No. _____

In The
Supreme Court of the United States

PAULA PEREZ-RODRIGUEZ,

Petitioner,

v.

THE BANK OF NEW YORK MELLON, *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

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QUESTION PRESENTED FOR REVIEW

Whether borrowers have the right under the Due Process Clause of the Fourteenth Amendment to contest residential foreclosures that use the same fraudulent documentation numerous branches of the federal government and 49 state Attorneys General condemned and prohibited through various multi-billion dollar settlements?

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

The parties to the proceeding in the District Court of Appeal of the State of Florida Third District, whose judgment is sought to be reviewed, are:

- Paula Perez-Rodriguez, defendant, appellant below, and petitioner here.
- The Bank of New York Mellon F/K/A The Bank of New York, as Trustee for the Certificateholders, CWMBS 2007-4, CHL Mortgage Pass-Through Certificates, Series 2007-4, plaintiffs, appellees below, and respondents here.

CACV of Colorado, LLC, Lauren Chiara, Mortgage Electronic Registration Systems, Inc., Surf Consultants, Inc., United States Department of Treasury were defendants in the underlying action but were not parties below, and are not parties to this petition.

TABLE OF CONTENTS

TABLE OF CONTENTS – Continued

TABLE OF CONTENTS – Continued

TABLE OF AUTHORITIES

Page

CASES:

TABLE OF AUTHORITIES – Continued

Page

TABLE OF AUTHORITIES – Continued

Page

TABLE OF AUTHORITIES – Continued

TABLE OF AUTHORITIES – Continued

Page

CONSTITUTIONAL AND STATUTORY AUTHORITY:

TABLE OF AUTHORITIES – Continued

Page

OTHER AUTHORITIES:

TABLE OF AUTHORITIES – Continued

Page

PETITION FOR A WRIT OF CERTIORARI

Paula Perez-Rodriguez respectfully petitions for a writ of certiorari to review the judgment of the District Court of Appeal of the State of Florida, Third District.

INTRODUCTION

In 2008, the United States suffered "the greatest economic meltdown since the Great Depression" and "[a]t the core of this crisis was the mortgage meltdown" caused by the securitization of subprime mortgages.[1] Securitization of mortgages was made possible largely through the expansive use of a private financial industry-created database system, Mortgage Electronic Registration Systems, Inc. ("MERS"), as a replacement for state recording laws. *See generally, In re Merscorp, Inc. v. Romaine*, 8 N.Y.3d 90, 96, 861 N.E.2d 81, 828 N.Y.S.2d 266 (2006).

Instead of lenders issuing mortgages under their names, mortgages would be issued (and recorded) under "MERS" acting as a "nominee" for the lenders, thereby allowing the mortgages to be "pooled" together

[1] Nelson, G.S., *Confronting the Mortgage Meltdown: A Brief for the Federalization of State Mortgage Foreclosure Law*, 37 PEPP. L. REV. 583, 583 (2010). *See generally* Lapidus, A.L., *What Really Happened: Ibanez and the Case for Using the Actual Transfer of Documents*, 41 STETSON L. REV. 817, 817-18 (Spring 2012) (citations omitted).

and marketed as securities using unrecorded notes and assignments. *See Pub. Emps.' Ret. Sys. of Miss. v. Merrill Lynch & Co.*, 277 F.R.D. 97, 102-03 (S.D.N.Y. 2011).[2] By 2007, approximately 60 percent of mortgage loan originations had been recorded under MERS's name. Peterson, 78 U. CIN. L. REV. at 1373-74 (citations omitted).

One of the nation's largest originators of residential mortgages was Countrywide Financial Corp., through its subsidiary Countrywide Home Loans, Inc. ("Countrywide"). Between 2003-2009, Countrywide originated billions of dollars worth of residential mortgages, a substantial portion of which were repackaged as securities and marketed to institutional investors. *See Comment: ARMS, but No Legs to Stand On: "Subprime" Solutions Plague the Subprime Mortgage Crisis*, 40 TEX. TECH. L. REV. 1089, 1101 (Summer 2008)

The nation's large mortgage servicers exploited the MERS system for a different purpose – the mass production of forged documents for use in foreclosures. One of these providers was Bank of America – the successor in interest to Countrywide. As the Office of Inspector General found in 2012, Bank of America

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[2] *See Bain v. Metropolitan Mortgage Group, Inc.*, 175 Wn. 83, 94-95, 285 P.3d 34 (2012) (en banc); Phyllis K. Slesinger & Daniel McLaughlin, *Mortgage Electronic Registration System*, 31 IDAHO L. REV. 805, 807 (1995); Peterson, C.L., *Foreclosure, Subprime Mortgage Lending, and the Mortgage Electronic Registration System*, 78 U. CIN. L. REV. 1359, 1361 (2010).

encouraged and financially rewarded employees to "robosign" affidavits and other documents needed to process foreclosures. R. 165-168.[3] The widespread misuse of MERS eventually led to state and federal investigations culminating in (1) a "Consent Order" between MERS and four federal agencies in 2011 and (2) a "Consent Judgment" between the five largest mortgage service companies in the United States and the U.S. Department of Justice, other federal agencies and the Attorneys General of 49 states in 2012. *See* pp. 8-11 *infra*.[4]

Nonetheless, state and federal courts have continued to be bombarded with foreclosure actions

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[3] *See* Office of the Inspector General, U.S. Department of Housing and Urban Development, *Bank of America Corporation Foreclosure and Claims Process Review, Charlotte, NC*, Memorandum of Review, No. 2012-FW-1802 (March 12, 2012), at pp. 5-12. R. 165-186. The OIG coined the term "robosigning" to mean routinely signing "legal documents, including affidavits, without the supporting documentation and without review[ing] and verifying the accuracy of the foreclosure information." *Id.* at p. 6. The OIG noted that "one notary testified that daily volume went from 60- to 200 documents per day to 20,000 documents per day. . . ." *Id.*

[4] On June 28, 2011, the Bank of New York Mellon, acting as Trustee for 530 trusts that had acquired billions of dollars worth of the pooled Countrywide securities entered into a separate $8.5 billion settlement with Bank of America. *See* Order Partially Approving Settlement, *In re The Bank of New York Mellon*, No. 651786/11, 2014 N.Y. Misc. LEXIS 452 (Sup. Ct. N.Y., N.Y. County Jan. 31, 2014). *See also Blackrock Financial Mgmt. v. Segregated Account of Ambac Assur. Corp.*, 673 F.3d 169 (2d Cir. 2012).

infected by the same types of fraudulent paperwork.[5] That fact, in turn, has led to a widespread split among state courts and federal bankruptcy courts about whether, or to what extent, borrowers can raise the fraudulent conduct as a defense to foreclosure. Petitioner asks that the Court grant the writ to both resolve this split and to vacate the judgment of foreclosure by holding that the Due Process Clause of the Fourteenth Amendment entitles borrowers to defend foreclosures by challenging the lenders' use of fraudulent documentation.

