No. 17-_____

In the Supreme Court of the United States

JOE O. RODRIGUEZ, JR.,

Petitioner,

—v—

BANK OF AMERICA, N.A.,
as Successor by Merger to BAC Home Loans;
RECONTRUST COMPANY, N.A.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

JOE O. RODRIGUEZ JR.
PETITIONER PRO SE
13730 F.M. 620 N. APT. 810
AUSTIN, TX 78717
(512) 905-7477
JOEYRODRIGUEZ5@YAHOO.COM

JANUARY 12, 2018

SUPREME COURT PRESS ♦ (888) 958-5705 ♦ BOSTON, MASSACHUSETTS

QUESTIONS PRESENTED

Petitioner, Joe O. Rodriguez purchased a property and executed a mortgage secured with a deed of trust and promissory note granting Countrywide Home Loans, Inc. a lien on the real property. The trial court ruled that Rodriguez defaulted on the promissory note to Bank of America N.A., as the purported lien holder and owner, this despite newly discovered evidence that was intentionally withheld by Respondents reflecting that Bank of America's mortgage servicer fraudulently concealed a notice of assignment of deed of trust, showing that the Government National Mortgage Association ("GNMA") had breached the deed of trust rendering it null and void. GNMA failed its Texas statutory duty to record its interest the Assignment of Deed of Trust in the county records. The new material evidence exposed that Bank of America's Corporation Assignment of Deed of Trust/Mortgage was in fact a fraudulent transfer to Bank of America N.A. from Countrywide Home Loans, Inc. The evidence also proved Bank of America N.A. did not have a personal interest in the title, mortgage or property to have foreclosed on Rodriguez's property pursuant to Texas statute. Thus, Respondents lacked Article III, constitutional standing to have invoked federal court subject matter jurisdiction, and thus, lacked the capacity to countersue Rodriguez, or to have received a final judgment from the District Court as a matter of law.

The questions presented are:

1. Whether the inferior courts decisions abridged Appellant's privilege and immunity as a citizen of the United States by dismissing his Rule 60(b)(4) lack of jurisdiction claim and newly discovered evidence by

enforcing Appellees' Rule 60(c)(1) counter claim before the federal court could first examine its federal subject matter jurisdiction as required under Article III, and if so, did it violate rights guaranteed to Appellant by the Fourteenth Amendment, by denying him equal protection of the law, and depriving Appellant of his property without proper due process of law?

2. Whether Appellees making a federal counter claim must show that it suffered an actual and personal injury-in-fact that is fairly traceable to Appellant's misconduct as the "minimum" requirement under Article III of the Constitution,[1] and if so, does Appellees' alleged injury-in-fact fall within the constitutional requisites to invoke the federal court's subject matter jurisdiction to maintain their counter suit as a matter of law?

---

[1] *See Lujan v. Defenders of Wildlife*, 504 U.S. 555—Supreme Court 1992.

PARTIES TO THE PROCEEDINGS

Petitioner, Joe O. Rodriguez Jr., pro-se litigant is the plaintiff, appellant, and the borrower in the proceedings below.

The Respondents, Bank of America, N.A., as Successor by Merger to BAC Home Loan; and ReconTrust Company, N.A., a subsidiary company are the defendants and appellees in the proceedings below.

TABLE OF CONTENTS

TABLE OF CONTENTS – Continued

Page

APPENDIX TABLE OF CONTENTS

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

CONSTITUTIONAL PROVISIONS

FEDERAL STATUES

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

OPINIONS BELOW

The Fifth Circuit Court's opinion issued on July 20, 2017, is attached as App.1a, and the Fifth Circuit Court's judgment issued on February 4, 2015, is attached at App.4a. The District Court's order denying Appellant's Motion for Reconsideration issued on January 22, 2016, is attached at App.12a. The District Court's order issued on January 4, 2016, is attached at App.7a, and the District Court's final judgment issued on January 28, 2014, is attached at App.6a.

JURISDICTION

On July 20, 2017, the Court of Appeals for the Fifth Circuit issued an order denying Petitioner's Petition for an appeal, and on August 10, 2017, the Court took no action on Petitioner's Petition for rehearing *en banc* rejecting Petitioner's lack of jurisdiction claim and a claim of fraud, misrepresentation, and misconduct by opposing party which constituted fraud on the court, and thus, violating Petitioner's Fourteenth Amendment rights. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS

- **U.S. Const. amend. XIV, § 1**

  All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws.

- **U.S. Const. Art. III, § 1**

  The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

- **U.S. Const. Art. III, § 2**

  The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;-to all cases affecting ambassadors, other public ministers and

> consuls; to all cases of admiralty and maritime jurisdiction;-to controversies to which the United States shall be a party;-to controversies between two or more states;-between a state and citizens of another state;-between citizens of different states; between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.
>
> In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.
>
> The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the Congress may by law have directed.

In addition to overall protections of the United States Constitutional of Article III, and Fourteenth Amendment, this case involves the following Constitutional Amendments.

INTRODUCTION

This is a request that the Supreme Court order a lower court to send up the record of the case for review. Appellant realizes the Court usually is not under any obligation to hear these cases, and it usually only does so if the case could have public interest, harmonize conflicting decisions in the federal Circuit courts, and could have precedential value. Thus Appellant provides this petition for the sole purpose to maintain public policy by harmonizing conflicting opinions in its federal Circuit Courts which makes this a matter of public interest.

The Fourteenth Amendment Section 1 prohibits any State from making or enforcing "any law which shall abridge the privileges or immunities of citizens of the United States; 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 law." *See Civil Rights Cases* 109 U.S. 3 (1883); *see also Holden v. Hardy*, 169 U.S. 366—Supreme Court 1898.

It's undisputed pursuant to this Court controlling precedents of *Civil Rights Cases* and *Holden v. Hardy*, that no State or government can make or enforce any law which shall abridges Rodriguez's privileges or immunities as citizen of the United States, nor shall any State or government be allowed to deprive Rodriguez of property without due process of law; nor deny Rodriguez the equal protection of the laws within its jurisdiction.

