No.

IN THE
Supreme Court of the United States

DANIEL H. ALEXANDER,

Petitioner,

v.

BAYVIEW LOAN SERVICING, LLC,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE DISTRICT COURT OF APPEAL OF FLORIDA
THIRD DISTRICT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Whether the Florida Supreme Court and the Third District Court of Appeal of Florida ("the Third DCA") violated the due process protections of the 5th and 14th Amendments to the U. S. Constitution by allowing the Third DCA to block the Florida Supreme Court from reviewing an arbitrary and capricious *per curiam* affirmance ("PCA") of a final judgment of foreclosure procured using false evidence in an unconscionable scheme to defraud the courts, the federal regulators and the U.S. Department of Justice that violated the $25 Billion National Mortgage Settlement by the continued use of fraudulent evidence in foreclosures?

Whether the Florida Supreme Court and the Third District Court of Appeal of Florida violated the due process protections of the 5th and 14th amendments to the U.S. Constitution by refusing to grant disqualification when there are objective reasons to question its impartiality in foreclosure appeals raising this same fraudulent misconduct?

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

The Petitioner, Daniel Alexander, was the defendant in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County and the Appellant in the Third District Court of Appeal of Florida. Mr. Alexander is an individual. Thus, there are no disclosures to be made by him pursuant to Supreme Court Rule 29.6.

The Respondent is Bayview Home Loans Servicing, LLC. ("Bayview") To Petitioner's knowledge, no publicly held corporation owns 10% or more of Bayview's stock.

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PETITION FOR WRIT OF CERTIORARI

Daniel Alexander respectfully petitions for a Writ of Certiorari to review the judgment of the Third DCA after the Florida Supreme Court declined to accept jurisdiction.

INTRODUCTION

In 2008, the United States suffered "the greatest economic meltdown since the Great Depression" and "[a]t the core of this crisis was the mortgage meltdown" caused by the securitization of subprime mortgages.[1] Securitization of mortgages was made possible largely through the expansive use of a private financial industry-created database system, Mortgage Electronic Registration Systems, Inc. ("MERS"), as a replacement for state recording laws. *See generally, In re MERSCORP, Inc. v. Romaine*, 8 N.Y.3d 90, 96, 861 N.E.2d 81, 828 N.Y.S.2d 266 (2006).

With the collapse of the housing market, the MERS system was exploited by the nation's large mortgage service providers for a different purpose - the mass

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[1] Nelson, G.S., Confronting the Mortgage Meltdown: A Brief for the Federalization of State Mortgage Foreclosure Law, 37 PEPP. L. REV. 583, 583 (2010). *See generally* Lapidus, A.L., What Really Happened: Ibanez and the Case For Using the Actual Transfer of Documents, 41 Stetson L. Rev. 817, 817-18 (Spring 2012)(citations omitted).

production of false and fictitious mortgage assignments for use in foreclosures. This "robo-signing scandal" led to several investigations by federal regulators and the U.S. Department of Justice ("the DOJ") into misconduct by Bank of America, N.A. ("BANA"), JP Morgan Chase ("Chase") and other large financial institutions. These investigations resulted in settlements worth billions of dollars and promises by these financial institutions to stop using false and fictitious evidence in foreclosures. At the time, the Maine Supreme Court stated:

> … this case is a disturbing example of a reprehensible practice. That such fraudulent evidentiary filings are being submitted to courts is both violate of the rules of court and ethically indefensible. The conduct … displays a serious and alarming lack of respect of the nation's judiciaries.

Fed. Nat'l Mortg. Ass'n v. Bradbury, 32 A.3d 1014, 1016 (Me. 2011). *See also Kemp v. Countrywide Home Loans, Inc.*, 440 B.R. 624 (Bankr. D. N.J. 2010) (refusing to recognize as legitimate Countrywide's attempted transfer of a note and mortgage that had not been properly endorsed); *In re Hill* , 437 Bankr. W.D. Pa. 2010) (issuing a "public censure" against Countrywide and counsel for fabricating evidence).

The rampant use of fraudulent documents in mortgage foreclosures was also universally

condemned by commentators. See Renuart, E., Property Title Troubles in Nonjudicial Foreclosure States: The Ibanez Time Bomb?, 4 WM. & MARY BUS. L. REV. 111, 119-28 (2013); White, A., Losing the Paper – Mortgage Assignments, Note Transfers and Consumer Protection, 24 Loy. Consumer L. Rev. 468, 486-87 (2012); Shaun Barnes, Kathleen G. Cully & Steven L. Schwarz, In-House Counsel's Role in the Structuring of Mortgage-Backed Securities, 2012 WIS. L. REV. 521, 528 (2012).

There is now clear evidence that Chase, BANA, and other large financial institutions defrauded those government regulators and the DOJ, by entering into multi-billion dollar settlements while intending to continue using false evidence in foreclosures. Chase, BANA and others have continued to bombard state and federal courts with foreclosure actions based on similar fraudulent paperwork. There is a pattern of false mortgage assignments and after-the-fact rubberstamped blank endorsements, backdated by perjury with the knowledge of the Banks' most senior management.

Throughout many appeals, the Third DCA has turned a blind eye to this widespread fraudulent conduct by Chase, BANA, and others. There is a clear pattern of bias in the Third DCA which the Florida Supreme Court has declined to address, leaving this Court to confront the fraud and bias that violated Mr. Alexander's due process rights under the 5th and 14th Amendments to the U.S.

Constitution.

REPORTS OF OPINIONS BELOW

The opinion of the Third DCA giving rise to this petition is *Alexander v. Bayview Loan Servicing, LLC*, 241 So. 3d 825 (Fla. 3rd DCA 2018), and the decision of the Florida Supreme Court that declined to accept jurisdiction to review that opinion. *Alexander v. Bayview Loan Servicing, LLC*, No. SC18-624, 2018 WL 2069311, at *1 (Fla. May 3, 2018) *See* App. 1-3.

STATEMENT OF BASIS FOR JURISDICTION

The *per curiam* affirmance sought to be reviewed was entered by the Third DCA on January 24, 2018. On May 3, 2018, the Florida Supreme Court determined it should decline to accept jurisdiction and denied a petition for *writ of mandamus*, rendering the Third DCA's opinion a decree from the highest court of the State of Florida. See *R.J. Reynolds Tobacco Co. v. Kenyon*, 882 So.2d 986, 989-90 (Fla. 2004). Therefore, the Third DCA was the state court of last resort from which Petitioner could seek review. *See, e.g., Williams v. Florida*, 399 U.S. 78, 79 n.5 (1970) (where the Florida Supreme Court was without jurisdiction to entertain an appeal, "the District Court of Appeal became the highest court from which a decision could be had."); *Florida Star v. B.J.F.,* 530 So.2d 286, 288 n.3 (Fla. 1988). Therefore, the Court's jurisdiction is invoked under

28 U.S.C. §1257(a).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Fifth Amendment to the United States Constitution provides in relevant part: "No person shall be … deprived of life, liberty or property without due process of law…."