OPINIONS BELOW

The opinion of the highest state court to review the merits appears at App. 1 to this Petition and is unpublished. The opinion of the trial court of the Eleventh Judicial Circuit, in and for Miami-Dade County, Florida, appear at App. 2 and are unpublished.

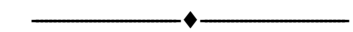
STATEMENT OF JURISDICTION

On December 4, 2013, the Third District Court of Appeal ("DCA") for the State of Florida rendered a *per curiam* order without a written opinion, affirming

[5] In Miami-Dade County alone, 56,656 foreclosure cases were filed during 2008. *See* Nelson, 37 PEPP. L. REV. at 586, n. 18.

the trial court's rulings. The Order is attached at App. 1. When no petition for rehearing was filed, on December 20, 2013, the Mandate, attached at App. 12, was issued.

Because the Third DCA affirmed the trial court's (1) issuance of a Final Judgment of Foreclosure and (2) order denying Petitioner's motion to vacate that order due to fraud without opinion or explanation, the Florida Supreme Court lacked jurisdiction to review the Third DCA's Order. *See R.J. Reynolds Tobacco Co. v. Kenyon*, 882 So.2d 986, 989-90 (Fla. 2004). Therefore, the Third DCA was the state court of last resort from which Petitioner could seek review. *See, e.g., Williams v. Florida*, 399 U.S. 78, 79 n. 5 (1970) (where the Florida Supreme Court was without jurisdiction to entertain an appeal, "the District Court of Appeal became the highest court from which a decision could be had."). *Accord The Florida Star v. B.J.F.,* 530 So.2d 286, 288 n. 3 (Fla. 1988) ("A district court decision rendered without an opinion or citation constitutes a decision from the highest state court empowered to hear the case."). *See also* Gerald B. Cope, Jr., *Discretionary Review of the Decisions of Intermediate Appellate Courts: A Comparison of Florida's System with Those of the Other States and the Federal System*, 45 FLA. L. REV. 21, 80-81 (1993) (citing cases). Therefore, the Court's jurisdiction is invoked under 28 U.S.C. §1257(a).



CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution provides in relevant part: "*No state shall make or enforce any law which shall abridge the privileges . . . of citizens of the United States; nor shall any state deprive any person of . . . property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.*"

Rule 1.110(b) of the Florida Rules of Civil Procedure, as amended in 2010, provides:

> When filing an action for foreclosure of a mortgage on residential real property the complaint shall be verified. When verification of a document is required, the document filed shall include an oath, affirmation, or the following statement: "Under penalty of perjury, I declare that I have read the foregoing, and the facts alleged therein are true and correct to the best of my knowledge and belief."

STATEMENT OF THE CASE

A. The Foreclosure Complaint and Unendorsed Note

On March 2, 2007, Countrywide loaned Petitioner $436,000. The loan documents – an Interest

Only Fixed Rate Note ("the Note") and Mortgage – were executed only by Petitioner. R. 5-39.[6] The Mortgage was signed by Petitioner and indicated MERS was "acting as a nominee for Lender and Lender's successors and assigns," none of whom were identified in the Mortgage. R. 13. The Note Petitioner signed was payable to Countrywide as the "Lender" and contained no endorsements. R. 39.[7]

On July 24, 2009, Respondent Bank of New York Mellon ("BNYM"), acting as the trustee for certain unidentified "Certificate Holders," filed an unverified foreclosure Complaint against Petitioner, alleging that she had defaulted on the Countrywide Note and Mortgage by failing to make any payment on or after February 1, 2009. R. 5-39. BNYM attached copies of the Note and Mortgage, payable to Countrywide, to the Complaint without any endorsement, assignment, or other evidence of transfer. Moreover, Count II of the Complaint alleged that the true "subject Promissory Note has been lost or destroyed" and that BNYM did not know when the Note was "lost or destroyed" or "the manner of loss or destruction."

On September 11, 2009, Petitioner filed a motion to dismiss the Complaint because the Note was not

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[6] The Mortgage was also executed by Lauren Chiara, who was not a party in the proceedings below.

[7] Countrywide has admitted that its standard business practice was to place blank endorsements on original notes long after foreclosure complaints had been filed. *See Kemp v. Countrywide Home Loans, Inc.*, 440 B.R. 624, 628-29 (Bankr. D. N.J. 2010).

endorsed or made payable to BNYM. R. 48-51. BNYM did not file a response and the motion remained unresolved. On October 26, 2009, BNYM filed a motion for summary judgment claiming that it had lost the original Note but the supporting affidavit attached to the motion said nothing about the lost Note. R. 54-74. A few days later, on November 2, 2009, BNYM filed a Notice of Filing Loan Documents, attaching a copy of a back-dated assignment of mortgage. R. 76-78.[8] No further record activity occurred until 2012.

B. The Government Enters Into Consent Agreements with MERS and Bank of America

On April 13, 2011, MERS entered into a "Consent Order" with four federal agencies. *See* Consent Order, *In re Merscorp, Inc.*, OCC EA No. 210-044, 2011 OCC Enf. Dec. LEXIS 80, 2011 WL 2411344 (April 13, 2011).[9] Two months later, Bank of America and BNYM also entered into a settlement that was only recently approved. *See* p. 3, n. 4 *supra*. A year later, on April 4, 2012, the five largest servicing companies

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[8] On April 18, 2012, BNYM also filed a Request For Admissions but attached as an exhibit a copy of the original *unendorsed* Note that had been attached to the Complaint. AX-1.

