inquiry this Court has applied to other statutes with "common-law foundations," *Bank of America*, 137 S. Ct. at 1306, like RICO and the antitrust laws. *E.g.*, Pet. App. 62a-67a. To justify such a uniquely expansive inquiry, the court pointed to the FHA's scope and Congress's purported

intent to redress issues relating to "urban squalor," including a "[d]eclining tax base." Pet. App. 33a-39a.[3]

Notably, the Eleventh Circuit almost entirely ignored the direct conflict between its application of the governing directness principles and the application of those same principles by three Justices of this Court—the only three Justices to have applied the correct proximate-cause standard to Miami's claims. Other than its brief statement that the concurrence was wrong to conclude that authorizing claims like Miami's would lead to "disquieting consequences," *Bank of America*, 137 S. Ct. at 1312 (Thomas, J., concurring in part and dissenting part); *see* Pet. App. 59a, the court of appeals did not acknowledge the three-Justice concurrence *at all*. *See, e.g.*, Pet. App. 16a-18a.

REASONS FOR GRANTING THE WRIT

This Court has already agreed to review the Eleventh Circuit's overly-broad application of the FHA's proximate-cause requirement once in this case, and it should do so again. Indeed, there could hardly be a clearer example of a "court of appeals [that] has decided … an important federal question in a way that conflicts with relevant decisions of this Court." S. Ct. R. 10(c). Given the Eleventh Circuit's persistent refusal to follow this Court's instructions and the increasing importance of the question presented, there is, if anything, *more* reason to grant certiorari

[3] The court rejected Miami's attempt to recover municipal-service costs as "too remote to satisfy proximate cause" even under the court's broad standard. Pet. App. 69a.

now than there was when this Court took up this issue three years ago.

I. This case presents a recurring issue of exceptional importance given the billions of dollars potentially at stake.

The question before this Court has only gained importance since this Court last granted certiorari. Miami's suit is one among many brought by outside plaintiffs' lawyers representing some of the largest tax-imposing local governments in the country, including Cook County, Illinois (Chicago); Philadelphia; Fulton County, Georgia (Atlanta); Sacramento; and Oakland. At the time of Bank of America's previous petition for certiorari, twelve local governments had brought suits similar to Miami's. *See* Pet. for Cert. 3 & n.1, *Bank of America Corp. v. City of Miami*, No. 15-1111 (filed Mar. 4, 2016). Four additional local governments have since filed suits—including Philadelphia and Oakland—bringing the total number of government plaintiffs to *sixteen*.[4] The vast majority of these governments have sued multiple lenders.

These suits often seek massive damages. For instance, a complaint filed by Cook County, Illinois (which includes Chicago) asserted that compensatory

[4] Specifically, suits have now been filed by Baltimore, Maryland; Birmingham, Alabama; Cobb County, Georgia; Cook County, Illinois; DeKalb County, Georgia; Fulton County, Georgia; Los Angeles, California; the Los Angeles Unified School District, California; Memphis, Tennessee; Miami, Florida; Miami Gardens, Florida; Montgomery County, Maryland; Philadelphia, Pennsylvania; Prince George's County, Maryland; Sacramento, California; and Shelby County, Alabama.

damages against Bank of America could "exceed $1 billion."[5] Cook County *also* sued both HSBC and Wells Fargo, seeking compensatory damages against *each* lender that "may exceed $300 million."[6] Three Atlanta-area counties similarly allege that "compensatory damages alone" against Bank of America "may exceed hundreds of millions of dollars," while also bringing a separate suit against HSBC for compensatory damages "likely" in excess of "$100 million."[7] The sheer number of cases like Miami's and the massive overall damages at stake are alone sufficient to establish the importance of the question presented—as they were the last time this question came before this Court.

Moreover, the ramifications of the Eleventh Circuit's ruling are not limited to the specific local-government, tax-loss claims at issue in this case. To the contrary, as Justice Thomas explained, allowing Miami's claims to proceed would lead to "disquieting consequences" far beyond these specific suits. *Bank of America*, 137 S. Ct. at 1312 (Thomas, J., concurring in

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[5] Second Amended Complaint ¶ 399 (ECF No. 177), *Cty. of Cook v. Bank of America Corp.*, No. 14-cv-2280 (N.D. Ill. filed July 7, 2017). The district court later dismissed the tax allegations on proximate-cause grounds, *see* p. 32, *infra*, and the County repleaded without the billion-dollar allegation.