The Fourteenth Amendment to the United States Constitution provides in relevant part: "No state shall … deprive any person of . . . property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Florida Statute § 702.01 provides "All mortgages shall be foreclosed in equity…"

Florida Rule of Civil Procedure 1.115(e) provides:

"Verification; When filing an action for foreclosure on a mortgage for residential real property the claim for relief shall be verified by the claimant seeking to foreclose the mortgage…."

Florida Rule of Civil Procedure 1.540(b) provides: "(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc. On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment… for the following reasons: … (3)

fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; … The motion shall be filed within a reasonable time, and for reasons (1), (2), and (3) not more than 1 year after the judgment, decree, order, or proceeding was entered or taken."

STATEMENT OF THE CASE

A. Statement of the Facts

On June 17, 2015, the trial court below entered a final judgment of foreclosure in favor of Bayview. R. 179-183. On June 17, 2016, Appellant filed a timely Motion to Vacate that Judgment under Fla. R. Civ. P. 1.540(b). ("the Rule 1.540(b) Motion") R. 276-331.

The Rule 1.540(b) Motion asserted Bayview had committed fraud in this case by fabricating evidence of standing, namely, an undated rubber stamped blank endorsement signed by Cynthia Riley, as Vice President of Washington Mutual ("WAMU") that was "part of a widespread scheme to defraud the courts that started by adding the same surrogate signed blank endorsement during active foreclosures filed without endorsed notes and with the expectation that the courts would accept the false claim that the endorsement was affixed shortly after [origination]." R. 276-277.

The Rule 1.540(b) Motion set forth that the sworn

testimony of Cynthia Riley stating her signature was affixed to original notes within days of origination was false. R. 277. Years after WAMU ceased to exist and she no longer worked for WAMU, Chase had teams add her rubber stamped endorsements to original notes for WAMU. This continued as Chase negotiated the $25 Billion National Mortgage Settlement and promised to only use "competent evidence" in foreclosures. R. 277.

The Rule 1.540(b) Motion then set forth that Chase perpetrated a fraud on the court by presenting the surrogate signed endorsements as if affixed by Ms. Riley before her termination in 2006. R. 278. The Rule 1.540(b) Motion attacked the renewed use of surrogate signed, false, and fictitious evidence to establish standing in foreclosures, even after the National Mortgage Settlement. R. 278.

Finally, the Rule 1.540(b) Motion also attacked the "Florida Assignment of Mortgage" ("AOM") prepared by Bayview's own counsel that purported to document a transaction whereby Chase "does hereby grant, sell, assign, transfer, and convey… a certain mortgage…" to the Respondent. R. 310.

The Rule 1.540(b) Motion asserts that Chase presented the same form AOM in the case of *JP Morgan Chase v. Mahra Sarofsky*, in Broward County Circuit Court Case No: CACE 13000153. R. 278, 312. The Rule 1.540(b) motion asserted that in *Sarofsky*, the trial witness "admitted under

oath that the identical form AOM represented a 'fictitious' transaction that never occurred. The AOM was prepared with the intent to establish Plaintiff's right to foreclosure by suggesting a transaction that never happened which is now a felony under Florida Statute §817.535." R. 278.

The balance of the Rule 1.540(b) Motion set forth the legal requirement that the lower Court must permit discovery and conduct an evidentiary hearing if there is a colorable claim that the judgment would not have been entered with knowledge the endorsement and assignment were fraudulent evidence. R. 278-281.

The Rule 1.540(b) Motion also discusses an Order to Show Cause why HSBC should not be sanctioned under the Inherent Contempt Powers of the Court for Fraud Upon the Court entered by the Honorable Judge Beatrice Butchko in *HSBC v. Buset* in Miami-Dade Circuit Court Case Number 2012-03881 CA 01. R. 280, 315-331. In her order, Judge Butchko found the assignment and endorsement prepared by Ocwen, the servicer, "was prepared in anticipation of litigation and reflected a transaction that never could happen." R. 280.

The Rule 1.540(b) Motion sets forth the controlling law that establishes surrogate signing is legally ineffective. R. 282-284. It sets forth the various settlements for surrogate signing and misconduct in foreclosures resulting in millions and billions of

dollars in penalties for conduct found in this foreclosure. R. 284-288.

Specifically, the Rule 1.540(b) Motion describes the Florida Attorney General's "robo-signing" investigation that found AOM's in foreclosures were "forged, incorrectly and illegally executed, false and misleading…. when it actually appeared they are fabricated in order to meet the demands of the institution that does not, in fact, have the necessary documentation to foreclose according to law." R. 287. Moreover, the Rule 1.540(b) Motion described a $120 Million Surrogate Signing Settlement condemning the practice of "signing of documents by an unauthorized person in the name of another… as if … signed by the proper person…." R. 287.

Finally, the Rule 1.540(b) Motion implored the trial court to "condemn in the harshest terms Plaintiffs continued misconduct after the Florida Attorney General's $120 Million Surrogate Signing Settlement and the $25 Billion National Mortgage Settlement. R. 289-290. The Rule 1.540(b) supports that position by stating the extensive body of Florida Supreme Court law which prohibits a party from obtaining equitable relief, regardless of the merits of their claim, when they act with unclean hands in a manner reasonable people would condemn. R.290-294.

On August 18, 2016, Bayview noticed a hearing on Petitioner's Rule 1.540(b) Motion, but not as an

evidentiary hearing. R. 396. At the hearing, Appellant's counsel advised the facts supporting the Rule 1.540(b) Motion filed herein were nearly identical to a Qui Tam action filed by undersigned counsel where BANA was accused of committing fraud upon the court using a very similar scheme to create after the fact, backdated rubber-stamped endorsements and false assignments on behalf of third parties. R. 394. The Honorable U.S. District Court Judge Ursuala Ungaro for the Southern District of Florida, Miami Division issued an omnibus order finding the use of such rubberstamped endorsements and assignments fell into the scope of conduct barred by the National Mortgage Settlement. *U.S. ex rel. Bruce Jacobs v. Bank of America Corp.,* et. al., U.S. Dist. Ct. Case No. 1:15-cv-24585-UU at pgs 19-20.

B. Course of Proceedings and Dispositions

The trial court prohibited discovery of the fraud and then denied the Rule 1.540(b) motion. R. 395. Petitioner appealed to the Third DCA in case number 3D16-2228. On December 21, 2017, the Third DCA removed the case from the oral argument calendar set for January 9, 2018. On January 24, 2018, the Third DCA issued a "per curiam" affirmance ("PCA"). See attached at App. 1.

1. The Motion for Rehearing, Rehearing En Banc and Request for a Written Opinion

Petitioner filed a Motion for Rehearing, Rehearing En Banc and for a Written Opinion on February 22, 2018. ("the Rehearing Motion"). The Rehearing Motion argued it is not proper to issue a PCA, which blocks Florida Supreme Court review, when there is a colorable claim of fraud that Chase used robo-stampers to affix WAMU endorsements to notes years after WAMU ceased to legally exist. Moreover, motion argued the assignment in evidence only assigned the mortgage without the note, which is a legal nullity. *Carpenter v. Longan*, 83 U.S. 271, 274 (1872).

