No.

IN THE
Supreme Court of the United States

DONNY MARIN, ET AL,

Petitioner,

v.

THE BANK OF NEW YORK,

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 due process protections enshrined in the 5th and 14th Amendments of the U. S. Constitution prohibit Florida Courts from turning a blind eye to the use of fraudulent evidence barred by the $25 Billion National Mortgage Settlement to obtain the equitable relief of foreclosure and to ignore objective reasons to question the impartiality of those Florida Courts that require disqualification?

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

The Petitioner, Donny Marin, ("Mr. Marin") 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. Marin is an individual. Thus, there are no disclosures to be made by him pursuant to Supreme Court Rule 29.6.

The Respondent is The Bank Of New York Mellon f/k/a The Bank Of New York ("BONYM"). No publicly held corporation owns 10% or more of the Bank of New York Mellon Corporation's stock.

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PETITION FOR WRIT OF CERTIORARI

Donny Marin 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

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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).

service providers for a different purpose - the mass 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).

There is clear and convincing evidence that Chase,

BANA, and other large financial institutions defrauded those government regulators and the DOJ by negotiating multi-billion dollar settlements while continuing to systemically use false evidence in foreclosures.

Chase, BANA and others still bombard state and federal courts 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, being presented as competent evidence in mortgage foreclosure actions from Florida to Ohio to Hawaii.

The Third DCA has turned a blind eye to this widespread fraudulent conduct, refusing to hold Respondent or BANA accountable to the rule of law. 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. Marin'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 *Marin v. Bank of New York*, No. 3D17-1730, 2018 WL 2230041 (Fla. 3rd DCA May 16, 2018), and the Florida Supreme Court decision that declined to accept jurisdiction to review that opinion.

Marin v. Bank of New York, No. SC18-1242, 2018 WL 3655258 (Fla. July 31, 2018). *See* App. 1-3.

STATEMENT OF BASIS FOR JURISDICTION

The *per curiam* affirmance ("PCA") sought to be reviewed was entered by the Third DCA on May 16, 2018. On July 31, 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

(i) *Fraud on the Court in this Foreclosure*

Respondent filed this initial foreclosure complaint on November 4, 2008. R. 25-45. The complaint alleged the promissory note was lost and attached a copy of the lost note which lacked any endorsements. R. 27-28, 41-45. Thereafter, on December 14, 2009, Respondent filed an amended complaint that dropped the lost note count but again attached a copy of an unendorsed promissory note. R. 88-92.

BANA as successor by merger to Countrywide Home Loans, Inc. acted as Servicer for BONYM for Petitioner's loan. R. 200-209. BANA prosecuted this foreclosure with its own evidence and witnesses on BONYM's behalf. R. 200-209.

Respondent attached to its amended complaint an assignment of mortgage ("AOM") prepared by its counsel and recorded in the Miami-Dade Public Records on November 12, 2008. R. 105. The AOM falsely claimed Mortgage Electronic Registration Systems Inc., ("MERS") sold Petitioner's note to the Respondent on October 15, 2008. R. 105.

(ii) *The Trial Court Denied Due Process by Striking Any Claims of Fraud or Unclean Hands from the Pleadings*

As trial approached, Petitioner filed two motions seeking a continuance because of Respondent's stonewall discovery tactics, failure to file a witness list, and failure to produce a witness for deposition. R. 122-123, R125-126. Respondent filed court ordered discovery responses raising privilege without a privilege log. Respondent also refused to coordinate dates to hear its discovery objections. R. 125-126. On October 6, 2011, the trial court granted the motion to continue the trial. R. 127.

On January 3, 2012, Petitioner filed the first of four motions to amend affirmative defense and three motions to file counterclaims alleging fraud on the court. R. 167-177. Petitioner raised unclean hands and specifically alleged the endorsement was added during the course of litigation so Plaintiff could fraudulently establish a right to enforce the note. R. 170. The third affirmative defense also attacked the MERS AOM since "MERS never holds the note and the Trust cannot accept such a transfer pursuant to its controlling Pooling and Servicing Agreement ("PSA"). R. 170.

The trial court reset the trial even though the pleadings were not closed as Respondent's motion to strike affirmative defenses alleging fraud and unclean hands was pending. R. 178-200, 203-205.

