No.

IN THE
Supreme Court of the United States

JOSE RODRIGUEZ,

Petitioner,

v.

BANK OF AMERICA, N.A.

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 continued use of fraudulent evidence barred by the $25 Billion National Mortgage Settlement to obtain the equitable relief of foreclosure and from ignoring objective reasons to question the impartiality of those Florida Courts in adjudicating foreclosures requiring disqualification?

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

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

The Respondent is Bank of America, N.A. ("BANA"). No publicly held corporation owns 10% or more of BANA's Corporation's stock.

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PETITION FOR WRIT OF CERTIORARI

Jose Rodriguez respectfully petitions for a Writ of Certiorari to review the per curiam affirmance ("PCA") of a summary judgment of foreclosure by the Third District Court of Appeal of Florida ("the Third DCA") after the Florida Supreme Court declined to accept jurisdiction to compel a written opinion.

INTRODUCTION

In 2010, the Florida Attorney General's Office exposed the "robo-signing scandal" wherein BANA, JP Morgan Chase, and other large financial institutions systematically used false evidence in foreclosures across the United States of America. The Office of the Comptroller of the Currency (the OCC") forced BANA and others into a Consent Judgment. The U.S. Department of Justice (the "DOJ") forced BANA into the $25 Billion National Mortgage Settlement. BANA promised to only use competent evidence in foreclosures going forward.

Few courts like the Maine Supreme Court wrote opinions discussing this widespread fraud stating:

> … 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). Yet, BANA continued with their fraud undeterred.

In Florida, the Fourth 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." *Pino v. Bank of New York, Mellon*, 57 So. 3d 950, 955 (Fla. 4th DCA 2011). 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.*

As evidenced herein, BANA and others broke their

promise to the DOJ and continued to defraud courts with false, fraudulent evidence in foreclosures. This continued fraud on the court is nationwide in its scope, and is still happening in judicial foreclosures from Miami-Dade County, Florida, to Miami County, Ohio, to Maui County, Hawaii.

The DOJ, the OCC, the Third DCA of Florida, and the Florida Supreme Court all know BANA broke its promise to the U.S. government and that BANA made that promise with fingers crossed behind its back. Yet, none have held BANA accountable to the rule of law. Despite a growing chorus of federal and state judges acknowledging the fraud, BANA and its lawyers are still engaged in the most egregious forms of criminal foreclosure misconduct that could exist in civil litigation. Most recently, the Second DCA held Petitioner's counsel should be allowed to plead this same fraud that the Third DCA has repeatedly swept under the rug of a PCA.

There is clear and convincing evidence BANA fraudulently fabricated evidence to present as standing in this foreclosure and many others, suborned perjury from its highest Senior BANA Executives to cover it up, misled courts on the facts and the law to block discovery, defied court orders from many judges to produce discovery, told bald face lies to a federal judge in the false claims act case brought by Petitioner's counsel, created a fraudulent endorsement process 3 days after signing the OCC Consent Judgment, and even ordered the military

grade purge of nearly 2 billion records in defiance of a court ordered subpoena.

There is objective evidence of bias in the Third DCA in adjudicating foreclosures which the Florida Supreme Court has declined to address, leaving this Court to confront the fraud and bias that violated Mr. Rodriguez's due process rights under the 5th and 14th Amendments to the U.S. Constitution. The Third DCA has turned a blind eye to this widespread fraudulent conduct because it has prejudged foreclosures in BANA's favor and abused the PCA to block the Florida Supreme Court's jurisdiction.

It is ultimately left for this Court to hold BANA to honor promises made to the OCC, the DOJ, and the rule of law. As discussed below, this is the third Petition for Writ of Certiorari raising these same issues presently pending before this Court. These Petitions should be consolidated and Certiorari granted to affirm that BANA, JP Morgan Chase and others are not above the law.

REPORTS OF OPINIONS BELOW

The opinion of the Third DCA giving rise to this petition is *Rodriguez v. Bank of Am., N.A.*, 246 So. 3d 541 (Fla. 3rd DCA 2018), reh'g denied (July 2, 2018). The Florida Supreme Court declined to accept jurisdiction to review that opinion. *Rodriguez v. Bank of Am., N.A.*, No. SC18-1288, 2018 WL 3853539, at *1 (Fla. Aug. 7, 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. The Third DCA denied rehearing, rehearing en banc, and a request for a written opinion on July 2, 2018. On August 7, 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."

STATEMENT OF THE CASE

A. Statement of the Facts

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

On September 23, 2013, BANA filed a foreclosure complaint against the home where four generations of Petitioner's family resided. R. 24-69. At paragraph 11 of the complaint, BANA alleged it was entitled to enforce the note attached to the complaint by virtue of the chain of endorsements found thereon claiming the note was a negotiable instrument. R. 36. Petitioner contended BANA fabricated the chain of endorsements, after the fact, as part of an ongoing, widespread fraud upon the court.