The Rehearing Motion attached a Final Judgment Petitioner's counsel obtained in his client's favor before Palm Beach County Senior Circuit Court Judge Howard Harrison finding unclean hands in another foreclosure case with the same Cynthia Riley rubber stamped WAMU endorsement used here. Judge Harrison cited this Court's holding "tampering with the administration of justice … is a wrong against the institutions set up to protect and safeguard the public … in which fraud cannot be complacently tolerated with the good order of society." *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 246, 64 S. Ct. 997, 88 L. Ed. 1250 (1944).

The Rehearing Motion showed there was a colorable

claim of fraud warranting the right to discovery and an evidentiary hearing on the Rule 1.540(b) Motion. Senior Chase executives suborned perjury to backdate endorsements to a time when WAMU still existed. Chase then presented those endorsements as valid in thousands of cases knowing of the falsity.

The Rehearing Motion explained that this misconduct continued in earnest even after the Florida Attorney General broke open the robo-signing scandal involving widespread fraud on the court. Even after the Office of the Comptroller of the Currency forced Chase and BANA into a Consent Judgment finding they all "litigated cases without properly endorsed notes" in March of 2011.

The Motion also discussed the dozens of cases from the other Florida District Courts of Appeal, with singular exception of the Third DCA, that reversed foreclosures filed without properly endorsed notes. It discussed Judge Ungaro's finding the use of backdated rubberstamped endorsements and false assignments fell into the scope of conduct barred by the National Mortgage Settlement.

The Rehearing motion also discussed the findings by U.S. Bankruptcy Court Judge Robert Drain for the Southern District of New York that Wells Fargo was "improving its own position by creating new documents and indorsements from third parties to itself to ensure that it could enforce is claims. *In re: Cythia Carssow-Franklin* Case Number 15-CV-

1701 (KMK). The motion noted that U.S. District Court Judge for the Southern District of New York, Kevin Karas affirmed Judge Drain finding "In the wake of the recent foreclosure crisis, and the dubiousness of the common robo-signing practices of various banks and other foreclosing entities… it may be time to reconsider whether "forged or unauthorized signatures" remain "very uncommon." *In re Carssow-Franklin (Wells Fargo Bank, N.A. v. Carssow-Franklin)*, --- F. Supp. 3d ---, --- [2016 WL 5660325, *6-10] (S.D.N.Y. 2016).

The Motion included a section describing the fundamental breakdown in due process for the Third DCA to block Florida Supreme Court review by abusing the PCA. It discussed the "fundamental black letter law" that a PCA is inappropriate unless "the points of law are so well settled that a further writing would serve no useful purpose. *Elliot v. Elliot*, 648 So. 2d 137, 138 (Fla. 4th DCA 1994).

The Motion goes on to cite the due process considerations discussed *supra.* in allowing an intermediate court to block review of its decision affirming fraud on the court merely by refusing to write an opinion stating the basis for that decision.

Near the end of the Rehearing Motion Petitioner cited the Code of Judicial Conduct, Canon 3 E(1) which states: "A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned..."

The Motion then discussed a series of articles in the Daily Business Review ("DBR") and the results of over 36 foreclosure appeals by Petitioner's counsel that give many objective reasons to question the impartiality of the Third DCA.

On March 21, 2018, the Third DCA summarily denied all requested relief. On April 19, 2018, Petitioner filed a petition for writ of mandamus asking the Florida Supreme Court to order the Third DCA to issue a written opinion that could provide jurisdiction for further review. On May 3, 2018, the Florida Supreme Court entered an order dismissing the Petition. See attached as App. 2.

(2) The Florida Supreme Court Has Taken No Action as the Third DCA Repeatedly Denied Motions to Disqualify that Set Forth Objective Reasons to Question its Impartiality

The Third DCA has repeatedly refused to disqualify itself, despite patently obvious reasons to question its fairness in foreclosures. One of many objective reasons to question the Third DCA's impartiality is a recent front page DBR article entitled, Can He Say That? Frustrated Attorney Asks 'What's Wrong with the Third DCA.[2]

2https://www.law.com/dailybusinessreview/sites/dailybusinessreview/2018/02/09/can-he-say-that-frustrated-attorney-asks-whats-wrong-with-the-third-dca/

The front page article reported "***there is no question that the Third District is pro-business and couldn't care less about homeowners.***" (emphasis added). It further reported that the Third DCA "abuses *per curiam* affirmances, or PCAs, to avoid explaining their rulings on lender standing, … [and] misuses the tool to strategically sidestep writing opinions that could provide grounds for rehearing. Instead, they say it uses the decisions to wipe out options for further review and avoid conflicts with other district courts." Instead of a reasoned opinion that would create conflict jurisdiction for further review, the Third DCA issues a PCA that says: you lose because we said so and there's nothing you can do about it.

Moreover, the front page article laid out statistical, empirical evidence that the Third DCA reversed on standing in favor of the banks 87% of the time, while over the same time period, the 1st, 2nd, 4th and 5th DCA's all reversed on standing in favor of the homeowners between 73%-84% of the time. This is not just an anomaly. The front page article attached a press release that set forth:

> … of its sixteen written opinions addressing standing in recent-era foreclosure cases, the Third District has only ruled for a property owner twice. *66 Team, LLC v. JPMorgan Chase Bank Nat. Ass'n*, 187 So. 3d 929 (Fla. 3rd DCA 2016) and *Riocabo v. Fed. Nat'l Mortgage Ass'n*, 230 So. 3d 579 (Fla. 3rd DCA

> 2017). (Consider that in 66 Team, the bank did not admit any documents or evidence at trial to prove its case. And in *Riocabo*, the bank confessed error - admitting that it must lose on appeal.)… The neighboring Fourth District has issued 120 written foreclosure opinions on standing, 87 (73%) have been in favor of property owners … It's also noteworthy that the Third has only issued sixteen written foreclosure opinions on standing – the fewest of any appellate court in the state.

Undersigned counsel has now filed three Motions to Disqualify the Third DCA citing this article and Canon 3 E(1) of the Code of Judicial Conduct. Two of the three cases involve the same fraudulent conduct found in this case.

All three Motions to Disqualify referenced over 36 foreclosure appeals undersigned counsel litigated before the Third DCA over the past decade. Virtually every appeal of a judgment of foreclosure ended with a PCA. It didn't matter if the issue was due process violations, hearsay, fraud, perjury, lack of jurisdiction, bias, or whatever. The Third DCA refused to write an opinion, grant rehearing, or certify conflict, even when other DCA's or the Florida Supreme Court reached the opposite result.

All three Motions to Disqualify explained how in virtually every appeal where the trial judge ruled in favor of undersigned counsel's client, the Third DCA

reversed with intellectually and factually dishonest opinions. The Third DCA applied the wrong standard of review to evidentiary rulings and findings of unclean hands, made findings of fact in direct conflict with the record, and ignored law rather than expose itself to further appellate review.

