

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 LAONS;
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

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JUNE 11, 2015

QUESTIONS PRESENTED

The “Brady Violation,” the suppression of evidence favorable to an accused [requested or not], violates due process where the evidence is material either to “guilt” [Emphasis in original] or to punishment, irrespective of the good faith or bad faith of the prosecution.

The statute of 18 U.S.C. § 1512(b)(c), provides that whoever knowingly uses intimidation, threatens, or corruptly persuades another person, or attempts to do so, or engages in misleading conduct toward another person, with intent to influence, or delay, or cause or induce any person to withhold a record, document, from an official proceeding; alter, mutilate, or conceal an object with intent to impair the object’s integrity or availability for use in an official proceeding; to produce a record, document, or other object, in an official proceeding.

The questions presented are:

1. Whether it a “Brady’s Violation” but then again in a civil matter, or a violation of 18 U.S. Code § 1512(b)(c), when an attorney as officer of the court intentionally withholds evidence during an official proceeding with the intent to have a favorable outcome and depriving a party of his 5th and 14th Amendment of due process of law, and of a fair trial violating his civil rights 42 U.S. Code § 1983?

2. When an attorney as officer of the court intentionally violates the statute of 18 U.S. Code § 1512(b)(c), does it warrant the court to sanction the lawyer with a FRCP 60(b)?

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.

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OPINIONS BELOW

The Court of Appeals for the Fifth Circuit order denying Mr. Rodriguez's petition for rehearing En Banc is attached to petition at App.17a. The opinion of the Court of Appeals for the Fifth Circuit is attached to petition at App.1a. The district court second opinion and final judgment is attached at App.13a. The district court first opinion and final judgment is attached at App.14a and App.16a.



JURISDICTION

The panel of court of appeals entered its judgment on December 22, 2014, and denied a petition for rehearing en banc on January 27, 2015. The petition for a writ of certiorari was filed on April 27, 2015. This Court's jurisdiction rests on 28 U.S.C. § 1254(1).



CONSTITUTIONAL, STATUTORY, AND JUDICIAL PROVISIONS INVOLVED

A. Constitutional Provisions

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

1. Fifth Amendment

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

2. Fourteenth Amendment, Section 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 to any person within its jurisdiction the equal protection of the laws.

B. Statutory Provisions**1. 18 U.S. Code 1512 (b), (c)**

Tampering with a witness, victim, or an informant

(b) Whoever knowingly uses intimidation, threatens, or corruptly persuades another person, or attempts to do so, or engages in misleading conduct toward another person, with intent to—

- (1) influence, delay, or prevent the testimony of any person in an official proceeding;
- (2) cause or induce any person to—
 - (A) withhold testimony, or withhold a record, document, or other object, from an official proceeding;
 - (B) alter, destroy, mutilate, or conceal an object with intent to impair the object's integrity or availability for use in an official proceeding;
 - (C) evade legal process summoning that person to appear as a witness, or to produce a record, document, or other object, in an official proceeding; or
 - (D) be absent from an official proceeding to which such person has been summoned by legal process; or
- (3) hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a

Federal offense or a violation of conditions of probation, supervised release, parole, or release pending judicial proceedings; shall be fined under this title or imprisoned not more than 20 years, or both.

(c) Whoever corruptly—

- (1) alters, destroys, mutilates, or conceals a record, document, or other object, or attempts to do so, with the intent to impair the object's integrity or availability for use in an official proceeding; or
- (2) otherwise obstructs, influences, or impedes any official proceeding, or attempts to do so, shall be fined under this title or imprisoned not more than 20 years, or both.

2. 18 U.S. Code § 1506

Theft or Alteration of Record or Process; False Bail

Whoever feloniously steals, takes away, alters, falsifies, or otherwise avoids any record, writ, process, or other proceeding, in any court of the United States, whereby any judgment is reversed, made void, or does not take effect; or

Whoever acknowledges, or procures to be acknowledged in any such court, any recognizance, bail, or judgment, in the name of any other person not privy or consenting to the same—

Shall be fined under this title or imprisoned not more than five years, or both.

3. 42 U.S. Code § 1983

Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

4. Tex. Penal Code 37.09

Tampering with or Fabricating Physical Evidence

- (a) A person commits an offense if, knowing that an investigation or official proceeding is pending or in progress, he:

- (1) alters, destroys, or conceals any record, document, or thing with intent to impair its verity, legibility, or availability as evidence in the investigation or official proceeding; or
 - (2) makes, presents, or uses any record, document, or thing with knowledge of its falsity and with intent to affect the course or outcome of the investigation or official proceeding.
- (b) This section shall not apply if the record, document, or thing concealed is privileged or is the work product of the parties to the investigation or official proceeding.
- (c) An offense under Subsection (a) or Subsection (d)(1) is a felony of the third degree, unless the thing altered, destroyed, or concealed is a human corpse, in which case the offense is a felony of the second degree. An offense under Subsection (d)(2) is a Class A misdemeanor.
- (d) A person commits an offense if the person:
- (1) knowing that an offense has been committed, alters, destroys, or conceals any record, document, or thing with intent to impair its verity, legibility, or availability as evidence in any subsequent investigation of or official proceeding related to the offense;

[. . .]

5. Tex. Penal Code 37.10*Tampering with Governmental Record*

- (a) A person commits an offense if he:
- (1) knowingly makes a false entry in, or false alteration of, a governmental record;
 - (2) makes, presents, or uses any record, document, or thing with knowledge of its falsity and with intent that it be taken as a genuine governmental record;
 - (3) intentionally destroys, conceals, removes, or otherwise impairs the verity, legibility, or availability of a governmental record;
 - (4) possesses, sells, or offers to sell a governmental record or a blank governmental record form with intent that it be used unlawfully;
 - (5) makes, presents, or uses a governmental record with knowledge of its falsity; or
 - (6) possesses, sells, or offers to sell a governmental record or a blank governmental record form with knowledge that it was obtained unlawfully.