[6] Second Amended Complaint ¶ 346 (ECF No. 136), *Cty. of Cook v. HSBC N. Am. Holdings, Inc.*, No. 14-cv-2031, (N.D. Ill. filed Jul. 10, 2017); Second Amended Complaint ¶ 421 (ECF No. 106), *Cty. of Cook v. Wells Fargo & Co.*, No. 14-cv-9548 (N.D. Ill. filed Jun. 21, 2017).

[7] First Amended Complaint ¶ 421 (ECF No. 32), *Cobb Cty. v. Bank of America Corp.*, No. 15-cv-4081 (N.D. Ga. filed June 17, 2016); Complaint ¶ 318 (ECF No. 1), *DeKalb Cty. v. HSBC N. Am. Holdings, Inc.*, No. 12-cv-3640 (N.D. Ga. filed Oct. 18, 2012).

part and dissenting in part). For instance, Miami claims tax losses not just from the decline in value of foreclosed-upon homes, but *also* from the decline in value of homes *near* foreclosed-upon homes. "Under [this] theory of causation," Justice Thomas explained, Miami's "injuries are one step further removed from the allegedly discriminatory lending practices than the injuries suffered by the neighboring homeowners whose houses declined in value. No one suggests that those homeowners could sue under the FHA, and I think it is clear that they cannot." *Id.*

The Eleventh Circuit's attempt to explain why it let Miami sue over the neighbors' taxes, when the neighbors cannot sue themselves, highlights just how permissive its version of proximate cause really is. *See* Pet. App. 59a-60a. The court suggested that such neighbors likely could not sue because it would be harder for them to prove *individual* property-value losses than for Miami to prove *citywide, aggregate* property-value losses. Pet. App. 60a. Thus, according to the Eleventh Circuit, the *more*-directly-injured neighbors *cannot* sue, while the *less*-directly-injured city *can* sue, even though the city's harms are purely derivative of the neighbor's (which, in turn, is purely derivative of the foreclosed-upon homeowner's). This logic turns the directness inquiry on its head—and fails to explain why its rule permits suit by the city but not by utility companies, or other entities that could *also* aggregate their harms across multiple foreclosed-upon properties.[8]

[8] The court of appeals claimed that utility-company losses result from customers' inability to pay, while tax losses result in a decrease in the amount of taxes actually assessed and owed.

The potential reach of the Eleventh Circuit's decision is not even limited to the FHA. If a reference to a statute's intended breadth and an open-ended, policy-driven conclusion that tracing causation is not "infeasible" justifies allowing recovery for any injury with a "meaningful and logical" connection to the alleged statutory violation, then the directness inquiry will lose any bite, because a wide range of federal causes of action share those attributes. That possibility will lead to significant uncertainty and a large increase in federal claims seeking recovery for injuries only distantly connected to any violation of federal law.

This Court already granted certiorari once given the importance of the Eleventh Circuit's decision allowing Miami's claims (and others') to proceed. Though the court on remand dressed up its decision in different words, it reached the same result with the same enormous practical ramifications. This Court should, again, grant certiorari on this crucial issue.

II. The Eleventh Circuit's "meaningful and logical continuity" standard conflicts with this Court's remand decision and its application of the governing "directness principles" to other statutes.

Not only is the question presented equally if not more important than the last time this Court granted review, but the Eleventh Circuit's decision is even more blatantly wrong. Last time, the Eleventh

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Pet. App. 61a. That is plainly wrong: Utility companies could claim harm from the fact that when foreclosures lead to vacancies, *there is no one in the house buying, say, cable TV service*. Like the city, they would be receiving less money.

Circuit erroneously held that the FHA imposes a different proximate-cause standard than the one this Court and other courts of appeals had applied to *other* federal statutes. This time, the Eleventh Circuit held that the FHA imposes a different proximate-cause standard than *the one this Court instructed it to apply*.