Most recently, on August 7, 2018, the Florida Supreme Court declined to accept jurisdiction in the case of *Bank of America v. Jose Rodriguez* in case number SC18-1288. In *Rodriguez*, the Honorable Miami-Dade Circuit Court Judge David Miller entered the two sanctions orders under the inequitable conduct doctrine finding BANA blocked discovery into a similar scheme to use backdated endorsements and false assignments.

BANA appealed Judge Miller and moved to disqualify him. Then BANA's counsel threw a fundraiser for the successor judge who promptly struck both sanction orders, struck all discovery, struck all pleadings alleging fraud, unclean hands or violations of Florida's RICO statute, and entered a summary final judgment of foreclosure.

On appeal in case number 3D17-272, the Third DCA issued a PCA of the *Rodriguez* summary judgment. By refusing to write an opinion, the Florida Supreme Court could refuse to accept jurisdiction under *R.J. Reynolds Tobacco Co. v. Kenyon*, 882 So. 2d 986 (Fla. 2004).

On May 31, 2018, undersigned counsel filed a Motion for Rehearing and Rehearing En Banc in *Rodriguez* which argued constitutional due process does not permit a PCA on that record either. On June 6, 2018, undersigned counsel filed his third Motion to Disqualify the Third DCA. On July 7, 2018, the Third DCA unanimously denied the Motion to Disqualify and all other requested relief.

On August 7, 2018, the Florida Supreme Court cited *R.J. Reynolds Tobacco Co.* and dismissed the Petition for a Writ of Mandamus to compel the Third DCA to issue a written opinion in *Rodriguez*. That appeal will soon be filed with this Court along with other homeowners denied their constitutional rights to due process protected by the 5th and 14th Amendments to the U.S. Constitution.

REASONS FOR GRANTING THE WRIT

CERTIORARI SHOULD BE GRANTED TO PROTECT DUE PROCESS RIGHTS GUARANTEED BY THE 5TH AND 14TH AMENDMENTS TO THE U.S. CONSTITUTION AND TO PREVENT FRAUD ON THE COURT OR BIASED APPELLATE JUDGES FROM GRANTING THE EQUITABLE RELIEF OF FORECLOSURE BY CONDONING THAT FRAUD

A. The Due Process Test

This Court has established what is essentially a two-

tiered analysis for due process challenges to conduct which, like the one in this case, involves property rather than liberty interests. The first "tier" involves a two-fold inquiry: (1) an examination of whether there has been a significant deprivation or threat of a deprivation of a property right, *see Fuentes v. Shevin*, 407 U.S. 67 (1972), and (2) an examination of whether there is sufficient state involvement of that deprivation to trigger the Due Process Clause, *see Lugar v. Edmondson Oil Co.*, 457 U.S. 922 (1982). If there is state action and if that action amounts to the deprivation or threat of a deprivation of a cognizable property interest, the Court proceeds to the second "tier" to then determine what procedural safeguards are required to protect that interest. *Connecticut v. Doehr*, 501 U.S. 1 (1991).

The Court traditionally uses the three-factor test first discussed in *Mathews v. Eldridge*, 424 U.S. 319 (1976), to assess what safeguards are necessary to pass muster under the Due Process Clauses of the Fifth and Fourteenth Amendments. The Mathews analysis weighs (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." 424 U.S. at 335; *see also Doehr*, 501 U.S. at 26-28.

1. The Significance of the Deprivation

There can be no serious question that Petitioner satisfied the first tier requirement. This Court has been a steadfast guardian of due process rights when what is at stake is a person's right "to maintain control over [her] home" because loss of one's home is "a far greater deprivation than the loss of furniture." *United States v. James Daniel Good Real Property*, 510 U.S. 43, 53-54 (1993). Courts have held that even "a small bank account" is sufficient to trigger due process protections. *See Nat'l Council of Resistance of Iran v. Dept. of State*, 251 F.3d 192, 202-205 (D.C. Cir. 2001) (*citing Russian Volunteer Fleet v. United States*, 282 U.S. 481, 489-42 (1931)).

2. State Action

Since foreclosures in Florida require judicial supervision from beginning to end, Petitioner also plainly satisfied the second tier. This Court has set out two elements that must be met in order to establish state action under the Fourteenth Amendment: "First, the deprivation must be caused by the exercise of some right or privilege created by the State.... Second, the party charged with the deprivation must be a person who may fairly be said to be a state actor." *Lugar v. Edmondson Oil Company*, 457 U.S. 922, 937 (1982).

The first requirement was met in this case by the

foreclosure process chosen by the Florida Legislature. Unlike some states which permit non-judicial foreclosures, Florida has required that mortgage foreclosure actions be supervised by the judiciary for 190 years. *See Daniels v. Henderson*, 5 Fla. 452 (1854) (construing Fla. Acts of 1824). Today, foreclosures in Florida are regulated by Fla. R. Civ. P. Rule 1.115(e), which requires verification of foreclosure complaints. See p. __ supra.

To meet the second requirement, a borrower must show that the "private actor operate[d] as a 'willful participant in joint activity with the State or its agents.'" *Brentwood Academy v. Tennessee Secondary School Athletic Association*, 531 U.S. 288, 296 (2001) (quoting *Lugar*, 457 U.S. at 941). This means that the private actor must have received the "significant assistance of state officials." Tulsa *Professional Collection Services v. Pope*, 485 U.S. 478, 486 (1988).

In judicial-foreclosure states such as Florida, the use of the state's courts (and the use of all the state officials who work for those courts) to pursue the foreclosure is mandatory; the foreclosing entity does not possess the right of self-help. This Court has recognized that prejudgment remedy statutes "are designed to enable one of the parties to 'make use of state procedures with the overt, significant assistance of state officials,' and they undoubtedly involve state action 'substantial enough to implicate the Due Process Clause.'" *Doehr*, 501 U.S. at 11

(*quoting Tulsa Professional Collection Services, Inc. v. Pope*, 485 U.S. 478, 486 (1988). *See also Brinkerhoff-Faris Trust & Savings Co. v. Hill*, 281 U.S. 673 (1930).

For the same reason, Florida's requirement of strict supervision of Florida's foreclosure proceedings is enough "substantial" involvement to trigger state action. *See Dieffenbach v. Attorney General*, 604 F.2d 187, 194 (2d Cir. 1979) (finding that the use of Vermont's strict foreclosure statute, "directly engage[d] the state's judicial power in effectuating foreclosure," was enough to show that there was state action in the foreclosure process). See also *New Destiny Dev. Corp. v. Piccione*, 802 F. Supp. 692 (D. Conn. 1992).