On November 8, 2013, Petitioner filed a motion to amend their affirmative defenses to raise additional facts discovered in other related cases into this systemic fraud. R. 212-232. On November 20, 2013, five years into the case, Respondent filed another motion to strike the affirmative defenses attaching a copy of the original note with two undated rubber-stamped signatures for David A. Spector as Managing Director of Countrywide Home Loans, Inc. and Countrywide Mortgage Ventures, LLC. R. 279. Neither of these undated rubber stamped endorsements appeared on the note attached to the initial complaint or the amended complaint. R. 41-45 and 88-92.

On December 19, 2013, Petitioner filed a counterclaim that alleged Fraud/Fraud on the Court and stated Respondent "falsely claimed it took ownership of the loan from MERS by assignment" and "caused an undated rubber stamped blank endorsement of David Spector's signature to be affixed to the original note after the filing of this action." R. 282. The David Spector endorsement was added after the filing of the case and after Mr. Spector "ceased employment with countrywide." R. 282-283. The counterclaim alleged Respondent filed its lost note count knowing the allegation was false when made in a "pattern and practice of material misrepresentations" made to mislead "the court and in fact the entire justice system." R. 283.

On December 19, 2013, the trial court struck all the

defenses alleging unclean hands and fraud with leave to amend. R. 290. On January 24, 2014, Petitioner filed his third amended answer and affirmative defenses. R. 294-310. On February 20, 2014, the trial court granted a motion to strike all counterclaims with 5 days leave to amend. R. 372. On February 25, 2014, Petitioner filed a fourth amended answer, affirmative defenses and counterclaim which gave even more details into the systemic fraud upon the court involving these endorsements and assignments.

On March 13, 2014, the trial court dismissed Petitioner's counterclaims with prejudice as conclusory and time barred. R. 454-455. On January 23, 2015, Petitioner filed a motion to amend counterclaims attaching an order from the Honorable Miami-Dade Circuit Court Judge David Miller finding BONYM's servicer, BANA engaged in bad faith discovery tactics to hide evidence of widespread fraud. R. 585-590.

The new counterclaims alleged with great specificity that BONYM and BANA were liable for civil conspiracy to commit fraud, violations of Florida's RICO statute, and sought a declaratory judgment that Respondent's continued use of fraudulent evidence after the $25 Billion National Mortgage Settlement constitutes unclean hands barring the equitable relief of foreclosure. R. 582-633, 608.

On January 30, 2015, Petitioner filed an emergency

motion to amend its answer, affirmative defenses, and counterclaims citing to a recent court ordered (by multiple judges) deposition testimony of Respondent's corporate representative admitting to the widespread use of unauthorized endorsements to create false evidence of standing to foreclosure. R. 638. On February 12, 2015, the trial court denied leave to amend the counterclaims to bar claims of fraud or unclean hands. R. 729.

(iii) *The Trial Court Refused to Disqualify Itself and Instead Abused Its Power by Threatening Petitioner's Counsel with Contempt and Bar Complaints and the Third DCA Takes No Action*

On February 18, 2015, the trial court began the trial by threatening to hold Petitioner's counsel in contempt of court for asking for a continuance to file a motion to disqualify the trial court. R. 1247. By the end of the trial, Petitioner filed a formal written motion to disqualify the trial court. The Motion for Disqualification argued the trial court appeared objectively biased after it: (1) refused to permit Petitioner's counsel an opportunity to be heard according to law; (2) made statements on the record that she does not believe Defendant's counsel because "Judges talk" about him; (3) prejudged the case by denying Petitioner's Motion for Involuntary Dismissal before even allowing argument on the motion; (4) repeatedly denied Petitioner's counsel a continuance to permit the filing of a written motion

to disqualify in violation of Florida Supreme Court law; (5) repeatedly threatening to hold Petitioner's counsel in contempt of court for requesting an opportunity to be heard and a continuance to file a written motion for disqualification; (6) working on other matters during the trial and repeated stoppages of the trial to conduct trials in other matters; (7) the failure to exclude rank hearsay or require any foundation for redacted documents produced by Plaintiff's counsel and introduced into evidence as a business record not made by the witness' business; (8) denying any meaningful discovery; and (9) striking affirmative defenses and counterclaims alleging fraud. R.984-985.