[9] The four agencies were the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision and the Federal Housing Finance Agency. Petitioner requests that the Court take judicial notice of the Consent Order with MERS.

in the United States, including Bank of America,[10] entered into a Consent Judgment with the U.S. Department of Justice, several other federal agencies, and Attorneys General of 49 states based on allegations that they had knowingly committed numerous abuses in the servicing and foreclosing of residential mortgages.[11]

As part of the settlement, Bank of America was required to pay $8.5 billion ($7.6 billion of which was designated for borrowers), and to abide by a comprehensive list of conditions set forth in Exhibit A, which was attached and expressly incorporated into the Consent Judgment.[12] The requirements of Exhibit A were designed to both prohibit past abuses (including the robo-signing and surrogate signing of thousands of documents)[13] and to provide a mechanism for consumers

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[10] The other four Defendants were Wells Fargo & Company and Wells Fargo Bank, N.A., Citigroup, J.P. Morgan-Chase, and Ally/GMAC.

[11] *See United States v. Bank of America*, 922 F. Supp. 2d 1, 4 (D. D.C. 2013), citing *United States v. Bank of America, et al.*, No. 12-0361 (ECF No. 14), 2012 WL 1440437, 2012 U.S. Dist. LEXIS 188892 (D. D.C. April 4, 2012).

[12] Although, as discussed *infra*, BNYM filed the Consent Judgment with the trial court, it did not include a copy of Exhibit A. Petitioner requests that the Court take judicial notice of the entire Consent Judgment. *See Mitchell v. Wells Fargo Bank, N.A.*, CV 13-04017-KAW, 2014 U.S. Dist. LEXIS 7803, at *10 (N.D. Cal. Jan. 21, 2014) (taking judicial notice of the Consent Judgment).

[13] While the Consent Judgment did not require Bank of America to explicitly admit that Countrywide had engaged in the fraudulent practices prohibited by Exhibit A, the ameliorative

(Continued on following page)

to obtain meaningful relief for Bank of America's fraudulent foreclosure practices. Among other things, Exhibit A required Bank of America (or other "servicer" of the loan) to:

- Ensure that factual assertions made in all foreclosure-related documents and filings be "accurate and complete and . . . supported by competent and reliable evidence."
- Ensure that all affidavits and sworn statements be "based on the affiant's review and personal knowledge of the accuracy and completeness of the assertions" therein to ensure that the affiant would be "competent to testify on the matters stated."
- Ensure that all notarized documents comply with all applicable state law requirements.
- Ensure that all affiants be individuals, not entities, and that all "affidavits, sworn statements and Declarations . . . be signed by hand signature of the affiant (except for electronically filed court documents)."

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provisions implicitly acknowledge that they had occurred. *See also* Office of the Inspector General, Memorandum of Review, *supra*, at pp. 5-12 (making extensive findings of misconduct by Bank of America); *Pino v. Bank of New York Mellon*, 57 So.3d 950, 954 (Fla. 4th DCA 2011), *certified question answered*, 121 So.3d 23 (Fla. 2013) (acknowledging the widespread problem of financial institutions filing fraudulent documents to support foreclosures).

- Prohibiting foreclosure referrals "while the borrower's complete application for any loan modification program is pending. . . ."

Bank of America, 2012 U.S. Dist. LEXIS 188892, at **24-30, 54.

Exhibit A also barred Bank of America and other servicers of the loans from benefitting from Countrywide's *prior* fraudulent activities by:

- Prohibiting the servicer from relying on "an affidavit of indebtedness or similar affidavit, sworn statement or Declaration filed in a pending pre-judgment judicial foreclosure . . . proceeding which (a) was required to be based on the affiant's review and personal knowledge of its accuracy but was not, (b) was not, when so required, properly notarized, or (c) contained materially inaccurate information in order to obtain a judgment of foreclosure, order of sale. . . ."
- Requiring the servicer in "pending cases in which such affidavits, sworn statements or Declarations may have been filed" to "take appropriate action . . . to substitute such affidavits with new affidavits and provide appropriate written notice to the borrower or borrower's counsel."
- Requiring the servicer in "pending post-judgment, pre-sale cases in judicial foreclosure proceedings in which an affidavit or sworn statement was filed which was required to be based on the affiant's review and personal knowledge of its accuracy but may

> not have been, or that may not have, when so required, been properly notarized, and such affidavit or sworn statement has not been re-filed, . . . to provide written notice to borrower . . . or borrower's counsel prior to proceeding with a foreclosure sale or eviction proceeding."

- Requiring the servicer to "offer and facilitate loan modifications for borrowers rather than initiate foreclosure" and to "notify potentially eligible borrowers of currently available loss mitigation options prior to foreclosure referral" and thereafter to "facilitate the submission and review of loss mitigation applications."

Id. at **29-30, 52-54, 67-70.

C. The Foreclosure Trial

On May 11, 2012, the trial court issued a uniform order setting the case for non-jury trial. R. 80-87. On June 21, 2012, that trial allegedly occurred[14] at which BNYM produced for the first time a document it claimed was the original Note – the one it had alleged in the Complaint was "lost or destroyed." R. 111-120.

[14] Although not relevant here, there was a dispute below as to whether a trial occurred, since there is no transcript and no clerk's notes reflecting the admission of any exhibits into evidence. The only record proof that a trial occurred is a sentence in the trial court's foreclosure order stating that Petitioner "was represented by counsel at the hearing for final judgment." R. 107-110.

However, contrary to the express terms of Countrywide's/Bank of America's 2012 Consent Judgment with federal and state authorities, this supposedly newly found Note was not endorsed by a human hand but contained only an undated rubber-stamped "signature" of Michelle Sjolander, Executive Vice President of Countrywide, on a blank endorsement. Nor did BNYM introduce any evidence to support any claim that BNYM held the allegedly newly found Note at the time the foreclosure Complaint was filed.[15] Nonetheless, the trial court entered a final foreclosure judgment and set the foreclosure sale for July 27, 2012, marking the original unendorsed Note as "cancelled." R. 182-184. R. 107-110.

