21-8245

No. 21A526

IN THE

SUPREME COURT OF THE UNITED STATES

FELIX I. GASPARD - PETITIONER

VS.

BAC HOME LOANS SERVICING, LP, et al - RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO

THE DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

PETITION FOR A WRIT OF CERTIORARI

FELIX I. GASPARD

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ORIGINAL

QUESTIONS PRESENTED

1. Under the U.S and Florida Constitutions, pursuant to applicable rules of law and the various consent decrees the very same "plaintiffs" entered into with 49 States and the Federal Government to resolve the fraud claims brought against them for causing the 2008 foreclosure crisis,
Whether the judiciary has jurisdiction to effectuate the "Taking without due process and without just compensation" of a pro se black disabled senior citizen's homestead property, for no legitimate public purpose but on the behalf of and for the benefit of a still unidentified real party in interest, by means of the same type of fraudulent and vexatious foreclosure action initiated by and through the same "plaintiffs", where the pro se black disabled senior citizen was judicially precluded from asserting his fundamental, legal and constitutional rights to due process, access to the courts, property rights, right to a timely requested trial by jury on his compulsory counterclaim, right to set off, recoupment or redemption; to equal protection under the law, and where the judiciary under the color of law and authority allowed the plaintiffs to commit fraud upon the court with impunity?

2. Under the U.S. and Florida Constitutions, under the applicable Rule of Law,
Whether a State adjudicated totally disabled black person entitled and qualified to have received a $267.00 loan modification have his property judicially TAKEN, under color of law, without due process nor compensation, by means of a void ab initio Final Judgment for violation of his fundamental right to a timely requested jury trial on his compulsory counterclaim, to a debt collector shielded by the courts from disclosing its entitlement to relief even up to now?
Whether another law firm be allowed to obtain a writ of possession against Defendant, when the third party that they claim to represent denies any involvement with them, a third party that did not participate in the proceedings, did not pay cash at auction and received a Conditional Credit Bid Assignment, a nullity by operation of law and when the law firm and the third party have motions for default pending against them for failure to file any responsive papers in the compulsory counterclaim?

3. Under the taking and the due process clauses of the U.S. and Fla. Constitutions; pursuant to F.R. Civ. P., Rules 1.140, 1.170, 1.260 (c), 1.420, 1.540 (b)(3) & (4), Rule 9.110 (b); pursuant to Rule 2.215(f), F. R. Jud. Admin.; to Fla. Stat., sec. 117, 817 and 831; and the applicable rules of law pertaining to a foreclosure action initiated by a self-proclaimed servicer with, to this day, no identified principal or real party in interest to validate an agency relationship, to authorize and ratify this action,

Whether a Defendant's 25-count Amended Compulsory Counterclaim, among them for Fraud and to Quiet Title, with timely jury trial requested, can be dismissed with prejudice, (even to parties that were never served or made an appearance in the case, to parties against whom Administrative Clerk Default were sought for failure to file any responsive papers), on the basis of res judicata, collateral estoppel, merger doctrine, litigation privilege,

- If the defendant's fundamental and constitutional rights were violated by all involved:

- If the predecessor Circuit court, the Honorable Judge Spencer Eig eviscerated defendant's counterclaim and defenses by denying proper discovery and improperly refused to dismiss the September 29, 2010 Foreclosure Complaint for lack of standing, for failing to state a cause of action, for naked fraud for attaching an "Assignment of mortgage...together with the note", already executed September 30, 2010 in violation of F.S. 117 and 831, because he "wanted to first hold the trial and if Defendant could prove the fraud then he would dismiss the case"

- If, accordingly, the 11th Circuit jurisdiction was never properly invoked, the lower court did not have subject matter jurisdiction, thus, rendering all subsequent litigation void ab initio

- If the trial Court, The Honorable Judge Marvin Gillman, against Defendant's strenuous, contemporaneous, and preserved objections, held a 2-day non-jury trial wherein after committing numerous procedural errors, sua sponte and with no mandated test, severed the compulsory counterclaim with jury trial timely requested, in order to enter Final Judgment of Foreclosure for Plaintiff, allowing execution and making no mention of the severed counterclaim nor making any provision to protect Defendant's interest pending the jury trial
- If the courts have refused for 12 years to hold any evidentiary hearings and to rule on the hundreds of pages of documentation submitted to prove fraud, fraud upon the Court, while at the same time denying his motions for lack of evidence.

4. Whether the doctrine of "Absolute Judicial Immunity" has been expanded into "Blanket Judicial Immunity" by affirming that any judge is afforded judicial immunity by "the blanket law, the blanket law that says that claims against any judge are completely, 100 percent barred by absolute judicial immunity. As long as any judge is acting in their judicial capacity, making whatever ruling, whether or not that ruling is something you agree with, or whether the ruling is completely legally wrong, there is absolute judicial immunity... The law in Florida is that judicial acts are entitled to absolute 100 percent judicial immunity", thereby making them above the U.S. and Florida Constitutions?

5. Whether the lower court erred in granting foreclosure relief to non-parties to the case and where the Plaintiff never amended the original Complaint when the Plaintiff was substituted?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

RELATED CASES

From the **U.S. SUPREME COURT:**

Felix I. Gaspard, Applicant v. BAC Home Loans Servicing, LP.
Application 21A598

Felix I. Gaspard, Applicant V. BAC Home Loans, LP
Application 21A526

Felix I. Gaspard, Petitioner v. BAC Home Loans Servicing, LP
Case # 16-8271

From the **CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT, IN AND FOR MIAMI-DADE COUNTY, FLORIDA:**

Gaspard v. The Honorable Judge Monica Gordo, **Case # 17-26102-CA.**
Judgment entered April 4, 2018.

Gaspard v. The Honorable Judge Rodolfo Ruiz, **Case # 19-15626-CA.**
Judgment entered December 2, 2019

From the **FLORIDA SUPREME COURT:**

Gaspard v. BAC Home Loans Servicing, LP, Case # SC16-1950.
Disposed on 10/26/2016.

Gaspard v. BAC Home Loans Servicing, LP, Case # SC17-1469. Disposed of on 8/10/2017.

Gaspard v. BAC Home Loans Servicing, LP, Case # SC17-1490. Disposed of on 8/11/2017.

Gaspard v. BAC Home Loans Servicing, LP, Case # SC17-1576. Disposed of on 9/25/2017.

Gaspard v. BAC Home Loans Servicing, LP, Case # SC17-2109. Disposed of on 12/12/2017.

Gaspard v. BAC Home Loans Servicing, LP, Case # SC17-2254. Disposed of on 12/22/2017.

Gaspard v. The Honorable Judge Rodolfo Ruiz, Case # SC20-1864. Disposed Of on 12/23/2020.

Gaspard v. BAC Home Loans Servicing, LP, Case # SC22-88. Disposed of 01/20/2022.

From the **THIRD DISTRICT COURT OF FLORIDA**

BAC Home Loans Servicing, LP v. Gaspard, Case # 3D13-2124. Disposed of 3/19/2014

Gaspard v. BAC Home Loans servicing, LP, Case # 3D14-1922. Disposed of 11/24/2014

Gaspard v. BAC Home Loans servicing, LP, Case # 3D15-427. Disposed of 06/01/2016

Gaspard v. BAC Home Loans Servicing, LP, Case # 3D16-2616. Disposed of 04/16/2017

Gaspard v. BAC Home Loans servicing, LP, Case # 3D17-94. Disposed of 06/23/2017

Gaspard v. BAC Home Loans servicing, LP, Case # 3D17-96. Disposed of 05/16/2017

Gaspard v. BAC Home Loans servicing, LP, Case # 3D17-1327. Disposed of 08/25/2017

Gaspard v. BAC Home Loans servicing, LP, Case # 3D17-1808. Disposed of 08/09/2017

Gaspard v. BAC Home Loans servicing, LP, Case # 3D17-2351. Disposed of 11/06/2017

Gaspard v. BAC Home Loans servicing, LP, Case # 3D17-2692. Disposed of 12/19/2017

Gaspard v. BAC Home Loans servicing, LP, Case # 3D17-2714. Disposed of 11/07/2018

Gaspard v. BAC Home Loans servicing, LP, Case # 3D19-685. Disposed of 06/05/2019

Gaspard v. The Honorable Judge Rodolfo Ruiz Case # 3D20-14. Disposed of 09/23/2020

Gaspard v. BAC Home Loans servicing, LP, Case # 3D20-1723. Disposed of 10/27/2021

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TABLE OF AUTHORITIES CITED

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Florida Bar

F. R. App. P

F. R. Jud. Admin.

Florida Constitution

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Due Process Clauses

Other Authorities

IN THE SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the 3rd DCA, the highest state court to review the merits, appears at Appendix A to the petition.