Neither should the inferior courts decisions be allowed to abridge Rodriguez's privileges and immunities as a citizen of the United States, nor shall the inferior courts be allowed to deny rights guaranteed to Rodriguez by the Fourteenth Amendment, by denying him equal protection of the law, depriving him of his property without proper due process of law by not accepting the usual course of judicial proceedings under Article III, to examine first, "subject-matter jurisdiction," before dismissing Rodriguez's lack of jurisdiction claim and newly discovered evidence that supports his claim depriving Rodriquez of a fair trial. This Court's controlling precedent held in *Steel Co. v. Citizens for Better Environment*, 523 U.S. 83 (1998), adhered to the rule that a federal court may not hypothesize subject matter jurisdiction for the purpose of deciding the merits. *Steel Co.* rejected a doctrine, once approved by several Courts of Appeals, which allowed federal tribunals to pretermit jurisdictional objections "where (1) the merits question is more readily resolved, and (2) the prevailing party on the merits would be the same as the prevailing party were jurisdiction denied." *Id.*, at 93. Recalling "a long and venerable line of our cases," *id.*, at 94, *Steel Co.* reiterated: "The requirement that jurisdiction be established as a threshold matter . . . is 'inflexible and without exception,'" *id.*, at 94-95 (quoting *Mansfield, C. & L. M. R. Co. v. Swan*, 111 U.S. 379, 382 (1884)); for "[j]urisdiction is power to declare the law," and "'[w]ithout jurisdiction the court cannot proceed at all in any cause,'" 523 U.S., at 94 (quoting *Ex parte McCardle*, 7 Wall. 506, 514 (1869)).

This decision by the inferior courts conflicts with federal law of Article III, and this Court's controlling precedent that holds a "court of appeal must address challenges to subject-matter jurisdiction before reaching the merits of a case. *See Del-Ray Battery Co v. Douglas Battery Co.*, 635 F.3d 725, 729 (5th Cir. 2011) (citing *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94 (1998)). The inferior courts cannot deny its constitutional obligation under Article III, by denying Rodriguez his Rule 60(b)(4) lack of jurisdiction claim without first examining its subject-matter jurisdiction, because it involves the court's power to hear a case, and jurisdiction can never be forfeited or waived. *See Arbaugh v. Y & H Corp.*, 546 U.S. 500, 506 (2006) *citing United States v. Cotton*, 535 U.S. 625, 630. This Court's controlling precedents holds that no State or government can make or enforce any law to deprive Rodriguez of liberty, or property without proper due process of law; nor deny Rodriguez equal protection of the laws protected by the Fourteenth Amendment. *See Civil Rights Cases*, 109 U.S. 3 (1883); *see also Holden v. Hardy*, 169 US 366-Supreme Court 1898.

Thus, the supervision of this Court is needed when it is apparent in the record the Fifth Circuit Court decision abridged Rodriguez's privileges and immuneties as a citizen of the United States which are protected by the Fourteenth Amendment. The Fifth Circuit Court's decision in this case has so far departed from this Court's usual course of judicial proceedings which clearly reflects the Fifth Circuit Court has decided important question of federal law in way that conflicts with relevant decisions of this Court and its sister Circuit Courts. (Supreme Court Rule 10). Thus, the supervision of this Court is needed for the sole purpose of harmonizing conflicting opinions in its Federal Circuit Courts in order to secure and maintain public policy by keeping uniformity in its federal courts which makes this a matter of public interest because it involves public safety.

STATEMENT OF THE CASE

A. Factual Background

"The material evidences is not in dispute." The events giving rise to this case began on October 21, 1998, when Appellant, Joe O. Rodriguez ("Rodriguez") purchased the property located at 1211 Washington Drive, Alice, Texas 78332 (the "Property") and executed a mortgage that was secured with a deed of trust and promissory note that granted Countrywide Home Loans, Inc. ("CHL"), a lien to the real property. On October 21, 1998, Rodriguez was given a Warranty Deed with Vendor's Lien, provides that Vendor's Lien was to be further secured but soon after GNMA breached the contract the deed of trust, and superior title remains in favor of Rodriguez the only person remaining on Warranty Deed, the only person described on the Warranty Deed having any legal interest in the title and property.

On June 11, 2011, Rodriguez attempted to pay-off the remaining balance owed on the note, a total of $13,148. Accordingly, Rodriguez requested information from Bank of America mortgage servicer, ("BAC mortgage servicer"), as the servicer to the loan, as to whom was the owner and holder to the title and mortgage holding the lien to the property. It was then, on June 11, 2011, Bank of America N.A. ("BAC") was claiming the role as the owner and holder to the title and mortgage the lien holder to the property secured with the deed of trust dated October 21, 1998, but BAC's mortgage servicer refused to show any material evidence exhibiting BAC was in fact the owner and holder to the title and mortgage.

For these reasons, when Rodriguez's property rights were being threaten, Rodriguez challenged BAC statutory rights as the official owner and holder to the title and mortgage to the property. On August 29, 2011, Rodriguez hired an attorney Lamar G. Clemons with English & Clemons, LLP, to request in writing from BAC to produce all copy of assignments and promissory note with proper endorsements in order to exhibit a perfection in the chain of title and mortgage to reveal if BAC was in fact the official owner and holder to the title and mortgage secured by the deed of trust and promissory note dated October 21, 1998. After, BAC refused to produce any material evidence to Lamar Clemons, Rodriguez's attorney, once again, on January 17, 2012, Rodriguez requested in writing pursuant to Real Estate Settlement Procedure Act for BAC to produce all copy of assignments and promissory note with proper endorsements in order to exhibit a perfection in chain of title and mortgage to verify if BAC had statutory authority to enforce the Note together with the deed of trust.

Approximately Nine Month Later, on May 1, 2012, Melenie Cowan, an alleged Vice President for Countrywide Home Loans, Inc. purportedly executed a unlawful Corporation Assignment of Deed of Trust/Mortgage (the "2012 Assignment") and fraudulently assigned and transferred all beneficial interest in the October

21, 1998, deed of trust and promissory note to Bank of America N.A. creating a fraudulent lien to Rodriguez's property. On May 9, 2012, the fraudulent 2012 Assignment was officially recorded as document no. 417527, in real property records of Jim Wells County of Alice, Texas. On June 5, 2012, BAC mortgage servicer unlawfully foreclosed on Rodriguez's property under the power of sale conferred by a deed of trust dated October 21, 1998, which is a NULL and VOID contract, and thus, BAC mortgage servicer were not in compliance with Texas statute pursuant to Texas Property Code § 51.002.[1] On July 16, 2012, Jim Rector, an alleged Substitute Trustee with ReconTrust Company. N.A., purportedly officially recorded a fraudulent Substitute Trustee's Deed as document no. 419098 in real property records of Jim Wells County of Alice, Texas.