Despite BANA attempting to plead a negotiation theory under Article 3 of the Florida UCC, Petitioner

contended the note attached to the complaint had provisions which rendered the note non-negotiable. Specifically, ¶(4)(C) of the note provided that each monthly payment of principal and interest:

> "will be part of a larger monthly payment ***required by the Security Instrument***, that shall be applied to principal, interest and other items ***in the order described in the Security Instrument***." (emphasis added). R. 58.

Accordingly, the note is subject to and governed by the mortgage which destroys its negotiability. BANA did not prove standing to foreclose by holding a non-negotiable instrument endorsed in blank.

The chain of endorsements attached to BANA's complaint began with a Senior Vice President of Franklin American Mortgage Company signing as Attorney in Fact for the originator, Oxford Lending Group, LLC., followed by two rubber stamped signatures of Laurie Meder and Michelle Sjolander on two more endorsements as S.V.P of Countrywide Bank and Bank of America, respectively, ending with a blank endorsement. R. 60.

Mr. Rodriguez propounded extensive discovery including requests for admissions, requests for production and interrogatories seeking, inter alia, proof of whether either chain of endorsements were authorized and correct. R. 151-164, 165-169, 170-175, 180-183, 190-194, 195-201, 202-203, 206-310,

311-314, 315-316, 335-347, 348-350, 351-356, 435-438.

On May 12, 2014, BANA responded to Mr. Rodriguez's request for production by providing a copy of the note and mortgage attached to the complaint and an assignment of mortgage ("AOM"). R. 359-380. The AOM purported to document a transaction that occurred on September 30, 2011, wherein the Mortgage Electronic Registration System ("MERS"), acting on its own behalf, "does hereby grant, sell, assign transfer and convey (the Petitioner's note and mortgage) unto BANA as successor by merger to BAC Home Loans Servicing, LP FKA Countrywide Home Loans." R. 380.

According to the endorsements on the notes, the note was negotiated from the originator to Franklin American Mortgage Company to Countrywide Bank, FSB to BANA. R. 371. According to the AOM, the note was sold by MERS to Countrywide Home Loans which merged into BAC Home Loans Servicing, LP, which merged into BANA. R. 380. BANA either acquired the note by the chain of endorsements or assignments. They are clearly different chains.

On September 5, 2014, BANA's counsel, Liebler Gonzalez and Portuando ("the LGP Firm") filed its Notice of Appearance in the case. R. 522.

On September 29, 2014, Petitioner filed a timely answer and affirmative defenses and counterclaims.

R. 555-587. The first affirmative defense challenged the endorsement signatures on the notes as "made by a third person acting without lawful authority to endorse the original note on behalf of the entity." R. 556. Petitioner also alleged any assignment is invalid and created at the request of BANA for the express purpose of committing a fraud upon the court. R. 556.

The third affirmative defense asserted that Respondent could not foreclose by holding a non-negotiable instrument with endorsements. R. 558.

The Counterclaims alleged BANA engaged in a widespread fraud upon the court immediately following the robo-signing scandal uncovered by the Florida Attorney General's Office in 2010. The Attorney General's powerpoint presentation entitled "Unfair, Deceptive and Unconscionable Acts in Foreclosure Cases detailed widespread fraud on the court involving robo-signed AOMs. R. 1418-1478. Instead of robo-signing AOM's to prove standing, BANA engaged in "robo-stamping" of endorsements on original notes as part of a continued effort to defraud the court. R. 584.

(ii) The Honorable Judge David M. Miller Sanctions BANA and its Counsel, the LGP Firm for "Bad Faith" and "Outrageous" Discovery Tactics, Twice

On October 24, 2014, the Honorable Judge David M. Miller, ("Judge Miller") conducted a hearing on BANA's Motion for Relief from Technical Admissions and entered an order denying the motion finding the proposed response was not filed in good faith noting a "'Pattern' see next order re: depos of corporate rep." R. 596.

During the hearing on the motion for relief from technical admissions, Judge Miller listened to the history of misconduct involving BANA and the LGP law firm to stonewall discovery into the rubberstamped endorsements. R. 922.

Judge Miller conducted a hearing on BANA's bad faith efforts to block court ordered discovery in all the cases involving the same rubber stamped endorsements on Countrywide originated notes found in this case. Judge Miller found:

> you all are playing games. I don't appreciate it and when you get older and these games are played against you, you won't appreciate it either…. I think this is outrageous and I find the bank to be operating in bad faith on multiple levels throughout this courthouse, including this particular case. R. 981.

On October 31, 2014, Judge Miller entered an "Order on the Court's *Sua Sponte* Finding of Plaintiff's Bad Faith Discovery Tactics and Awarding Sanctions Under the Inequitable Conduct Doctrine." R. 645-650. The order made specific findings of "bad faith and outrageous conduct by [BANA] and the LGP firm…" R. 649. The order required BANA to produce Senior Vice President Marie Garner for the corporate representative deposition ordered by several Circuit Court Judges. R. 648. The order awarded sanctions under the Inequitable Conduct Doctrine and warned BANA not to engage in further bad faith delay tactics. R. 650.