The decision of the 11th Judicial Circuit Court of Florida appears at Appendix B to the petition.

The opinion of the Florida Supreme Court appears at Appendix C to the petition.

The 3rd DCA Order denying a timely filed petition for rehearing appears at Appendix D

JURISDICTION

The date on which the highest state court decided my case was October 27, 2021. A copy of that decision appears at Appendix A.

A timely petition for rehearing was thereafter denied on the following date December 16, 2021 and a copy of the order denying rehearing appears at Appendix D.

An extension of time to file the petition for a writ of certiorari was granted to and including April 18, 2022 on March 22, 2022 in Application No. 21A526

The jurisdiction of this Court is invoked under 28 U.S.C. 1257(a)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

1. Pro Se Petitioner respectfully requests that the Stand-Alone Statement and Procedural History [App. 81] previously filed as an exhibit to his Motion for a Stay be accepted as his Statement of the Case for convenience's sake. Yet, to conform to this petition format, Pro Se Petitioner brings this condensed version of the Statement of the Case and Procedural History [App. 81].

2. This is an appeal stemming from a constitutionally prohibited Taking without due process and without fair compensation of Appellant's property by means of a vexatious prosecution of a void ab initio foreclosure action involving parties [R. 1970-2197, par. 15-43, 276-277, 285-293, 302, 465-576], whose grand scheme to defraud by filing fraudulent actions had already been exposed and sanctioned by the appropriate Federal and State entities as being the culprits for the 2008 foreclosure crisis. That scheme was laid bare even further in the Feb. 5, 2012 New York Times article on Page BU1: "A Tornado Warning, Unheeded" which clearly sustains the assertion that Fannie Mae was fully aware of the fraud being committed by Plaintiffs **[R. 1970-2197, par. 525-527; 553-564]**. This article is based on the May 2006 confidential 147-page report, [App. 53] known internally as O.C.J. Case No. 5595, (Company's Office of Corporate Justice). It states:

> "According to O.C.J. Case No. 5595, Fannie held roughly two million mortgage notes in its offices in Herndon, Va., in 2005 — a fraction of the 15 million loans it actually owned or guaranteed.

Who had the rest? Various third parties. At that time, Fannie typically destroyed 40 percent of the notes once the mortgages were paid off. It returned the rest to the respective lenders, only without marking the notes as canceled.

Mr. Lavalle and the internal report raised concerns that Fannie wasn't taking enough care in handling these documents. The company lacked a centralized system for reporting lost notes, for instance. Nor did custodians or loan servicers that held notes on its behalf report missing notes to homeowners. The potential for mayhem, the report said, was serious. Anyone who gains control of a note can, in theory, try to force the borrower to pay it, even if it has already been paid. In such a case, "the borrower would have the expensive and unenviable task of trying to collect from the custodian that was negligent in losing the note, from the servicer that accepted payments, or from others responsible for the predicament," the report stated. Mr. Lavalle suggested that Fannie return the paid notes to borrowers after stamping them "canceled." Impractical, the 2006 report said.

This leaves open the possibility that someone might try to force homeowners to pay the same mortgage twice. Or that loans could be improperly pledged as collateral by some other institution, even though the loans have been paid, Mr. Lavalle said. Indeed, there have been instances in the foreclosure crisis when two different institutions laid claim to the same mortgage note ...

Even so, the report didn't conclude that Mr. Lavalle was wrong on the legal issues. It simply said that few people would have the financial resources to challenge foreclosures. In other words, few people would be like Mr. Lavalle.

"Courts are unlikely to unwind foreclosures unless borrowers can demonstrate that the foreclosure would not have gone forward with the correct pleadings, which is a difficult burden for most borrowers to meet," the report said. "Nevertheless, the issues Mr. Lavalle raises should be addressed promptly in order to mitigate the risk of exposure to lawsuits and some degree of liability." Mr. Cymrot declined to comment for this article...

Now, he hopes dubious mortgage practices will be eradicated.

"Any attorney general, lawyer, bank director, judge, regulator or member of Congress who does not open their eyes to the abuse, ask pertinent questions and allow proper investigation and discovery," he said, "is only assisting in the concealment of what may be the fraud of our lifetime." [App. 53]

3. BANA's Detailed History Statement [App. 38], the Case of JP Morgan Chase Bank N.A. v. Butler, 2013 WL 3359583 (N. Y. Sup.) [App. 143], the added transcripts [App. 35; R. 3545-3676], the exhibits [App. 1-54] paint a clear picture of the continuing fraud being perpetrated upon the Court [R. 1970-2197].

4. Plaintiff failed to comply with conditions precedent. [App. 81, par. 3-8]. Petitioner refinanced his homestead property on 4/11/2007 with Countrywide Home Loans, **Inc.**, **[CHL]** [App. 1-2; App. 135] and timely made every payment until and including June 1, 2009, when a $519.00 trial modification period [App. 8-9] was offered and successfully completed for July 1, August 1, and September 1, 2009. BAC refused to provide the federally mandated $519.00 permanent mortgage modification on account of Fannie Mae, a heretofore undisclosed investor prohibited by regulations from issuing any mortgage at all, that was demanding instead payment that would amount to 96% of verified income. [App. 1-20]. Meanwhile, Defendant received offers from independent sources for mortgage modifications with payment as low as $267.00 [App. 3], in keeping with the guidelines, but no higher than $608.00 if for the full amount refinanced [App. 4]. [App. 81, Par. 9-10]

5. On **September 29, 2010**, the Law Offices of David J. Stern filed a foreclosure Complaint on behalf of the original Plaintiff, BAC Home Loans Servicing, **LP**, **[BAC]**, FKA Countrywide Home Loans

Servicing, **LP [CHLS]**, attaching an unendorsed Note and a fraudulent "Assignment of Mortgage together with the note" already executed September 30, 2010, from MERS to BAC. [App. 81. par. 11-15].

6. On July 14, 2011, Plaintiff filed a "Notice of Filing Copy of Assignment of Mortgage". Together with the first Assignment of Mortgage, was a new one dated May 10, 2011 from MERS as **the undersigned holder of a mortgage**...assigning **all beneficial interest** under that certain **mortgage** described below **together with the Note(s)**". [App. 81, par. 16].

7. On **May 7, 2012**, under the cover of a "Notice of Non-Compliant Written Request under RESPA" [R. 212-218], Plaintiff claimed no duty to answer the **December 27, 2010** "QWR/Production of Documents [R. 97-116]. Plaintiff also filed an ex parte "Motion to Amend Pleadings and Substitute Party Plaintiff" from "BAC Home Loans Servicing, LP FKA Countrywide Home Loans Servicing, LP to Bank of America, N.A. (BANA), by merger", wherein counsel misrepresented there would be no prejudice to Defendant [R. 208-211]. **No other documents were attached to the Motion to Substitute, besides the merger documents. No Amended Complaint was attached to the Motion, nor was ever filed afterwards.** [R. 208-211]. **Thus, the 9/29/2010 Complaint remained the operative Complaint, with its unendorsed Note, pursuant Rule 1.190.** [App. 81, par. 17-20]

8. On 6/19/2013, BANA filed with the court a version of the original note [R. 370] now bearing a **stamped** blank open endorsement

from Countrywide Home Loans, Inc., and obtained a Final Judgment of foreclosure from Judge Gillman [R. 371-385; 386-388; 795-838]. The original documents stayed with the court until November 5, 2014. On 7/11/13, Judge Gillman granted the Motion to Vacate the Final Judgment on the basis of fraud, failure to state a cause of action. **Plaintiff was ordered to provide proper discovery, especially as to Fannie Mae**. [R. 472; 747-777, p. 13-21]. BANA appealed the Final Judgment's reversal, in Case 3D13-2124. The reversal was affirmed with opinion by the Third DCA [R. 858-860, thereby establishing the law of the case. [App. 81, par. 21-26].