On May 1, 2013, Appellant, Joe O. Rodriguez, Jr. ("Rodriguez") filed a lawsuit against Countrywide Home Loans, Inc., Bank of America N.A, and ReconTrust N.A., in District Court of the 79th Judicial District of Alice, Texas, case no. 13-05-522-36-cv, for unlawful conduct of "statutory fraud" and "common-law fraud," by slandering Rodriguez's property title by recording a fraudulent claim against the mortgage and title causing Rodriguez to be injured by creating a cloud on title with the intentions of defrauding Rodriguez of his property rights. BAC mortgage servicer misconduct of defrauding Rodriguez of all mortgage payments that he has faithfully paid on the property since the beginning of the loan violates the wrong debt collection

[1] Texas Property Code § 51.002, Sale of Real Property under Contract Lien. (a) A sale of real property under a power of sale conferred by a deed of trust or other contract lien.

practice; in violation of the Deception Trade Practices Act; and other statutes which includes Truth in Lending Act (TILA), Real Estate Settlement Procedures Act (RESPA), and Texas Recording Act, and among other several state and federal statutes.

On May 15, 2013, Appellees' attorney, Jeffrey R. Seewald, for McGlinchey Stafford PPLC, without Article III, constitutional standing and thus without federal court subject matter jurisdiction removed Rodriguez's lawsuit from the District Court of the 79th Judicial District of Alice, Texas, having the venue transferred to the United States District Court for the Southern District of Texas, case no. 2:13-cv-133, based on an alleged federal question and diversity jurisdiction under 28 U.S.C. §§ 1331 and 1332.

On January 28, 2014, district court entered a summary judgment against Rodriguez, (App.6a) and on January 31, 2014, Rodriguez timely filed his notice of appeal to Fifth Circuit Court, case no. 14-40096, and after being denied, and during the pendency of the appeal to the United State Supreme Court, Mr. Rodriguez on March 4, 2015, learned of the existence of a unrecorded assignment of deed of trust dated October 21, 1998, by one of BAC's attorney, Mr. La Breche, who responded to Rodriguez's complaint to the Consumer Financial Protection Bureau, case no. 150202-001915. And after being denied in the United State Supreme Court for lack of jurisdiction, and because Rodriguez was deprived of a fair and full trial for the reason that BAC's mortgage servicer failed its statutory duty pursuant to Real Estate Settlement Procedure Act, to produce all assignment including the 1998 Assignment in response to Rodriguez, and his attorney written requests which prevented Rodriguez from fully and fairly presenting his case and defense.

The newly discover evidence the 1998 Assignment that was intentionally withheld or fraudulent concealed by Appellees during trial and after final judgment clearly exhibits on October 21, 1998, Countrywide Home Loan, Assistant Secretary Annias D. Smith had already assigned, transferred, and delivered all beneficial interests in the deed of trust and promissory note to Government National Mortgage Association ("GNMA") the lien to Rodriguez's property. The newly discovered evidence also revealed GNMA failed its Texas statutory duty to officially record its beneficial interest in the deed of trust by not recording the 1998 Assignment pursuant to Texas recording and conveying statutes of Texas Property Code § 13.001[2] also known as the Recording Act, and Texas Local Government Code § 192.007,[3] thus, breaching the agreement of the contract, covenant number fourteen of the deed of trust which prohibits violations of Federal law and the law of the jurisdiction in which the Property is located,

---

[2] Texas Property Code § 13.001, Validity of Unrecorded Instrument (a) A conveyance of real property or an interest in real property or a mortgage or deed of trust is void as to a creditor or to a subsequent purchaser for a valuable consideration without notice unless the instrument has been acknowledged, sworn to, or proved and filed for record as required by law.

[3] Texas Local Government Code § 192.007, Records of Releases and Other Actions (a) To release, transfer, assign, or take another action relating to an instrument that is filed, registered, or recorded in the office of the county clerk, <u>a person must file</u>, register, or record another instrument relating to the action in the same manner as the original instrument was required to be filed, registered, or recorded.

and thus, rendering the deed of trust as a NULL and VOID contract. The 1998 Assignment also established a broken chain in the title and mortgage to the property, and thus, exhibiting Melenie Cowen misconduct by misrepresenting her role as an alleged Vice President for CHL, who misrepresented CHL role as a grantor for the intentions to execute a unlawful Corporation Assignment of deed of trust/mortgage on May 01, 2012, for the sole purpose to defraud Rodriguez of his property rights by unlawfully assigning, and transferring a fraudulent interest to Bank of America N.A., under a NULL and VOID deed of trust together with the note creating a fraudulent lien against Rodriguez's property. The 1998 Assignment also exhibits BAC's mortgage servicer lacked Texas statutory authority to have to foreclosed on the Rodriguez's property on June 5, 2012, under the power of sale conferred by the deed of trust pursuant to Texas Property Code § 51.002.

In addition, the undisputed 1998 Assignment clearly reveals Appellees' attorney, Matt Manning misconduct of fraud on the court and perjury by filing fabricated evidence into the court records on December 26, 2013, the corporation assignment of deed of trust/ mortgage dated May 01, 2012, a fraudulent document to support his client's summary judgment together with a sworn affidavit made by Jessica L. Valdez an allegedly BAC's AVP Operation Team Manager.

Therefore there is no doubt because of Appellees misconduct of intentionally withholding or fraudulent concealing the 1998 Assignment during trial proceeding and after final judgment caused Rodriguez to be harm it prevented Rodriguez from fully and fairly presenting his case causing him irreparable injury by depriving

Rodriguez of rights protected by the Fourteenth Amendment, by denying him equal protection of the law and depriving him of property without proper due process of law.

The inferior court found Bank of America mortgage servicer had authority to have foreclosed on the purported lien to Rodriguez's property, and ignored Rodriguez's lack of jurisdiction defense of Rule 60(b)(4), by dismissing his newly discovered evidence by enforcing Appellees Rule 60(c)(1) counter claim. It did so regardless of the district court constitutional duty under Article III, § 2 of the U.S. Constitution "to examine first, subject-matter jurisdiction, because it involves the court's power to hear a case, and jurisdiction can never be forfeited or waived." *See Arbaugh v. Y & H Corp.*, 546 U.S. 500, 506 (2006) citing *United States v. Cotton*, 535 U.S. 625, 630. "In observing Constitutional Article III jurisdiction when evidence on record shows BAC had no beneficial interest in the property, and thus, Article III, constitutional standing was lost and the inferior court was left with no choice but to dismiss Appellees' counter claims, but dismissal of Appellees' counter claims were not granted or given." In a long and venerable line of cases, this Court has held that, without proper jurisdiction, <u>a court cannot proceed at all, but can only note the jurisdictional defect and dismiss the counter suit</u>. *See, e.g.*, *Capron v. Van Noorden*, 2 Cranch 126; *Arizonans for Official English v. Arizona*, 520 U.S. 43, 73; *Norton v. Mathews*, 427 U.S. 524, 531; *Secretary of Navy v. Avrech*, 418 U.S. 676, 678 (per curiam); *United States v. Augenblick*, 393 U.S. 348.