This Court has always held that the directness inquiry, as its name suggests, must focus on directness—*i.e.*, the degree of separation between the alleged statutory violation and injury. The court of appeals, however, *refused* to focus on directness—dismissing the length of the causal chain as being of "limited value," Pet. App. 33a—and instead looked only at whether there is a "logical bond" or "meaningful and logical continuity," *regardless* how indirect. That is simply not the directness inquiry this Court has "repeatedly applied … to statutes with common-law foundations." *Bank of America*, 137 S. Ct. at 1306. Miami's theory cannot survive under this Court's approach, as Justice Thomas's concurrence makes clear.

This Court remanded for application of *that* inquiry—but the Eleventh Circuit wrongly read this Court's decision to remand as a sign that Miami's claims should survive. *See* Pet. App. 30a. This Court's willingness to let the lower court redo its mistaken analysis was not a signal that there was no mistake to correct. There are multiple examples *just this year* to prove that point. *See, e.g.*, *Sturgeon v. Frost*, 139 S. Ct. 1066 (2019); *Flowers v. Mississippi*, 139 S. Ct. 2228, 2238 (2019). The Eleventh Circuit's insistence on applying a different standard warrants certiorari review.

A. As the three-Justice concurrence recognized, a straightforward application of the governing directness principles requires dismissing Miami's complaint.

This Court's holding in *Bank of America* was straightforward: The FHA's proximate-cause requirement incorporates the same "directness principles" that apply to other statutes with "common-law foundations" like RICO and the antitrust laws. Those principles require any plaintiff to show "some direct relation between the injury asserted and the injurious conduct alleged." *Bank of America*, 137 S. Ct. at 1306. Moreover, the "general tendency" in cases applying these common-law "directness principles" is "not to go beyond the first step" of causation. *Id.*

The focus of the directness inquiry must therefore be on *directness—i.e.*, on whether there is "the close connection [between violation and injury] that proximate cause requires." *Id.* This Court has therefore routinely rejected alleged causal chains far shorter than the one Miami claims here. For instance, in *Holmes*, an alleged RICO violation caused certain broker-dealers to become insolvent, leading to losses for the broker-dealers' customers. 503 U.S. at 261-65. This Court held that this single intervening step—the broker-dealers' insolvency—was *on its own* legally sufficient to defeat proximate cause. The "demand for some direct relation between the injury asserted and the injurious conduct alleged" was not satisfied, this Court explained, because that demand generally limits recovery to injury at "the first step" in the causal chain. *Id.* at 271-72.

Even when this Court has, in unusual circumstances, made very limited exceptions to this first-step principle, it has gone out of its way to emphasize that the focus of the directness inquiry must *still* be on the length of the causal chain. In *Lexmark*, for instance, the Court slightly relaxed the first-step principle under the Lanham Act to avoid a nonsensical interpretation of a statute and to allow a direct competitor of the defendant to recover from harm that followed "automatically" from the statutory violation—false advertising. 572 U.S. at 133-34, 140. Even in that case, however, the Court went out of its way to emphasize the very limited—indeed, "relatively unique"—nature of the exception it was making, given the nature of false-advertising injury, and to emphasize that the directness requirement bars recovery of downstream, derivative financial harm. *Id.* at 133-34, 140; *accord, e.g.*, *Apple*, 139 S. Ct. at 1527 (Gorsuch, J., dissenting) (reading *Lexmark* that way and noting that "the competitor's landlord can't sue the false advertiser").

Any look at the length of the asserted causal chain would require rejecting Miami's claims. Miami alleges that "[a]s a result of the lenders' discriminatory loan practices, borrowers from predominantly minority neighborhoods were likely to default on their home loans, leading to foreclosures"; that "[t]he foreclosures led to vacant houses"; that "[t]he vacant houses, in turn, led to decreased property values for the surrounding homes"; and that "those decreased property values resulted in homeowners paying lower property taxes to the city government." *Bank of America*, 137 S. Ct. at 1311 (Thomas, J., concurring in part and dissenting in

part). Miami's allegations are thus, indisputably, entirely derivative of an alleged FHA violation against a third party—indeed, in the case of tax losses from decreases in *neighboring* property values, they are derivative of harm that is itself derivative.