On February 26, 2015, the trial court summarily denied the Motion to Disqualify and ordered Petitioner to file an emergency appeal to the Third DCA within 48 hours. R. 1053. Petitioner filed a Petition for writ of prohibition alleging the trial judge prejudged the case, ignored evidence of fraud, abused its power to threaten contempt and more in Third DCA case number 3D15-471. On March 2, 2015, the Third DCA summarily denied the Writ of Prohibition.

(iv) ***The Trial Court Enters a Judgment Granting the Equitable Relief of Foreclosure Ignoring the Fraud***

On June 4, 2015, as feared, the trial court entered a final judgment of foreclosure. R. 1217-1221.

Strikingly, the trial court found Petitioner's loan belonged to the Respondent in 2006 and relied on the backdated AOM that said Respondent acquired the loan from MERS on October 15, 2008. R. 1227.

On June 19, 2015, Petitioner filed a timely Motion for Rehearing attaching an expert witness report of Jay Patterson who explained that MERS never could or did do anything with the Respondent and Petitioner's loan. R. 1104-1190. The Motion for Rehearing argued the trial court ignored "dozens of reported cases" that hold a plaintiff fails to prove standing without proof the note was endorsed before filing the complaint. R. 1107. The trial court erred in denying leave to raise defenses or file counterclaims based on the fraud on the court and denied due process and a fair trial. R. 1110-1113.

Respondent responded to the Motion for Rehearing conceding it never intended to rely on the MERS assignment to "establish standing in any form." R. 1197. Thereafter, the trial court denied the Motion for Rehearing on July 20, 2015. R. 1206.

(v) ***With the First Appeal Pending, the Third DCA Refused to Relinquish Jurisdiction for the Trial Court to Consider Petitioner's Motion for Relief From Judgment Due to Newly Discovered Evidence and Fraud***

On August 20, 2015, Petitioner filed a notice of

appeal in Third DCA case number 3D15-1927 ("the first appeal"). On the one year anniversary of the final judgment, Petitioner filed a timely Motion to vacate judgment due to newly discovered evidence and fraud upon the court under Fla. R. Civ. P. 1.540(b) ("the Rule 1.540(b) Motion"). The Rule 1.540(b) motion alleged Respondent's servicer, BANA, affixed the undated rubber stamped blank endorsement for Countrywide years after Countrywide ceased to exist and Mr. Spector no longer worked for Countrywide. Thereafter, BANA suborned perjury from its most senior executives to falsely claim Countrywide affixed the endorsements years earlier.

On April 8, 2016, the Third DCA denied a motion to relinquish jurisdiction to permit the trial court to consider the Rule 1.540(b) Motion. On June 8, 2016, the Third DCA denied a motion to supplement the appellate record with the Rule 1.540(b) motion, forcing Petitioner to file an Amended Initial brief to remove references to the Rule 1.540(b) Motion in the original initial brief. The Trial Court denied Petitioner the right to plead or prove fraud or unclean hands. The Third DCA did so as well.

(vi) *The Third DCA and the Florida Supreme Court Turned a Blind Eye to the Egregious Due Process Violations that Deprived Petitioner of his Real Property Using Fraudulent Evidence*

On November 17, 2016, the Third DCA entered an order dispensing with oral argument of the first appeal. Petitioner filed a motion for rehearing of that order arguing the "serious due process violations raised in this appeal which involves allegations of fraud upon the court" that would leave Petitioner with a reasonable fear that without oral argument, the Court was not fair or impartial. On November 22, 2016, the Third DCA confirmed there would be no oral argument.

On January 24, 2017, the Third DCA issued a PCA. On March 15, 2017, the Third DCA denied a motion for rehearing, rehearing en banc and a request for a written opinion that laid out the constitutional, statutory and procedural violations by this PCA.