D. BNYM's Motion to Cancel and Vacate

On July 5, 2012, BNYM – apparently realizing it had acted in violation of the Consent Judgment – filed a motion to cancel any sale and/or to vacate the Final Judgment, pursuant to Fla. R. Civ. P. 1.540(b). R. 121-129.[16] The motion acknowledged that BNYM

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[15] *See Zimmerman v. JPMorgan Chase Bank*, No. 4D12-2190, 2014 Fla. App. LEXIS 1832, 2014 WL 537559 (Fla. 4th DCA Feb. 12, 2014) (per curiam) (reversing foreclosure order, holding that on remand "Chase must show that it was the holder of the endorsed note on the date the complaint was filed" and that without such proof "Chase had no standing" to file the complaint).

[16] Fla. R. Civ. P. 1.540(b) provides:

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc. On motion and upon

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was required to file the motion by the Consent Judgment but stated that the motion should be granted only so that "foreclosure avoidance opportunities" could be "evaluated" (R. 124) – not so they could be "offer[ed]" or "facilitate[d]" as required by Exhibit A to the Consent Judgment. However, BNYM's motion attached *only* the Consent Judgment and *not* Exhibit A, which, as previously discussed, included these and other extensive requirements. Moreover, at no time thereafter did BNYM ever state what steps it took, if any, to comply with Exhibit A's requirements.

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such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, decree, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial or rehearing; (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) that the judgment or decree is void; or (5) that the judgment or decree has been satisfied, released, or discharged, or a prior judgment or decree upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment or decree should have prospective application. The motion shall be filed within a reasonable time, and for reasons (1), (2), and (3) not more than 1 year after the judgment, decree, order, or proceeding was entered or taken. A motion under this subdivision does not affect the finality of a judgment or decree or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, decree, order, or proceeding or to set aside a judgment or decree for fraud upon the court.

Without waiting for any response from Petitioner's counsel, the trial court granted BNYM's motion to cancel the sale and re-scheduled it for October 24, 2012. R. 131. Between July 5 and October 24, 2012, the trial court made no effort to determine whether BNYM had even notified Petitioner of any loan modification programs, much less "offered" to provide them or "facilitate" them.

E. The Foreclosure Sale and Petitioner's Motion to Vacate

On October 26, 2012, the foreclosure sale took place resulting in the sale of the property for $290,000 ($146,000 less than Petitioner's mortgage) to a third party ("the buyer"). R. 133-134.

On October 29, 2012, Petitioner's new counsel (one of Petitioner's counsel herein) filed a Notice of Appearance (AX-2) and subsequently moved to vacate the sale, alleging that the foreclosure had been accomplished using fraudulent documents. In addition to seeking discovery and an evidentiary hearing in order to determine if a surrogate signor affixed Michelle Sjolander's rubber-stamped signature to the original note after filing suit, so Respondent could claim it suddenly "found" the blank endorsed original note three-plus years into litigation, the motion sought discovery and a hearing concerning the three separate, backdated assignments of mortgage – dated October 19, 2009, May 17, 2012 and June 7, 2012 –

that BNYM had produced during the course of the litigation. R. 144-154.

On November 29, 2012, the parties, now including the buyer, appeared for a status hearing on Petitioner's motion to vacate and the buyer's motion for a Certificate of Title at which Petitioner renewed her request for an evidentiary hearing. *See* Hearing Transcript, Nov. 29, 2012.[17] However, the trial court refused and summarily denied the motion to vacate and granted the Certificate of Title to the buyer. R. 191-193. Two weeks before Christmas, Petitioner, a single mother with a 9 year old son, was evicted from the property. R. 194, 198.

F. The Appeal to Florida's Third District Court of Appeal

Petitioner appealed the trial court's rulings to the Third DCA (one of Florida's intermediate appellate courts). Prior to filing her Initial Brief, however, she requested that the Third DCA relinquish jurisdiction under Fla. R. App. P. 9.600(b), based on the fact that Petitioner's counsel had taken a videotaped deposition of Michelle Sjolander in another case in which she confirmed that employees of Countrywide's

[17] The Third DCA granted Petitioner's motion to supplement the record with this transcript. During the short hearing, Petitioner's new counsel proffered that her original counsel had abandoned Petitioner and did not appear for the alleged trial on June 21, 2012, due to a drug problem.

Master Document Custodian used rubber-stamps to fabricate signatures for blank endorsements on original notes for herself and two other Countrywide officials. Appellant's Motion for Extension of Time and to Relinquish Jurisdiction, etc., *Perez-Rodriguez v. The Bank of New York Mellon*, No. 3D12-3209 (Fla. 3d DCA March 26, 2013), at p. 3. Ms. Sjolander also testified that a Master Document Custodian had "launched an initiative" to start imaging promissory notes with her blank endorsement in 2011. *Id.* The Third DCA, however, summarily denied the motion.

In her initial brief, Petitioner argued, among other things, that she had been denied due process by being denied the right to challenge the foreclosure based on her "colorable claim of fraud on the court." Appellant's Brief, p. 15. BNYM did not attempt to explain the circumstances behind the suspicious endorsements, but nonetheless claimed *ipse dixit* that no fraud or due process violation occurred. After full briefing and oral argument, the Third DCA affirmed without issuing an opinion, thereby precluding review by the Florida Supreme Court. *See* p. 1 *supra*.

REASON FOR GRANTING THE PETITION

THE PETITION SHOULD BE GRANTED TO RESOLVE A CONFLICT IN THE COURTS ON AN ISSUE OF GREAT PUBLIC IMPORTANCE – WHETHER BORROWERS CAN CONTEST FORECLOSURE PROCEEDINGS THAT ARE FOUNDED ON FRAUDULENT OR FABRICATED DOCUMENTATION

I. Introduction

This case presents the Court with an issue of profound and urgent public importance – whether borrowers have a due process right to contest foreclosures when they are based on the same fraudulent documentation that numerous branches of the federal government and 49 state Attorneys General have already condemned and prohibited through multi-billion dollar settlements. Although Florida's Third DCA was unmoved by the use of fraudulent paperwork, courts in other states have found the same conduct to be "disturbing" and "reprehensible."