C. Judicial Rules**1. Federal Rule Civil Procedures 60(b)(3)***Relief from a Judgment or Order*

- (b) GROUNDS FOR RELIEF FROM A FINAL JUDGMENT, ORDER, OR PROCEEDING. On motion and just terms, the court may

relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

2. Federal Rule Civil Procedures 37(b)(2)(A)(vi)

- (A) *For Not Obeying a Discovery Order.* If a party or a party’s officer, director, or managing agent—or a witness designated under Rule 30(b)(6) or 31(a)(4)—fails to obey an order to provide or permit discovery, including an order under Rule 26(f), 35, or 37(a), the court where the action is pending may issue further just orders. They may include the following:

- (vi) rendering a default judgment against the disobedient party;



STATEMENT

The Plaintiff’s civil rights violation 42 U.S. Code § 1983, in this instance civil case, has issues of first impression of civil rights violation similar to a criminal violation found in *Brady v. Maryland*, 373 U.S. 83 (1963) called the “Brady Violation,” but then again in a civil matter. The “Brady Violation,” the suppression by the prosecution of evidence favorable to an accused [requested or not], violates due process where the evidence is material either to “guilt”

[Emphasis in original] or to punishment, irrespective of the good faith or bad faith of the prosecution.

The Plaintiff's civil rights were violated due to the misconduct of two "officers of the court," defendants' attorneys, Matt Manning and Jeffrey Seewald with McGlinchey Stafford, PLLC, in their capacities as counsel for Bank of America N.A (BOA), by intentionally withholding relevant material evidence during an "official proceeding," with the intent to affect the course and outcome of the official proceeding, and thus by withholding key material evidence that proves the Plaintiff's claims, which has deprived the Plaintiff of his 5th and 14th Amendment of due process of law causing an injury of a loss of real property, which violated the Plaintiff's civil rights to a fair trial. *See* 42 U.S. Code § 1983.

The Fifth and Fourteenth Amendments to the United States Constitution guarantee of due process for all citizens require the government to respect all rights that are guaranteed, protected and provided by the U.S. Constitution and all applicable statutes before the government can deprive a person of life, liberty, or property.

The Court, at a minimum, has to ensure fundamental fairness by guaranteeing the Plaintiff the essential right to be heard, ensuring that all parties receive all relevant material evidence as a whole, not piece by piece, to ensure that the adjudicating court has the appropriate jurisdiction to render a judgment.

BOA and its representatives, Matt Manning and Jeffrey Seewald, have breached their duty to disclose

information to the Plaintiff, a violation of Federal Rule of Civil Procedure 26 (a)(1)(A)(i)(ii), (b)(1), (e)(1)(A).

Defendants' attorneys, Matt Manning and Jeffrey Seewald, were obligated to promote justice and to aid in an effective operation of the judicial system. As officers of the court, they have an absolute ethical duty to tell the panel the truth including avoiding dishonesty or evasion about reasons the attorney or his/her client is not appearing, the location of documents, and other matters related to conduct of the courts. The attorneys' duty is to represent their clients zealously, within the formal rules of the Code of Professional Conduct.

In support of this Petition, Plaintiff relies upon and incorporates herein by reference the following material evidence which is attached to Plaintiff's sworn affidavit. The Plaintiff's sworn affidavit in support of the writ of certiorari is attached at App.19a.

- A copy of letter from corporate attorney (App.23a)
- A copy of the October 21, 1998, the Assignment of Deed of Trust (App.26a)
- A copy of the Plaintiff's promissory note (App.29a)
- A copy of the May 1, 2012, the Assignment of Deed of Trust/Mortgage (App.34a)

On March 10, 2015, BOA's corporate attorney Andrew M. LaBreche, with McGuire Wood LLP,

responded to a Consumer Financial Protection Bureau (CFPB) complaint with Service Request Number 1-539768153. Via U.S. Mail a letter of a “summary of research” (App.23a) of Plaintiff’s mortgage loan was sent to the Plaintiff. The summary of research exposed a concealed document that BOA had in its possession, a “1998-Assignment” (App.26a) that shows that Countrywide had already assigned its ownership rights to Government National Mortgage Association (GNMA) fourteen years prior.

The “1998-Assignment” that was created on October 21, 1998, by Assistant Secretary, Annias D. Smith, for Countrywide, Home Loan Inc. Annias D. Smith purportedly assigned and transferred the original promissory note, together with the lien against the property securing the payment, and title to the land, to GOVERNMENT NATIONAL MORTGAGE ASSOCIATION.

Where it may have been true that at conception of the loan obligation, Countrywide was the owner and holder of one certain promissory note with legal rights to the Note for the sum of \$59,670.00 executed by Joey Rodriguez, AN UNMARRIED MAN, payable to the Countrywide Home Loans, Inc. and was at conception secured by a Deed of Trust with the same date therewith to Trustee, Denise S. Gunnerson 6537 S. Staples, Suite 110, Corpus Christi Texas 78413. Notation from the withheld instrument is noted below:

... does hereby transfer and assign, set over and deliver unto GOVERNMENT

NATIONAL MORTGAGE ASSOCIATION
the above note, together with the liens . . .

The withheld material evidences the “1998-Assignment” identifies the federal government agency “Government National Mortgage Association” was to be the subsequent bona fide purchaser of the original promissory note and deed of trust, against the property at 1211 Washington Street Alice, Texas, 78332, as collateral to secure repayment of the promissory note.