On April 17, 2017, Petitioner filed a Petition for Writ of Mandamus for the Florida Supreme Court to order the Third DCA to write an opinion as the result conflicts with dozens of opinions from the four other Florida DCAs. Petitioner cited a fundamental breakdown in constitutional due process and argued:

> Without articulating any rational basis for its

> result, the Third DCA affirmed the trial court's summary rulings that: (i) denied Petitioner's four (4) motions to assert affirmative defenses raising unclean hands as a defense to foreclosure; (ii) denied Petitioner's request to amend its pleadings to allege counterclaims of civil conspiracy and violations of Florida's Racketeering Influenced and Corrupt Organizations statute ("RICO") for having multiple Senior Vice Presidents commit perjury to cover up the fraud on the court; (iii) denied discovery into all of those allegations; (iv) denied a jury trial on those counterclaims; (v) denied a legally sufficient motion to disqualify the trial court; (vi) denied a writ of prohibition against the trial court; and (vii) granted a judgment without proof the note was endorsed before filing the action.
>
> The Third DCA gave no reason for (i) refusing to relinquish jurisdiction for the trial court to hear a timely Rule 1.540(b) Motion alleging this fraud on the court; (ii) striking appellate oral argument; and (iii) issuing a PCA....

On April 19, 2017, the Florida Supreme Court dismissed the Petition asserting there was no jurisdiction to address the first appeal.

(vii) ***The Trial Court Refused to Consider Newly Discovered Evidence of Fraud, Perjury, Defiance of Court Orders, and Even the Destruction of Nearly 2 Billion Records in Violation of a Court Ordered Subpoena, Triggering Two More Appeals to the Third DCA***

On June 15, 2017, Respondent noticed Petitioner's Rule 1.540(b) Motion for a 15 minute hearing with two other motions. R. 3509-3510. The morning of that hearing, on July 21, 2017, Petitioner filed an Amended Rule 1.540(b) Motion. R. 1821-2816. However, the trial court refused to even consider the Amended Rule 1.540(b) Motion. R. 3495. Instead, the trial court summarily denied the original Rule 1.540(b) Motion from 2016 without permitting any argument. R. 3435-3436.

The Amended Rule 1.540(b) Motion updated the record with new evidence discovered during the federal False Claims Act case filed by Petitioner's counsel as Relator on behalf of the United States Department of Housing and Urban Development before the Honorable U.S. District Court Judge Ursula Ungaro in the Southern District of Florida. U.S. ex rel. Bruce Jacobs v. Bank of America Corp., et. al.,U.S. Dist. Ct. Case No. 1:15-cv-24585-UU. R. 1822-1825.

The Amended Rule 1.540(b) Motion noted that Judge Ungaro held the use of the rubber-stamped

endorsements and MERS assignments (as used in this case) "falls within the scope of actions barred by the [$25 Billion National Mortgage Settlement] Consent Judgment Servicing Standards...." The Amended Rule 1.540(b) Motion also noted that Judge Ungaro found the allegations raised:

> a 'reasonable inference' that Defendants signed the Consent Judgment with the intent to 'continue pursuing mortgage foreclosures by misleadingly filing copies of promissory notes bearing rubber-stamped endorsement signatures that were not legally authorized by the purported signatories (and therefore, were invalid), and by filing copies of purported assignments by MERS, which never owned any interest in the notes that purportedly were being assigned (and therefore, were ineffective). R. 1822-1825.

The Amended Rule 1.540(b) Motion documented that these undated rubber-stamped endorsements were created to defraud the Office of the Comptroller of the Currency (the "OCC"), the Department of Housing and Urban Development's Office of Inspector General ("HUD/OIG"), and the United States Department of Justice ("DOJ"), along with this Court and other state and federal courts dealing with mortgage foreclosure actions. R. 1825-1826.

The Amended Rule 1.540(b) Motion set forth that BANA created a "90 Day Delinquent Note Endorsement Process" in April of 2011, just three

days after the OCC forced BANA into a Consent Judgment finding BANA was litigating foreclosures without properly endorsed notes. The purpose of the 2011 delinquent note endorsement process was for BANA to fraudulently affix Countrywide endorsements to delinquent Countrywide notes years after Countrywide ceased to exist. BANA then suborned perjury from Senior Executives to backdate the rubberstamped endorsements to a time when Countrywide still existed.

The Amended Rule 1.540(b) Motion also set forth that BANA's own witness confirmed the notes, such as the one here, were never endorsed as of 2009. Linda DeMartini admitted to a federal bankruptcy judge in New Jersey that notes were not endorsed between 2006 and 2009. She admitted the standard operating procedure was to create a hand signed allonge when needed, not a rubber stamp. R. 1841-1843.

