
No. 18-273

IN THE
Supreme Court of the United States

JOSE RODRIGUEZ, etc.,

Petitioner,

V.

BANK OF AMERICA, N.A.,

Respondent.

**PETITIONER'S RESPONSE TO
BANK OF AMERICA'S NOTICE (AND SUGGESTION)
AS TO THE NOVEMBER 27, 2017 DEATH
OF DEFENDANT JOSE RODRIGUEZ**

Petitioner, Jose Rodriguez, hereby files this response to Bank of America's Notice (and Suggestion) as to the November 27, 2017 Death of Defendant Jose Rodriguez, and states:

On the eve of this Court's conference to decide whether to grant a writ of certiorari, Bank of America has filed a Notice (and Suggestion) of Death of Mr. Rodriguez. The Notice cites five inapposite cases and makes the misleading suggestion that upon his death, his Petition for Writ of Certiorari died with Mr. Rodriguez. Bank of America asks this Court for absolution of its illegal foreclosure misconduct and to block review of the denial of Mr. Rodriguez's due process rights under the 5th and 14th amendments to the U.S. Constitution by this Court because of his death. This is inconsistent with Florida law.

None of the five (5) cases support Bank of America suggestion that Mr. Rodriguez's death divests this Court of authority to grant certiorari in his foreclosure case. Not one of those cases involved a foreclosure. *In re 73 Engle-Related Cases*, 239 So. 3d 166, 168 (Fla. 1st DCA 2018)(class action tobacco litigation); *Rogers v. Concrete Scis., Inc.*, 394 So. 2d 212, 213 (Fla. 1st DCA 1981)(worker's compensation litigation); *Adelsberger v. United States*, 58 Fed. Cl. 616, 618 (2003)(fair labor standards act litigation); *Tennyson v. ASCAP*, 477 F. App'x 608 (11th Cir. 2012)(antitrust litigation); *Brake v. Murphy*, 687 So. 2d 842, 842 (Fla. 3rd DCA 1996) (fraudulent transfer litigation).

In full candor to this tribunal, Bank of America should have provided this Court the controlling Florida Supreme Court authority that squarely addresses the death of a main defendant during a foreclosure. *Davis v. Scott*, 97 Fla. 148, 149, 120 So. 1, 1 (1929). In *Davis*, the Florida Supreme Court instructed that “[i]t is well settled that a suit *of this kind* [foreclosure] abates on the date of the death of the main defendant...” *Id.* (emphasis added). This abatement allows for the estate to substitute in as the foreclosure defendant.

However, here, as in *Davis*, the trial court granted the foreclosure judgment before Mr. Rodriguez's death. Under *Davis*, there would be no need for an abatement unless Mr. Rodriguez had made an effort to show the final judgment “*was unjust, irregular, illegal, or deprived him of any legal right.*” *Id.* (emphasis added). Mr. Rodriguez did make such an effort in that regard.

Mr. Rodriguez passed away in November of 2017, leaving his wife, his children and his grandchild living in their home subject to Bank of America's judgment of foreclosure obtained illegally and in violation of his due process rights in January of 2017. In October of 2017, a month before he died, Mr. Rodriguez's counsel filed his initial brief challenging the final judgment as unjust, illegal, and a deprivation of his constitutional rights. Under *Davis*, Mr. Rodriguez may continue to posthumously pursue this appeal of his foreclosure. His wife stands ready to open an estate to pursue those rights if necessary.

Bank of America stands accused in this Petition for Writ of Certiorari of having obtained this foreclosure judgment illegally. With the assistance of its counsel, Bank of America defrauded government regulators, the Department of Justice, and the courts by continuing to present false evidence backdated by perjury of its most senior executives. Bank of America and its counsel even presented this Court a false and debunked affidavit of its Senior Executive, Thomas Wrenn, to contradict an email showing it ordered its vendor to destroy nearly two billion records in defiance of a court ordered subpoena.