As the Maine Supreme Court recently stated:

> The affidavit in this case is a disturbing example of a reprehensible practice. That such fraudulent evidentiary filings are being submitted to courts is both violative of the rules of court and ethically indefensible. The conduct through which this affidavit was created and submitted displays a serious and alarming lack of respect of the nation's judiciaries.

Fed. Nat'l Mortg. Ass'n v. Bradbury, 32 A.3d 1014, 1016 (Me. 2011). *See also Kemp v. Countrywide Home Loans, Inc.*, 440 B.R. 624 (Bankr. D. N.J. 2010) (refusing to recognize as legitimate Countrywide's attempted transfer of a note and mortgage that had not been properly endorsed); *U.S. Bank Nat'l Ass'n v. Ibanez*, 458 Mass. 637, 655, 941 N.E.2d 40, 55 (2011) (Cordy, J., concurring) ("I concur fully in the opinion of the court, and write separately only to underscore that what is surprising about these cases is not the statement of principles articulated by the court regarding title law and the law of foreclosure in Massachusetts, but rather the utter carelessness with which the plaintiff banks documented the titles to their assets."). *In re Hill*, 437 B.R. 503 (Bankr. W.D. Pa. 2010) (issuing a "public censure" against Countrywide and its counsel for fabricating evidence).[18] The Court should grant this Petition to resolve this split in authority and to hold that if due process means anything, it means the resolution of disputes without the use of fraud.

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[18] The rampant use of fraudulent documents in mortgage foreclosures has also been universally condemned by commentators. *See* Renuart, E., *Property Title Troubles in Nonjudicial Foreclosure States: The Ibanez Time Bomb?*, 4 WM. & MARY BUS. L. REV. 111, 119-28 (2013); White, A., *Losing the Paper – Mortgage Assignments, Note Transfers and Consumer Protection*, 24 LOY. CONSUMER L. REV. 468, 486-87 (2012); Shaun Barnes, Kathleen G. Cully & Steven L. Schwarz, *In-House Counsel's Role in the Structuring of Mortgage-Backed Securities*, 2012 WIS. L. REV. 521, 528 (2012).

II. The Due Process Test

This 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).

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; *see also Doehr*, 501 U.S. at 26-28.

A. The Significance of the Deprivation

There can be no serious question that Petitioner satisfied the first tier requirement. This 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). Courts have held that even "a small bank account" is sufficient to trigger due process protections. *See Nat'l Council of Resistance of Iran v. Dept. of State*, 251 F.3d 192, 202-205 (D.C. Cir. 2001) (citing *Russian Volunteer Fleet v. United States*, 282 U.S. 481, 489-92 (1931)).

B. State Action

Since foreclosures in Florida require judicial supervision from beginning to end, Petitioner also plainly satisfied the second tier. This 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).

The first requirement was met in this case by the foreclosure process chosen by the Florida Legislature.[19] Unlike some states which permit *non*-judicial foreclosures, 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). Today, foreclosures in Florida are regulated by Fla. R. Civ. P. 1.110(b), which requires verification of foreclosure complaints. *See* p. 6 *supra.*[20]

To meet the second requirement, a borrower must show that the "private actor operate[d] as a 'willful participant in joint activity with the State or its agents.'" *Brentwood Academy v. Tennessee Secondary*

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[19] This Court has declined to review due process challenges to foreclosures in states that allow non-judicial foreclosures and, therefore, lack state action as defined by the Court in *Flagg Bros., Inc. v. Brooks*, 436 U.S. 149 (1978). *See, e.g., Gomes v. Countrywide Home Loans, Inc.*, 192 Cal. App. 4th 1149, 121 Cal. Rptr. 3d 819, *cert. denied*, 132 S.Ct. 419 (2011); *Apao v. Bank of New York*, 324 F.3d 1091 (9th Cir. 2003), *cert. denied*, 540 U.S. 948 (2003).

[20] The Florida Supreme Court has explained that "[o]ne of the primary purposes of this amendment was to ensure the plaintiff and plaintiffs' counsel do their 'due diligence' and appropriately investigate and verify ownership of the note or right to enforce the note and ensure the allegations in the complaint are accurate." *In re Amends to The Fla. Rules of Civ. Pro.-Form 1.996 (Final Judgment of Foreclosure)*, 51 So.3d 1140 (Fla. 2010).

School Athletic Association, 531 U.S. 288, 296 (2001) (quoting *Lugar,* 457 U.S. at 941). This means that the private actor must have received the "significant assistance of state officials." *Tulsa Professional Collection Services, Inc. v. Pope,* 485 U.S. 478, 486 (1988).

In judicial-foreclosure states such as Florida,[21] the use of the state's courts (and the use of all the state officials who work for those courts) to pursue the foreclosure is mandatory; the foreclosing entity does not possess the right of self-help. In *Shelley v. Kraemer,* 334 U.S. 1 (1948), this Court held that the use of a court to enforce a restrictive covenant could be state action because the court was essentially participating in the discrimination by enforcing the facially discriminatory covenant. Similarly, in *Doehr*, the Court recognized that although prejudgment remedy statutes ordinarily involve disputes between private parties, there is significant governmental assistance by state officials and through state procedures. Specifically, the Court acknowledged that prejudgment remedy statutes "are designed to enable one of the parties to 'make use of state procedures with the overt, significant assistance of state officials,' and they undoubtedly involve state action 'substantial enough to implicate the Due Process Clause.'" *Doehr*, 501 U.S. at 11 (quoting *Pope*, 485 U.S. at 486.

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[21] *See* Nelson, 37 PEPP. L. REV. at 588 (stating that "about forty percent" of the states require foreclosures only by judicial action) (citation omitted).

See also Brinkerhoff-Faris Trust & Savings Co. v. Hill, 281 U.S. 673 (1930).