On November 13, 2014, BANA moved to dismiss Petitioner's counterclaims. R. 715-761. On November 18, 2014, BANA filed its responses to Defendant's Request for Production re: Validity of Endorsement in Blank. R. 1052-1055. The response raised blanket objections and reproduced only the documents attached to the complaint. R. 1052-1055. The LGP firm's practice of blanket objections to stonewall discovery in bad faith was repeated in other discovery responses filed on November 18, 2014. R. 1056-1079.

At BANA's insistence, Petitioner filed several more notices of taking corporate representative deposition duces tecum required by the *sua sponte* order. R. 1080-1093. On November 19, 2014, Petitioner filed a motion for sanctions after BANA failed to produce

documents responsive to the duces tecum. R. 1094-1103. Specifically, BANA produced no documents showing when and how the endorsement stamps were applied. R. 1095. The motion further noted Judge Stanford Blake and Judge Barry Stone both ordered this deposition go forward. R. 1095.

After taking the corporate representative's deposition, Petitioner filed an Emergency Motion for Additional Sanctions Under the Inequitable Conduct Doctrine. R. 1159-1172. The Motion advised that BANA refused to meet and confer in good faith and then did a document dump the Friday evening before the deposition. R. 1160. The Motion advised the corporate representative, Marie Garner ("Ms. Garner") "never even looked at the duces tecum notice" before the document dump. R. 1161. Ms. Garner knew nothing about when the practice of using stamps began, started or changed. R. 1162.

On December 12, 2014, Judge Miller conducted an extensive hearing and entered both parties' competing orders granting Petitioner's Emergency Motion for Additional Sanctions under the Inequitable Conduct Doctrine. R. 1283-1289. Judge Miller found BANA gave willful, intentional, bad faith responses to the duces tecum. R. 1287. Judge Miller believed the misconduct was worthy of striking the pleadings. R. 1288.

Judge Miller ordered BANA to make additional

production about several areas including the establishment and operation of the endorsement rooms. Moreover, BANA had to file affidavits explaining what efforts were made to comply with the duces tecum for Ms. Garner's deposition. Finally, Judge Miller invited additional caselaw to support imposing additional sanctions beyond attorney's fees. R. 1289.

Exactly 10 days later, on December 22, 2014, BANA filed a Motion to Disqualify Judge Miller. R. 1296-1307. BANA also filed a motion for rehearing of Judge Miller's order granting additional sanctions. R. 1308-1325. Thereafter, on January 12, 2015, BANA filed a Motion to Stay enforcement of the order. R. 1349-1361. BANA never did produce documents ordered by Judge Miller to show whether it was still engaged in a fraud upon the court, claiming BANA would be unduly burdened by the costs of responding to the discovery. R. 1349-1361.

On January 12, 2015, BANA filed its affidavits of due diligence required by Judge Miller's order. R. 1362-1394. The affidavits show no effort was made to locate information about who affixed the stamped endorsements to original notes. The affidavits confirmed that BANA made no effort to find documents responsive to the duces tecum for Mr. Garner's deposition warranting additional sanctions. R. 1362-1394.

(iii) The Shocking Reversal of Fortune for BANA After the LGP firm Hosted a Fundraiser for the Successor Judge

Judge Miller rotated out of the division into Family Court at the end of 2014, and the case took a dramatic turn in BANA's favor. As set forth in Petitioner's Motion for Rehearing *En Banc* and Request for a Written opinion eventually denied by the Third DCA, the LGP firm hosted a big fundraiser for the incoming successor judge who promptly struck both of Judge Miller's sanctions orders, struck all discovery, struck all defenses alleging fraud, struck all counterclaims alleging fraud, and granted BANA's motion for summary judgment of foreclosure based on the blank endorsement on the non-negotiable note in total disregard of the clear and convincing evidence of fraud on the court.

On January 16, 2015, following Ms. Garner's deposition, Petitioner filed a Motion to Amend Counterclaims. R. 1652-1700. Petitioner alleged BANA engaged in RICO activity and conspiracy to commit fraud by affixing endorsements onto original notes years after origination, when Countrywide no longer existed, and then had Senior Executives commit perjury to "backdate" the endorsements to a time when Countrywide still existed. Petitioner also sought a declaratory judgment that the misconduct was unclean hands which bars the equitable relief of foreclosure. R. 1652-1700.

On January 16, 2015, Petitioner filed a notice of filing deposition transcripts of BANA witnesses who gave testimony relevant to the ongoing fraud in this case. R. 2402-2403. Specifically, Petitioner filed the deposition transcripts of BANA Senior Vice President Michelle Sjolander taken by Petitioner's counsel in the case of Bank of America v. Amida Frey (R. 1701-1800), the deposition of the Corporate Representative for both Bank of New York Mellon and Bank of America, Marie Garner (R. 1801-2248), and the deposition of Kim Harmstead taken in the case of Bank of New York v. Christopher Hodgkins. R. 2249-2401.