Nor could there be any possible argument that Miami's claimed injuries followed "necessarily" from, or are "surely attributable" to, the alleged FHA violation. *See Lexmark*, 572 U.S. at 139. For instance, even if there were discriminatory loan terms, a subsequent foreclosure may be—indeed, most likely would be—caused not by the specific loan terms, but by unrelated life events like job loss. And changes in property values can be caused by numerous macroeconomic factors that have nothing to do with specific foreclosures. To paraphrase Justice Thomas, "[t]he Court of Appeals [need not have] look[ed] far to discern other, independent events that might well have caused the injuries Miami alleges in these cases." *Bank of America*, 137 S. Ct. at 1311 (Thomas, J., concurring in part and dissenting in part).

In short, Miami's alleged causal chain is *far* more attenuated than any this Court has upheld in applying the governing "directness principles," and is indeed far longer than most of the causal chains this Court has *rejected* as too *indirect*. Thus, this Court's opinion "leaves little doubt that neither Miami nor any similarly situated plaintiff can satisfy the rigorous standard for proximate cause that th[is] Court adopt[ed] and l[eft] to the Court of Appeals to apply." *Id.*

B. The Eleventh Circuit failed to justify its unprecedented expansion of the governing directness principles.

The Eleventh Circuit allowed Miami's claims to proceed only by refusing to apply this Court's established "directness principles." The court of appeals dismissed the length of Miami's causal chain as being "of limited value." Pet. App. 33a. In lieu of following this Court's approach to directness, as reflected in *Bank of America*, the court applied its own approach, which is both novel and uniquely expansive. Under that approach, actual "directness" is replaced with a "meaningful and logical continuity" or a "logical bond" between the injury and an alleged statutory violation. None of the Eleventh Circuit's justifications withstands scrutiny.

1. The problems start with the Eleventh Circuit's discussion of the phrase "some direct relation," which it took to be the governing legal test. Pet. App. 21a. The panel interpreted that phrase to mean *any* type of "logical bond," or "meaningful and logical continuity." Pet. App. 21a-22a. The panel based that view *not* on the common law, or on any of this Court's holdings, but on dictionary definitions of words this Court used in its opinion. And it did so selectively—extensively defining the words "some"[9] and "relation" (and "cause"), but *completely ignoring the word*

[9] The court of appeals misdefined "some" in any event. In this Court's phrase "some direct relation," "some" means "one … of something," *i.e.*, a class or group. *Webster's Third New International Dictionary* 2171 (2002) (*"Webster's*"). It does not "soften[]" the adjective "direct," Pet. App. 21a. This Court did not write "some*what* direct."

"*direct*." Pet. App. 21a. Indeed, "logical bond" comes straight from the definition of "relation," *id.*, completely unlimited by the modifier "direct."

But the word "direct," to put it mildly, is an important part of the phrase "some direct relation." And given that "direct" means "effected without any … intervening step,"[10] to have "some direct relation" between a violation and damages requires not just *any* "logical bond" or "meaningful and logical continuity," but an *immediate* one. Indeed, replacing directness with a mere "logical bond" effectively resurrects the foreseeability standard that this Court unanimously rejected, and thus fails to "ensure the close connection that proximate cause requires." *Bank of America*, 137 S. Ct. at 1306. If anything, the Eleventh Circuit's standard is *broader* than foreseeability because a bond could be "logical" even if not "foreseeable."

Nor could the court of appeals' parsing of this Court's opinion be justified as some FHA-specific holding. The phrase "some direct relation" comes from *Holmes*, 503 U.S. at 268, a RICO case, and appears in virtually all this Court's subsequent decisions examining proximate cause under federal statutes. *See, e.g.*, *Staub v. Proctor Hosp.*, 562 U.S. 411, 419 (2011) (Title VII). If the word "some" watered down the analysis the way the Eleventh Circuit thought, many RICO cases (for example) would come out differently. *See, e.g.*, *Slay's Restoration, LLC v. Wright Nat'l Flood Ins. Co.*, 884 F.3d 489, 493-94 (4th Cir. 2018) ("Because [the] claimed injury was not the direct result of the defendant's fraudulent conduct, it

[10] *Webster's* 640.

was not proximately caused by that conduct, as required by [RICO].").

2. The Eleventh Circuit's "logical bond" or "meaningful and logical continuity" standard also disregards this Court's repeated holding that proximate cause generally does not "go beyond the first step" in the causal chain. *E.g.*, *Bank of America*, 137 S. Ct. at 1306. In short, proximate cause requires *proximity*.