3. The Matthews Test

a. The Private Interest

The "private interest" prong of the *Matthews* Test weighs heavily in Petitioner's favor. As *Daniel Good* again underscores, Petitioner had an enormous interest in retaining his home.

b. The Risk of Erroneous Deprivation

The risk of an erroneous deprivation when the decision rests on fraudulent evidence manufactured by the opposing party should be selfevident. Using false or fraudulent evidence "involve[s] a corruption

of the truth-seeking function of the trial process." *United States v. Agurs*, 427 U.S. 97, 107 (1976). *See also Miller v. Pate*, 386 U.S. 1 (1967) (finding that a deliberate misrepresentation of truth to a jury is a violation of due process); *Caldwell v. Mississippi*, 472 U.S. 320 (1985) (finding that an uncorrected, misleading statement of law to a jury violated due process); *Darden v. Wainwright*, 477 U.S. 168, 181-82 (1986) (improper argument and manipulation or misstatement of evidence violates Due Process). *Cf. Mesarosh v. United States*, 352 U.S. 1, 14 (1956) (reversing convictions based on Solicitor General's disclosure that an important government witness had committed perjury in other proceedings, stating that the Court had a duty "to see that the waters of justice are not polluted").

c. *The governmental interest*

While requiring plaintiffs in foreclosure actions to prove standing to sue creates an administrative burden, it is a burden that is basic to all civil litigation. *See Warth v. Seldin*, 422 U.S. 490, 498 (1975) (standing "is [a] threshold question in every federal case, determining the power of the court to entertain the suit"). The same principle holds true in federal bankruptcy proceedings involving foreclosure disputes. As one district court bluntly put it: 'This Court possesses the independent obligations to preserve the judicial integrity of the federal court and to jealously guard federal jurisdiction. Neither the fluidity of the secondary

mortgage market, nor monetary or economic considerations of the parties, nor the convenience of litigants supersede these obligations." *In re Foreclosure Cases I*, Nos. I:07CV2282 et al., 2007 U.S. Dist. LEXIS 84011, at *6, 2007 WL 3232430, at *2 (N.D. Ohio Oct. 31, 2007). *See generally* RESTATEMENT (THIRD) OF PROP: MORTGS. § 5.4(c) (1997) ("A mortgage may be enforced only by, or on behalf of, a person who is entitled to enforce the obligation the mortgage secures.").

d. The Need for Supreme Court Intervention

If this Court does not grant *writ* in this case, the corruption of foreclosure proceedings in Florida will effectively be rendered immune from challenge. By refusing to issue an opinion, the Third DCA insulated its views from challenge in the Florida Supreme Court, despite the fact that its holding is irreconcilable with one of its sister courts. *See Pino v. Bank of New York Mellon*, 57 So.3d 950 (Fla. 4 DCA 2011), the certified question answered, 121 So.3d 23 (Fla. 2013). Federal court review, in turn, is limited by *Rooker-Feldman* doctrine, which deprives "lower federal courts" of "subject matter jurisdiction" to review state court decisions on foreclosure matters, even as to due process/fraud claims similar to Petitioner's. *See*, e.g., *Warriner v. Fink*, 307 F.2d 933 (5 Cir. 1962); *Moncrief v. Chase Manhattan Mortgage Corp.*, 275 Fed. Appx. 149 (3d Cir. 2008); *Pennington v. Equifirst Corp.*, No. 10-1344-RDR, 2011 U.S. Dist. LEXIS 9226 (D. Kan.

Jan. 31, 2011). Courts also held that borrowers lack standing to challenge violations of the 2012 Consent Judgment. *See Conant v. Wells Fargo Bank, N.A.*, No. 13-572 (CKK), 2014 U.S. Dist. LEXIS 19154, at **37-39 (D. D.C. Feb. 14, 2014)(collecting cases). Thus, review of the Third DCA's conduct can only be accomplished by this Court through a Petition such as this one.

(4) Fraud on the Court Violates Due Process when it Deprives Life, Liberty, or Property

It is axiomatic that "[a] fair trial in a fair tribunal is a basic requirement of due process." *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 876, 129 S. Ct. 2252, 2259, 173 L. Ed. 2d 1208 (2009). Because fraud on the courts pollutes the process society relies on for dispute-resolution, subsequent courts reason that "a decision produced by fraud on the court is not in essence a decision at all, and never becomes final. Judgments … obtained by fraud or collusion are void, and confer no vested title." *League v. De Young*, 52 U.S. 185, 203, 13 L. Ed. 657 (1850). Due process does not permit fraud on the court to deprive any person of life, liberty or property. A biased court also violates constitutional due process guarantees by tolerating that fraud.

"As long ago as *Mooney v. Holohan*, 294 U.S. 103, 112, 55 S.Ct. 340, 342, 79 L.Ed. 791 (1935), this Court made clear that deliberate deception of a court … by the presentation of known false evidence is

incompatible with 'rudimentary demands of justice' … the same result obtains when the State, although not soliciting false evidence, allows it to go uncorrected when it appears.'" *Giglio v. United States*, 405 U.S. 150, 153, 92 S. Ct. 763, 766, 31 L. Ed. 2d 104 (1972). In *Mooney*, this Court held due process:

> is a requirement that cannot be deemed to be satisfied by mere notice and hearing if a state has contrived … a deliberate deception of court and jury by the presentation of testimony known to be perjured. Such a contrivance … is as inconsistent with the rudimentary demands of justice as is the obtaining of a like result by intimidation. And the action … may constitute state action within the purview of the Fourteenth Amendment. That amendment governs any action of a state, 'whether through its legislature, through its courts, or through its executive or administrative officers… Upon the state courts, equally with the courts of the Union, rests the obligation to guard and enforce every right secured by that Constitution. *Mooney v. Holohan*, 294 U.S. 103, 113, 55 S. Ct. 340, 342, 79 L. Ed. 791 (1935).

If a state, whether by the active conduct or the connivance of the prosecution, obtains a conviction through the use of perjured testimony, it violates civilized standards for the trial of guilt or innocence

and thereby deprives an accused of liberty without due process of law. *Hysler v. State of Fla.*, 315 U.S. 411, 413, 62 S. Ct. 688, 690, 86 L. Ed. 932 (1942). The same holds true when the deprival is of property without due process of law.

(5) The Growing Chorus of Federal and State Court Judges Calling Out this Fraud in Foreclosures

The Florida Legislature enacted Florida Statute §702.01 which provides, all mortgages shall be foreclosed in equity. Fla. Stat. Ann. § 702.01 (1987). Almost two centuries ago, this Court pronounced: "equitable powers can ***never*** be exerted in behalf of one who has acted fraudulently, or who, by deceit or any unfair means, has gained an advantage." *Bein v. Heath*, 47 U.S. 228, 6 How. 228, 1848 WL 6464 (U.S.La.), 12 L.Ed. 416 (1848)(emphasis added).