Countrywide failed to officially file and record the “1998-Assignment” assigning the Security Instrument securing the lien interest in the real property, in Jim Wells County Real Property Records, nor did Countrywide perfect GNMA's personal property rights with the Secretary of State. The perfection of chain of title of “1998-Assignment” was not perfected in a timely manner, and therefore, the chain of title lost its perfection. The original deed of trust (lien) remains found in public records in the name of Countrywide who has no statutory enforcement rights to the lien.

Countrywide in providing actual notice of attempting to transfer Countrywide's rights over to GNMA on October 21, 1998, nevertheless the “1998-Assignment” is untraceable in Jim Wells County public records.

Countrywide's actions in failing to record GNMA's “interest” in title and property, and as result, that interest is now void, as to a creditor or a subsequent purchaser as provided of the TEX. PROP. CODE ANN. § 13.001.

The statute of 26 U.S. Code § 6323 (b)(1)(A), provides protection for the Plaintiff, Rodriguez in the interest of the lien. The statute provides that even though notice of a lien imposed by section 6321 has been filed, such lien shall not be valid; (1) with respect to a security (as defined in subsection (h)(4)); (A) as against a purchaser of such security who at the time of purchase did not have actual notice or knowledge of the existence of such lien. The lien is not valid since the Plaintiff did not received actual notice or acknowledge of the GNMA's existence lien the (1998 Assignment).

The negotiation of the promissory note did not occur between Countrywide and GNMA, as the promissory note still remains in the name of Countrywide by virtue of Texas Business & Commerce Code 3.203(d) which provides that a transferor (Countrywide) purporting to transfer a promissory note less than the entire instrument, that negotiation of that instrument does not occur.

The Texas Business & Commerce Code § 3.205 provides that a Negotiable Instrument (promissory note) only becomes payable and negotiable to an identifying "person" as the payee or bona fide endorsee.

The promissory note lacks an endorsement(s) identifying GNMA as the new owner(s) of the note, and thus the note lacks the perfection of chain of title. In a context where the lien and promissory note have no statutory value, and the codes properly allow the court to make that lien and the promissory note null and void.

For the promissory note to continue in Countrywide's name, should raise suspicion as to what Countrywide sold to GNMA.

On May 01, 2012, Melanie Cowan, has intentionally filed or caused to be filed and recorded in the Official Public Records of Jim Wells County, Texas, a duplicitous security instrument an Assignment of Deed of Trust/Mortgage under Instrument No. 417527 (Exhibit A-3) from Countrywide to BOA misrepresenting BOA interest in the property and title.

Melanie Cowan intentionally falsified her employment with Countrywide, as Vice President for the intention to fabricate a duplicitous assignment the "2012-Assignment" to deceive the purchase or sale of the Security Instrument, which is a violation of securities laws, 17 C.F.R. 240.10b-5, also known as Rule 10b-5, that prohibit securities fraud.

Melanie Cowan's duplicitous assignment of "2012-Assignment" shall be void as provided and defined of the Securities Exchange Act of 1934, Validity of Contracts Sec. 29. (a) Any condition, stipulation, or provision binding any person to waive compliance with any provision of this title or of any rule or regulation thereunder, or of any rule of a self-regulatory organization, shall be void.

On December 26, 2013, Matt Manning and Jeffrey Seewald submitted fraudulent material evidence to the court records, the duplicitous security instrument, "2012-Assignment," aided their client BOA in committing fraud in filing deceitful prejudicial material evidence to support its pleading for summary judgment, in case no. 2:13-cv-00133, Doc.31-4, Page1-2.

On December 26, 2013, Matt Manning and Jeffrey Seewald submitted a deceitful affidavit¹ from Jessica Valdez an AVP Operation Team Manager for BOA to support their summary judgment in order to receive an unlawful judgment. *See Hazel-Atlas Glass Co. v Hartford-Empire Co.*, 322 U.S. 238, 270 (1944); *See Jackson v. Irving Trust*, *supra*, 311 U.S. 499; *Soreason v. Sutherland*, 109 F.2d 714, 719 (2nd. Cir 1940). And certainly an issue of such importance affecting the validity of a judgment, should never be tried on affidavits.

Mr. Justice Roberts of the United States Supreme Court states that “Such a proceeding is required by settled federal law, and would be tried, as it should be, in open court with living witnesses, instead of through the unsatisfactory method of affidavits. We should not resort to a disorderly remedy, by disregarding the law as applied in federal courts ever since they were established, in order to reach one inequity at the risk of perpetrating another.”

Ms. Valdez was a deceptive method of means to persuade the court that BOA was in control of the original promissory note, evidence in the records proves that BOA was not in control of the note. The allonge must be permanently affixed to the related note and must clearly identify the note by referencing at least the name of the borrower(s), the date of the note, the amount of the note, and the address of the security property. The note must clearly reference the attached allonge. Without an endorsement and

¹ Submitted Ms. Valdez’s affidavit in Case No. 2:13-cv-00133, Doc.31-1, Page1-2

allonge attached to the promissory note that clearly references a subsequent bona fide purchaser, there can be no one to identify to whom the original promissory note was delivered. Nevertheless having possession of the promissory note alone does not give a person statutory enforcement rights.

Finally, Jessica Valdez did not reference GNMA's "1998-Assignment" in BOA's possession. She is required under perjury to be honest and truthful in her sworn affidavit. The evidence clearly shows that she fabricated a treacherous sworn affidavit, and was without knowledge that an un-recorded instrument existed. Her intentions were to affect the course and the outcome of the official proceeding to cause a miscarriage of justice. Valdez has aided in depriving, defrauding and causing financial injury to the Plaintiff and the federal government.