9. Defendant's counterclaims and affirmative defenses were effectively eviscerated by Judge Eig's denial of all his attempts to obtain discovery from Plaintiff because the orders denied Appellant's request for all documents in the entire chain of custody and ownership, discovery of documents evidencing the **transfer(s)** as to Fannie Mae, and the bank's acquisition of the subject note, of servicer and holder status, as previously ordered by Judge Eig himself and also by Judge Gillman. [R. 642-671; 870-876]. These and other irregularities caused Defendant to file Motions for Recusal or disqualification [R. 885-910; 930-931; 948-959; 966; 970-989; 1006-1038, p. 21-22]. On June 24, 2014, Appellant filed a Motion to add Fannie Mae and MERS as indispensable party Plaintiffs [R. 921-929]. It was denied by Judge

Eig on 7/10/2014, with leave to add Fannie Mae and MERS to the counterclaim [R. 945-946; 991-1005]. [App. 81, Par. 27-31].

10. On 11/5/2014, over Appellant's preserved strenuous objections [R. 1079-1085;1125; 3301-3483], the Honorable Judge Gillman improperly severed [R. 1126] Petitioner's compulsory counterclaim in order to grant Final Judgment for Plaintiff [R. 1127-1130] without making any mention of the severance of the compulsory counterclaim or issuing a stay of execution to protect Petitioner's interests. Petitioner's **Amended Severed** Compulsory Counterclaim [R. 1970-2197] raised 25 counts including Fraud, Quiet Title, Wrongful Foreclosure, against 23 identified parties and against unknown John and Jane Doe #1-50, wherein Pro se Appellant pled with specificity the elements of the cause of action of (a) **Fraud in the Inducement**, in Count II, par. 125-134, Count X, par. 244-254, Count XXII, par. 458; (b) the elements of **Common Law Fraud**: Count XVI, par. 385, Breach of Contract due to 1) **Fraud by Deception**; 5) **the two separate "Assignment of mortgage...together with the note are fraudulent and bogus securing nothing** (a through u); Count XXII, par. 430-464, where Appellant raised at least **11 counts of fraud: violation of FAS 140**, par. 433; **fraud, fraud upon the Court**, par. 434; 435-438, **permanent conversion of note to stock; submission of false documents to court**, par. 439; **fraud by adhesion**, par. 440; **prima facie evidence of counterfeit fraud**, par. 441; **attempted theft and**

theft, par. 442; **securities fraud, deceptive practices**, par. 443; **copy of promissory note, Count II of security fraud**, par. 444; **bifurcation**, par. 447; **tax fraud**, par. 452; **2 MERS assignments, felony land record fraud**, par. 453-454; **disparagement of title**, par. 455-456; **fraud in factum**, par. 457; **fraud in the inducement**, par 458; overall, **RICO**, par. 461-464; **(c) Aiding and Abetting Fraud**, par. 465-571, detailing the **Counter-Defendants' joint and several liabilities**: Countrywide/BANA, par. 466-524; Fannie Mae, par. 525-546; MERS & MERSCORP, par. 547-552; David J. Stern, par. 553-564; against the counsels, par. 565-571; Count XXIII, for **Wrongful Foreclosure**, par. 572-576; **Slander of Title**, par, 577-583; **Quiet Title**, par. 584-599 [R. 1970-2197]. [App. 81, par. 32]

11. Petitioner was denied due process and access to the courts by Judge Gordo for his attempts to obtain rulings on 19 separate motions submitted since December 2016, leading to the preclusion Order [R. 2963-2965]. These are the pending Motions Judge Gordo refused to rule on: 1) 12/13/16 Defendant's Request to Plaintiff's Counsel for Admissions (Albertelli/Mosby) [R. 1828-1827]; 2) 5/8/17 BANA/Liebler's Motion to Dismiss Amended Counterclaim [R. 2362-2374]; 3) 5/22/17 Defendant's Answer in Opposition/**Request for Evidentiary Hearing** [R. 2389-2410]; 4) 7/12/17 Purchaser's Motion for Writ of Possession [R. 2432-2442]; 5) 7/13/17 BANA-Liebler Memorandum of Law in Support of Motion to Dismiss [App. 37]; 6) 7/31/17 Def. Motion to Cancel 8/10/17 Hearing

on Writ of Possession/Demand for Certified Proof of Authority and to Post Bond [R. 2501-2514]; **7**) 8/7/17 Motion for Default (MERS) [R. 2525-2527]; **8**) 8/7/17 Motion for default (Fannie Mae & Michael Williams) [R. 2528-2530]; **9**) 8/7/17 Motion for Default (LaCroix) [R. 2531-2533]; **10**) 8/7/17 Motion for Default (Van Ness) [R. 2534-2535]; **11**) 8/8/17 Answer to Plaintiff's Memorandum of Law in Support of Motion to Dismiss Amended Counterclaim. Request for Evidentiary Hearing. [R. 2589-2668]; **12**) 8/31/17 MERS' Motion to Dismiss [R. 2702-2884]; **13**) 9/20/17 Motion for Default (Albertelli) [R. 2885-2886]; **14**) 9/20/17 Def. Motion for Extension of Time to Answer MERS [R. 2887-2889]; **15**) 9/29/17 Renewed Motion to Invalidate Certificate of Title for Fraud. Emergency Evidentiary Hearing Requested. [R. 2890-2904]; **16**) 10/3/17 Notice of Inquiry/Proof of Authority /Demand for Bond [R. 2905-2915]; **17**) 10/10/17 Motion for Default (Anastasia) [R. 2916-2917]; **18**) 10/24/17 Albertelli Motion to Dismiss [R. 2932-2939]; **19**) 11/09/17 Def. Motion for Continuance pending Appeal [R. 2943-2945]. An undocketed 11/17/17 "Defendant's Verified Motion for Rehearing" on the denial of the third DQ Motion was also separately handed over to Mr. Roderick and was not ruled upon. [App 81, par. 34-59].

12. Appellant was denied Access to the Court for his attempts to obtain rulings on 19 separate pending motions by a preclusion Order [R. 2963-2965]. From that point on, he could not have reflected into the records even the transcripts of previously held

hearings, thus, he could not factually rebut counsels' outright fraud. All attempts to have the lower court's records supplemented were denied until August 13, 2019, when the 3rd DCA granted Appellant's August 6, 2019 Motion to Supplement the Record with the transcripts of hearings held on 1) March 5, 2015 [R. 3633-3642]; 2) August 27, 2015 [R. 3622-3632]; 3) March 9, 2017 [R. 3604-3613]; 4) April 27, 2017 [R. 3553-3570]; 5) May 4, 2017 (Insurance Proceeds)[App. 35]; 6) November 14, 2017 (AM) [R. 3546-3552]; 7) November 14, 2017 (PM) [R. 3614-3621]; 8) February 28, 2019 [R. 3643-3676]. The transcripts of the November 4-5, 2014 bench trial was finally reflected in the records on March 1, 2019 [R. 3301-3483].

13. Petitioner's Amended Compulsory Counterclaims were improperly dismissed with prejudice by the Honorable Ruiz. [App. 81, par. 60- 71]. All attempts to have the Florida supreme Court review these proceedings were denied. Therefore, review by this Honorable body is Petitioner's last resort.

REASONS FOR GRANTING THE PETITION

THE 3RD DCA ABUSE OF PCA'S VIOLATES DUE PROCESS RIGHTS

14. This is the perfect case for this Court to review the practice of the 3rd DCA to preclude review by the issuance of PCAs. The Third DCA issuance of a PCA decision without opinion has left Petitioner without a remedy to protect his home from foreclosure by persons acting without authority and entitlement.