For the same reason, Florida's requirement of strict supervision of Florida's foreclosure proceedings[22] is enough "substantial" involvement to trigger state action. *See Dieffenbach v. Attorney General,* 604 F.2d 187, 194 (2d Cir. 1979) (finding that the use of Vermont's strict foreclosure statute, which required the mortgagee to go to court to obtain a foreclosure, granted the court discretionary power to change the statutory period of redemption, obligated the creditor to obtain a writ of possession after the redemption period expired, and generally "directly engage[d] the state's judicial power in effectuating foreclosure," was enough to show that there was state action in the foreclosure process). *See also Turner v. Blackburn,* 389 F. Supp. 1250 (W.D.N.C. 1975); *Valley Dev. at Vail v. Warder*, 192 Colo. 316, 557 P.2d 1180 (Colo. 1976); *New Destiny Dev. Corp. v. Piccione*, 802 F. Supp. 692 (D. Conn. 1992).

C. The *Mathews* Test

1. The private interest

The "private interest" prong of the *Mathews* test weighs heavily in Petitioner's favor. As *Daniel Good*

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[22] *See, e.g., Batchin v. Barnett Bank of Southwest Florida*, 647 So.2d 211 (Fla. 2d DCA 1994); *DeMars v. Village of Sandalwood Lakes Homeowners Assoc., Inc.*, 625 So.2d 1219 (Fla. 4th DCA 1993).

again underscores, Petitioner had an enormous interest in retaining her and her family's home.

2. The Risk of Erroneous Deprivation

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). *See also Miller v. Pate*, 386 U.S. 1 (1967) (finding that a deliberate misrepresentation of truth to a jury is a violation of due process); *Caldwell v. Mississippi*, 472 U.S. 320 (1985) (finding that an uncorrected, misleading statement of law to a jury violated due process); *Darden v. Wainwright*, 477 U.S. 168, 181-82 (1986) (improper argument and manipulation or misstatement of evidence violates Due Process). *Cf. Mesarosh v. United States*, 352 U.S. 1, 14 (1956) (reversing convictions based on Solicitor General's disclosure that an important government witness had committed perjury in other proceedings, stating that the Court had a duty "to see that the waters of justice are not polluted").

3. The governmental interest

While requiring plaintiffs in foreclosure actions to prove legal ownership of the underlying note and mortgage would create an 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"). The same principle holds true in federal bankruptcy proceedings involving foreclosure disputes. As one district court bluntly put it: "This Court possesses the independent obligations to preserve the judicial integrity of the federal court and to jealously guard federal jurisdiction. Neither the fluidity of the secondary mortgage market, nor monetary or economic considerations of the parties, nor the convenience of litigants supersede these obligations." *In re Foreclosure Cases I*, Nos. I:07CV2282 et al., 2007 U.S. Dist. LEXIS 84011, at *6, 2007 WL 3232430, at *2 (N.D. Ohio Oct. 31, 2007). *See also 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.' "); *Eaton v. Fed. Nat'l Mortg. Ass'n*, 969 N.E.2d 1118, 1121, 1132 (Mass. 2011) (holding, in a decision with prospective effect only, that a party conducting a foreclosure sale pursuant to a power of sale in a mortgage must hold not only the mortgage, but also the note); *In re Foreclosure Cases*, 521 F. Supp. 2d 650, 653-54 (S.D. Ohio 2007) (requiring plaintiffs in twenty seven foreclosure actions to show that they were the holders of the notes and mortgages at the time the complaints were filed). *See generally*

RESTATEMENT (THIRD) OF PROP. MORTGS. § 5.4(c) (1997) ("A mortgage may be enforced only by, or on behalf of, a person who is entitled to enforce the obligation the mortgage secures."); 18 William B. Stoebuck & John W. Weaver, *Washington Practice: Real Estate: Transactions* § 18.18, at 334 (2d ed. 2004) ("A general axiom of mortgage law is that obligation and mortgage cannot be split, meaning that the person who can foreclose the mortgage must be the one to whom the obligation is due."), quoted in *Bain v. Metropolitan Mortgage Group, Inc.*, 285 P.3d 34 (2012).

III. The Need For Supreme Court Intervention

If this Court does not grant writ in this case, the corruption of foreclosure proceedings in Florida will effectively be rendered 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 that its holding is irreconcilable – on virtually identical facts – with one of its sister courts. *See Pino v. Bank of New York Mellon*, 57 So.3d 950 (Fla. 4th DCA 2011), *certified question answered*, 121 So.3d 23 (Fla. 2013).

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, e.g., Warriner v. Fink*, 307 F.2d 933 (5th Cir.

1962); *Moncrief v. Chase Manhattan Mortgage Corp.*, 275 Fed. Appx. 149 (3d Cir. 2008); *Pennington v. Equifirst Corp.*, No. 10-1344-RDR, 2011 U.S. Dist. LEXIS 9226 (D. Kan. Jan. 31, 2011). *See also Glaviano v. JPMorgan Chase Bank, N.A.*, No. 13-2049 (RMC), 2013 U.S. Dist. LEXIS 180582 (D. D.C. Dec. 27, 2013); *Hahn v. GMAC Mortgage LLC*, No. 11-cv-02978-BNB, 2011 U.S. Dist. LEXIS 144535 (D. Colo. Dec. 15, 2011). Courts also held that borrowers lack standing to challenge violations of the 2012 Consent Judgment. *See Conant v. Wells Fargo Bank, N.A.*, No. 13-572 (CKK), 2014 U.S. Dist. LEXIS 19154, at **37-39 (D. D.C. Feb. 14, 2014) (collecting cases). Review of the Third DCA'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 foreclosure proceedings brought in state courts and federal bankruptcy courts 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. Therefore, the Court should grant the instant Petition.

Respectfully submitted,

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Counsel for Petitioner

Third District Court of Appeal
State of Florida, July Term, A.D. 2013

Opinion filed December 4, 2013.
Not final until disposition of timely
filed motion for rehearing.

No. 3D12-3209
Lower Tribunal No. 09-55547

Paula Rodriguez,
Appellant,

vs.

The Bank of New York Mellon, etc.,
Appellee,

An Appeal from the Circuit Court for Miami-Dade County, Jorge E. Cueto, Judge.