The panel has abused its power of discretion in granting BOA statutory rights to enforce the Plaintiff's statutory debt contract. The promissory note is governed by statutes of Texas Business & Commerce Code not by Ms. Valdez's deceitful affidavit that was made outside of the court jurisdiction, and supported by a hearsay rule of a federal rule of evidence. The requirements that must be satisfied in order for a note to be a negotiable instrument are set out in the Texas Business & Commerce Code § 3.104(a)(b)(e).

The panel has abused its power of discretion by not striking the Defendants' dishonest affidavit of Jessica Valdez, which deceitfully supported Defendants' summary judgment.

The panel of Fifth Circuit has breached their oath to Article VI, of the U.S. Constitution. Article VI

provides that judges in every state ruling on a statutory debt contract shall be bound by oath or affirmation to support the Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; anything in the Constitution or laws of any State to the contrary notwithstanding. *See Shaw v. Delta Air Lines*, 463 U.S. 85, 96 n.14 (1983). Under the Supremacy Clause of the U.S. Constitution, state laws or actions violating federal law are invalid.

The panel of Fifth Circuit Court has breached its duty under oath to the Fifth Amendment and Fourteenth Amendment to the United States Constitution which guarantees due process for all citizens requiring the government to respect all rights that are guaranteed, protected and provided by the U.S. Constitution and all applicable statutes before the government can deprive the Plaintiff of life, liberty, or property.

The Plaintiff has a constitutional right to have a clear, unambiguous record of ownership from the time the Plaintiff signed his papers at closing to the present moment with no lapse in the chain of title that would causes a “defect” in the instrument, making it invalid. In other words, BOA must substantiate a marketable title with a “perfection” of the chain of title for the deed of trust and the promissory note.

The panel has abused its power of discretion in waiving a federal law, Article III, since possession alone of promissory note is insufficient to

demonstrate standing. The panel has waived the Defendants' constitutional standing requirement to state a claim in a federal court which is contrary to one of the most popular *stare decisis* of the U.S. Supreme Court. *See Lujan v. Defenders of Wildlife*, 504 U.S., 560 (1992). As the Supreme Court recently defined the requirement, “[t]o qualify for standing, a claimant must present an injury that is concrete, particularized, and actual or imminent; fairly traceable to the defendant’s challenged behavior; and likely to be redressed by a favorable ruling.”

The panel is not above the law and must follow the rule of law and exercise discretionary powers in accordance to legal requirements. Discretionary power must be used reasonably, impartially and avoiding oppression or unnecessary injuring to the Plaintiff.

The panel has abused its power of discretion in denying Plaintiff’s petition for rehearing *En Banc*, when Defendants lacked constitutional standing to state a claim in a federal court.

The panel has breached their duty to United States Constitution of Article (III, VI) by not taking all appropriate measures to perform all duties fairly and efficiently that would have assured the Plaintiff a “fair trial” and would have discovered a crime being committed against a federal government agency (GNMA). *See Tumey v. Ohio*, 273 U.S. 510 (1927) No matter what the evidences is against the Plaintiff, he has the right to have an impartial judge. *See Chapman v. California*, 386 U.S. 18, 22 (1967) The Court held in 1967 that “we cannot leave to the States the formulation of the authoritative . . . remedies designed to protect people from *infractions* by the

States of federally guaranteed rights.” See, *e.g.*, *Dye v. Hofbauer*, 546 U.S. 1 (2005); *Spears v. United States*, 555 U.S. __ (2009); *Gonzales v. Thomas*, 547 U.S. 183 (2006). (The Court grants cases of lower court error because “[t]ry as they might, the Justices cannot always resist acting as a court of last resort.”)

The revered philosopher saw the rule of law as foundation to an orderly society.² He states in *Aristotle, Nicomachean Ethics* that a correctly established law promotes virtue as well as discouraging vice.³



REASON FOR GRANTING THE WRIT

The Plaintiff has a right to an appeal as a matter of right under Title 28 U.S.C. § 1291. The Title 28 U.S.C. § 1291 gives the courts of appeals jurisdiction over appeals from “all final decisions of the district courts of the United States.” A “final decision” is one “by which a district court disassociates itself from a case.” *Swint v. Chambers County Comm’n*, 514 U.S. 35, 42 (1995).

BOA and its agents have breached the statute of 18 U.S. Code 1512(b)-(c). The statute of 18 U.S. Code 1512(h),(i) subsection (h) provides extraterritorial Federal jurisdiction over an offense under this section. (i) A prosecution under this section or section

² Quoting Aristotle, *Nicomachean Ethics*, 1129019-25 (Terence Irwin trans.,1985)

³ *Id.*

1503 may be brought in the district in which the official proceeding (whether or not pending or about to be instituted) was intended to be affected or in the district in which the conduct constituting the alleged offense occurred.

Plaintiff's claims in tort is considered to be a choice in action, which is a form of property that is protected by the due process clause of the United States Constitution. All persons shall be equal before the courts and tribunals. The Plaintiff has a civil right to a fair trial which is an essential right for the citizens of the United States that respects the rule of law. Trial courts that are deemed unfair should be restarted, or its judgment voided. The United States Supreme Court aims to do right by ensuring the people the proper administration of justice as provided by the United States Constitution.

Defendants' attorneys, Matt Manning and Jeffrey Seewald, were obligated to promote justice and effective operation of the judicial system by ensuring that the parties receive all relevant material evidence as a whole, not piece by piece, to ensure that the adjudicating court has the appropriate jurisdiction to render a judgment.