Recently, the Chief Judge of the Second DCA, in a concurring opinion, noted, "[i]t appears that many foreclosure judgments are entered based on dubious proof by the banks due to an understandable lack of sympathy for defendants who are years behind on payments…" *Shaffer v. Deutsche Bank Nat. Trust.*, 2017 WL 1400592 at *8 (Fla. 2nd DCA) filed April 19, 2017. On June 10, 2017, the Honorable Broward County Circuit Court Judge William W. Haury, Jr. wrote:

This is one of the few instances in the history

> of Florida jurisprudence where the Florida Supreme Court has deemed it necessary to subject an entire industry to special rule [Fla. R. Civ. P. 1.115(e) due to the industry's documented illegal behavior… a direct result of the robosigning scandal… Notwithstanding this, some of our courts appear to be conforming to the business practices of this industry rather than requiring the business practices to conform to the law." W*ells Fargo Bank N.A., as Trustee for the Structured Asset Mortgage Investments II Inc. Bear Stearns Mortgage Funding Trust 2007-AR1, Mortgage Pass Through Certificates Series 2007-AR1. v. Jerry Warren*, Broward County Case No. 13-010112(11), fn. 4.

In 2011, the Honorable Judge Gary M. Farmer retired from the Fourth DCA of Florida but wrote a dissent, through the Honorable Judge Mark Polen, following the robo-signing scandal that stated:

> Decision-making in our courts depends on genuine, reliable evidence. The system cannot tolerate even an attempted use of fraudulent documents and false evidence in our courts. The judicial branch long ago recognized its responsibility to deal with, and punish, the attempted use of false and fraudulent evidence. When such an attempt has been colorably raised by a party, courts must be most vigilant to address the issue and pursue

> it to a resolution. *Pino v. Bank of New York, Mellon*, 57 So. 3d 950, 954 (Fla. 4th DCA 2011).

Only the Honorable U.S. District Court Judge Ursula Ungaro has expressly called out BANA for violating the $25 Billion National Mortgage Settlement ("NMS") by using rubberstamped endorsements backdated by perjury by the highest senior BANA executives and false MERS assignments in the false claims act case brought by undersigned counsel discussed *supra*. It is intolerable for any appellate courts to misstate the facts and the law to protect fraudulent foreclosures over the constitutional rights of homeowners.

Wells Fargo essentially admitted to the same misconduct before U.S. Bankruptcy Court Judge Robert N. Drain of the Southern District of New York. Wells Fargo, another party to the NMS, was also "improving its own position by creating new documents and indorsements from third parties to itself to ensure that it could enforce its claims." *In re Carssow-Franklin (Wells Fargo Bank, N.A. v. Carssow-Franklin)*, --- F. Supp. 3d ---, --- [2016 WL 5660325, *6-10] (S.D.N.Y. 2016).

In *Franklin*, the Honorable U.S. District Court Judge Kenneth M. Karas affirmed Judge Drain's findings, noting Wells Fargo engaged in a practice of creating "after-the-fact" documentation "on behalf of third parties" by in-house "assignment and indorsement teams" which Wells Fargo tried to

cover-up with an invalid MERS assignment on June 12, 2012, two months after signing the $25 Billion National Mortgage Settlement. BONYM and BANA did the same thing and engaged in the most egregious misconduct to cover it up.

No party, especially not a party to the $25 Billion NMS, "has a right to trifle with the courts." *Ramey v. Haverty Furniture Companies, Inc.*, 993 So. 2d 1014, 1018 (Fla. 2nd DCA 2008).

Petitioners' homestead is a protected property right which Respondent cannot foreclose on with unclean hands. The U.S. Supreme Court instructs that once it is determined that a protected property interest was taken, the next determination is whether the State's procedures comport with due process. *American Mfrs. Mutual Ins. Co., v. Sullivan*, 526 U.S. 40, 59, 119 S.Ct. 977, 989 (1999). This Court must review these procedural and substantive due process violations of the U.S. Constitution. "It is the purpose of the ancient institution of property to protect those claims upon which people rely in their daily lives, reliance that must not be arbitrarily undermined." *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 577, 92 S.Ct. 2701, 2709 (1972).

Once a state has established avenues of appellate review, they must be free of unreasoned distinctions to impede equal and open access to the courts. *Rinaldi v. Yeager*, 384 U.S. 305, 310, 86 S.Ct. 1497,

1500 (1966). By refusing to write an opinion, the Third DCA denied Petitioner equal access to the Florida Supreme Court and due process of law.

In 1980, Article V of the Florida Constitution was amended to divest the Florida Supreme Court of jurisdiction to review a PCA without a written opinion.[3] In 1993, the Honorable Judge Gerald B. Cope, Jr., of the Third District Court of Appeal, published an extensive article analyzing Florida's Appellate Procedure after the 1980 Amendment. Gerald B. Cope Jr., Discretionary Review of the Decisions of Intermediate Appellate Courts: A Comparison of Florida's System with Those of the Other States and the Federal System, 45 Fla. L. Rev. 21 (Jan. 1993). Judge Cope concluded that Florida's written opinion requirement was enacted in a time of crisis and imposed "the most severe limitation on access to the State Supreme Court of any American jurisdiction." Id. at 93.

Two decades after the 1980 amendment, the Florida Supreme Court commissioned a report to study the use of PCA decisions. See, Comm. on Per Curiam Affirmed Dec., Final Report and Recommendations (May 2000). The majority reported that the PCA performs a useful function when used properly. Id. at 29. However, several practitioners cited a

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3 Florida Constitutional Amendment Article V 3(b)(3); *see generally*, Jenkins v. State, 385 So. 2d 1356, 1359 (Fla. 1980); *St. Paul Title Ins. Co. v. Davis,* 392 So. 2d 1304, 1305 (Fla. 1981).

widespread PCA problem which appears arbitrary and undermines the quality of appellate justice in Florida. Id. The Florida Supreme Court adopted the PCA Committee's recommendation to amend Rule 9.330 of Florida's Appellate Procedure to allow litigants to request a written opinion from the Court effective January, 2003.

Former Florida Supreme Court Justice England also concluded this amendment to Rule 9.330 is conceptually flawed and should be repealed. Arthur J. England, Jr., Asking for Written Opinion from a Court That Has Chosen Not to Write One, 78-Mar Fla. B. J. 10, 16 (March, 2004). Justice England saw the procedural infirmity in "asking a District Court to provide an opinion that will expose their rationale to Supreme Court review puts expressly in the hands of District Court judges the discretion to allow or not allow review." Id. at 15.

It is "fundamental black letter law" that a District Court should write an opinion unless "the points of law raised are so well settled that a further writing would serve no useful purpose." *Elliot v. Elliot*, 648 So. 2d 137, 138 (Fla. 4th DCA 1994). The Third DCA has abused the PCA to deny appeals speaking out about the use of false endorsements and assignments, fraud on the court, perjury, and the destruction of evidence in defiance of a court ordered subpoena. This breakdown in due process reaches an arbitrary result that conflicts with well-settled law and permits parties to the National Mortgage

Settlement to continue to defraud courts with the approval, *sub silencio*, of the Florida Court system.

Due Process protects against the arbitrary deprivation of property and reflects the value our constitutional and political history places on the right to enjoy prosperity, free of governmental interference. *Fuentes v. Shevin*, 407 U.S. 67, 80-1, 92 S.Ct. 1983, 1996 (1972).