In case after case, this Court has held that the relevant "directness principles" are not satisfied if there are *any* intervening steps in the causal chain, especially where, as here, the plaintiff "complain[s] of harm flowing merely from the misfortunes visited upon a third person by the defendant's acts." *Holmes*, 503 U.S. at 268-69; *see also*, *e.g.*, *Associated Gen. Contractors*, 459 U.S. at 534. Yet here, the Eleventh Circuit recognized that, even on the most favorable possible construction of Miami's claims, Miami's claimed injury falls "at the second or third step" of the causal chain. Pet. App. 33a; *see also* Pet. App. 102a, 107a.

The Eleventh Circuit's only response was to note that the first-step principle is not a "hard and fast rule." Pet. App. 23a. But just because some very limited exceptions exist does not mean that Miami falls into one—much less that the court should disregard the length and complexity of the causal chain altogether. This Court has made clear that exceptions to the first-step principle are limited both in number and in scope, and there is *no* case making an exception as broad as the one the Eleventh Circuit made here. Nor did the Eleventh Circuit explain why

this claim under this statute would qualify for an exception at all.

The only two cases on which the Eleventh Circuit relied for this point—*Lexmark* and *Bridge v. Phoenix Bond & Indemnity Co.*, 553 U.S. 639 (2008)—actually highlight the importance of focusing on the length of the alleged causal chain.

The Eleventh Circuit relied primarily on *Lexmark*, but contrary to the Eleventh Circuit's description, Pet. App. 23a, there was nothing "complex" about the chain of causation in that case. *Lexmark* involved the Lanham Act, which bars customers from suing for false advertising even though they are the only ones directly injured; to make the statute function, this Court held that a competitor whose potential customers are deceived into withholding business is a proper plaintiff. 572 U.S. at 133-134. Even while doing so, however, this Court went out of its way to emphasize why the length of the causal chain is important. The Court emphasized the "general tendency not to stretch proximate causation beyond the first step," *id.* at 139 (citation omitted); described the case as involving "relatively unique circumstances," *id.* at 140; and specifically emphasized that *most* downstream, derivative injuries were not recoverable *even under the Lanham Act*, *id.* at 133-34. Thus, far from rejecting the length of the alleged causal chain as being "of limited value," Pet. App. 33a, *Lexmark*, like *Holmes* and other cases, emphasized that the length of the causal chain is the *most important* part of the directness inquiry, and the inquiry bars non-first-step injury in all but the most "unique" circumstances.

This Court's decision in *Bridge* provides even less support for the Eleventh Circuit's decision. That case involved a county system for fairly apportioning tax liens among bidders. To avoid manipulation, the county forbade the use of "agents, employees, or related entities" in order to obtain a disproportionate number of liens, and required a sworn affirmation of compliance with this prohibition. 553 U.S. at 643-44. One bidder sued another bidder under RICO for violating this prohibition, and the defendant moved to dismiss because the plaintiff bidder had not, itself, relied on the sworn affidavit. *Id.* at 645-46. This Court held that such first-party reliance is not required, but, citing *Holmes*, emphasized the importance of a "sufficiently direct relationship between the defendant's wrongful conduct and the plaintiff's injury." *Id.* at 657. The Court found that requirement satisfied because plaintiffs "and other losing bidders were the *only* parties injured by [defendants'] misrepresentations," and there "are no independent factors" in the causal chain. *Id.* at 658. In short, given that defendants effectively stole plaintiffs' opportunity to buy the tax liens, the Eleventh Circuit's assertion that the *Bridge* plaintiffs' harms "clear[ly] … would not have fallen in the first step" in the causal chain is simply wrong. At the very least, neither *Bridge* nor *Lexmark* validated a causal chain anything like the one Miami stretches out here.