The Amended Motion also set forth evidence that BANA ordered its third party vendor, Sourcecorp, to purge almost 2 billion records directly related to that delinquent note endorsement process in violation of a court ordered subpoena. R. 1825-1831.

The Amended Rule 1.540(b) Motion also set forth allegations that Respondent and its servicer, BANA, have a well-documented history of committing fraud upon the court going back to the first MERS foreclosures that were dismissed as sham in 2005.

The industry's own investigation confirmed Florida attorneys lied to the courts about the law and evidence needed to foreclose in Florida, and other states. R. 1836-1840.

The Amended Rule 1.540(b) Motion also set forth that the Honorable Judge David Miller expressly found Bank of America engaged in "intentional, willful, and wanton bad faith by refusing to make good faith responses to discovery" in two orders awarding sanctions under the Inequitable Conduct Doctrine. The orders document two years of stonewall, scorched earth tactics "clearly intended to deliberately block discovery ordered by several Circuit Court Judges." R. 1843-1845.

The Amended Rule 1.540(b) Motion also set forth that the MERS assignment is further evidence of unclean hands. The assignment purports to suggest MERS sold the note and mortgage to the Respondent. In fact, MERS expressly prohibits any servicer from creating a MERS assignment from making such a false representation. MERS never owns the note and has no right to sell the note. MERS has only been an instrumentality of fraud since Judge Gordon struck the MERS foreclosures as sham in 2005. R. 1845.

As a result of all this, the Amended Rule 1.540(b) Motion asserted that Respondent had unclean hands and should be sanctioned for committing a fraud upon the court. However, on July 21, 2017, the

trial court refused to even consider the Amended Rule 1.540(b) Motion. R. 3495. The trial court insisted the Florida Rules of Procedure require leave of court to amend a Rule 1.540(b) Motion, without citation to any authority in support. R. 3498. Then the trial court summarily denied the original Rule 1.540(b) Motion without permitting any argument. R. 3435-3436.

On July 26, 2017, Appellant filed an Emergency Motion to Vacate and/or Stay Writ of Possession and Second Verified Motion for Disqualification. R. 3439-3471. On July 27, 2017, the trial court summarily denied Motion to Stay the Writ of Possession and the Second Verified Motion for Disqualification. R. 3490-3491.

(a) The Appeal of the Trial Court's Refusal to Grant Disqualification

On November 3, 2017, Appellant filed a second Petition for Writ of Prohibition in Third DCA case number 3D13-1730. The petition noted the trial court allowed Respondent's counsel to argue their motions while refusing to allow the same courtesy to Petitioner's counsel. Furthermore, the petition noted the trial court repeatedly refused to allow Petitioner the opportunity to plead and prove unclean hands, argue the Rule 1.540(b) Motion, or consider the additional facts in the Amended Rule 1.540(b) Motion that explained all the fraud on the court, while allowing Respondent to make

arguments without interruption.

The second Petition for Writ of Prohibition also noted that the trial court had repeatedly denied a proper motion to continue the hearing to permit Petitioner's counsel to file a proper motion to disqualify, while repeatedly threatening Counsel with contempt of court and a bar complaint. The second Petition for Writ of Prohibition noted the Florida Supreme Court issued a public reprimand to another judge engaged in essentially the same conduct finding this to be an abuse of power. *In re Aleman*, 995 So. 2d 395, 399 (Fla. 2008). On November 15, 2017, the Third DCA summarily denied the Writ of Prohibition.

(b) The Appeal of the Denial of the Amended Rule 1.540(b) Motion

On December 4, 2017, Petitioner filed his second appeal of the trial court's order denying the Amended Rule 1.540(b) Motion in Third DCA case number 3D17-1730 ("the Second Appeal"). The thrust of the appeal argued that the trial court denied due process by refusing to even consider the Amended Rule 1.540(b) motion or conduct an evidentiary hearing to consider the clear and convincing evidence Respondent procured this judgment by fraud on the Court.