This inferior court holding so far departed from this Court's accepted and usual course of judicial proceeding and has decided an important federal question in a way that conflicts with relevant decisions of this Court causing Rodriguez to be harmed by depriving Rodriguez of his constitutional right protected by the Fourteenth Amendment, by denying him equal protection of the laws, and depriving him of his property without proper due process of law.

B. Procedural Background

On November 03, 2015, eight months later after discovering the intentionally withheld or fraudulent concealed evidence the October 21, 1998, unrecorded assignment of deed of trust, and after getting permission from the Chief Judge Mr. Ricardo Hinojosa, Mr. Rodriguez timely filed a lack of jurisdiction claim under 60(b)(4) requesting for post relief from a judgment issued on January 28, 2014, that is a void judgment because it was rendered by a court lacking subject matter jurisdiction. Rodriguez also timely filed a Rule 60(b)(3) motion with saving clause of (d)(3), requesting for post relief from a judgment, that was obtained by fraud, misrepresentation, and misconduct by Appellees that constituted fraud on the court.[4] Appellees responded on November 25, 2015, contending Rodriguez motion for relief was untimely under Rule 60(c)(1), and should be denied because Rodriguez lacked standing to

[4] A saving clause in Rule 60(b) provides: "This rule does not limit the power of a court to entertain an independent action . . . to set aside a judgment for fraud upon the court." *See Rozier v. Ford Motor Co.*, 573 F.2d 1332-Court of Appeals, 5th Circuit 1978; citing *See Dausuel v. Dausuel*, 90 U.S. App. D.C. 275, 195 F.2d 774 (1952) Dausuel.

challenge the unrecorded assignment dated on October 21, 1998, and Rodriguez's motion for relief is based entirely on an unfiled assignment of deed of trust. Appellees also argued that Rodriguez's Rule 60(b)(3) motion and his newly discover evidence claim is time barred under Rule60(c)(1), to no more than a year after the entry of the judgment. In addition, Appellees argued that Rodriguez request for relief under subsections (4) and (6) were also untimely because a claim under those subsections "must be made within a reasonable time . . . " Appellees did not challenged Rodriguez's fraud on the court claim under Rule 60(d)(3), to set aside a void judgment by Appellees' attorney, Matt Manning misconduct by using fabricated evidence the May 01, 2012, Assignment a fraudulent court record with an sworn affidavit made by Jessica L. Valdez, in order to deceive the court for the sole purpose to obtain it clients' summary judgment which constituted fraud on the court.[5]

On January 04, 2016, the district court found Rodriguez's 60(b)(3) motion was time barred under 60(c)(1), for his newly discovered evidence, fraud, misrepresentation, or misconduct by opposing part. (App.7a.) The district court ruled that withholding of evidence that is not requested pursuant to standard discovery procedures does not amount to fraud on the court under Rule 60(d)(3). The district court also ruled that

---

[5] *See Landscape Properties, Inc. v. Vogel*, 46 F.3d 1416, 1422 (8th Cir.), cert. denied, 516 U.S. 823, 116 S.Ct. 86, 133 L.Ed.2d 43 (1995) "A finding of fraud on the court is justified only by the most egregious misconduct directed to the court itself, such as bribery of a judge or jury or "fabrication of evidence by counsel." [emphasis added].

Rodriguez's conclusory allegations against counsel and recitations of various rules and statutes regarding an attorney's professional obligations, perjury, and falsification of evidence do not establish a basis for this Court to vacate its prior judgment. "The district hold that Federal Rules do not credit allegation that are merely conclusory." [emphasis added]. The district court did not ruled or acknowledged Rodriguez claim for a jury trial protected under the Seventh Amendment with the authority of 28 U.S.C. § 1861, and Federal Rule of Civil Procedure 38.

On January 21, 2016, Rodriguez timely filed a motion for reconsideration and a memorandum in support requesting for the court to reconsider Rodriguez's claim pursuant to Rule 60(b)(4) because it dealt with subject matter jurisdictional issues. Rodriguez argued that the district court decision by overlooking or ignoring Rodriguez's 60(b)(4) claim would constitutes prejudice and would further injure him by violating his rights guaranteed by the Fourteenth Amendment, by denying him equal protection of the law and thus depriving him of his property without proper due process of law. In addition, Rodriguez argued the newly discover evidence under Rule 60(b)(4), has no statutes of limitation especially when the evidence reveals Appellees' final judgment is a void judgment, because "the court that rendered it lacked subject matter jurisdiction, and have acted in a manner inconsistent with due process of law." *See Carter v. Fenner*, 136 F.3d 1000—Court of Appeals, 5th Circuit 1998. Mr. Rodriguez contended that BAC did not have a personal interest in the title, and mortgage relating to Rodriguez's property because the October 21, 1998, deed of trust was rendered Null and Void because

GNMA did not comply with Texas statutes as required of the contract. Thus, BAC did not suffer-an injury-in-fact by Rodriguez's actions, and thus, the inferior court lacked subject matter jurisdiction to entertain Appellee's counter claim because Appellees lacked constitutional standing and capacity to have invoked the federal court's subject matter jurisdiction under Article III. *See Lujan v. Defenders of Wildlife*, 504 US 555-Supreme Court 1992. Rodriguez has claimed under *Lujan* controlling precedent which has held that "at the irreducible minimum," the constitutional requisites under Article III, for the existence of standing are that the Appellees must personally have suffered some actual or threatened injury that can fairly be traced to the challenged action of the Rodriguez, and that injury is likely to be redressed by a favorable decision. *See Valley Forge Christian College v. Americans United*, 454 U.S. 464, 472 (1982); *Allen v. Wright*. 468 U.S. 737, 751 (1984); *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). Appellees did not challenged Rodriguez's motion for reconsideration. On January 22, 2016, without finding of fact and conclusion of law the district enter an order denying Rodriguez's Motion for Reconsideration. App.12a.