Bruce Jacobs & Associates, P.A., Bruce Jacobs, Amida Umesh Frey and Sebastian M. Alovisi, for appellant.

McGuire Woods, LLP, Sara F. Holladay-Tobias and Emily Rottmann (Jacksonville), for appellee.

Before SUAREZ, SALTER and FERNANDEZ, JJ.

PER CURIAM.

Affirmed.

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE
COUNTY, FLORIDA
CASE NO.: 13-2009-CA-0055547

THE BANK OF NEW YORK
MELLON FKA THE BANK OF
NEW YORK: AS TRUSTEE FOR
THE CERTIFICATEHOLDERS,
CWMBS 2007-4, CHL MORTGAGE
PASS-THROUGH TRUST 2007-4
MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2007-4,
Plaintiff,

vs.

RODRIGUEZ, PAULA, *et al.*
Defendant(s). /

FINAL JUDGMENT OF FORECLOSURE
(Pursuant to Administrative Order 09-09)

THIS ACTION was heard before the Court on Plaintiff's Final Judgment on 6/21/2012. On the evidence presented, **IT IS ORDERED AND ADJUDGED that**:

1. The Plaintiff's Final Judgment is GRANTED, Service of process has been duly and regularly obtained over Defendants: PAULA RODRIGUEZ, LAUREN CHIARA, UNKNOWN SPOUSE OF PAULA RODRIGUEZ, UNKNOWN SPOUSE OF LAUREN CHIARA, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., UNITED

STATES OF AMERICA, DEPARTMENT OF TREASURY, SURF CUNSULTANTS [sic], INC., CACV OF COLORADO, LLC, and MIAMI-DADE COUNTY

2. **Amounts Due.** There is due and owing to the Plaintiff the following:

Principal due on the note secured by the mortgage foreclosed:	$435,407.50
Interest on the note and mortgage	$95,884.93
Property Inspection	$685.00
Escrow Advances/TAX	$21,131.03
Escrow Advances/Hazard Insurance	$9,419.03
Late fees	$235.84
Court Costs:	
Filing fee	$2,785.00
Service of Process	$778.60
Attorney fees based upon a flat fee	$1,300.00
Attorney fees based upon 0.7hours [sic] at $175.00 per hour	$122.50
GRAND TOTAL	**$558,330.40**

3. **Interest.** The grand total amount referenced in Paragraph 2 shall bear interest from this date forward at the prevailing legal rate of interest.

4. **Lien on Property.** Plaintiff, whose address is 7105 Corporate Drive, Plano, TX 75024, holds a lien for the grand total sum specified in Paragraph 2 herein. The lien of the Plaintiff is superior in dignity to any right, title, interest or claim of the defendants and all persons, corporations, or other entities claiming by, through, or under the defendants or any of them and the

property will be sold free and clear of all claims of the defendants, with the exception of any assessments that are superior pursuant to Florida Statutes, Section 718.116. The Plaintiff's lien encumbers the subject property located in Miami-Dade County, Florida and described as:

THE WEST 150 FEET OF THE EAST 260.68 FEET OF THE NORTH ½ OF TRACT 8 OF BILTMORE HEIGHTS, ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 39, AT PAGE 65, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA; FKA LOTS 8,9 AND 10, IN BLOCK 8, OF BILTMORE HEIGHTS, ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 21, AT PAGE 34, OF THE PUBLIC RECORD OF MIAMI-DADE COUTNY [sic]**, FLORIDA PROPERTY ADDRESS: 5928 SW 49TH STREET,, MIAMI, FL 33155**

5. **Sale of property.** If the grand total amount with interest at the rate described in Paragraph 3 and all costs accrued subsequent to this judgment are not paid, the Clerk of the Court shall sell the subject property at public sale on JUL 27 2012, 20___, to the highest bidder for cash, except as prescribed in Paragraph 6, at

   [ ] Room 908, 140 West Flagler Street, Miami, Florida at 11:00 a.m.

   [ ] www.miamidade.realforeclose.com. the Clerk's website for on-line auctions at 9:00 a.m.

   after having first given notice as required by Section 45.031, Florida Statutes.

6. **Costs.** Plaintiff shall advance all subsequent costs of this action and shall be reimbursed for them by the Clerk if plaintiff is not the purchaser of the property for sale. If plaintiff is the purchaser, the Clerk shall credit plaintiff's bid with the total sum with interest and costs accruing subsequent to this judgment, or such part of it, as is necessary to pay the bid in full. The Clerk shall receive the service charge imposed in Section 45.031, Florida Statutes, for services in making, recording, and certifying the sale and title that shall be assessed as costs.

7. **Right of Redemption.** On filing of the Certificate of Sale, defendant's right of redemption as proscribed by Florida Statutes, Section 45.0315 shall be terminated.

8. **Distribution of Proceeds.** On filing the Certificate of Title, the Clerk shall distribute the proceeds of the sale, so far as they are sufficient, by paying: first, all of the plaintiff's costs; second, documentary stamps affixed to the Certificate; third, plaintiff's attorneys' fees; fourth, the total sum due to the plaintiff, less the items paid, plus interest at the rate prescribed in paragraph 2 from this date to the date of the sale. During the sixty (60) days after the Clerk issues the certificate of disbursements, the Clerk shall hold the surplus pending further Order of this Court.

9. **Right of Possession.** Upon filing of the Certificate of Title, defendant and all persons claiming under or against defendant since the filing of the Notice of Lis Pendens shall be foreclosed of all estate or claim in the property and the purchaser

at sale shall be let into possession of the property, subject to the provisions of the "Protecting Tenant At Foreclosure Act of 2009."

10. **Attorney Fees.** The Court finds, based upon the affidavits presented and upon inquiry of counsel for the plaintiff, that a flat fee of Thirteen Hundred ($1,300.00) Dollars is appropriate. PLAINTIFF'S COUNSEL REPRESENTS THAT THE ATTORNEY FEE AWARDED DOES NOT EXCEED ITS CONTRACT FEE WITH THE PLAINTIFF. The Court finds that there are no reduction or enhancement factors for consideration by the Court pursuant to *Florida Patient's Compensation Fund v. Rowe*, 472 So.2d 1145 (Fla. 1985).