Petitioner filed a request for judicial notice of the Florida Attorney General's powerpoint presentation on Unfair, Deceptive and Unconscionable Acts in foreclosures, along with other documents establishing the fraud on the court involving the MERS AOMs. R. 2415-2417. Finally, Petitioner filed a request for production re: conspiracy, RICO, and perjury. R. 2418-2425.

On February 9, 2015, BANA filed a motion to dismiss the amended counterclaims. R. 2435-2461. On February 13, 2015, BANA filed a Motion for Protective Order asking the successor judge to "preclude further discovery." R. 2462-2590. On February 16, 2015, BANA filed an objection to the notice of taking corporate representative deposition. R. 2591-2615.

For the rest of 2015, BANA's counsel, the LGP firm, filed an endless stream of stonewall defenses, including an appeal to the Third DCA, and successfully thwarted all Petitioner's discovery. R. 2616-3912. To avoid the possibility of an unfavorable appellate result that further obstructs discovery, Petitioner agreed to vacate Judge Miller's December 12, 2013 Order, finding additional bad faith, without prejudice to bring the motion before the successor judge. R. 4786-4789. On August 14, 2015, the successor judge vacated Judge Miller's award of sanctions for bad faith discovery dated October 28, 2015. R. 5256-5259.

On October 23, 2015, almost a year after Ms. Garner's deposition, Petitioner filed a Motion for Sanctions under Rule 1.380, the Court's Inherent Contempt Powers and the Inequitable Conduct Doctrine. R. 6006-6365. The Motion set forth a 360 page account that detailed BANA's stonewall discovery efforts since LGP became BANA's counsel for the successor judge's consideration. R. 6562-6580. On December 1, 2015, the successor judge denied the motion for sanctions without any findings of fact or conclusion of law. R. 6732.

On December 4, 2015, the successor judge entered an order dismissing Petitioner's counterclaims against BANA. R. 6734-6735. Again, the order made no findings of fact or conclusions of law. It just dismissed the RICO claims, Conspiracy Claims and the Declaratory Judgment Action. R. 6734-6735.

On April 21, 2016, Petitioner filed the deposition transcripts and trial transcripts from the Bank of New York v. SSG Worldwide case tried by Petitioner's Counsel and the LGP firm involving the same backdated endorsement stamps backed up by false MERS assignments. R. 7466-8703. Also on April 21, 2016, the successor judge refused to permit Petitioner to file any counterclaims and struck all but two of Petitioners' defenses, standing and forced placed insurance. Again, without making any findings of fact or conclusion of law.

At the end of May, 2016, Petitioner filed two additional corporate representative deposition notices and corresponding requests for production. R. 11438-12629. BANA and the LGP firm fired back with a counter-offensive of discovery requests to Petitioner. R. 12630-12681. On June 20, 2016, Petitioner filed a Motion to Compel BANA to produce a corporate representative pursuant to the notice. R. 12808-12811.

(iv) The Trial Court Grants Summary Judgment, Ignores a Motion for Contempt for Fraud on the Court, but Grants a Stay Pending Appeal

On September 29, 2016, the successor judge entered two orders finding all of BANA's objections were sustained and granting a protective order against all discovery into BANA's bad faith and perjury. R.

13984-13985 and 13988-13989.

Only 20 days later, on October 10, 2016, the successor judge heard argument on BANA's Motion for Summary Judgment and reserved ruling. R. 14156. Petitioner had filed a Notice setting forth all the sworn evidence filed in opposition to the summary judgment obtained through the investigation. R. 13675-13677. Thereafter, on October 13, 2016, Petitioner filed a Motion for Order to Show Cause Why Plaintiff and Its Counsel Should Not Be Held in Criminal Contempt under the Court's Inherent Contempt Powers for Fraud Upon the Court. R.14257-14824. The almost 600 page Motion documented BANA and the LGP firm's scorched earth litigation tactics to perpetrate this systemic fraud on the court. R.14257-14824.

On January 4, 2017, after striking all of Petitioner's counterclaims, discovery and defenses alleging fraud on the court, the successor judge entered a summary final judgment of foreclosure. R. 16608-16612. Again, the successor judge made no findings of fact or conclusions of law in its six page order. R. 16608-16612. Two days later, Petitioner again requested leave to depose BANA's corporate representative in support of the pending Motion for Sanctions. R. 15859-15864. That request was also denied, again without any findings of fact or conclusions of law. R. 16003-16004. However, the trial court granted a stay pending appeal, necessarily finding a substantial likelihood

of success on the merits, allowing three generations of Mr. Rodriguez's family to stay in the home pending this Petition.