On February 01, 2016, Rodriguez's timely filed his Notice of Appeal on June 17, 2016, and filed his Brief to Fifth Circuit Court. Rodriguez's main issue whether the district court abused its discretion by denying Rodriguez his guarantee right to a fair and full trial under the due process clause and equal protection clause of the Fourteenth Amendment for failure to address or acknowledge Rodriguez's lack of jurisdiction claim under Rule 60(b)(4) with the authority of *Carter v. Fenner*, 136 F.3d 1000—Court of Appeals, 5th Circuit 1998, a remedy for post relief from a judgment that is VOID because it was rendered by a court that lacked subject matter jurisdiction. Rodriguez also argued whether the district court erred and abused its discretion by denying Rodriguez his guarantee right to fair and full trial under the due process clause and equal protection clause of the Fourteenth Amendment for failure to grant Rodriguez Rule 60(b)(3) motion with saving clause of (d)(3) with the authority *Rozier v. Ford Motor Co.*, 573 F.2d 1332—Court of Appeals, 5th Circuit 1978, a remedy for post relief from a judgment that was obtain by fraud, misrepresentation and misconduct by Appellees which constituted fraud on the court. Rodriguez contended whether the district court erred and abused its discretion by denying Rodriguez his guarantee right to fair trial under the due process clause and equal protection clause of the Fourteenth Amendment for failure to address or acknowledge Rodriguez's breach of contract claim. Rodriguez argued whether the district court erred and abused its discretion for failure to address or acknowledge Rodriguez claim for a jury trial protected under the Seventh Amendment with the authority of 28 U.S.C. § 1861, and Federal Rule of Civil Procedure 38.

On July 20, 2017, the Fifth Circuit Court of Appeal ruled that Rodriguez did not challenge the district court finding on his Rule 60(b)(3) claim that had not been brought within a reasonable time, and was therefore barred under Rule 60(c)(1). (App.1a.) The court of appeal found that Rodriguez had not proven his assertions for his Rule (d)(3) claim, and found that district court did not abuse its discretion in denying Rodriguez relief for fraud upon the court. The court of appeal also ruled Rodriguez has not shown either a jurisdiction flaw or a violation of procedural due process because Rodriguez's lack-of-jurisdiction assertion relied on the validity of his withheld-evidence claims, which the district court dismissed.

On August 03, 2017, Rodriguez timely filed a Motion for Rehearing En Banc requesting to stay the mandate because the panel's opinion conflicted with the controlling precedent of the United States Supreme Court as well as its own Fifth Circuit Court plus its Sister Circuit Courts and pursuant to Federal Rule of Appellate Procedure 35(b)(1)(A), an en banc consideration by the full Court was necessary to secure and maintain the uniformity of the Supreme Court and its sister Circuit Courts' decisions, as a matter of law. When Rodriguez filed the motion for rehearing, Rodriguez filed a motion for leave requesting permission to file an additional word count of 1925 words. Mr. Rodriguez contended whether the Panel's opinion conflicted with United States Supreme Court's controlling precedent of Article III, constitutional standing cases and whether the panel has violated clearly established law. Mr. Rodriguez contends whether the Panel's opinion conflicted with United States Supreme Court's controlling precedent relating to cases of constitutional rights protected by the Fourteenth Amendment because the panel's decision deprives Rodriguez of procedural due process of law and equal protection of the law the right to be heard on the merits when his property right are threatened and whether the panel's opinion violated clearly established federal law. Mr. Rodriguez contends whether the Panel's opinion conflicted with the Fifth Circuit Court's controlling precedent relating to cases under Rule 60(b)(3) with saving clause (d)(3) a remedy for post relief on a judgment that was obtain by fraud, misrepresentation and misconduct by Appellees which constituted fraud on the court and whether the panel's opinion violated clearly established federal law. Rodriguez contends whether the Panel's opinion conflicted with its own Fifth Circuit Court and its sister Circuit Court controlling precedent relating to cases under Rule 60(b)(4) a remedy for post relief on a judgment that is void because the court that rendered it lacked subject matter jurisdiction and have acted in manner in consistent with due process of law and whether the panel's opinion violated clearly established federal law. On August 07, 2017, the Fifth Circuit Court took no action on Rodriguez's Petition for Rehearing En Banc and Motion to Stay the Mandate claiming that Rodriguez time for filing his Petition had expired under Fed. R. App. P. 40, and Petition was not to exceed 3,900 words. On August 9, 2017, Rodriguez filed a motion for leave requesting Appellate Court to reconsider Rodriguez's petition under the mail box rule because it was timely filed pursuant to the Fifth Circuit Rule 26.1, which provides except for briefs and record excerpts, all other papers, including petitions for rehearing where permitted by 5th Cir. R. 30 and 31, by a third-party commercial carrier for delivery within 3 days, or on the day of mailing if the most expeditious form of delivery by mail is used. But, the Fifth Circuit Court denied Rodriguez's request.

REASON FOR GRANTING THE WRIT

The Fifth Circuit Court holding of Federal Rule of Civil Procedure 60(c)(1) compels Rodriguez to surrender his constitutional right of procedural due process and equal protection of the law when his property right are threaten nevertheless the Fourteenth Amendment protects those rights to each citizen of the state of its jurisdiction. The court of appeal decision turns on two fundamental of the Fourteenth Amendment principles it deprives Rodriguez of the equal protection of the law; it abridges the privileges and immunities of Rodriguez as a citizen of the United States, and it deprives Rodriguez of his property without proper due process of law. Federal Rule of Civil Procedure 60(c)(1) suppressing Rodriguez's clear and convincing evidence that proves Bank of America N.A. did not suffer a personal injury in fact from Rodriguez actions, and thus, lacked Article III, constitutional standing to invoke the federal court subject matter jurisdiction to maintain its counter suit. The court of appeal ruling conflicts with the U.S. Supreme Court's controlling precedent which holds that the "court of appeal is duty-bound to examine its subject-matter jurisdiction sua sponte." *See Ins. Corp. of Ir., Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702 (1982); *H&D Tire & Auto.-Hardware, Inc. v. Pitney Bowes Inc.*, 227 F.3d 326, 328 (5th Cir. 2000). This Court should grant this petition for the following reasons.

The Fifth Circuit Court of Appeal's reasoning turns the Due Process Clause and Equal Protection Clause doctrine on its head. "The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)); *see also City of Paris v. Abbott*, 360 S.W.3d 567, 582 (Tex. App.—Texarkana 2011, no pet.) (citing *Perry v. Del Rio*, 67 S.W.3d 85, 92 (Tex. 2001)); *Mayhew v. Town of Sunnyvale*, 964 S.W.2d 922, 939 (Tex. 1998)). "In assessing what process is due . . . substantial weight must be given to the good-faith judgments" of those who provide the procedures. *Mathews*, 424 U.S. at 349.