15. In a series of rulings over many years, the Florida Courts began to narrowly define and interpret the word "expressly" of the Florida Constitution, Art. V, Sect 3 (2) (A), to be the exclusive domain of a District Court's "written opinion" (R. J. Reynolds Tobacco Co. v. Kenyon, 882 So.2d 986, 988-90 (Fla. 2004)). Additional rulings further restricted and reduced the term "expressly" by removing any ability of written dissents, concurring opinion or citations to meet the new "written opinion" standard for obtaining Supreme Court jurisdiction (Jenkins v. State, 385 So.2d at 1359; Reaves v. State, 485 So.2d 829, 830 (Fla. 1986); Wells v. State, 132 So.3d 1110, 1112-14 (Fla. 2014). With the new PCA Standard, access to the Supreme Court became highly exclusive and nearly impossible to obtain. It is estimated that "PCA's without an opinion" may account for over 70% of rulings in the District Court, which meant that under the PCA standard nearly two-thirds of the population are currently left without access to the Supreme Court of Florida regardless of the merits of their cases. (Leen, Craig. Without Explanation p. 22; 4th DCA PCA Data Report).

16. The Florida Legislature began writing rules around the PCA Standard even though the PCA Standard was never actually written into law. The Legislature made an addition to the Florida Rules of Appellate Procedure which further stripped jurisdiction from the Supreme Court to hear matters related to any case issued

without a District Court written opinion. The new rule states that the Supreme Court itself was barred from hearing any case without a written opinion and was now legally mandated to dismiss any appeal from a party who was without a written opinion and that party could not file a motion for reconsideration or clarification regardless of the merits of their case (Rule 9.030(a)(d).)

17. In a twist of irony, the highest court of the State, the Florida Supreme Court was now stripped of its own jurisdiction to hear conflict law and constitutional law questions which was the very purpose of its existence. **The Supreme Court's "discretion" to review a case was now extinct, replaced by the District Court's exclusive control of the Supreme Court's jurisdiction,** as the Supreme Court decided the DCA would not be "required" to provide a written opinion to anyone; not even when requested by the Supreme court itself regardless of the merits of their case (Foley v. Weaver, 177 So.2d at 226). This has created an unbounded, unconscionable conflict of interest.

18. The Courts' refusal to rule on the jurisdiction of the Court, except in **Case 3D13-2124,** coupled with the violations of his fundamental and constitutional rights, the Court's refusal to issue any written opinion, have left Petitioner with no other avenue of redress. Petitioner is not alone facing this predicament.

19. Because of the frustration surrounding PCAs, the Florida Supreme Court's Judicial Management Council appointed a Committee

on Per Curiam Affirmed Decisions (PCA Committee), which issued a useful report in May 2000. In this report, the PCA Committee gathered statistics and met with attorneys, judges, and the Florida Bar in an attempt to obtain various perspectives on the PCAs. It noted that "PCA opinions undermine confidence in the integrity of the judicial system" "PCAs leave the unavoidable impression that the majority has acted in an arbitrary fashion". Id. at 46. Judge Cope in his dissent to the final report drew on and quoted from the commentary to the ABA Standards Relating to Appellate Courts (1994), that "[l]itigants are entitled to assurance that their cases have been thoughtfully considered. The public, also, is entitled to assurance that the court is thus performing its duty".

20. Through several conferences, the PCA Committee developed a list of recommendations to promote the proper use of PCAs, including suggestions for opinion writing, and suggestions for when a PCA is inappropriate. In that report, the Judicial Management Council suggested types of cases that may warrant a written opinion, hoping that by presenting factors to consider, judges would choose to write an opinion in cases warranting a written opinion, rather than issuing a PCA. These include cases in which a) the decision conflicts with another district; b) an apparent conflict with another district may be harmonized or distinguished; c) there may be a basis for Supreme Court review; d) the case presents a new legal rule; e) existing law is modified

by the decision; f) the decision applies novel or significantly different facts to an existing rule of law; g) the decision uses a generally overlooked legal rule; h) the issue is pending before the court in other cases; i) the issue decided may arise in future cases; j) the constitutional or statutory issue is one of first impression; k) previous case law was "overruled by statute, rule or an intervening decision of a higher court".

21. In the U.S. Supreme Court Case Barone v. Wells Fargo, counsel stated: "Herein, the trial court and 3rd DCA never cited case law to back up their decisions, and 3rd DCA avoided and failed to address the Void judgement and federal jurisdictional questions of great public importance. Non-opinioned orders in FL have irritated attorneys to the point that one put together the data. (Samantha Joseph, Can He Say That? Frustrated Attorney Asks, "What's Wrong with the Third DCA?", Daily Business Review.

22. In the Supreme Court Case Daniel Alexander v. Bayview Loan Servicing, counsel stated, in pages 14-16:

"One of the many objective reasons to question the Third DCA's impartiality is a recent front page DBR article entitled, Can He Say That? Frustrated Attorney Asks 'What's Wrong with the Third DCA. The front-page article reported "*there is no question that the Third District is pro-business and couldn't care less about homeowners.*" (Emphasis added). It further reported that the Third DCA "abuses per curiam affirmances, or PCAs, to avoid explaining their rulings on lender standing, ... [and] misuses the tool to strategically sidestep writing opinions that could provide grounds for rehearing. Instead, they say it uses the decisions to wipe out options for further review and avoid conflicts with other district courts." Instead of a reasoned opinion that would create conflict jurisdiction for further review, the Third DCA issues a PCA that

says: you lose because we said so and there's nothing you can do about it. Moreover, the front-page article laid out statistical, empirical evidence that the Third DCA reversed on standing in favor of the banks 87% of the time, while over the same time period, the 1st, 2nd, 4th and 5th DCA's all reversed on standing in favor of the homeowners between 73%-84% of the time. This is not just an anomaly. The front-page article attached a press release that set forth: ... of its sixteen written opinions addressing the standing in recent era foreclosure cases, the Third District has only ruled for a property owner twice: 66 Team, LLC v. JPMorgan Chase Bank Nat. Ass'n, 187 So.3d 929 (Fla. 3rd DCA 2016) and Riocabo v. Fed. Nat'l Mortgage Ass'n, 230 So. 3d 579 (Fla. 3rd DCA 2017). (Consider that in 66 Team, the bank did not admit any documents or evidence at trial to prove its case. And in Riocabo, the bank confessed error - admitting that it must lose on appeal.)... The neighboring Fourth District has issued 120 written foreclosure opinions on standing, 87 (73%) have been in favor of property owners. ... It's also noteworthy that the Third has only issued sixteen written foreclosure opinions on standing - the fewest of any appellate court in the state."

23. The Florida courts' interpretation of "expressly" to exclusively be a "written opinion" is in conflict with decades of U.S. Supreme Court's jurisprudence which had interpreted the word "expression" for the U.S. Constitution (*United States v. O'Brien,* 391 U.S. 367 (1968); Tinker v. Des Moines Independent Community School District, 393 U.S. 503, 505-06 (1969). The U.S. Supreme Courts did not believe the term "expression" should be so narrowly defined as to only include the "written word" which was often beyond reach in many cases but instead the U.S. Supreme Court found that the term "expression" should be broadly defined to include a person's acts, physical expressions or even the actual outcome (Tinker). More importantly, the U.S. Supreme Court would determine how the term "expression" fit

in the context of each individual case noting in Spence v. Washington (1974) that laws dealing with flag burning or misuse are "directly related to expression in the context of activity." But where the U.S. Supreme Court allows for a 'case by case' determination of the term "expression"; **Florida's constitution hinges its entire Supreme Court Jurisdiction on a single interpretation of the word "expressly" and never considers the facts of an individual case.**

24. Void Judgment: A judgment that has no legal force or effect, the invalidity of which may be asserted by any party whose rights are affected at any time and any place, whether directly or collaterally. From its inception, a void judgment continues to be absolutely null. It is incapable of being confirmed in any manner or to any degree. Black's Law Dictionary West Group, 7th Ed. pg. 848. A void judgment is a nullity and a person adversely affected has the right to impeach it whenever it is attempted to be enforced against him. In re Kantt's estate, 272 So.2d 153, 156 (Fla. 1972).