(v.) The Initial Brief to the Third DCA

On October 4, 2017, Petitioner filed its initial brief before the Third DCA. The brief primarily argued the trial court erred by repeatedly striking pleadings alleging fraud by the use of rubberstamped blank endorsements BANA affixed and backdated by suborning perjury by Senior BANA executives and backed up by a false MERS AOM and then denying leave to file the Third Amended Counterclaim alleging RICO violations. *Town of Coreytown v. State ex rel. Ervin*, 60 So. 2d 482, 487 (Fla. 1952); *Marquesa at Pembroke Pines Condo. Ass'n, Inc. v. Powell*, 183 So. 3d 1278, 1279 (Fla. 4th DCA 2016); *See also, Carib Ocean Shipping, Inc. v. Armas*, 854 So. 2d 234, 235-36 (Fla. 3rd DCA 2003).

The appeal also argued there was a rebuttable presumption that the endorsements were valid and Petitioner was engaged in discovery to obtain additional evidence in support of its defense. *See Bennett v. Deutsche Bank Nat. T. Co.*, 124 So. 3d 320 (Fla. 4th DCA 2013); *See also, 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)(suggesting no presumption is appropriate as Wells Fargo had the evidence of the validity of the endorsements is in possession and

admitted to creating after the fact endorsements on behalf of third parties).

The Appeal further argued the promissory note was not a negotiable instrument under Florida law. *Holly Hill Acres, Ltd. v. Charter Bank of Gainesville* 314 So. 2d 209, 211 (Fla. 2nd DCA 1975). Petitioner's promissory note provided at paragraph 4(c) that monthly payments are set by the mortgage and paid in the order described in the mortgage.

Finally, the Appeal argued it was clear error to grant summary judgment without resolving the question of fraud on the court. *Nessim v. DeLoache*, 384 So. 2d 1341, 1344 (Fla. 3rd DCA 1980)("The issue of fraud is not ordinarily a proper subject for summary judgment"). The successor judge cannot find, with any integrity, there are no questions of fact after Judge Miller sounded the judicial alarm awarding sanctions under the inequitable conduct doctrine for "bad faith" and "outrageous" discovery tactics, twice. It was clear error to enter summary judgment without taking evidence as to the fraud on the court.

(vi.) The Reply Brief to the Third DCA

On March3, 2018, Petitioner filed his Reply Brief to the Third DCA. The Reply Brief explained the use of backdated endorsements and MERS assignments presented herein formed the basis of a False Claims Act case brought by Petitioner's counsel against BANA in the U.S. District Court for the Southern

District of Florida, Miami Division before the Honorable U.S. District Court Judge Ursula Ungaro in U.S. ex rel. Bruce Jacobs v. Bank of America Corp., et. al., U.S. Dist. Ct. Case No. 1:15-cv-24585-UU ("the FCA case").

Judge Ungaro denied BANA's motion to dismiss the FCA case, filed by the LGP firm, holding that "[u]sing rubber-stamped endorsements on promissory notes or relying on MERS transfers to foreclose on properties or obtain orders of sales falls within the scope of actions barred by the [$25 Billion National Mortgage Settlement] Consent Judgment Servicing Standards…."

After the FCA case completed discovery, it settled for an amount which is publicly available, but which Petitioner's counsel may not publicly disclose. For undisclosed reasons, the U.S. Attorney's office declined to intervene in the FCA case or initiate its own criminal or civil investigation into this continued fraud on the court in defiance of the National Mortgage Settlement.

The Reply Brief explained that BANA and the LGP firm made the same false misrepresentation that all Countrywide notes were imaged and endorsed within days of origination to the Honorable U.S. Magistrate John O'Sullivan and the Honorable U.S. District Court Judge Ursula Ungaro of the Southern District of Florida. The Reply Brief argued that evidence produced in the FCA case established there

are no records showing any Countrywide notes were imaged within days of origination. Also, images of notes made months and even years after origination show no endorsements. BANA suborned perjury at its highest corporate levels and even dared lie to federal judges about these endorsements.

The Reply Brief explained that on April 1, 2011, just 3 days after signing the Consent Judgment with the Office of the Comptroller of the Currency, BANA contracted with its third party vendor, SourceHOV, (formerly Sourcecorp) to implement a "90 day Delinquent Note Endorsement Process" for which SourceHOV would maintain detailed records related to every loan that participated in the process.

In February of 2016, BANA ordered SourceHOV to destroy its all of its data and records related to the delinquent note endorsement process in violation of a court ordered subpoena for those records. The LGP firm represented both BOA and BONY when counsel for SourceHOV responded to a second subpoena in the FCA case by admitting "We have confirmed back in Feb 2016, BOA had us execute an extensive project to purge all its data, which we were obligated to do."

SourceHOV's email admitted destroying nearly 2 billion records at BANA's direction over a 90 day period. The military grade purge began just days after the LGP firm started fighting against producing a BANA representative who eventually

claimed no knowledge of Sourcecorp and continued for another month after Petitioner's Counsel served the court ordered subpoena on Sourcecorp over the objection of BANA and the LGP firm.