11. ***NOTICE PURSUANT TO AMENDMENT TO SECTION 45.031 FLA. ST. (2006)***

    IF THIS PROPERTY IS SOLD AT PUBLIC AUCTION, THERE MAY BE ADDITIONAL MONEY FROM THE SALE AFTER PAYMENT OF PERSONS WHO ARE ENTITLED TO BE PAID FROM THE SALE PROCEEDS PURSUANT TO THE FINAL JUDGMENT.

    IF YOU ARE A SUBORDINATE LIEN HOLDER CLAIMING A RIGHT TO FUNDS REMAINING AFTER THE SALE, YOU MUST FILE A CLAIM WITH THE CLERK NO LATER THAN SIXTY (60) DAYS AFTER THE SALE. IF YOU FAIL TO FILE A CLAIM, YOU WILL NOT BE ENTITLED TO ANY REMAINING FUNDS.

    IF YOU ARE THE PROPERTY OWNER, YOU MAY CLAIM THESE FUNDS YOURSELF. YOU ARE NOT REQUIRED TO HAVE A LAWYER OR

ANY OTHER REPRESENTATION AND YOU DO NOT HAVE TO ASSIGN YOUR RIGHTS TO ANYONE ELSE IN ORDER FOR YOU TO CLAIM ANY MONEY TO WHICH YOU ARE ENTITLED. PLEASE CHECK WITH THE CLERK OF THE COURT, 140 WEST FLAGLER STREET, ROOM 908, MIAMI, FLORIDA (TELEPHONE: (305) 375-5943), WITHIN TEN (10) DAYS AFTER THE SALE TO SEE IF THERE IS ADDITIONAL MONEY FROM THE FORECLOSURE SALE THAT THE CLERK HAS IN THE REGISTRY OF THE COURT.

IF YOU DECIDE TO SELL YOUR HOME OR HIRE SOMEONE TO HELP YOU CLAIM THE ADDITIONAL MONEY, YOU SHOULD READ VERY CAREFULLY ALL PAPERS YOU ARE REQUIRED TO SIGN, ASK SOMEONE ELSE, PREFERABLY AN ATTORNEY WHO IS NOT RELATED TO THE PERSON OFFERING TO HELP YOU, TO MAKE SURE THAT YOU UNDERSTAND WHAT YOU ARE SIGNING AND THAT YOU ARE NOT TRANSFERRING YOUR PROPERTY OR THE EQUITY IN YOUR PROPERTY WITHOUT THE PROPER INFORMATION. IF YOU CANNOT AFFORD TO PAY AN ATTORNEY, YOU MAY CONTACT THE LEGAL AID SOCIETY AT THE DADE COUNTY BAR ASSOCIATION, 123 N.W. FIRST AVENUE, SUITE 214, MIAMI, FLORIDA, (TELEPHONE: (305) 579-5733), TO SEE IF YOU QUALIFY FINANCIALLY FOR THEIR SERVICES. IF THEY CANNOT ASSIST YOU, THEY MAY BE ABLE TO REFER YOU TO A LOCAL BAR REFERRAL AGENCY OR SUGGEST OTHER OPTIONS. IF YOU CHOOSE TO CONTACT THE DADE

COUNTY BAR ASSOCIATION LEGAL AID SOCIETY, YOU SHOULD DO SO AS SOON AS POSSIBLE AFTER RECEIPT OF THIS NOTICE.

12. **Jurisdiction.** The Court retains jurisdiction of this action to enter further orders that are proper, including, without limitation, writs of possession and deficiency judgments.

DONE AND ORDERED in Chambers in Miami-Dade County, Florida, this ___ day of _____, 2012.

_____
Circuit Judge

CONFORMED COPY

JUN 21 2012

JORGE E. CUETO
CIRCUIT COURT JUDGE

Publish in DAILY BUSINESS REVIEW

(20-187.1382/JN)
Copies furnished to *all* parties:

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

CIRCUIT CIVIL DIVISION
CASE NO: 2009-55547 CA 25

The Bank of NY Mellon

Plaintiff(s),

vs.

Paula Rodriguez

Defendant(s), /

ORDER GRANTING/DENYING PLAINTIFF'S/ DEFENDANT'S

Motion to Vacate Judgment

THIS CAUSE having come on to be heard on 15th of November, 2013 on Plaintiff's/Defendant's Motion
To vacate Final Judgment

and the Court having heard arguments of counsel, and being otherwise advised in the premises, it is hereupon

ORDERED AND ADJUDGED that said Motion be, and the same is hereby
Denied. Defendant was represented by counsel at the hearing for final judgment. The *Certificate of Title* shall be *issued* forthwith

DONE AND ORDERED in Chambers at Miami-Dade County, Florida this 15th day of November, 2012.

/s/ J
CIRCUIT COURT JUDGE
JORGE E. CUETO
CIRCUIT COURT JUDGE

Copies furnished to: Counsel of Record

MANDATE

from

DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA
THIRD DISTRICT

This cause having been brought to the Court by appeal, and after due consideration the Court having issued its opinion;

YOU ARE HEREBY COMMANDED that such further proceedings be had in said cause as may be in accordance with the opinion of this Court, and with the rules of procedure and laws of the State of Florida.

WITNESS the Honorable Frank A. Shepherd, Chief Judge of the District Court of Appeal of the State of Florida, Third District, and seal of the said Court at Miami, Florida on this day.

DATE:	December 20, 2013
CASE NO.:	**12-3209**
COUNTY OF ORIGIN:	**Dade**
T.C. CASE NO.:	**09-55547**
STYLE:	
PAULA RODRIGUEZ,	**v. THE BANK OF NEW YORK MELLON, etc.,**

[SEAL]

/s/ Mary Cay Blanks
Clerk, District Court of Appeal,
Third District

ORIGINAL TO: Miami-Dade Clerk

cc: Bruce Jacobs Amida Umesh Frey Emily Rottmann
Sara F. Holladay-Tobias Sebastian M. Alovisi