25. Rule 1.540(b)(4) specifically provides for relief from a void judgment or order. On a proper motion, a trial court must set aside a void judgment, and Florida courts have routinely held that a trial court has no discretion and is obligated to vacate such a judgment. In Horton v. Rodriguez Espaillat Y Asociados, 926 So.2d 436 (Fla. 3d DCA 2006):

("Where a party asserts that the underlying judgment is void, "**it** is necessary to evaluate the underlying judgment in reviewing the order denying the motion. If it is determined that the judgment entered is void, the court has no discretion, but is obligated to vacate the judgment." Dep't of Transp. V. Bailey, 603 So.2d 1384, 1386-87 (Fla. 1st DCA 1992). In this case, the underlying judgment is void because the complaint, on its face, fails to state a recognizable claim against the defendant. See Bercerra v. Equity Imports, Inc., 551 So. 2d 486 (Fla. 3d DCA 1989); Magnificent Twelve, Inc. v. Walker, 522 So.2d 103 (Fla. 3d DCA 1988).)"

26. Generally, a judgment is void if: **(1) the trial court lacks subject matter jurisdiction;** (2) the trial court lacks personal jurisdiction over the party; or (3) **if, in the proceedings leading up to the judgment, there is a violation of the due process guarantee of notice and an opportunity to be heard.** Tannenbaum v. Shea, 133 So. 3d 1056, 1061 (Fla. 4th DCA 2014).

VOID AB INITIO: LACK OF SUBJECT MATTER JURISDICTION AT INCEPTION

27. This judgment is void ab initio because the subject-matter jurisdiction of the 11th Circuit was not properly invoked by the manifest deficiencies of the fraudulent Complaint filed by and on behalf of (non-)parties proven to have caused the 2008 foreclosure crisis. **BAC** failed to demonstrate that it had standing to foreclose and the Complaint failed to state a cause of action by the filing of fraudulent both in substance and in style, "Assignments of mortgage...together with the note" from MERS who could not legally assign anything to anyone. There is no valid judgment entered by a court of competent jurisdiction, thus, all the proceedings, the orders are void and a nullity.

28. These flaws were obvious from the pleadings and the Courts should have dismissed the Complaint sua sponte, or at a minimum, when the matter was raised it would have been proper to vacate the final judgment and dismiss the Complaint.

VOID FOR LACK OF JURISDICTION: ORDERS OBTAINED BY NON-PARTIES

29. The proper procedure for substituting parties in the case of a transfer of a party's interest pending litigation is outlined in Rule 1.260 (c), F. R. Civ. P., which provides: "[I]n case of any transfer of interest, the action may be continued by or against the original party, unless the court **upon motion** directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. Service of the motion shall be made as provided in subdivision (a) of this rule", which states: "The motion for substitution may be made by any party or by successors or representatives of the deceased party **and, together with the notice of hearing, shall be served on all parties as provided in rule 1.080** and upon persons not parties in the manner provided for the service of a summons." (Emphasis added).

30. In Barker v. Jackson Nat. Life Ins. Co., 163 F.R.D. 364 (M.D. Florida 1995), the Court held:

"Regardless of whether transfer of interest during pendency of action results in order for substitution of parties, the respective substantive rights of transferor or transferee are not affected...Under rule concerning real parties in interest, **whenever transfer of interest is made solely for purpose of convenience or legal tactics, court may ignore transfer so that transferor remains real party in interest**...Disposition of motion

under rule concerning substitution of parties is committed to sound judgment of trial court, **which may order that original party continue action alone,** that transferee be substituted for original party, or that transferee be joined as additional party...Substitution of parties is never mandatory since even if not named, successors in interest are always bound by judgment.").

31. BANA is not a party to the case because Plaintiff did not attach a proposed amended complaint to the **ex-parte** (thus, no Notice of Hearing or Hearing set as required by Rule 1.260 (c)) Motion to Amend and Substitute Party Plaintiff by merger [R. 208-221] as required by **Rule 1.260(c)** and never filed an amended complaint afterward [R. passim] as required by **Rule 1.190(a)**. there was no service as required by See, Varnedore v. Copeland, 210 So.3d 741 (Fla. 5th DCA 2017). Failure to comply with the motion procedure in Rule 1.190(a) cannot be excused on appeal under the harmless doctrine. Diaz v. First Capital Corp., 771 So.2d 598 (Fla. 3d DCA 2000). When a party does not comply with the requirements of rule 1.260, this means that the substituting party was never properly substituted. See Taylor, Bean & Whitaker Mortgage Company v. wright, 253 So. 3d 72, 73-74 (Fla. 1st DCA 2018).

32. The proper procedure for substituting parties in the case of a transfer of a party's interest pending litigation is outlined in Rule 1.260 (c), F. R. Civ. P., which provides:

"[I]n case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. Service of the motion shall be made as provided in subdivision (a) of this rule", which states: "The motion for substitution may be

made by any party or by successors or representatives of the deceased party **and, together with the notice of hearing**, shall be **served on all parties as provided in rule 1.080** and upon persons not parties in the manner provided for the service of a summons."

33. Though BANA was granted to be substituted as party Plaintiff by merger, they never filed an Amended Complaint. Thus, the original Complaint with its fraudulent attachments remained the operative Complaint. **BANA** cannot exceed whatever assets, rights, standing of **BAC** it has acquired by merger pending litigation and is legally only entitled to step into the shoes of **BAC**. Since **BAC** did not have any standing, **BANA, as successor in interest Plaintiff**, did not inherit any standing from **BAC** and could not legally foreclose on the property. Plaintiff never even attempted to show that BAC had any standing, which it was required to do, as held by numerous court cases.

34. The court below granted relief to **Albertelli Law** and **Fannie Mae**, 2 non-parties in the underlying foreclosure action, not properly before the Court and not entitled to relief because they were never made parties nor did they file a motion to intervene, **Rule 1.230**, F. R. Civ. P. [R. 921-929; 945-946; 991-1005; 1826-1827; 2432-2442]. Fannie Mae and Albertelli could not have been made party to the case nor could they have been allowed to intervene in the case. Florida courts have consistently found purchasers pendente lite lack any interest in foreclosure and may not intervene. See Peninsular Naval Stores co, v, Cox, 49 So. 191,

195 (Fla. 1909); Andresix Corp. v. Peoples Downtown Nat'l Bank, 419 So.2d 1107, 1107 (Fla. 3d DCA 1982). Fannie Mae and Albertelli are also defaulted parties in the Amended Severed Compulsory Counterclaim because there are still Motions for Default pending against them for failure to serve any responsive papers [R. 1826-1827; 1902-1911; 2525-2535; 2885-2886]. Further, Fannie Mae and BANA have refused to grant any discovery as to their proper legal involvement in this case, despite orders compelling such [R. 694-712; 713-746; 747-777] with the acquiescence of the courts [R. 642-671; 870-876; 1006-1038] to the extent that even the Motion to Add Fannie Mae and MERS as Indispensable Party-Plaintiffs was denied [R. 921-929; 945-946; 991-1005].

35. Therefore, the Honorable Judge Alan Fine did not have jurisdiction to grant the "Orders" to non-parties Albertelli and Fannie Mae [R. 3504-3533]. As such, any relief based upon these entities' pleadings and documents are void and forever subject to collateral attack because they were entered without jurisdiction. Herbits v. City of Miami, 197 So.3d 575, 578 (Fla. 3d DCA 2016) ("Any order entered by the trial court without jurisdiction is null and void.") The "Orders" are void, must be vacated.

VOID FOR FAILURE TO SERVE NOTICE, MOTIONS AND ORDERS

36. The "Orders" granted by Judge Fine are also void because Defendant was not served with copy of the ex-parte Motions, received no notice of hearing and none was held, was not served

with copies of the entered orders and thus, was denied due process. Courtney v. Catalina, Ltd., 130 So.3d 739, 740 (Fla. 3d DCA 2014); Shields v. Flinn, 528 So.2d 967 (Fla. 3d DCA 1988); Cam-La, Inc. v. Fixel, 632 So.2d 1067 (Fla. 3d DCA 1994). F. R. Civ. P., Rule 1.080(a) requires "all orders" issued by a trial court be "served in conformity with the requirements of F. R. Jud. Admin. 2.516,".