3. In an attempt to justify its departure from the common-law directness principles this Court has applied to other statutes, the Eleventh Circuit emphasized that the FHA is "a far-reaching statute." Pet. App. 33a-39a, 62a-67a. But even broad statutes focus on remedying direct harm. Antitrust laws, for

example, were intended to be "given broad, remedial effect," *Am. Soc'y of Mech. Eng'rs, Inc. v. Hydrolevel Corp.*, 456 U.S. 556, 568-69 & n.6 (1982), and RICO is similarly to be "read broadly" and "liberally construed," *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 497-98 (1985). But even so, this Court has squarely held that plaintiffs cannot use either of these statutes to recover downstream economic harm from injuries inflicted on others. *Holmes*, 503 U.S. at 274; *Associated Gen. Contractors*, 459 U.S. at 535. Indeed, this Court in *Holmes* recognized that RICO must be "liberally construed," but held that there is "nothing illiberal" about barring recovery for derivative harm. 503 U.S. at 274. This Court's prior decision in this case cited precisely these RICO and antitrust precedents as the basis for the common-law "directness principles" that govern the FHA. *Bank of America*, 137 S. Ct. at 1306. This Court thus held that the FHA is to be treated like other broad statutes with common-law antecedents, but the Eleventh Circuit treated it as *uniquely* broad and disconnected from the common law.

The Eleventh Circuit's resort to the FHA's purported purposes fares no better. The court relied on a single Senate floor statement from 1968 opining that discrimination in our nation's cities could be linked to a "[d]eclining tax base, poor sanitation, loss of jobs, inadequate educational opportunity, and urban squalor." Pet. App. 38a-39a. But these general justifications for enacting the statute are not license to permit recovery in civil litigation for such *indirect* harms. Rather, Senator Mondale's statement recognizes that, as this Court put it, a "violation of the FHA may … be expected to cause ripples of harm to

flow far beyond the defendant's misconduct." *Bank of America*, 137 S. Ct. at 1306 (citation omitted). Congress's desire to limit those ripples does not mean "that Congress intended to provide a [*private*] remedy wherever those ripples travel," *id.*, on top of the federal government's ability to enforce the statute, *see* p. 31, *infra.* This Court already decided that the FHA is not that broad.

4. Much of the Eleventh Circuit's decision rests not on application of "directness principles" at all, but on a speculative discussion of why proving plaintiffs' *indirect* causation theory "is not administratively infeasible." Pet. App. 39a-62a. But nothing in this Court's decision in this case, or any other, suggests that proximate cause can be established simply by a court's case-specific conclusion that it would not be "infeasible" to trace causation. As the court of appeals recognized, Pet. App. 40a-42a, this Court in *Holmes* explained that three particular difficulties in tracing causation explain *why* the "directness of relationship" is a "central element[]" of proximate cause. *Holmes*, 503 U.S. at 269. But while those policies *justify* the directness inquiry, they do not drive the analysis in each case.

Even considering the policies *Holmes* identified, the Eleventh Circuit's analysis is deeply flawed. For instance, as this Court explained in *Holmes*, "the less direct an injury is, the more difficult it becomes to ascertain the amount of a plaintiff's damages attributable to the violation, as distinct from other, independent, factors." 503 U.S. at 269. That reasoning directly applies here, as innumerable "independent" factors can intervene between an allegedly discriminatory loan term, a default, a

foreclosure, a vacancy, a change in property values, tax assessments, and the ultimate change in tax revenue. *Bank of America*, 137 S. Ct. at 1311 (Thomas, J., concurring in part and dissenting in part) ("The Court of Appeals will not need to look far to discern other, independent events that might well have caused the injuries Miami alleges in these cases.").

The court of appeals claimed that because Miami alleged that "Hedonic regression" can calculate lost tax revenue from a given *foreclosure*, it will be possible to prove Miami's indirect losses. Pet. App. 43a-45a. Even this is doubtful, given the well-recognized limitations and manipulability of regression analysis generally.[11] But even the court of appeals' blind reliance on the allegation does not get Miami far enough, for such a regression analysis cannot address what happened at the earlier steps: whether the default that led to the foreclosure and vacancy was caused by disadvantageous loan terms rather than changes in the borrower's life after the loan closed, such as job loss, illness, or divorce. As the Eleventh Circuit's discussion makes clear, Miami has not alleged that regression could do that work. Pet. App. 44a (quoting Miami's allegation that Hedonic regression can isolate "lost property value attributable to … foreclosures and vacancies," not

[11] For instance, an article Miami previously cited to this Court explains that regression "facilitates biased, result-oriented thinking by expert witnesses" and "can give the wrong answer, or contradictory answers, to questions lawyers and judges care about." D. James Greiner, *Causal Inference in Civil Rights Litigation*, 122 Harv. L. Rev. 533, 534, 538 (2008).

whether the "foreclosures and vacancies" were caused by discriminatory loan terms).