I. THE FIFTH CIRCUIT COURT DECISION THAT APPELLANT'S RULE 60(b)(4) LACKED A JURISDICTION CLAIM BECAUSE NEWLY DISCOVERED EVIDENCE WAS TIME BARRED UNDER RULE 60(c)(1), DIRECTLY CONFLICTS WITH RULING OF ITS OWN COURT AND SISTER TENTH CIRCUIT PRECEDENT TO ATTACK A JUDGMENT AS VOID FOR LACK OF FEDERAL SUBJECT MATTER JURISDICTION, AND THUS, FIFTH CIRCUIT COURT HAVE SO FAR DEPARTED FROM ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDING

The Tenth Circuit has found Rule 60(b)(4), is unlike its counterparts it provides relief from void judgment, "is not subject to any time limitation." *See Orner v. Shalala*, 30 F.3d 1307, 1310 (10th Cir. 1994) (quoting *V.T.A., Inc.*, 597 F.2d at 224 n. 9 and accompanying text) ("if a judgment is void, it is a nullity from the outset and any 60(b)(4) motion for relief is therefore filed within a reasonable time"); *see also Venable v. Haislip*, 721 F.2d 297, 299-300 (10th Cir. 1983). Furthermore, in *Orner* court it has held that when Rule 60(b)(4) is applicable, "relief is not a discretionary matter; it is mandatory." citing *V.T.A., Inc.*,597 F.2d at 224 n. 8; *see also Venable*, 721 F.2d at 300. The Fifth Circuit also holds that "'[t]here is no time limit on an attack on a judgment as void. The one-year limit applicable to some Rule 60(b) motions is expressly inapplicable, and even the requirement that the motion be made within a "reasonable time," which seems literally to apply to motions under Rule 60(b)(4), cannot be enforced with regard to this class of motion.'" *See Carter v. Fenner* 136 F.3d 1000—Court of Appeals, 5th Circuit 1998; cititing *New York Life Insurance Company v. Brown*, 84 F.3d 137, 142-43 (5th Cir. 1996) (quoting *Briley v. Hidalgo*, 981 F.2d 246, 249 (5th Cir. 1993)). The Tenth Circuit has held that a judgment is void for Rule 60(b)(4) purposes if the rendering court was powerless to enter it," *See Gschwind v. Cessna Aircraft Co.*, 232 F.3d 1342, 1346 (10th Cir. 2000) Whether for "lack of subject matter jurisdiction or jurisdiction over the parties," or due to "a plain usurpation of power or if the court has acted in a manner inconsistent with due process of law," *See V.T.A., Inc. v. Airco, Inc.*, 597 F.2d 220, 224-25 (10th Cir. 1979) (footnote omitted). Also the Fifth Circuit had held that a Rule 60(b) motion to set aside a judgment as one for relief under 60(b)(4) because "[a] judgment is not void simply because it is erroneous, but only where the rendering court lacked subject matter jurisdiction or acted in a manner inconsistent with due process of law"). *See Carter v. Fenner*, 136 F.3d 1000 —Court of Appeals, 5th Circuit 1998; citing *United States v. 119.67 Acres of Land*, 663 F.2d 1328, 1331 (5th Cir. 1981).

The district court's decision by not acknowledging or declining to acknowledge Rodriguez's lack-of-jurisdiction claim under Rule 60(b)(4), and dismissing Rodriguez newly discovery evidence under Rule 60(c)(1) before the district court could first examine if it had subject matter jurisdiction as required under Article III, violates rights guaranteed to Rodriguez by the Fourteenth Amendment, by denying him equal protection of the law, and depriving Rodriguez of property without proper due process of law. The Fifth Circuit Court of Appeal held under Rule 60(c)(1) the district court may dismiss Rodriguez newly discovery evidence, and thus, dismissing Rodriguez's lack-of-jurisdiction claim under Rule 60(b)(4). Under this ruling of Fifth Circuit, invades the privileges and immunities of the citizens of the United States, it deprives citizen of the equal protection of the law and it forces a private citizen to surrender his/her property without proper procedural due process of law.

The Fifth Circuit decision conflicts with its own and this Court controlling precedent that has held that that the court of appeal "must address challenges to subject-matter jurisdiction before reaching merits to this case". *See Del-Ray Battery Co v. Douglas Battery Co.*, 635 F.3d 725, 729 (5th Cir. 2011) (citing *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94 (1998)). The inferior court's decision by dismissing Rodriguez's newly discovery evidence that was intentionally withheld after final judgment pursuant to Appellees Rule 60(c)(1) counter claim conflicts with its own and the Tenth Circuit Court's controlling precedent that has held that Rule 60(b)(4), is unlike its counterparts it provides relief from void judgment, "is not subject to any time limitation." *See Orner v. Shalala*, 30 F.3d 1307, 1310 (10th Cir.1994) (quoting *V.T.A., Inc.*, 597 F.2d at 224 n. 9 and accompanying text); *See Carter v. Fenner* 136 F.3d 1000—Court of Appeals, 5th Circuit 1998; cititing *New York Life Insurance Company v. Brown*, 84 F.3d 137, 142-43 (5th Cir. 1996) (quoting *Briley v. Hidalgo*, 981 F.2d 246, 249 (5th Cir. 1993)).