37. The same above principles apply to the Orders granted to Albertelli by Judge Ruiz while the appeal 3D17-2714 was still pending [R. 2988-2994; 3001; 3002-3016; 3022-3023] and to the dismissal with prejudice of the Amended Severed Compulsory Counterclaim as to all Parties and to all Defendants [R. 3484-3491]. Judge Ruiz granted relief beyond the scope of the pleadings to include parties that never made an appearance in the case, and were not properly in front of the Court due to motions for default previously filed and pending against them. [R. 3484-3491]

VIOLATIONS OF DUE PROCESS RIGHTS

38. The core of the required elements of due process is (1) notice (Mullane v. Central Hanover Trust Co., 339 U.S. 306, 314 (1950)) and (2) a hearing (Fuentes v. Shevin, 407 U.S. 67, 80-81 (1972); Armstrong v. Manzo, 380 U.S. 545, 550(1965); Mathews v. Eldridge, 424 U.S. 319, 333 (1976); Keys Citizens for Responsible Gov't, Inc., v. Fla. Keys Aqueduct Auth., 795 So.2d 940, 948 (Fla. 2001)) before (3) an impartial tribunal (Marshall v. Jerrico, 446 U.S. 238, 242 (1980)), an opportunity for (4) confrontation and

cross-examination (Goldberg v. Kelly, 397 U.S. 254, 269 (1970); Greene v. McElroy, 360 U.S. 474, 296-97 (1959), for (5) discovery; that a (6) decision be made based on the record, and that a party be allowed to be represented by (7) counsel.

39. Fraud was specifically articulated in United States v. Throckmorton, 98 U.S. 61, 65-66, 25 L. Ed. 93 (1878), in which the United States Supreme Court said:

"Where the unsuccessful party has been prevented from exhibiting fully his case, by fraud, or deception practiced on him by his opponent ... these and similar cases which show that there has never been a real contest in the trial or hearing of the case, are reasons for which a new suit may be sustained to set aside and annul the former judgment or decree, and open the case for a new and fair hearing". (Citations omitted.)

40. Here, counsels continued to commit fraud upon the Court by demanding that that the Court disregard Appellant's "Statement of Facts and Procedural History" and to rely on nothing more than counsel's own unsworn testimony and assertions that are patently against the facts of the case as established by the dockets and the records, engaging in outright lies that have prevented the Courts from adjudicating the issues on their merits, in violation of Rules 4-4.1, 4-3.1, 4-3.3, 4-3.4, 4-8.4, the National Servicing Guidelines, as well as the various Consent Orders entered into by Bank of America, MERS, Countrywide, Fannie Mae, mandating disclosure to borrowers and their attorneys if there had been fraudulent documents filed in foreclosure cases, among others. United States v. Throckmorton, supra.

VIOLATION OF FUNDAMENTAL AND CONSTITUTIONAL RIGHT TO A TIMELY REQUESTED JURY TRIAL ON COMPULSORY COUNTERCLAIM

41. Art. I, Sect. 22 of the Florida Constitution expressly provides that the right of trial by jury shall be secure to all and remain inviolate. Similarly, Amend. VII of the U.S. Const. provides: "the right of trial by jury shall be preserved" Rule 1.430, F. R. C. P. also provides that "The right of trial by jury as declared by the Constitution or by statute shall be preserved to the parties inviolate." F.S.A. 65.061(1). Violation of Rule 1.170(a), 1.270(b): improper severance of compulsory counterclaim.

42. In Adams v. Citizens Bank of Brevard, 248 So.2d 682, 684 (Fla. 4th DCA 1971), the Court held:

"But where the compulsory counterclaim entitles the counterclaimant (upon timely demand) to a jury trial on issues which are sufficiently similar or related to the issues made by the equitable claim that a determination by the first fact finder would necessarily bind the latter one, such issues may not be tried non-jury by the court since to do so would deprive the counter-claimant of his constitutional right to trial by jury"

43. In Spring v. Ronel Refining, Inc., 421 So.2d 46 (Fla. 3d DCA 1982), the Court held:

"In setting the cause for a nonjury trial, the trial court departed from the essential requirements of law ... In the present case, the denial of the right to jury trial is more than the denial of a constitutional right, it is the denial of a fundamental right recognized prior to the adoption of a written constitution", regarding "the order of procedure to be followed by the trial court when a civil action is filed seeking relief historically cognizable only in a court of equity, and the answer contains a compulsory counterclaim legal in nature for which the defendant is entitled to and demands trial by jury".

44. See also, Cerrito v. Kovitch, 457 So.2d 1021 (1984):

"The right to a jury trial, in the absence of specific statutory authorization, depends upon whether the nature of the cause of action is legal or equitable. However, where both legal and equitable issues are presented in a single case, **"only under the most imperative circumstances ... can the right to a jury trial of legal issues be lost through prior determination of equitable claims."** Beacon Theatres, Inc. v. Westover, 359 U.S. 500, 510-11, 79 S. Ct. 948 956, 957, 3 L. Ed. 2d 988 (1959). In such cases the jury trial must be accorded to the person requesting it even though the legal issues are incidental to the equitable issues. Dairy Queen, Inc. v. Wood, 369 U.S. 469, 82 S. Ct. 894, 8 L. Ed. 2d 44 (1962)"

45. See, Paramount Engineering Group, Inc. v. Oakland Lakes, Ltd., 685 So. 2d 11 (Fla. 4th DCA 1996):

"Denial of jury trial would improperly force firm to choose between pursuing counterclaim at equity and waiving its constitutional right to jury trial, or arguing its position as affirmative defense to foreclosure of lien which would bar its counterclaim under doctrine of collateral estoppels."

46. See, Norris v. Paps, 615 So.2d 735 (Fla. 2d DCA 1993):

"By severing fraud counterclaim in mortgage foreclosure proceeding, trial court either erroneously determined factual issues of fraud without evidence and without a jury, or erroneously entered judgment for mortgagee before it resolved affirmative defense of fraud. Either option would be error."

47. Here, against Appellant's preserved objections, Judge Gillman violated Defendant's constitutional rights by denying his motions for continuance [R. 1079-1085; 1125] and by severing [R. 1126] the Defendant's compulsory counterclaims based on fraud and to quiet title in order to enter a final judgment of foreclosure for the Plaintiff [T4. 15-18; T5. 109-124]; [R. 3301-3483]. Appellant's arguments as to the denial of a timely requested jury-

trial on the compulsory counterclaim is further laid out in his 8/8/17 "Answer in Opposition to Motion to Dismiss" [R. 2589-2668].

48. Therefore, the violation of Appellant's fundamental and constitutional right to a timely requested jury trial on his compulsory counterclaim render these proceedings void ab initio.

DISMISSAL OF THE AMENDED COMPULSORY COUNTERCLAIM WITH PREJUDICE

49. Here, by Judge Ruiz's and Appellees' own admissions, **"the counterclaims were severed because they were not addressed in the foreclosure trial"** and Judge Ruiz erred when he entered the "Order dismissing with prejudice as to all parties and to all defendants" [R. 3484-3491] Appellant's **Amended Severed Compulsory Counterclaim** because the jurisdiction of the 11th Circuit was not properly invoked by the filing with the Complaint of 2 fraudulent, both in substance and in style, "Assignments of mortgage ... together with the note", thus rendering all ensuing proceedings void ab initio; there is no valid judgment entered by a court of competent jurisdiction; Judge Ruiz did not have jurisdiction to issue the "Order" for due process violation; counsels did not even try to establish that the doctrines apply; there is no identity of parties, of issues, of cause of action. Albertelli Law and Fannie Mae are note properly before the Court and not entitled to relief. Appellant's arguments are further expanded in the appeal of the Order in **CASE 3D19-685**. Thus, **Appellant was denied his due process**

rights to a judgment on the record by all involved. The "Order" was improperly issued and must be reversed, quashed.