The Reply Brief argued that BANA even conceded in the FCA case that any MERS AOM purporting to evidence an assignment of the mortgage, together with the note, were legally fictitious and not competent evidence. However, the LGP firm assisted in the commission of the fraud, receiving millions of dollars in fees, by stonewalling Petitioner's counsel in this case, the FCA case, and many others. On more than one occasion, the LGP firm moved to disqualify judges and appealed their discovery orders to stonewall discovery of this fraud.

(vii.) The Suggestion of Disqualification of the Third DCA in the Reply Brief

The Reply Brief then argued the Third DCA should disqualify itself as its impartiality is reasonably questioned. Canon 3 E(1) of the Code of Judicial Conduct states: "A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned..."

The fact that the Third DCA has repeatedly issued PCA's and refused to write opinions in other appeals raising this fraud was one reason to question its impartiality. Another reason was the front page article published on Monday, February 12, 2018, in

the Daily Business Review entitled, Can He Say That? Frustrated Attorney Asks 'what's wrong with the Third DCA, by Samantha Joseph. The article reported "there is no question that the Third District is pro-business and couldn't care less about homeowners." The article further reported the Third DCA:

> abuses per curiam affirmances, or PCAs, to avoid explaining their rulings on lender standing,… Instead, … it uses the decisions to wipe out options for further review and avoid conflicts with other district courts."

The 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 homeowners between 73%-84% of the time.

The Reply Brief Argued Petitioner's counsel has taken approximately 36 foreclosure appeals before the Third DCA since 2010 and lost every single one. It did not matter whether the issue was hearsay, perjury, fraud, defiance of court orders, due process violations or even the destruction of evidence under a court ordered subpoena. The bank always won.

In the second foreclosure appeal taken, the Third DCA entered a PCA and ordered Petitioner's counsel to show cause why he shouldn't be sanctioned for

frivolous arguments. In that appeal, the bank admitted its summary judgment affidavit wrongly claimed the Plaintiff owned the note and the Second DCA reversed on the same arguments raised only days after the PCA. The Third DCA never discharged the Show Cause Order which chilled Petitioner's counsel from prosecuting foreclosure defense appeals for a time.

In the third appeal, the Third DCA refused to correct an opinion that implied Petitioner's counsel lied to a trial judge when he never appeared at the trial level. *BAC Home Loans Serv., Inc. v. Headley*, 130 So. 3d 703, 707 (Fla. 3rd DCA 2013). This further discredited and disparaged Petitioner's Counsel who feared taking further appeals for a time.

On every appeal taken of a final judgment of foreclosure in favor of a bank, the Third DCA issued a PCA and denied a motion for written opinion, rehearing, or for rehearing *En Banc*. The Third DCA rejected repeated arguments that the result would negatively impact the public's perception of the Court's ability to render meaningful justice which is a standard for *En Banc* review in Florida.

For several years now, Petitioner's counsel has been obligated to inform clients seeking to appeal a foreclosure decision in the Third DCA that there is an institutional bias which will make such an effort most likely futile. As evidenced by the Daily Business Review article, hiring different counsel

would not change this systemic bias towards banks.

The Reply Brief argued that the Third DCA's abuse of the PCA and systemic bias in favor of banks has emboldened trial judges to abuse their power. Specifically, Collier County Circuit Court Judge Hugh Hayes imposed $67,000 in sanctions against Petitioner's Counsel for advocating that these backdated endorsements and false MERS assignment are fraud on the court in Bank of New York Mellon v. Scott Sorenson.

Finally, the Reply Brief noted "it is the duty of Courts to scrupulously guard [the right to an impartial judge] and to refrain from attempting to exercise jurisdiction in any matter where his qualification to do so is seriously brought in question. As such, the Reply Brief argued the Third DCA should either enforce the rule of law or disqualify itself if that proved too difficult.

(viii.) The PCA, and Petitioner's Motion for Rehearing *En Banc* and Request for a Written Opinion

On May 16, 2018, the Third DCA issued a PCA citing to an inapposite decision in another appeal litigated by Petitioner's counsel overturning a judgment finding unclean hands and ordering sanctions under the Court's inherent contempt powers. *HSBC Bank*

USA, N.A. v. Buset, 43 Fla. L. Weekly D305 (Fla. 3rd DCA Feb. 7, 2018).

On May 31, 2018, Petitioner filed yet another Motion for Rehearing *En Banc* and Request for a Written Opinion that argued the Third DCA cannot fairly resolve this appeal by PCA despite clear evidence of a fraud upon the court in this case, and others. Such a result violates the Petitioner's right to due process protected under the U.S. and Florida Constitutions.

The Motion for Rehearing *En Banc* again argued this result would negatively impact the public's perception of the Third DCA, especially as it came only days after unanimously denying a Motion to Disqualify the Third DCA in *HSBC v. Buset*.