The court of appeals similarly erred in concluding that indirect suits like Miami's are necessary to "vindicate the law." Pet. App. 54a-58a; *see Holmes*, 503 U.S. at 269. Not only can directly injured victims seek redress under the FHA, *see* 42 U.S.C. §§ 3610, 3612, 3613, aided by an attorney's-fee-shifting provision, *id.* § 3613(c)(2), but HUD can bring an administrative action on behalf of a directly injured victim, *id.* § 3610(a)(1)(A)(i), and the Attorney General can bring suit against those engaged in a "pattern or practice" of statutory violations, *id.* § 3614(a). The court of appeals made a value judgment that Congress could have done more to encourage FHA enforcement, and so took it upon itself to put a thumb on the interpretive scale in order to right that perceived wrong. Pet. App. 54a-58a. This is not an appropriate exercise of statutory interpretation.

Ultimately, though, the policy-driven question whether claims like these *should* be actionable is beside the point. The panel simply refused this Court's instruction that it apply established common-law directness principles to the FHA to determine whether these claims *are* actionable. Those principles plainly require reversal of the Eleventh Circuit's decision, and dismissal of Miami's complaint.

III. There is no reason to wait for further percolation before granting certiorari.

Just like the last time this Court agreed to review the Eleventh Circuit's proximate-cause ruling, the fact that no other court of appeals has yet addressed

how proximate cause applies in this precise context is not a reason to deny certiorari. For the reasons explained above, the conflict between the Eleventh Circuit's decision and this Court's decision on a question of such importance itself warrants this Court's review. S. Ct. R. 10(c). Moreover, the Eleventh Circuit's decision has led to and will continue to lead to confusion in the lower courts; conflicts with the proximate-cause standard other courts of appeals apply to *other* federal statutes; and merits review *regardless* of what decisions other courts of appeals might later reach concerning the proper scope of the FHA's proximate-cause requirement.

1. Legal developments in the district courts show the importance of prompt review to correct the confusion the Eleventh Circuit's decision is causing. Since this Court's decision, at least nine courts have taken up the task of applying this Court's decision. Due in large part to the Eleventh Circuit's ruling, those courts have fallen into disagreement over how to apply the FHA's proximate-causation requirement to nearly identical FHA claims with nearly identical causal chains.

Prior to the Eleventh Circuit's decision on remand, three different judges held that tax-loss claims like Miami's do not satisfy proximate cause under this Court's decision in *Bank of America*.[12] A fourth judge

[12] *Cty. of Cook v. Bank of America Corp.*, No. 14-cv-2280, 2018 WL 1561725, at *5 (N.D. Ill. Mar. 30, 2018); *Cty. of Cook v. Wells Fargo & Co.*, No. 14-cv-9548, 2018 WL 1469003, at *8-*9 (N.D. Ill. Mar. 26, 2018); *Cty. of Cook v. HSBC N. Am. Holdings Inc.*, 314 F. Supp. 3d 950, 963-64 (N.D. Ill. 2018).

expressed "serious concerns" about such claims, while putting off a final ruling.[13]

The Eleventh Circuit's decision has undermined this emerging consensus and created uncertainty about how these functionally identical cases should proceed. Prior to the Eleventh Circuit's remand decision, only one court had allowed a tax-loss claim to proceed, but the Ninth Circuit granted interlocutory review in that case, presumably because it was a clear outlier.[14] Since the Eleventh Circuit's decision, however, three district courts outside the Eleventh Circuit denied motions to dismiss, effectively parroting the Eleventh Circuit's reasoning.[15] This confusion will only proliferate absent this Court's intervention.

2. Immediate review is also warranted given the conflict between the proximate-cause standard the Eleventh Circuit applied to the FHA and the proximate-cause standard other courts of appeals have applied to other federal statutes with common-law roots. Bank of America's prior petition for certiorari sought review based on precisely this conflict, emphasizing the importance of applying

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[13] City *of Phila. v. Wells Fargo & Co.*, No. 17-cv-2203, 2018 WL 424451, at *6 (E.D. Pa. Jan. 16, 2018).