50. It is axiomatic that [a] **fair trial tribunal** is a basic requirement of due process." Caperton v. A.T. Massey Coal Co., 556 U.S. 868, 876, 129 S. Ct. 2252, 2259, 173 L. Ed. 2d 1208 (2009). Because fraud on the courts pollutes the process society relies on for dispute resolution, subsequent courts reason that "a decision produced by fraud on the courts 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, 13L. 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.

51. In the case, Trump v. Vance, No. 19-635, the Supreme Court reaffirmed "**In our system of government, as this court has often stated, no one is above the law. That principle applies, of course, to a president.**" Yet, the 3rd DCA has done away with any pretense, semblance or veneer and elevated the judiciary above the U.S. and the Fla. Constitutions from which the Judge derives his power in explicitly expanding the doctrine of "**Absolute Judicial Immunity for judicial acts not taken in the clear absence of jurisdiction**" into "**Blanket Judicial Immunity**" and to affirm that any judge is afforded judicial immunity by

"The blanket law, the blanket law that says that claims against any judge are completely, 100 percent barred by absolute judicial immunity. As long as any judge is acting in their judicial capacity, making whatever ruling, whether or not that ruling is something you agree with, or whether the ruling is completely legally wrong, there is absolute judicial immunity. So, tell me why I should disregard that law and not grant this motion ... The law in Florida is that judicial acts are entitled to absolute 100 percent judicial immunity."

52. When judges do not follow the law, they are trespassers of the law, they lose subject-matter jurisdiction (if they had any) and their orders are void, of no legal force or effect. The U.S. Supreme Court held in Scheuer v. Rhodes, 416 U.S. 232, 94 S. Ct. 1683, 1687 (1974):

"When a state officer acts under a state law in a manner violative of the Federal Constitution, he comes into conflict with the superior authority of that Constitution, and he is in that stripped of his official or representative character and is subjected in his person to the consequences of his individual conduct. The State has no power to impart him any immunity from responsibility to the supreme authority of the United States."

53. That same mind set of the judiciary being above the law is also seen in paragraph 12 of the Order dismissing with prejudice the Appellant's improperly severed Amended Compulsory Counterclaim with jury trial timely requested where Judge Ruiz condones this Taking of Appellant's property and states:

"Additionally, Gaspard named the law firm Liebler, Gonzalez & Portuondo, its attorneys Mary J. Walter, J. Randolph Liebler, Ariel Acevedo, Bernardo Portuondo, and Juan Gonzalez, as well as the law firm Albertelli Law. The Amended Counterclaim must be dismissed against the Counsel Defendants because their actions were directly connected with the litigation of this matter.

'[A]bsolute immunity is properly afforded to any act occurring during the course of a judicial proceeding." Echevarria,

McCalla, Raymer, Barrett & Frappier v. Cole, 950 So. 2d 380, 383 (Fla. 2007)." (Emphasis added).

54. Yet, in Echevarria, supra, Wells, J., concurring in part and dissenting in part, stated:

"But when communications are separate from pending litigation and are not necessary in order to pursue future litigation, tort victims do not have the benefit of these judicial safeguards. Therefore, the litigation privilege should not be structured so as to deprive those who are intended to have the protection of law in respect to the communications from having that protection. Recipients of misleading or fraudulent reinstatement letters must be able to enforce Florida's Consumer Collection Practices Act (FCCPA) and deceptive and Unfair Trade Practices Act (FDUTPA), the statutory bases of the causes of the causes of action pleaded in Echevarria, for relief. To not allow such enforcement would be an unintended and unstated consequence of the litigation privilege."

55. In Fisher v. Debrincat, 169 So.3d 1204 (Fla. 4th DCA 2015), the Fla. Supreme Court did an in-depth analysis of the litigation privilege doctrine encompassing Echvarria, Levin, and held:

"The Florida Supreme Court has long recognized the viability of a cause of action for malicious prosecution...the litigation privilege does not bar a malicious prosecution action...the essence of the tort of malicious prosecution action is the misuse of the legal machinery for an improper purpose...A wrongful act giving rise to a claim for malicious prosecution is committed when the tortfeasor acting with malice and without probable cause, engages in conduct causing the commencement or continuation of a judicial proceeding against the plaintiff...The litigation privilege cannot be applied to bar the filing of a claim for malicious prosecution where the elements of that tort are satisfied."

VIOLATION OF CONSTITUTIONAL RIGHT OF ACCESS TO THE COURTS

56. Article 1, Section 21 of the Florida Constitution provides: "The Courts shall be open to every person for redress of

any injury, and justice shall be administered without sale, denial or delay." Not only had Judge Gordo decided not to revisit Judge Eig's previous rulings regardless of the amount of new evidence submitted in violation of Rule 2.215(f) and of the Defendant's fundamental and constitutional due process rights, Judge Gordo went even further by refusing to rule on 13 separate motions submitted since December 2016 and six (6) separate "Motions for Administrative Clerk Defaults against the named counter-Defendants for failure to file any responsive papers [App. 81, par 53-59]. That decision negatively impacted the Defendant's ability to mount any defense against Plaintiff's manipulations of the record, against their claim of law of the case, res judicata, etc. Appellant also sought the intervention of other judicial authorities to resolve his dire situation as time was running out for redemption of the property. [See writ of Mandamus [App. 82-83], writs of Prohibition, letters to and from Judge Soto [App. 77-78]; to and from Judge Bailey [App. 75-76]. As a result of Defendant's attempts to obtain evidentiary hearings and rulings, Judge Gordo issued an "Order to Show Cause" [R. 2928-2931], leading to the 11/15/2017 preclusion Order [R. 2963-2965].

VIOLATION OF TAKINGS AND DUE PROCESS CLAUSES

57. The Fifth Amendment has two property clauses: The Taking Clause protects owners from having their property "taken for public use" without "just compensation" and the Due Process Clause

protects them against "being deprived ... of property without due process of law." The Fourteenth Amendment, Section 1, of the U. S. Const. provides: "nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

58. In Stop the Beach Renourishment v. Florida Department of Environmental Protection, 130 S. Ct. 2592 (2010), a plurality of the Court embraced the doctrine of "judicial takings" and concluded that the Takings Clause of the United States Constitution protects property owners against takings effectuated by the judiciary in the same way that it protects them against takings perpetrated by legislatives or executives. In the plurality's view, "it would be absurd to allow a State to do by judicial decree what the Takings Clause forbids it to do by legislative fiat...if a legislature or a court declares what was once an established right of private property no longer exists, it has taken the property, no less than if the State had physically appropriated it or destroyed its value by regulation." *Id.* at 2601-2602. See also, Hill v. Suwanee River Water Management District, 217 So.3d 1100 (2017).

59. Here, the Florida judiciary has evidently declared that it has jurisdiction to effectuate the constitutionally prohibited "Taking without due process and without just compensation" of a pro se black disabled senior citizen's homestead property, for no legitimate public purpose but on the behalf of and for the benefit

of a still unidentified private real party in interest, by means of the same type of fraudulent and vexatious foreclosure action initiated by and through the same "plaintiffs", where the pro se black disabled senior citizen was judicially precluded from asserting his fundamental, legal and constitutional rights to due process; access to the courts; property rights; right to a timely requested trial by jury on his compulsory counterclaim; right to set off, recoupment or redemption; to equal protection under the law, and where the judiciary under the color of law and authority allowed plaintiffs to commit fraud upon the court with impunity. Appellant's arguments about the Taking of his homestead property are further expanded in the **Case 3D20-14.**

60. The Fourteenth Amendment provides: "nor shall any state deprive any person of life, liberty, or property, without due process of law". Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 313 (1950)). As a result, state actors must provide a party with notice and an opportunity to be heard prior to taking any action that will affect that party's property interests. Tulsa Prof'l Collection Servs., Inc. v. Pope, 485 U.S. 478, 484-85 (1988)

61. The U.S Supreme Court has "consistently held that some form of hearing is required before an individual is finally deprived of a property interest" by government action and that the "opportunity to be heard at a meaningful time and in a meaningful manner" is indispensable. Mathews v. Eldridge, 424 U.S 319, 333

(1976). Due process requires procedures designed to minimize substantively unfair or mistaken deprivations of property, a danger that is especially great when the State seizes goods simply upon the application of and for the benefit of a private party." Fuentes v. Shevin, 407 U.S. 67, 81 (1972)

62. Morrissey v. Brewer, 408 U.S. 471, 481 (1972) ("[D]ue process is flexible and calls for such procedural protections as the particular situation demands."); Hofer, 5 So.3d at 771 (same): The "particular factual situation" defining the requirements of due process in the foreclosure context includes pervasive error, disarray, and fraud in the foreclosure system. Considered against that backdrop, Petitioner's ability to meaningfully defend his home depends on his ability to test the factual evidence arrayed against him in a manner that is "meaningful, full and fair, and not merely colorable or illusive" (Hofer, 5 So.3d at 771), from his ability to obtain discovery to his opportunity to present his legal arguments before the case is disposed of via trial.