Under the Magna Carta, the Due Process Clause limits the powers of all branches of government, including the judiciary. *Truax v. Corrigan*, 257, U.S. 312,333, 42 S.Ct. 124, 129 (1921). Chief Justice Taft wrote:

> Our whole system of law is predicated on the general fundamental principle of equality of application of the law. 'All men are equal before the law,' 'This is a government of laws and not of men,' 'No man is above the law,' are all maxims showing the spirit in which Legislatures, executives and courts are expected to make, execute and apply laws." *Id.* The guaranty of due process "was aimed at undue favor and individual or class privilege…. *Id.*

This is why "Equal Justice Under Law" is etched in all caps across the front of the U.S. Supreme Court. "The vague contours of the Due Process Clause do not leave judges at large." *Rochin v. People of*

California, 342 U.S. 165, 170, 72 S.Ct. 205, 209 (1952). Judges have long been required to give a public reasoned opinion from the bench in support of their judgment. Id. at fn. 4.

The reason given to support state action that takes property may not be so inadequate that it may be characterized as arbitrary. *Jeffries v. Turkey Run Consolidated School District*, 492 F.2d 1, 4 (7th Cir. 1974). State action is "arbitrary" when it takes without reason or for merely pretextual reasons. *Decarion v. Monroe County*, 853 F. Supp 1415, 1421 (S.D. Fla. 1994).

The "arbitrary and capricious" standard requires a state to examine the relevant data and to articulate a satisfactory explanation for its action. *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm*, 463 U.S. 29, 43, 103 S.Ct. 2856, 2867 (1983) *citing Burlington Truck Lines v. United States*, 371 U.S. 156, 168, 83 S.Ct. 239, 245-246 (1962). As the Florida Supreme Court has held, "one of the best procedural protections against arbitrary exercise of discretionary power lies in the requirement of findings and reasons that appear to reviewing judges to be rational." *Roberson v. Florida Parole and Probation Commission*, 444 So. 2d 917, 921 (Fla. 1983).

(6) The Third DCA's Per Curiam Affirmance is Pretextual, Arbitrary and Capricious

This Court is asked to review the Third DCA's opinion below which is clearly pretextual, arbitrary, and violates Petitioner's due process rights. If the Florida Supreme Court won't speak out to correct this miscarriage of justice, this Honorable Court is all that is left to protect Petitioner's due process rights enshrined in the 5th and 14th amendments to the U.S. Constitution. This Court instructs:

> Whether acting through its judiciary or through its legislature, a State may not deprive a person of all existing remedies for the enforcement of a right, which the State has no power to destroy, unless there is, or was, afforded to him some real opportunity to protect it." *Brinkerhoff-Faris Trust & Sav. Co. v. Hill*, 281 U.S. 673, 50 S. Ct. 451, 74 L. Ed. 1107 (1930). at 681-682, 50 S. Ct., at 454-455.

This Court is called on to act because the Florida Supreme Court has taken no action to prevent the Third DCA from improperly ignoring fraudulent conduct in foreclosures.

(7) Due Process Demands the Third DCA Disqualify Itself from Foreclosures as its Impartiality is Objectively Questioned

Justice England recognized an unconstitutional and

inherent flaw in entrusting intermediate appellate court judges with the power to shield an arbitrary decision from further appellate review merely by refusing to write an opinion. The same infirmity exists in Florida, wherein appellate court judges are entrusted to decide for themselves whether there is an objective reason to question their impartiality.

The Florida Supreme Court instructs that "the disqualification of an appellate judge is a matter which rests largely within the sound discretion of the individual involved." *Giuliano v. Wainwright*, 416 So. 2d 1180, 1181 (1982). "When a litigant seeks to disqualify … a judge of a district court of appeal, a different, more personal standard applies. The standard enunciated by the Florida Supreme Court is that 'each justice must determine for himself both the legal sufficiency of a request seeking his disqualification and the propriety of withdrawing in any particular circumstances.'" *In re Carlton* 378 So. 2d 1212, 1216 (Fla.1979) (On Request for Disqualification). *Clarendon Nat. Ins. Co. v. Shogreen*, 990 So. 2d 1231, 1233 (Fla. 3rd DCA 2008). In *Shogreen*, this Court noted that the Florida Supreme Court "has approved the application of the Carlton standard when that court's appellate-level judges were faced with a court-wide motion for disqualification." *Id. citing, 5–H Corp. v. Padovano*, 708 So. 2d 244, 245–46 (Fla.1997).

This Court instructs "a multimember court must not have its guarantee of neutrality undermined, for the

appearance of bias demeans the reputation and integrity not just of one jurist, but of the larger institution of which he or she is a part. *Williams v. Pennsylvania*, 136 S. Ct. 1899, 1902, 195 L. Ed. 2d 132 (2016). "An unconstitutional failure to recuse constitutes structural error..." *Id.*

"The Due Process Clause may sometimes demand recusal even when a judge "'ha[s] no actual bias.'" (citations omitted) Recusal is required when, objectively speaking, "the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable." *Rippo v. Baker*, 137 S. Ct. 905, 907, 197 L. Ed. 2d 167 (2017). As this Court has explained:

> The judiciary's authority therefore depends in large measure on the public's willingness to respect and follow its decisions. As Justice Frankfurter once put it for the Court, "justice must satisfy the appearance of justice." (citations omitted). It follows that public perception of judicial integrity is "a state interest of the highest order." (citations omitted) *Williams-Yulee v. Fla. Bar*, 135 S. Ct. 1656, 1666, 191 L. Ed. 2d 570 (2015).

"It is axiomatic that the Due Process Clause entitles a person to an impartial and disinterested tribunal in … civil … cases. This requirement of neutrality … preserves both the appearance and reality of fairness, … by ensuring that no person will be

deprived of his interests in the absence of a proceeding in which he may present his case with assurance that the arbiter is not predisposed to find against him. *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980). "Due process guarantees the right to a neutral, detached judiciary in order "to convey to the individual a feeling that the government has dealt with him fairly, as well as to minimize the risk of mistaken deprivations of protected interests." *Carey v. Piphus*, 425 U.S. 247, 262 (1978); *Taylor v. Hayes*, 418 U.S. 488, 501 (1974).

The Florida Supreme Court has held, "it is the duty of Courts to scrupulously guard this right and to refrain from attempting to exercise jurisdiction in any matter where his qualification to do so is seriously brought in question. The exercise of any other policy tends to discredit the judiciary and shadow the administration of justice." *Crosby v. State*, 97 So. 2d 181, 184 (Fla. 1957). The Florida Supreme Court recognized that "prejudice of a judge is a delicate question to raise but …, if predicated on grounds with a modicum of reason, the judge against whom raised, should be prompt to recuse himself." *Livingston v. State*, 441 So. 2d 1083, 1086 (Fla. 1983). In *Livingston*, the Florida Supreme Court further instructed:

> it is a matter of no concern what judge presides in a particular cause, but it is a matter of grave concern that justice be administered with dispatch, without fear or

> favor or the suspicion of such attributes. The outstanding big factor in every lawsuit is the truth of the controversy. Judges, counsel, and rules of procedure are secondary factors designed by the law as instrumentalities to work out and arrive at the truth of the controversy… *Id.*

The rules regarding judicial disqualification "were established to ensure public confidence in the integrity of the judicial system…." *Livingston* at 1086.