On June 6, 2018, Petitioner filed his own Motion to Disqualify the Third DCA for the same reasons set forth in the Motion to Disqualify filed in *Buset*, and because the Third DCA had again abused the PCA to ignore false evidence, perjury, defiance of court orders, "bad faith" "outrageous" discovery violations, and even the destruction of nearly 2 billion records in violation of a court ordered subpoena.

(ix.) The Petition for Writ of Mandamus to the Florida Supreme Court

On July 2, 2018, the Third DCA unanimously and summarily denied Petitioner's Motion for Rehearing

En Banc, Request for a Written Opinion, and Motion to Disqualify the Third DCA. On August 1, 2018, Petitioner filed a Petition for Writ of Mandamus to the Florida Supreme Court seeking an order compelling the Third DCA to write an opinion that would subject its result to further review.

This was not the first time Petitioner's counsel asked the Florida Supreme Court to compel a written opinion when a PCA resulted in deprivation of property without due process in violation of the 5th and 14th Amendments to the U.S. Constitution. *See, Donny Marin v. Bank of New York* (Fla. SC 17-705), *Gerald Oberman v. Bank of America* (Fla. SC17-1829), and *Daniel Alexander v. Bayview Home Loan Servicing* (Fla. SC18-624).

The Petition for Writ of Mandamus argued the rule of law must prevail over deference to an inferior Court that continues to abuse its power to block review of illegal foreclosure misconduct. It argued there is objective bias based on the Third DCA's continued violation of Florida appellate procedure which continues because the Third DCA refuses to hold BANA accountable to the rule of law.

Finally, the Petition for Writ of Mandamus presented extensive argument that a PCA ignoring fraud, perjury and destruction of evidence by a Court that is objectively biased is a denial of due process that warrants the Writ to issue.

On August 7, 2018, the Florida Supreme Court determined it lacked jurisdiction to issue the Writ of Mandamus and dismissed the Petition. This Petition for Writ of Certiorari ensued.

REASONS FOR GRANTING THE WRIT

CERTIORARI SHOULD BE GRANTED AS FLORIDA'S BIASED COURT SYSTEM DEPRIVED MR. RODRIGUEZ OF HIS PROPERTY WITHOUT DUE PROCESS OF LAW BASED ON FALSE AND FRAUDULENT EVIDENCE

I. Due Process Does Not Tolerate Fraud, Perjury, Defiance of Court Orders, and Destruction of Evidence in violation of a Court Ordered Subpoena, even if Florida Courts Will Tolerate Such Egregious Misconduct to Protect Bank of America and a Broken Fraudulent Foreclosure System

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.

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).

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) (emphasis added). 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).

II. Due Process Will Not Tolerate a Biased Court that Deprives a Person of Life, Liberty or Property by Ignoring Fraud, Perjury, Defiance of Court Orders, and Destruction of Evidence in violation of a Court Ordered Subpoena to Grant a Summary Judgment of Foreclosure

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).

In Florida, each individual judge has discretion to grant or deny their own disqualification. *Giuliano v. Wainwright*, 416 So. 2d 1180, 1181 (Fla. 1982). *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)(applying 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).

Yet, 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 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 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. Rodriguez'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." The guaranty of due process "was aimed at undue favor and individual or class privilege…. Id.

III. Independent, Intellectually Honest, and Unbiased Courts Hold Banks Accountable to the Rule of Law Just As Any other Party

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 Second 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 …, 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 *Sorenson* decision is consistent with Judge Ungaro's ruling in the FCA case that BANA's use of rubber-stamped Countrywide endorsements backdated by perjury and false MERS assignments (as used in *Sorenson,* this case, and many others) states a fraud claim under the False Claims Statute and violates promises made under the National Mortgage Settlement. R. 1822-1825.

The Second DCA's *Sorenson* decision is also consistent with the ruling of U.S. Bankruptcy Court Judge Robert Drain for the Southern District of New York that Wells Fargo was similarly "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). 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 Second DCA's *Sorenson* decision is consistent with the final judgment undersigned counsel obtained in Wells Fargo v. Riley, under Palm Beach County Case Number 50-2016-CA-010759-XXXX-MB by Senior Circuit Court Judge Howard Harrison who found unclean hands based on fraudulent evidence, defiance of the court's discovery order, perjury, and that recording a false assignment of mortgage is a felony in Florida.

The Second DCA's *Sorenson* decision is consistent with *Pino v. Bank of New York, Mellon*, 57 So. 3d 950, 954 (Fla. 4th DCA 2011)*discussed infra*.

More recently, the Chief Judge of the Second DCA, wrote a concurring opinion noting that many foreclosure judgments are still being entered "based on dubious proof by the banks…." *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… 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 BANA'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. BANA has done the same herein, and far worse.