On May 16, 2018, the Third DCA issued a PCA of the Second Appeal. On May 31, 2018, Petitioner

filed a Motion for Rehearing En Banc and Request for a Written Opinion, again arguing the use of a PCA to avoid addressing fraudulent evidence violates the U.S. Constitution.

Moreover, the Motion for Rehearing noted the Third DCA issued this PCA just days after denying an extensively documented, legally sufficient Motion to Disqualify the Third DCA filed by Petitioner's Counsel on behalf of Joseph Buset in HSBC v. Buset under Third DCA case number 3D17-272.

(viii) The Repeated Motions to Disqualify the Third DCA

On June 6, 2018, Petitioner filed his own Motion to Disqualify the Third DCA that expressly adopted, reavered, and renewed the *Buset* Motion to Disqualify the Third District Court of Appeal. Petitioner argued there were a myriad of objective reasons to fear the Third DCA will not fairly and impartially adjudicate the pending Motion for Written Opinion and for Rehearing En Banc, including the various articles in the Daily Business Review, the most recent of which stated:

> There is no question that the Third District is pro-business and couldn't care less about homeowners.... [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.

The *Buset* Motion to Disqualify the Third District Court of Appeal was a first in the history of Florida jurisprudence. The *Buset* Motion to Disqualify discussed how the Third DCA ruled against Petitioner's counsel in approximately 40 foreclosure appeals, threatened sanctions against Petitioner's Counsel, and wrote opinions personally and unfairly attacking Petitioner's Counsel's professionalism, without addressing any of the substantive arguments of fraud, perjury, destruction of evidence or gross violations of due process.

The Third DCA denied the *Buset* Motion to Disqualify without comment and then denied rehearing in *Buset* to permit HSBC to foreclose based on what the trial judge found was false testimony, false evidence, and unclean hands for lying about violating her discovery order. To emphasize its point, the Third DCA then issued PCAs in this case and another case that relied on the same false MERS assignment and undated Countrywide endorsement backdated by perjury.

As set forth in the Motion to Disqualify the Third DCA in this case, Petitioner argued the result herein conflicts with dozens of rulings of every DCA that issued opinions on standing which require proof the

endorsement was in place before filing the action.

Petitioner argued the Florida Supreme Court does not permit a trial judge to deny motions to continue to file a motion to disqualify or abuse its power by threatening sanctions, contempt, or a bar complaint. Petitioner argued that a fair and impartial court would never ignore that BANA ordered the destruction of evidence under a court ordered subpoena resulting in a military grade wipe of 1.88 billion objects of data, metadata and encryption codes. Yet, the Third DCA knowingly ignored all these issues as a result of clear and objective bias.

On June 27, 2018, the Third DCA unanimously and summarily denied both the Motion to Disqualify the Third DCA, the Motion for Rehearing En Banc and the Request for a Written Opinion. On July 31, 2018, the Florida Supreme Court dismissed the appeal holding there is no jurisdiction to review an unelaborated decision for a DCA issued without an opinion or explanation. This appeal ensued.

REASONS FOR GRANTING THE WRIT

CERTIORARI SHOULD BE GRANTED AS THE THIRD DCA HAS ALLOWED A BIASED COURT TO DEPRIVE MR. MARIN OF HIS PROPERTY WITHOUT DUE PROCESS OF LAW BASED ON FALSE AND FRAUDULENT EVIDENCE

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). Yet, the Third DCA has twice affirmed the final judgment of foreclosure without comment when the points of law are so well settled in Petitioner's favor.

This Honorable Court should take note that the Respondent, BONYM, is the same party as the Appellee in the *Pino v. Bank of New York, Mellon*, 57 So. 3d 950, 954 (Fla. 4th DCA 2011). In *Pino*, the 4th DCA certified a question of great public importance to the Florida Supreme Court finding "many, many mortgage foreclosures appear tainted with suspect documents... [which] may dramatically affect the mortgage foreclosure crisis in State." *Id.* at 955. The dissenting opinion in *Pino* wrote:

> 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.... *Id.*

Most recently, on November 18, 2018, the Second DCA of Florida addressed nearly the identical fact pattern of the same fraudulent evidence presented herein involving BONYM and reached a decidedly

different result. *Sorenson v. Bank of New York Mellon as Trustee for Certificate Holders CWALT, Inc.*, No. 2D16-273, 2018 WL 6005236, at *1 (Fla. 2nd DCA Nov. 16, 2018). In *Sorenson*, the 2nd DCA reversed finding it was an abuse of discretion to deny Petitioner's counsel's repeated requests:

> to amend his answer and affirmative defenses and to add a counterclaim reflecting new theories of the case. The crux of the new arguments was that the evidence on which the Bank relied to show standing had been fraudulently created and produced. Specifically, ... the Bank had added the undated endorsement during the current litigation, had provided perjured testimony to falsely backdate the endorsement, and had submitted a false assignment of the note and mortgage to support its timeline of events." *Id.* at *1.

The Second DCA's decision is consistent with Judge Ungaro's ruling that BANA's use of backdated rubber-stamped Countrywide endorsements and false MERS assignments (as used in *Sorenson* and this case). R. 1822-1825.

Petitioner made four attempts to amend the pleadings to allege the same egregious fraud upon the court as raised in *Sorenson* and the False Claims Act case before Judge Ungaro by a party that promised the U.S. Department of Justice it would stop using false evidence in foreclosures years ago

when it entered into the $25 Billion National Mortgage Settlement.

The Third DCA summarily denied two appeals seeking to disqualify the trial judge after she struck all discovery, struck all allegations of fraud, prejudged the case, and her repeated threats of sanctions, contempt and bar complaints against Petitioner's counsel for zealous advocacy.

The Third DCA summarily and unanimously denied multiple motions to disqualify itself despite overwhelmingly objective reasons to question its impartiality. A front page article in the Daily Business Review, the South Florida legal publication, that reports the Third DCA is "pro-bank" and could not "care less about homeowners" is clear objective evidence of bias.

Most recently, the Daily Business Review published yet another article [2] on October 18, 2018, that reported the Third DCA has (1) "... a reputation for issuing adverse opinions against borrowers in foreclosure cases" (2) "... cultivated a reputation for disproportionately ruling against borrowers in foreclosure cases" and (3) "... an issue properly adjudicating foreclosure cases."

As also set forth in the Motion to Disqualify the

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2 https://www.law.com/dailybusinessreview/2018/10/18/third-dca-issues-rare-ruling-against-lender-in-jurisdiction-squabble/

Third DCA, Petitioner's counsel has filed approximately 40 foreclosure appeals raising the use of false endorsements and assignments, fraud on the court, perjury, hearsay, due process violations, discovery violations, and even the destruction of almost 2 billion records in defiance of a court ordered subpoena. Petitioner's counsel has lost every single appeal before the Third DCA. Not a single appeal was decided on the merits with a fair consideration of the facts in the record or the legal arguments.

Further, 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.

I. Due Process Does Not Tolerate Fraudulent Evidence Even If Florida Courts Disagree

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, 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.

This Court instructs that due process does not tolerate the use of false or fraudulent evidence because it "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").

"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.

II. The Growing Minority of Courts that Refuse to Ignore Unclean Hands and Fraud

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.

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.

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).

III. Abuse of the PCA is a Denial of Due Process

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 issuing only PCAs and 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. 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 widespread PCA problem which appears arbitrary

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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).

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. While meant to provide a remedy to the potential abuse of the PCA, the amendment has the obvious flaw of giving discretion to the same judges being charged with abusing the PCA.

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).

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).

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.

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.

IV. There Can Be No Due Process Before Biased Courts

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).

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

The integrity of the judicial system cannot tolerate biased courts that order the sale of Mr. Marin's home without due process of law while ignoring fraudulent evidence by the wealthy and powerful. It is left to this Honorable Court to enforce equal justice under law and ensure no party to the National Mortgage Settlement continues to commit fraud on the courts with impunity. As 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.

CONCLUSION

Mr. Marin was deprived of his property without due process of law. The Courts in Florida are objectively biased in favor of foreclosure plaintiffs and have ignored the continued use of fraudulent evidence. This cannot stand in a fair and impartial judiciary. This is not the rule of law.

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 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.

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.

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.

As this David v. Goliath battle involves egregious misconduct by wealthy and powerful financial institutions, this petition presents a critical constitutional crisis that cannot be swept under the rug by a PCA.

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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