[14] *See City of Oakland v. Wells Fargo Bank, N.A.*, No. 15-cv-04321, 2018 WL 3008538 (N.D. Cal. June 15, 2018); *City of Oakland v. Wells Fargo & Co.*, No. 19-15169, ECF No. 1 (9th Cir. Jan. 24, 2019).

[15] *City of Sacramento v. Wells Fargo & Co.*, No. 18-cv-416, 2019 WL 3975590, at *6-*9 (E.D. Cal. Aug. 22, 2019); *Prince George's Cty. v. Wells Fargo & Co.*, No. 18-cv-3576, 2019 WL 3766526 (D. Md. Aug. 9, 2019); *Montgomery Cty. v. Bank of America Corp.*, No. 18-cv-3575, 2019 WL 4805678 (D. Md. Sept. 30, 2019).

consistent proximate-cause principles across federal statutes with common-law foundations. *See* Pet. for Cert. at 26-31, *Bank of America Corp. v. City of Miami*, No. 15-1111 (filed Mar. 4, 2016).

The Eleventh Circuit's ruling on remand, no less than its prior one, imposes a proximate-cause standard that conflicts with the standard applied by other courts of appeals. Across a wide range of statutes, the courts of appeals have applied a directness requirement focused on directness itself—*i.e.*, the length of the causal chain and remoteness of the alleged injury. *E.g.*, *Ray Charles Found. v. Robinson*, 795 F.3d 1109, 1124 (9th Cir. 2015) (Copyright Act); *Aransas Project v. Shaw*, 775 F.3d 641, 658-59 (5th Cir. 2014) (Endangered Species Act). Indeed, this Court's prior decision in this case is already being applied, in cases under *other* statutes, as a decision about the length of the causal chain and the first-step principle. *See, e.g.*, *Empire Merchants, LLC v. Reliable Churchill LLLP*, 902 F.3d 132, 141 (2d Cir. 2018) (citing *Bank of America*, 137 S. Ct. at 1306).

The Eleventh Circuit, while paying lip service to "directness," explicitly rejected any meaningful reliance on remoteness or the length of the causal chain. Pet. App. 33a Its "meaningful and logical continuity" standard is based entirely on *stripping* the word "direct" from the phrase "some direct relation." *See* pp. 23-25, *supra*.

No less than before, therefore, the courts of appeals are divided as to the correct application of proximate cause to federal statutory claims. Before the Eleventh Circuit's decision, lower courts could be confident that they must consider the length of the causal chain and

the remoteness of the injury as the focus of the proximate-cause analysis under federal statutes with common-law antecedents. But now, a district court has little way to know whether to rely on such considerations. While the Fifth Circuit in *Aransas* reversed a district court for *failing to consider* the length of the alleged causal chain, the Eleventh Circuit here reversed the district court for *relying* on that same factor, dismissing the length of the causal chain as being "of limited value." Pet. App. 33a. These analytical approaches to directness are irreconcilable, and the Eleventh Circuit identifies no principled basis on which to predict which approach should apply to other federal statutes with common-law roots.

3. Waiting for additional courts of appeals to apply this Court's decision in *Bank of America* to similar FHA claims would also serve no purpose and cause significant harm. The blatant conflict with this Court's decision in *Bank of America* is not going away. And additional reasoning from hypothetical future appellate decisions would be of limited, if any, value. The Eleventh Circuit's decision includes extensive—if deeply flawed—analysis, and numerous district courts have also issued reasoned opinions interpreting this Court's decision. *See* pp. 32-33, *supra*. Delay would thus neither change the need for certiorari nor aid this Court's review. Indeed, even if plaintiffs' counsel were to lose in a single circuit, it is far from clear that they would risk asking this Court to resolve the split—especially given what this Court has already written. Rather, they will continue litigating their massively expensive cases in every other circuit, and continue their pursuit of nine-figure

payouts—for damages to which, under any proper analysis of proximate cause, they are not entitled.

This Court's review was necessary in 2016, is necessary today, and will remain necessary until the Eleventh Circuit's rule is firmly rejected. The Court should grant certiorari now to resolve this important issue and enforce this Court's prior decision.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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