This Court should ignore this desperate, last ditch notice and suggestion of death. It should not distract this Court from the findings of several respected jurists from the trial and appellate courts of Florida and the federal bench who have all made written findings that show Bank of America, JP Morgan Chase, and Wells Fargo have defied the federal regulators and the Department of Justice. They have continued to use essentially the same false evidence in

foreclosures before, during, and after their promise in the \$25 Billion National Mortgage Settlement to not use false evidence in foreclosures going forward.

The U.S. Court of Appeals for the District of Columbia recently acknowledged that “the 2008 financial crisis destabilized the economy and left millions of Americans economically devastated. Congress ... determined that ... federal regulators had failed to prevent mounting risks to the economy, in part because those regulators were overly responsive to the industry they purported to police.” *PHH Corp. v. Consumer Fin. Prot. Bureau*, 881 F.3d 75, 77 (D.C. Cir. 2018).

In his dissent, now Justice Kavanaugh argued that “[t]o prevent tyranny and protect individual liberty, the Framers of the Constitution separated the legislative, executive, and judicial powers of the new national government.” *Id.* at 164. Justice Kavanaugh argued it was of utmost importance:

to guard against ‘capture’ of—that is, undue influence over— independent agencies by regulated entities or interest groups, for example. As Elizabeth Warren noted in her original proposal for a multi-member consumer protection agency: “With every agency, the fear of regulatory capture is ever-present.” Elizabeth Warren, *Unsafe at Any Rate: If It's Good Enough for Microwaves, It's Good Enough for Mortgages. Why We Need a Financial Product Safety Commission*, Democracy, Summer 2007, at 8, 18. Capture can infringe individual liberty because capture can prevent a neutral, impartial agency assessment of what rules to issue or what enforcement actions to undertake or how to resolve adjudications. In a multi-member agency, however, the capturing parties “must capture a majority of the membership rather than just one individual.” Lisa Schultz Bressman & Robert B. Thompson, *The Future of Agency Independence*, 63 Vand. L. Rev. 599, 611 (2010).

The Honorable U.S. District Court Judge Amy Tottenberg of the Northern District of Georgia explained “the potential for regulatory capture is real, and it is not beyond the realm of possibility that a majority of contractors in an industry could submit false claims to the Government with the hope that, because the conduct occurs on a large scale, the Government, whether purposefully or not, would simply overlook such false claims.” *United States ex rel. Saldivar v. Fresenius Med. Care Holdings, Inc.*, 145 F. Supp. 3d 1220, 1263 (N.D. Ga. 2015), *rev'd and remanded*, 841 F.3d 927 (11th Cir. 2016).

Bank of America, JP Morgan Chase, and Wells Fargo are large and powerful financial institutions who have submitted false evidence to the government in foreclosures on such a large scale, from Miami to Maui and every judicial foreclosure state in between, that they expect the government will overlook their misconduct. This Court must ensure the government does not overlook, purposefully or not, continued criminal foreclosure misconduct of such magnitude in violation of the \$25 Billion National Mortgage Settlement.

This Court holds, “the rule of law, which is a foundation of freedom, presupposes a functioning judiciary respected for its independence, its professional attainments, and the absolute probity of its judges.” *New York State Bd. of Elections v. Lopez Torres*, 552 U.S. 196, 212, 128 S. Ct. 791, 803, 169 L. Ed. 2d 665 (2008). Undersigned counsel has presented this evidence of widespread fraud in foreclosures to many respected jurists. A growing chorus of those jurists agree this fraud is unacceptable in the good order of society.

There can be no free markets and no rule of law if any party, much less a party to the National Mortgage Settlement, presents false evidence, commits perjury, destroys evidence, misleads courts, and defies court orders with impunity. The rule of law must be jealously guarded and applied equally to the least and most powerful voices. Equal justice under law prevents tyranny and protects individual liberty. Conversely, regulatory capture where the government overlooks waves of criminal foreclosure misconduct by powerful financial institutions leads to tyranny and the degradation of individual liberty. This view is neither conservative nor liberal, it is fair and impartial.

WHEREFORE, Petitioner hereby respectfully requests this Court ignore the suggestion of death, grant certiorari, and any relief deemed mete and just.

Respectfully submitted,

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