The attorneys withheld and concealed the "1998-Assignment," in an official proceeding, and for its place enter a duplicitous assignment the "2012-Assignment" to misrepresent BOA's interest in the title and property, and with such actions of misconduct, not only depriving the Plaintiff of his civil right to a fair trial but aided in committing a crime against GNMA.

Matt Manning and Jeffrey Seewald have breached their duty to Rule 26 (a), they failed and refused to disclose vital information to the Plaintiff under the FRCP 26 (a)(1)(A)(i)(ii), (b)(1), (e)(1)(A).

For no citizens of United States is above the law. BOA and its agent's negligent actions of misconduct of the court of "obstruction of justice" and "fraud upon the court" exposed a concealed instrument and triggered thirteen counts of felony offenses and they must be legally liable for as defined under the statutes listed below.

Count 1: BOA and its agents, Matt Manning, Jeffrey Seewald, Melanie Cowan, Jessica Valdez, Carolyn Hollerman, and Jim Rector are liable for "tampering with evidence" as defined under the statute of TEX PE. CODE ANN. § 37.09. The statute provides when (a) A person commits an offense if, knowing that official proceeding is pending or in progress, he: (1) alters, destroys, or conceals any record, document, or thing with intent to impair its verity, legibility, or availability as evidence in the official proceeding; or (2) makes, presents, or uses any record, document, or thing with knowledge of its falsity and with intent to affect the course or outcome of the official proceeding. (c) An offense under Subsection is a felony of the third degree.

Count 2: BOA and its agents, Matt Manning, Jeffrey Seewald, Melanie Cowan, Jessica Valdez, Carolyn Hollerman, and Jim Rector are liable for "tampering with a victim" as defined under the statute of 18 U.S. Code § 1512(b)(c)(1)(2), the statute provides that (c) whoever corruptly (1) alters, destroys, mutilates, or conceals a record, document,

or other object, or attempts to do so, with the intent to impair the object's integrity or availability for use in an official proceeding; or (2) otherwise obstructs, influences, or impedes any official proceeding, or attempts to do so shall be fined under this title or imprisoned not more than 20 years, or both.

Count 3: BOA and its agents, Matt Manning, Jeffrey Seewald, Melanie Cowan, Jessica Valdez, Carolyn Hollerman, and Jim Rector are liable for "influencing the court" as defined under the statute of 18 U.S. Code § 1503. The statute provides that (a) Whoever corruptly, or endeavors to influence, intimidate, any court of the United States, magistrate judge, or property on account of the performance of his official duties, or corruptly, influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice.

Count 4: BOA and its employees, Melanie Cowan and Jessica Valdez are liable for "theft, embezzlement, or misapplication by bank officer or employee" as defined under the statute of 18 U.S. Code § 656., shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.

Count 5: BOA and its employee, Melanie Cowan, are liable for "security fraud" in fabricating a duplicitous assignment being the "2012-Assignment" as defined under the security law of 17 C.F.R. 240.10b-5, also known as Rule 10b-5, the statute prohibits any act or omission resulting in fraud or deceit in connection with the purchase or sale of any security.

Count 6: BOA and its employee, Melanie Cowan, are liable for “securities fraud” as defined under the statute of 18 U.S. Code § 1348. The statute provides that whoever knowingly executes, or attempts to execute, a scheme or artifice to obtain, by means of false or fraudulent pretenses, representations, or promises, any money or property in connection with the purchase or sale of any commodity for future delivery, or any option on a commodity for future delivery, or any security of an issuer with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. § 78); shall be fined under this title, or imprisoned not more than 25 years, or both.

**Crime Against the Federal Government
and United States**

Count 7: BOA and its agents, Matt Manning and Jeffrey Seewald, are liable for “tampering with Governmental Record,” as defined under the TEX. CODE ANN. § 37.10. The statute provides when (a) A person commits an offense if he: (1) knowingly makes a false entry in, or false alteration of, a governmental record; (2) makes, presents, or uses any record, document, or thing with knowledge of its falsity and with intent that it be taken as a genuine governmental record; (3) intentionally destroys, conceals, removes, or otherwise impairs the verity, legibility, or availability of a governmental record; (4) possesses, sells, or offers to sell a governmental record or a blank governmental record form with intent that it be used unlawfully; (5) makes, presents, or uses a governmental record with knowledge of its falsity.

Count 8: BOA and its agents, Matt Manning, Jeffrey Seewald, Melanie Cowan, Jessica Valdez, Carolyn Hollerman, and Jim Rector have committed criminal felony offenses and they must be held legally accountable for their irresponsible actions as defined under the False Claim Act, 31 U.S.C. § 3729. The False Claim Act provides liability for any person, who “knowing present or cause to be presented, a false or fraudulent claim for payment or approval,” or who “knowing make, use or cause to be made or used, a false record or statement material to a false or fraudulent claim.” They are all liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages which the Government sustains because of the act of that person.

Count 9: BOA and its employees, and agents, Matt Manning, Jeffrey Seewald, Melanie Cowan, Jessica Valdez, Carolyn Hollerman, and Jim Rector have engaged in major fraud against the United States and they must be held legally accountable for their actions as defined under the statute of 18 U.S. Code § 1031. The statute provides that (a) Whoever knowingly executes, or attempts to execute, any scheme or artifice with the intent (1) to defraud the United States; or (2) to obtain money or property by means of false or fraudulent pretenses, representations, or promises, in any grant, contract, subcontract, subsidy, loan, guarantee, insurance, or other form of Federal assistance, including through the Troubled Asset Relief Program. The fine imposed for an offense under this section may exceed the maximum otherwise provided by law, if such fine does not exceed \$5,000,000.