63. An unacceptable risk of error exists where challenged procedures allow decisions based on "one-sided, self-serving and conclusory submissions." Doehr, 501 U.S. at 14. When a decision implicating the continued enjoyment of property rights involves even "moderately complex issues," the property owner must have a meaningful opportunity to contest the moving party's facts. Massey, 842 So.2d at 147. Otherwise, there is "a serious risk of

an erroneous deprivation." Id. This requirement cannot be short-circuited on the basis of an across-the-board judgment that foreclosure cases are "easy" or straightforward.

64. In adjudicating a creditor-debtor dispute implicating property rights, it is the meaningfulness of the procedural forum that counts, not the fact that a particular litigant may have, in fact, defaulted on a debt. Fuentes, 407 U.S at 87 ("But even assuming that the appellants had fallen behind in their installment payments and that they had no other valid defenses that is immaterial here. The right to be heard does not depend on an advance showing that one will surely prevail at the hearing.")

65. Resolving a foreclosure case requires more than merely "determining the existence of a debt or delinquent payment." Connecticut v. Doehr, 501 U.S. 1, 14 (1991). Technical and potentially complex issues arising from mortgage securitization often make it difficult to determine the threshold question of whether a plaintiff has standing to prosecute a foreclosure case. For example, in situations where an affidavit purporting to document conveyance of a note is undercut by deposition testimony, courts must make credibility determinations or otherwise resolve conflicting factual allegations. Similarly, in many cases, homeowners point to evidence that the documents underlying a foreclosure are fraudulent, or that the signature purporting to verify the allegations in a complaint is faulty. And affirmative

defenses available to a homeowner will in some instances require a court to examine the ongoing relationships between homeowner, lender, investor, note holder, note owner, and servicer.

THE DUE PROCESS TEST

66. The Court has established what is essentially a two-tiered analysis for due process challenges to conduct which, like the one in this case, involves property rather than liberty interests. The first "tier" involves a two-fold inquiry: (1) an examination of whether there has been a significant deprivation or threat of a deprivation of a property right, *see Fuentes v. Shevin*, 407 U.S. 67 (1972), and (2) an examination of whether there is sufficient state involvement of that deprivation to trigger the Due Process Clause, *see Lugar v. Edmondson Oil Co.*, 457 U.S. 922 (1982); *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345 (1974).

67. If there is state action, and if that action amounts to the deprivation or threat of a deprivation of a cognizable property interest, the Court proceeds to the second "tier" to then determine what procedural safeguards are required to protect that interest. *Connecticut v. Doehr*, 501 U.S. 1 (1991). The Court traditionally uses the three-factor test first discussed in Mathews v. Eldridge, 424 U.S. 319 (1976), to assess what safeguards are necessary to pass muster under the Due Process Clauses of the Fifth and Fourteenth Amendments. The *Mathews* analysis weighs (1) "the private interest that will be affected by the official action";

(2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." 424 U.S. at 335; Doehr, 501 U.S. at 26-28.

A. The Significance of the Deprivation

68. There can be no serious question that Petitioner satisfied the first-tier requirement. The Court has been a steadfast guardian of due process rights when what is at stake is a person's right "to maintain control over [her] home" because loss of one's home is "a far greater deprivation than the loss of furniture." United States v. James Daniel Good Real Property, 510 U.S. 43, 53-54 (1993).

B. State Action

69. The Court has set out two elements that must be met in order to establish state action under the Fourteenth Amendment: "First, the deprivation must be caused by the exercise of some right or privilege created by the State. Second, the party charged with the deprivation must be a person who may fairly be said to be a state actor." Lugar v. Edmondson Oil Co., 457 U.S. 922, 937 (1982).

70. Appellant also satisfied the second tier since Florida has required that mortgage foreclosure actions be supervised by

the judiciary for 190 years. See Daniels v. Henderson, 5 Fla. 452 (1854) (construing Fla. Acts of 1824). At the time of this Complaint, foreclosures in Florida were regulated by Fla. R. Civ. P. 1.110(b), which requires verification of foreclosure complaints. See, In re Amends to the Fla. R. Civ. P., 51 So.3d 1140 (Fla. 2010).

C. The *Mathews* Test

1. The private interest

71. The "private interest" prong of the *Mathews* test weighs heavily in Appellant's favor. As Daniel Good again underscores, Appellant had an enormous interest in retaining his home.

2. The Risk of Erroneous Deprivation

72. The risk of an erroneous deprivation when the decision rests on fraudulent evidence manufactured by the opposing party should be self-evident. "Using false or fraudulent evidence "involve[s] a corruption of the truth-seeking function of the trial process." United States v. Agurs, 427 U.S. 97, 107 (1976); 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).

3. The governmental interest

73. Requiring plaintiffs in foreclosure actions to prove legal ownership of the underlying note and mortgage would not create an extra administrative burden. It is a burden that is basic to all civil litigation - standing to sue. *See* Warth v. Seldin, 422 U.S. 490, 498 (1975) (standing "is [a] threshold question in every federal case, determining the power of the court to entertain the suit"); See, CPT Asset Backed Certificates, Series 2004-EC1 v. Kham, 278 P.3d 586, 591 (Okla. 2012) ("Because the note is a negotiable instrument, it is subject to the requirements of the UCC. Thus, a foreclosing entity has the burden of proving it is a 'person entitled to enforce the instrument.'").

THE NEED FOR SUPREME COURT INTERVENTION

74. By denying access to the court and by violating the Petitioner due process rights, the Courts have decided that Petitioner has no right to legally defend his homestead property from being taken via a fraudulent foreclosure action. The courts are no longer regulating or creating a private scheme for lenders; it has taken overt official action to protect lenders, trustees, Fannie Mae, BANA, MERS and the Law firms from the legal consequences of their negligent, or even intentional fraud that is abundantly evidenced.

75. If this Court does not grant Certiorari Writ in this case, corruption of foreclosure proceedings in Florida will

effectively continue to be immune from challenge. By refusing to issue an opinion, the Third DCA insulated its views from challenge in the Florida Supreme Court despite the fact its holding is irreconcilable with many of its sister courts, the Florida and the US Supreme Courts.

76. Federal court review, in turn, is limited by the Rooker-Feldman doctrine, which deprives "lower federal courts" of "subject matter jurisdiction" to review state court decisions on foreclosure matters, even as to due process/fraud claims similar to Petitioner's. See, Warriner v. Fink, 307 F.2d 933 (5th Cir. 1962); Pennington v. Equifirst Corp., No. 10-1344-RDR, 2011 U.S. Dist. LEXIS 9226 (D. Kan. Jan. 31, 2011). Review of the Third DCA and of the lower court's conduct, therefore, can only be accomplished by this Court through a Petition such as this one.

CONCLUSION

This case involves the widespread use of fraudulent documents in the constitutionally prohibited taking of homeowners' property in foreclosure proceedings across the nation. The implications of such conduct on the Due Process rights of borrowers in Florida, however, will likely evade review unless this Court acts. Review and reversal of the decision below is warranted. The Petition for a Writ of Certiorari should be granted.

Respectfully submitted