The newly discovered evidence of the 1998 Assignment exhibits Bank of America mortgage servicer lacked a beneficial interest in the deed of trust because the contract the deed of trust had been breached by GNMA by not complying with Texas conveying and recording statutes which rendered the deed of trust null and void, and thus, Bank of America mortgage servicer lacked Texas statutory authority to have foreclosed on Rodriguez's property under a power of sale conferred by deed of trust pursuant to Texas Property Code § 51.002. Here this Court has held that an inferior court "must look to Texas law to determine whether a property right was created." *Board of Regents v. Roth,* 408 U.S. 564, 569-70, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972) (A person claiming a property interest in a benefit "must have more than an abstract need or desire for it. . . . He must . . . have a legitimate claim to it."). But *Board of Regents* court did not stop there. The U.S. Supreme Court went on to conclude that a property interest may exist by operation of a contract, law, or policy established under state law. *Board of Regents v. Roth,* 408 U.S. 564, 577, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972); *Cabrol,* 106 F.3d at 105. Since, the October 21, 1998, deed of trust the contract is null and void, Bank of America N.A. cannot establish a property interest by operation of a contract, law, or policy established under state law pursuant to this Court's controlling precedent of *Board of Regents.* Thus, Appellees cannot established constitutional standing (federal subject matter jurisdiction) under Article III. Appellees making counter claim bears the burden of showing that he/she (1) has suffered an "injury in fact" that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of Rodriguez; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision. *See Friends of the Earth, Inc. v. Laidlaw Envtl. Servs, Inc.*, 528 U.S. 167, 180-81 (2000). The injury-in-fact requirement is the "irreducible constitutional minimum" for standing. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). Pursuant to Tenth Circuit and the Fifth Circuit Court's controlling precedent the judgment issued on January 28, 2014, is a Void judgment because it was rendered by a court that lacked subject matter jurisdiction and the district court have acted in a manner inconsistent with due process of law. *Gschwind v. Cessna Aircraft Co.*, 232 F.3d 1342, 1346 (10th Cir. 2000); *see also V.T.A., Inc. v. Airco, Inc.*, 597 F.2d 220, 224-25 (10th Cir. 1979) (footnote omitted); *See Carter v. Fenner*, 136 F.3d 1000 —Court of Appeals, 5th Circuit 1998; citing *United States v. 119.67 Acres of Land*, 663 F.2d 1328, 1331 (5th Cir.1981). This Court has held that the validity of an order of a federal court depends upon that court's having jurisdiction over both the subject matter and the parties. *Stoll v. Gottlieb*, 305 U.S. 165, 171-172 (1938); *Thompson v. Whitman*, 18 Wall. 457, 85 U.S. 465 (1874).

The supervision of this Court is needed when it is apparent in the court record the Fifth Circuit Court decision in this case has so far departed from this Court's usual course of judicial proceedings which clearly reflects the Fifth Circuit Court has decided important question of federal law in way that conflicts with relevant decisions of the U.S. Supreme Court and of its own Court and its sister Tenth Circuit Court. The answer will have serious ramifications not only for Rodriguez but for the protection of property right of every citizen of the United States; the guarantee of having equal protection of the law, and due process of law that is protected by the Fourteenth Amendment of the Constitution.

II. THE FIFTH CIRCUIT COURT OF APPEALS' DECISION THAT APPELLANT'S CLAIM UNDER RULE 60(b)(3) WITH SAVING CLAUSE OF (d)(3) AND NEWLY DISCOVERED EVIDENCE IS TIME BARRED UNDER RULE 60(c)(1), DIRECTLY CONFLICTS WITH RULING BY THIS COURT AND EIGHTH AND THIRD CIRCUIT COURT AND ITS OWN PRECEDENT OF FRAUD ON THE COURT

This Court and the Third, Fifth, Eighth Circuit Court has found that "a finding of fraud on the court is justified only by the most egregious misconduct directed to the court itself, such as bribery of a judge or jury or "fabrication of evidence by counsel." *See Landscape Properties, Inc. v. Vogel*, 46 F.3d 1416, 1422 (8th Cir.), cert. denied, 516 U.S. 823, 116 S.Ct. 86, 133 L.Ed.2d 43 (1995) "Generally speaking, only the most egregious misconduct, such as bribery of a judge or members of a jury, or the fabrication of evidence by a party in which an attorney is implicated, will constitute a fraud on the court." citing *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 64 S.Ct. 997, 88 L.Ed. 1250 (1944); *Root Refin. Co. v. Universal Oil Products*, 169 F.2d 514 (3d Cir. 1948); *See also Rozier v. Ford Motor Co.*, 573 F.2d 1332-Court of Appeals, 5th Circuit 1978, 7 J. Moore, *Federal Practice, ¶ 60.33* at 510-11.

The records of the court clearly shows Rodriguez's 60(b)(3) motion with saving clause (d)(3) was timely filed after the fraud was discover and post-trial relief is available as remedy to a party who has lost a civil suit after an adverse party failed to disclose relevant information called by a qualified written request from the borrower for information relating to the servicing of the loan pursuant Real Estate Settlement Procedure Act. *See also* 12 U.S.C. § 2605.[6] All the same, Appellees had a statutory duty under Texas Debt Collection Practices Act ("DCPA") which provides protection to consumer which includes Rodriguez, a equivalent state statute contained in Finance Code chapter 392, the failure to provide verification of the debt when borrower, Rodriguez has requested the information in writing has serious penalties under the Fair Debt Collection Practice Act (15 U.S.C. § 1601 *et seq.*) which requires that a borrower be given 30 days to request and obtain verification of the debt. The lender may give notice of default, accelerate the debt, and even post for foreclosure in less time, but the foreclosure sale itself should

[6] *See* 12 U.S.C. § 2605-Servicing of mortgage loans and administration of escrow accounts (e) Duty of loan servicer to respond to borrower inquiries (1) Notice of receipt of inquiry (A) In general, If any servicer of a federally related mortgage loan receives a qualified written request from the borrower (or an agent of the borrower) for information relating to the servicing of such loan, the servicer shall provide a written response acknowledging receipt of the correspondence within 5 days (excluding legal public holidays, Saturdays, and Sundays) unless the action requested is taken within such period. (B) Qualified written request For purposes of this subsection, a qualified written request shall be a written correspondence, other than notice on a payment coupon or other payment medium supplied by the servicer, that—(i) includes, or otherwise enables the servicer to identify, the name and account of the borrower; and (ii) includes a statement of the reasons for the belief of the borrower, to the extent applicable, that the account is in error or provides sufficient detail to the servicer regarding other information sought by the borrower.

not be conducted until the 30 days debt verification period has expired. Failure to provide verification of the debt when the borrower has requested it in writing has serious penalties under both laws.