BOA breached its duty to United States consent judgment order filed on April 04, 2012, case no. 1:12-cv-00361-RMC. BOA Corp. and the other four leading banks were ordered to stop violating statutes of the Unfair and Deceptive Acts, the False Claims Act, the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Service members Civil Relief Act, the Bankruptcy Code, and Federal Rules of Bankruptcy Procedures.

BOA breached its duty to United States of America Department of Treasury Comptroller of the Currency consent judgment order filed on April 13, 2012, case no. AA-EC-11-12. BOA breached its duty to meet the requirement of all applicable laws in foreclosure operations. BOA was ordered to stop its foreclosure abuses, such as robo-signing, false affidavits, improper documentation.

BOA and its agents, Matt Manning, Jeffrey Seewald, Melanie Cowan, Jessica Valdez, Carolyn Hollerman, and Jim Rector are liable for “feloniously steals, takes away, alters, falsifies, or otherwise avoids any record, process, or other proceeding, in any court” as defined under the statute of 18 U.S. Code § 1506, the statute, provides that whoever feloniously steals, takes away, alters, falsifies, or otherwise avoids any record, writ, process, or other proceeding, in any court of the United States, whereby any judgment is reversed, made void, or does not take effect.

Matt Manning and Jeffrey Seewald, have earned to be sanctioned for their breach of duty to discovery procedures by concealing information that supported the Plaintiff's claims. The Federal Rules Civil

Procedures 37(c)(1)(C), provides that if (c) a person who fail to disclose, to supplement an early response, or to admit; (1) If a party fails to provide information as required by Rule 26(a); (C) may impose appropriate sanctions, including any of the orders listed in Rule 37(b)(2)(A)(i)-(vi).

Federal Rule of Civil Procedure 37(b)(2)(A)(vi), provides the court the power to sanction BOA and its representatives for their breach of duty to FRCP 26(a), and rendering a default judgment against the disobedient attorneys. *See R & R Sails, Inc. v. Ins. Co. of the Pa.*, 673 F.3d 1240, 1246 (9th Cir. 2012) “The party facing sanctions bears the burden of proving that its failure to disclose the required information was substantially justified or is harmless.”

BOA and Its agents, Matt Manning, Jeffrey Seewald, Melanie Cowan, Jessica Valdez, Carolyn Hollerman, Jim Rector, and William Larew engaged in misconduct of “obstruction of justice” and “fraud upon the court” which deprived the Plaintiff, Rodriguez of his civil rights to a fair trial and they are legally liable as defined under the 42 U.S. Code § 1983. The statute provides that every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. *See*

Thoren v. Jenkins, 374 F. Sup. 134 (D.C. 1974) “The only elements which need to be present in order to establish claim for damages under the civil rights acts are that defendants have deprived plaintiff of a constitutional right, and that defendants’ conduct was under color of state law.”

BOA is not entitled to obtain a judgment in equity as provided by the doctrine as it is stated “those seeking equity must do equity” or “equity must come with clean hands.” (“It is a self-imposed ordinance that closes the doors of a court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief[.]”) (quoting *Precision Instrument Mfg. Co. v. Auto. Maint. Mach. Co.*, 324 U.S. 806, 814 (1945)).

Federal law provides when the attorney(s) for BOA, as an officer(s) of the court, commits “fraud upon the court,” it makes the orders and judgment of that court void, of no legal force or effect. *See State of Illinois v. Fred E. Sterling*, 357 Ill. 354, 192 N.E. 229 (1934) (“The maxim that fraud vitiates every transaction into which it enters applies to judgments as well as to contracts and other transactions.”); *Allen F. Moore v. Stanley F. Sievers*, 336 Ill. 316, 168 N.E. 259 (1929)

The 18 U.S. Code § 401, provides the court the power and remedy to punish by fine or imprisonment both Matt Manning and Jeffrey Seewald as officers of the court for their unprofessional conduct in obstructing the administration of justice. The 18 U.S. Code § 401 provide that the Supreme Court of the United States shall have the power to punish by fine or imprisonment, or both, at its discretion, such

contempt of its authority, and none other, as (1) Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice; (2) Misbehavior of any of its officers in their official transactions; (3) Disobedience or resistance to its lawful writ, process, order, rule, decree, or command.

The Federal Rules of Civil Procedures 60(b) provides the court with the power and remedy to sanction BOA and its representatives, by granting the Plaintiff relief from the final judgment on grounds of Defendants' (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered material evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief.

The statute 18 U.S. Code § 1506 provides the court authority and proper remedy to sanction the Defendants and its representatives for whoever feloniously steals, takes away, alters, falsifies, or otherwise avoids any record, writ, process, or other proceeding, in any court of the United States, whereby any judgment is reversed, made void, or does not take effect.

The FRCP 37(b)(2)(A)(vi), provides the court the power to sanction and rendering a default judgment against BOA, for their counsel's conduct and the

violation of discovery rules of FRCP 26(a). The Sixth Circuit adopted the negligence standard for adverse inference sanctions under Rule 37 in *Beaven v. U.S. Department of Justice*, 622 F.3d 540 (2010) and recently reaffirmed this standard in *Stocker v. United States*, 705 F.3d 225 (2013).

A lawyer cannot shield his client from sanctions; a party must bear some responsibility for its counsel's discovery abuses when it is or should be aware of counsel's conduct and the violation of discovery rules.

The United States Supreme Court cannot turn a blind eye to a crime against the United States government agency GNMA. The statute of 18 U.S.C. § 4 provides that misprision prohibition is the failure-to-report offense, misprision of a felony under the section is in essence a concealment offense. The offense is punishable by imprisonment for not more than three years and/or a fine of not more than \$250,000.