The Third DCA has repeatedly denied Motions to Disqualify that set forth many objective reasons to question the court's impartiality. Most obvious is the front page article of the Daily Business Review that explained in great detail how the Third DCA has ruled for homeowners in only 2 cases on standing since 2010, while the other 4 DCAs have ruled for homeowners in hundreds of cases. These foreclosures are prosecuted using the same forms and evidence throughout Florida. As the Daily Business review correctly reported "There is no question that the Third District is pro-business and couldn't care less about homeowners."

On March 23, 2017, the Honorable U. S. Bankruptcy Judge Christopher M. Klein of the Eastern District of California sanctioned BANA $45 million for foreclosure misconduct involving BOA's Senior Management. *Sundquist v. Bank of America*, --

B.R.--, 2017 WL 1102964 *46 (U.S. Bkrptcy, E.D. Cal. issued March 23, 2017). The opinion "tells a story that smacks of cynical disregard for the law." Id. at *47. The Court noted:

> The high degree of reprehensibility, coupled with the significant involvement by the office of the Chief Executive Officer, calls for of an amount sufficient to have a deterrent effect on Bank of America and not be laughed off in the boardroom as petty cash or "chump change…. It happens that Bank of America has a long rap sheet of fines and penalties in cases relating to its mortgage business … In an environment in which Bank of America has been settling, i.e. terminating exposure to higher sums, for billions and hundreds of millions of dollars… why should Bank of America be permitted to evade the appropriate measure of punitive damages for its conduct? Not being brought to book for bad behavior offensive to societal norms merely incentivizes future bad behavior." *39-40.

Judge Klein noted BANA's "attitude of impunity" citing failed governmental regulatory investigations "that turned out to be a chimera." Id. at *43. Even investigations by the Consumer Financial Protection Bureau were "thwarted" with a "bald-faced lie" and a refusal to turn over documents.

In stark contrast to Florida, the Maine Supreme

Court has taken a different approach to misconduct in foreclosures. *Bayview Loan Servicing, LLC v. Bartlett*, 87 A.3d 741, 749 (Maine S. Ct. 2014). In *Bartlett,* the Maine Supreme Court affirmed an involuntary dismissal with prejudice for Bayview's failure to attend a fourth court ordered mediation and awarded the borrower a free home. *Id.* The ultimate sanction was appropriate as Bayview had previously defied court orders that affected the borrower's ability to resolve their foreclosure.

Trial level judges are speaking out against continued misconduct in foreclosures, even if the Third DCA and the Florida Supreme Court are not. This Court should join those judges on the right side of history and grant certiorari.

CONCLUSION

The basis for the judicial power, which is referenced in Article V, Section 1 of the Florida Constitution, is found in Federalist Number 78, written by Alexander Hamilton as Publius. The Federalist Society warns that:

> The Constitution's promise of due process of law is, among other things, a promise of impartial adjudication in the courts—a promise that people challenging assertions of government power will have access to a neutral tribunal that is not only free from actual bias but free even from the appearance

> of bias. To the extent that private citizens cannot reasonably be confident that they will receive justice through litigation, they will be tempted to seek extra-legal recourse.

This Court must act to save the integrity of the Florida judiciary. It is the best hope to save our country from the perils Alexander Hamilton warned of when the people believe they cannot receive fair and impartial justice from this judiciary. Such a concern become more real as political events unfold, undermining the institutions of democracy.

The Third DCA violated Petitioner's due process rights and the judicial canons governing impartiality by refusing to write an opinion that justifies the continued use of fraudulent evidence in an equitable action of foreclosure. It is objectively reasonable to fear the Third DCA acted to reach a predetermined outcome that favor banks over homeowners - foreclosure. If the Florida Supreme Court will not act, this Court must.

As this David v. Goliath battle involves misconduct by the most wealthy and powerful, this petition presents perhaps the most epic constitutional crisis in our lifetime. Democracy will not fall if financial institutions are held to the rule of law. To the contrary, democracy falls if the public is allowed to believe Courts are biased in favor of bad corporate citizens and a fraudulent foreclosure process.

WHEREFORE, this Court should grant the writ and consider the issue on the merits.

Respectfully submitted,

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Daniel H. Alexander and Jacqueline P. Alexander,
Defendant - Appellants.

Versus

Bayview Loan Servicing, LLC,
Appellee,

No. 3D16-2228

District Court of Appeal of Florida
Third District

Lower Tribunal No. 14-19290

Opinion filed January 24, 2018, Rehearing Denied March 21, 2018

An Appeal from the Circuit Court for Miami-Dade County, John W. Thornton, Jr., Judge

Jacobs Keeley, PLLC, and Bruce Jacobs, Court E. Keely, Amida U. Frey, and Anna C. Morales, for appellants.

Phelan Hallinan Diamond & Jones, PLLC, and Jonathan L. Blackmore (Fort Lauderdale), for appellee.

JUDGES: Before SUAREZ, LAGOA and SALTER, JJ.

OPINION
PER CURIAM:

Affirmed

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI DADE COUNTY

Case no.: 14-19290-CA-35

BAYVIEW LOAN SERVICING, LLC.
Plaintiff,

vs.

DANIEL HABAKKUK ALEXANDER A/K/A DANIEL H. ALEXANDER, ET. AL.,
Defendants.

ORDER DENYING DEFENDANTS' MOTION TO VACATE FINAL JUDGMENT PURSUANT TO FLA. R. CIV. P. 1.540(B)

THIS CAUSE, having come on to be heard for a special set hearing on September 2, 2016 on DEFENDANTS' MOTION TO VACATE FINAL JUDGMENT PURSUANT TO FLA. R. CIV. P. 1.540(B) and the Court having heard argument of counsel, and being otherwise advised in the premises, it is hereby:

ORDERED AND ADJUDGED that Said Motion is hereby DENIED.

DONE AND ORDERED in Chambers at the Miami-Dade County; Florida on this 2nd day of September, 2016.

JUDGE JOHN THORNTON JR.
CIRCUIT COURT JUDGE

SUPREME COURT OF FLORIDA
THURSDAY MAY 3, 2018

CASE NO.: SC18-624
Lower Tribunal No(s).:
3D16-2228; 132014CA019290000001

DANIEL H. ALEXANDER, ET AL vs. BAYVIEW LOAN SERVICING, LLC.

Having determined that this Court is without jurisdiction, this case is hereby dismissed. See R.J. Reynolds Tobacco Co. v. Kenyon, 882 So. 2d 986 (Fla.2004).
No motion for rehearing will be entertained by the Court. *See* Fla. R. App. P. 9.330(d)(2).

A True Copy
Test:

John A. Tomasino
Clerk, Supreme Court