Approximately Nine Month Later, after Rodriguez written request on May 1, 2012, Melenie Cowan is legally liable for her misconduct of fraud, and misrepresentation under Texas Civil Practice and Remedies Code § 12.002,[7] because Melenie Cowan, an alleged Vice President for CHL officially recorded or caused to be officially recorded a unlawful 2012 Assignment as document no. 417527, on May 09, 2012, in Jim Wells County property records of Alice, Texas, when she had knowledge or should have known the 2012 Assignment was a fraudulent claim against Rodriguez's real property and 2012 Assignment was created under the constitution or laws of this state of Texas as defined in Section 37.01, Penal Code, for the intentions to mispresent CHL role as grantor for the sole purpose to deprive Rodriguez of his property rights by using a unlawful document, the 2012 Assignment to fraudulently transfer, and assign a fraudulent interest in the

[7] Texas Civil Practice and Remedies Code § 12.002, liability, the Code provide that: (a) A person may not make, present, or use a document or other record with; (1) knowledge that the document or other record is a fraudulent court record or a fraudulent lien or claim against real or personal property or an interest in real or personal property; (2) as a court record or document of a court created by or established under the constitution or laws of this state or the United States or another entity listed in Section 37.01, Penal Code, evidencing a valid lien or claim against real or personal property or an interest in real or personal property; and (3) intent to cause another person to suffer: (A) physical injury; (B) financial injury; or (C) mental anguish or emotional distress.

deed of trust dated October 21, 1998, to Bank of America N.A., for the sole purpose to create a fraudulent lien against Rodriguez's property. "The false assertion of a legal right in property where no exits may constitute a fraudulent lien or claim against real property in violation of Section 12.002 of Texas Civil Practice and Remedies Code." *See Casstevens v. Smith*, 269 S.W.3d 222, 234 (Tex. App.Texarkana, 2008, pet. denied). Rodriguez also claimed because of BAC' mortgage servicer misconduct by using the unlawful 2012 Assignment to mispresent BAC's role of having an interest in the October 21, 1998, deed of trust to unlawfully foreclosed on Rodriguez's property causing Rodriguez to have suffered financially by defending his title and his property rights which have caused Rodriguez to have suffered unnecessary emotional distress. Appellees' attorney, Matt Manning is legally responsible for perjury[8] by using the fabricated evidence the May 01, 2012, Assignment as an official document or court record together with a sworn affidavit made by Jessica L. Valdez an allegedly BAC's AVP Operation Team Manager to deceive the court in order to obtain it

---

[8] *See* 18 U.S.C. § 1621, Whoever (1) having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true; or (2) in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code, willfully subscribes as true any material matter which he does not believe to be true; is guilty of perjury and shall, except as otherwise expressly provided by law, be fined under this title or imprisoned not more than five years, or both.

clients' summary judgment, and thus, Mr. Manning misconduct constitutes fraud on the court.[9] Pursuant to 18 U.S.C. § 1621, the federal statute is applicable for Appellees' attorney, Matt Manning misconduct who is legally liable for perjury by having knowledge or should have known that the May 01, 2012, Assignment and Substitute Trustee Deed were not true when he submitted the fraudulent documents into the court record under OATH pursuant to Local Rule 83.1(I.). Thus, under penalty of perjury as provided by federal law of 28 U.S.C. § 1621, Mr. Manning should be fined under this title or imprisoned not more than five years, or both. Pursuant to Local Rule of United States District Court for the Southern District of Texas 83.1(I.) provides an admission, Appellees' attorney Mr. Manning took an OATH before District Court of Southern District to solemnly swear [affirm] that he would discharge his duties as an attorney and counselor of this court faithfully, that he would demean himself uprightly under the law and the highest ethics of our profession, and that he would support and defend the Constitution of the United States but the evidence shows otherwise Mr. Manning has breached his OATH.

The Fifth Circuit Court ruling conflict with this Court and the Third, Fifth, Eighth Circuit Court because the all of these Courts has held that "Generally speaking, only the most egregious misconduct, such as bribery of a judge or members of a jury, or the fabrication of

---

[9] *See Landscape Properties, Inc. v. Vogel*, 46 F.3d 1416, 1422 (8th Cir.), cert. denied, 516 U.S. 823, 116 S.Ct. 86, 133 L.Ed.2d 43 (1995) "A finding of fraud on the court is justified only by the most egregious misconduct directed to the court itself, such as bribery of a judge or jury or "fabrication of evidence by counsel."

evidence by a party in which an attorney is implicated, will constitute a fraud on the court." citing *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 64 S.Ct. 997, 88 L.Ed. 1250 (1944); *Root Refin. Co. v. Universal Oil Products*, 169 F.2d 514 (3d Cir. 1948); *See also Rozier v. Ford Motor Co.*, 573 F.2d 1332-Court of Appeals, 5th Circuit 1978; *See Landscape Properties, Inc. v. Vogel*, 46 F.3d 1416, 1422 (8th Cir.), cert. denied, 516 U.S. 823, 116 S.Ct. 86, 133 L.Ed.2d 43 (1995).

In addition, in *Rozier*, it has held that misconduct applies to Rule 60(b)(3) by withholding information called for by discovery. Citing *Petry v. General Motors Corp.*, 62 F.R.D. 357 (E.D. Pa. 1974), it does not require that the information withheld be of such nature as to alter the result in the case. citing *Seaboldt v. Pennsylvania RR. Co.*, 290 F.2d 296, 299-300 (3d Cir. 1961). *See generally*, 11 C. Wright & A. Miller, *Federal Practice and Procedure, § 2861* (1970). And does this subsection of the Rule aimed to judgments which were unfairly obtained, not at those which are factually incorrect. Also, whether in *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 244 (1944) the term rule of equity takes effect, under certain circumstances, one of which after-discovery the fraud, relief will be granted against judgments regardless of the term of their entry. citing *Marine Insurance Company v. Hodgson*, 7 Cranch 332; *Marshall v. Holmes*, 141 U.S. 589. The Fifth Circuit court should have invoked its unlimited power pursuant to subsection Rule 60(d)(3), and set aside the judgment issued on January 28, 2014, for fraud on the court because the judgment was obtain fraudulently for so purpose to defraud Rodriguez of his property. (App.6a.).

This Court and the Third, Fifth, Eighth Circuit Court has found that "a finding of fraud on the court is justified only by the most egregious misconduct directed to the court itself, such as bribery of a judge or jury or "fabricated evidence by counsel," but the Fifth Circuit Court has denied Appellees' attorney used "fabricated evidence to deceive the court in order to obtain a favorable judgment for sole purpose to defraud Rodriguez of his property, thus making this matter a public interest matter and a federal interest matter of law because it involves public safety, so the supervision of this Court is needed to maintain and restore the rule of law when it is apparent in the record that Appellees have used the court system unlawfully to make a illegitimate personal gain.

CONCLUSION

For the foregoing reasons, this petition should be granted.

Respectfully submitted,

JOE O. RODRIGUEZ JR.
PETITIONER PRO SE
13730 F.M. 620 N. APT. 810
AUSTIN, TX 78717
(512) 905-7477
JOEYRODRIGUEZ5@YAHOO.COM

JANUARY 12, 2018