BOA and its employees, agents which includes Matt Manning, Jeffrey Seewald, Melanie Cowan, Jessica Valdez, Carolyn Hollerman, and Jim Rector for they have all breach their duty to the United States Constitution and the rule of law. Their criminal offenses against the court and the Constitution should be treated as contempt of court.

The Supreme Court aims to do right by ensuring that every United States citizen upholds the rule of law and the judicial system, gives every citizen like Plaintiff, Rodriguez a fair trial with a proper administration of justice.

The statutes provided equitably relief for the Plaintiff as defined in 18 U.S. Code § 1506, FRCP 37(b)(2)(A)(vi), and FRCP 60(b), the statutes provide if an opposing party(s) commit an act of misconduct of the court of unfairness or misrepresentation, that his/her negligent actions would render the final judgment is void or in default.



CONCLUSION

As this most high court, is a court of justice, it is not to be taken lightly of the seemingly criminal acts, committed by the Defendants, its representatives, as reflected in the records of this instant case. It is with prayer that this highest court of the land recognize these seemingly criminal acts as a matter of public interest thus, as a matter of right, and for all the reasons described above a writ of certiorari should be granted.

Respectfully submitted,

JOE O. RODRIGUEZ JR.

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JUNE 11, 2015

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**OPINION OF THE
COURT OF APPEALS FOR THE FIFTH CIRCUIT
(DECEMBER 22, 2014)**

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

JOE O. RODRIGUEZ, JR.,

Plaintiff–Appellant,

v.

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

Defendants–Appellees.

No. 14-40096
Summary Calendar

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 2:13-CV-133

Before KING, JOLLY, and PRADO, Circuit Judges.

PER CURIAM*

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Joe O. Rodriguez, Jr., filed a pro se complaint in Texas State Court against Bank of America, N.A. (BOA) and Recontrust Co., N.A. (Recon) alleging that the property located at 1211 Washington Street in Alice, Texas, was improperly sold following foreclosure because BOA did not possess the promissory note that was secured by the Washington Street property.¹ The Defendants moved for summary judgment asserting, among other things, the affirmative defense of res judicata. The district court granted summary judgment to all Defendants. Rodriguez appeals.

We review the grant of summary judgment de novo. *Stauffer v. Gearhart*, 741 F.3d 574, 581 (5th Cir. 2014). A district court may grant summary judgment under Federal Rule of civil Procedure 56 if the record demonstrates “that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” FED. R. CIV. P. 56(a); *Stauffer*, 741 F.3d at 581. Under the doctrine of res judicata or claim preclusion, “a final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action.” *Oreck Direct, LLC v. Dyson, Inc.*, 560 F.3d 398, 401 (5th Cir. 2009) (internal quotation marks and citation omitted). A claim is barred by the doctrine of res judicata if the following four requirements are met: “(1) the parties must be identical in the two actions;

¹ The case was originally brought against Recon and “Countrywide Rome Loans Servicing, L.P. or Bank of America, N.A., as Successor by Merger to BAC Home Loans Servicing, L.P.” Only BOA and Recon are parties to the appeal.

(2) the prior judgment must have been rendered by a court of competent jurisdiction; (3) there must be a final judgment on the merits; and (4) the same claim or cause of action must be involved in both cases.” *Id.* (internal quotation marks and citation omitted).

With respect to BOA, summary judgment was properly granted on the basis of res judicata. There is no dispute that BOA was a defendant in Rodriguez’s prior lawsuit, thus satisfying the first requirement. The second requirement is met because it has not been disputed that the federal district court for the Southern District of Texas was a court of competent jurisdiction to resolve the prior suit. Rodriguez’s principal challenge to the res judicata bar is his assertion that the district court did not satisfy the third requirement because it did not address his case on the merits. Rodriguez’s allegations of errors in the dismissal of the first action that was not appealed does not defeat an assertion of res judicata. *See Federated Dep’t Stores, Inc. v. Moitie*, 452 U.S. 394, 398-99 (1981). His argument that the prior order was not an adjudication on the merits because the district court did not state that the dismissal was with prejudice as required by Federal Rule of Civil Procedure 41(a)(2) is without merit because Rule 41(a)(2) applies to voluntary dismissals. Rule 41(b), however, specifically provides that, with some exceptions that do not apply here, a dismissal for failure to prosecute operates as an adjudication on the merits. *See Nielsen v. United States*, 976 F.2d 951, 957 (5th Cir. 1992). As noted above, the fourth requirement is that the same cause of action must be involved in both cases. As found by the district court, Rodriguez’s complaint, that the defendants did not

have the authority to foreclose on his property, is based upon the same nucleus of operative facts as his prior suit. Rodriguez does not dispute this finding.

With respect to the claims against Recon, the district court properly granted summary judgment on the merits. Rodriguez's various claims are all premised on a "show me the note" theory—*i.e.*, Rodriguez argues that the Defendants did not have the authority to foreclose on his home because they were not owners and holders of the note and deed of trust. However, "the mortgage servicer need not hold or own the note and yet would be authorized to administer a foreclosure." *Martins v. BAC Home Loans Servicing, LP.*, 722 F.3d 249, 255 (5th Cir. 2013). Moreover, based on the summary judgment evidence, there is no genuine dispute of material fact that the defendants had the authority to foreclose. Defendants have provided unrebutted evidence that BOA was assigned the deed of trust and that the note was in default.² Furthermore, Rodriguez does not have standing to challenge the assignment, as "under Texas law, facially valid assignments cannot be challenged for want of authority except by the defrauded assignor." *Reinagel v. Deutsche Bank Nat'l Trust Co.*, 735 F.3d 220, 228 (5th Cir. 2013). Therefore, the district court did not err in granting summary judgment in favor of Recon.