IV. The Third DCA is PCA is Irreconcilable with Due Process and the Rule of Law

a. The Note is Non-Negotiable

The Third DCA affirmed the final summary judgment of foreclosure by citation to *HSBC Bank USA, Nat'l Ass'n v. Buset*, 241 So. 3d 882 (Fla. 3rd

DCA 2018). *Buset* issued a blanket statement that all promissory notes secured by a mortgage are negotiable instruments unless "the terms of the mortgage were incorporated into the note." *Id. 888.*

The Second DCA did not "bicker with" that proposition that all such notes are negotiable instruments but ruled "that is as far as we can travel" with that proposition when faced with a Home Equity Line of Credit which was clearly not a promise to pay a fixed amount of money. *Third Fed. Sav. & Loan Ass'n of Cleveland v. Koulouvaris*, 247 So. 3d 652, 654 (Fla. 2nd DCA 2018).

Similarly, the plain terms of ¶4(c) of the note expressly incorporates the terms of the mortgage which controls the monthly payment amount and the application of payments.

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). Here, the law is well settled that Petitioner's promissory note is not negotiable because it incorporates the terms of the mortgage. Yet, the Third DCA ignored this fact to reach a predetermined result – foreclosure.

b. *The Third DCA Cannot Keep Protecting Foreclosure Fraud by BANA and Others*

It is evident that BANA, and others, continued to prepare and present false evidence in foreclosures in defiance of the National Mortgage Settlement. This continued misconduct is nationwide in scope. Yet, The U.S. Department of Justice, the federal regulators, and the Florida Courts have clearly turned a blind eye to this fact. The Government refused to intervene in Judge Ungaro's False Claims Act case against BANA leaving Petitioner's Counsel and a small group of intrepid lawyers to challenge the LGP firm and the 1,000 man law firm of Wilmer Hale alone. David slew Goliath and forced BANA to a confidential settlement.

Most recently, on October 18, 2018, the Daily Business Review published yet another article[1] 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."

Respectfully, this is now the fifth Petition for Certiorari filed to this Honorable Court since Petitioner's counsel first uncovered this fraud. Five years ago, this Court denied certiorari of a PCA issued by the Third DCA of an order denying a motion to vacate judgment due to fraud in *Paula*

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

Rodriguez v. Bank of New York, *Mellon,* in Supreme Court Case Number 13-1063. More recently, on October 18, 2018, this Court denied certiorari of a Third DCA opinion reversing an order vacating a judgment due to fraud in *Keith Simpson v. Bank of New York, Mellon* in Supreme Court Case Number 18-187.

The fraud in both cases involved the same rubberstamped Countrywide blank endorsements backdated by perjury of Senior BANA Executives and false MERS assignments presented here. Ms. Rodriguez and her son were evicted shortly before Christmas in 2013. Mr. Simpson and his disabled wife left their home on their 33rd wedding anniversary in July of 2018.

Petitioner's Counsel has two other Petitions presently pending before this Court: *Daniel Alexander v. Bayview Loan Servicing, LLC.*, in Supreme Court Case Number 18-375 and *Donny Marin v. Bank of New York Mellon* in Supreme Court Case Number 18-A291. The same LGP firm that represented BANA below responded to the Petition in *Alexander* on Bayview's behalf.

This Court should consider consolidating these Petitions for writ of certiorari. They all assert that the Third DCA has issued a PCA that violates due process by ignoring fraud on the court and objective reasons to question the Third DCA's impartiality.

CONCLUSION

"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.

Mr. Rodriguez was deprived of his property without due process of law. The PCA affirming a fraudulent summary judgment is not due process. There is no due process if Florida Courts are objectively biased in favor of foreclosure plaintiffs and ignore the continued use of fraudulent evidence. This cannot stand in a fair and impartial judiciary. This is not the rule of law and cannot be swept under the rug by a PCA in a good and orderly society.

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

Respectfully submitted,

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Jose Rodriguez,
Appellant.

Versus

Bank of America, N.A.,
Appellee,

No. 3D17-272

District Court of Appeal of Florida
Third District

Lower Tribunal No. 13-30447

Opinion filed May 16, 2018, Rehearing Denied July 2, 2018

An Appeal from the Circuit Court for Miami-Dade County, Samantha Ruiz Cohen, Judge

Jacobs Keeley, PLLC, and Bruce Jacobs and Court E. Keeley, for appellant.

Liebler, Gonzalez & Portuondo, and Dora F. Kaufman and Alan Michael Pierce, for appellee.

JUDGES: Before SUAREZ, LAGOA, and LINDSEY, JJ.

OPINION
PER CURIAM.

Affirmed. See HSBC Bank USA, Nat'l Ass'n v. Buset, 43 Fla. L. Weekly D305 (Fla. 3d DCA Feb 7, 2018)

SUPREME COURT OF FLORIDA
TUESDAY, AUGUST 7, 2018

CASE NO.: SC18-1288
Lower Tribunal No(s).:
3D17-272; 132013CA0304470000001

JOSE RODRIGUEZ, vs. BANK OF AMERICA, N.A.

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 or reinstatement will be entertained by the Court.

A True Copy
Test:

John A. Tomasino
Clerk, Supreme Court