² The district court correctly denied Rodriguez's motion to strike the declaration of Jessica L. Valdez as impermissible hearsay. We have reviewed that declaration and conclude, as did the district court, that it qualifies under the business records exception to the hearsay rule. *See* Fed. R. Evid. 803(6).

App.5a

The grant of summary judgment in favor of Defendants is AFFIRMED.

ORDER OF DISTRICT COURT OF TEXAS
(JANUARY 28, 2014)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

JOE O. RODRIGUEZ, JR.,

Plaintiff,

v.

BANK OF AMERICA, N.A., ET AL.,

Defendants.

Civil Action No. 2:13-CV-133

Before the Court is Defendants' Motion for Summary Judgment (D.E. 31) in this mortgage-related lawsuit. The motion also seeks a pre-filing injunction against Plaintiff as a "vexatious litigant." In his response (D.E. 43, 44), Plaintiff seeks an order striking Defendants' affidavit evidence (D.E. 31-1, 31-4). For the reasons set out below, the Motion to Strike (D.E. 44) is DENIED, and the Motion for Summary Judgment (D.E. 31) is GRANTED IN PART with respect to dismissal of Plaintiff's claims, and DENIED IN PART with respect to the request for a pre-filing injunction.

Procedural Posture

On September 25, 2012, Plaintiff Joey O. Rodriguez (Rodriguez)¹ filed suit in the 79th Judicial District Court, Jim Wells County, Texas, against “Countrywide Home Loans Servicing, L.P. or Bank of America, N.A., as Successor by Merger to BAC Home Loans Servicing, L.P.” The action was removed to this Court as Civil Action No. 2:12-cv-325. *See* D.E. 1-2 in 2:12-cv-325. Rodriguez complained of the Bank of America foreclosure of a deed of trust lien on his home at 1211 Washington Street, Alice, Texas. On March 6, 2013, the case was resolved against Rodriguez by this Court’s order granting Defendant Bank of America, N.A.’s² motion to dismiss. Rodriguez had pled claims for wrongful foreclosure, fraud, and violations of the Texas Deceptive Trade Practices Act (DTPA), the Texas Finance Code, the Real Estate Settlement Procedures Act (RESPA), and the Truth in Lending Act (TILA). He sought declaratory and injunctive relief. Rodriguez did not appeal the judgment.

Less than two months after this dismissal, on May 1, 2013, Rodriguez filed the current case, again in the 79th Judicial District Court, Jim Wells County, Texas, against “Countrywide Home Loans Servicing, LP or Bank of America, N.A., as Successor by Merger to BAC Home Loans Servicing, LP, and

¹ Rodriguez also appeared as “Joe O. Rodriguez, Jr.” in that case. *E.g.*, D.E. 13, p. 2 in 2:12-cv-325.

² Filed by Bank of America individually and as successor by merger to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP.

ReconTrust Company, N.A.” D.E. 1-1. He again complains of the Bank of America foreclosure of a deed of trust lien on 1211 Washington Street, Alice, Texas. He alleges claims described as slander of title, statutory fraud, common law fraud, cloud on the title, foreclosure fraud, wrongful debt collection practices, intentional misrepresentation, fraudulent concealment, negligent misrepresentation, fraud by omission, and unjust enrichment. He also alleges claims related to the Federal Trade Commission and violations of the DTPA, TILA, RESPA, Fair Housing Act (FHA), Fair Credit Reporting Act (FCRA), Texas Property Code, Texas Government Code, Texas Business & Commerce Code, and 18 U.S.C. § 1963. Rodriguez seeks declaratory and injunctive relief.

Defendants removed Rodriguez’s dispute to this Court and seek summary judgment on the basis of res judicata and collateral estoppel, as well as on the merits of each claim. D.E. 31. Defendants also argue that Rodriguez is a vexatious litigant and they seek a pre-filing injunction against Rodriguez to prevent him from filing additional litigation against them without first obtaining the permission of the Court. *Id.*

Discussion

A. Res Judicata

Despite the labels he puts on them, all of Rodriguez’s claims arise from Bank of America’s June 5, 2012 foreclosure of the deed of trust lien on Rodriguez’s property after Rodriguez defaulted on the promissory note secured by the deed of trust. There is no dispute that the loan was in default or

that the deed of trust imposed a lien to secure payment of the note. Rodriguez's complaints are that Bank of America did not have proper assignments of the note or deed of trust and that the assignment, if any, of the deed of trust was not properly recorded in violation of the law. His claims are all based on the argument that Defendants did not have the necessary authority to foreclose.

This Court adjudicated these claims in the prior lawsuit, No. 2:12-cv-325. The doctrine of res judicata precludes a plaintiff from bringing the same claims in a new lawsuit. The prior final judgment determined all claims that were expressed in the prior lawsuit along with any other theories arising from the same nucleus of operative facts as between the same parties. *United States v. Davenport*, 484 F.3d 321, 325-26 (5th Cir. 2007); *In re Ark-La-Tex Timber Co.*, 482 F.3d 319, 330 (5th Cir. 2007).

Under res judicata, Bank of America individually and as successor by merger to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP is entitled to judgment on all claims that Rodriguez asserted in the prior lawsuit, along with all claims that, with due diligence, he could have asserted in the prior lawsuit, including all of the claims asserted against Bank of America here. The Court GRANTS Defendants' Motion for Summary Judgment (D.E. 31) as to those Defendants on the basis of res judicata. However, because ReconTrust was not a party to the prior action, the Court will review the arguments for summary judgment based on the merits of the case.

B. Summary Judgment Evidence

Rodriguez complains that Defendants' summary judgment evidence is insufficient to support the judgment that Defendants request. In particular, Rodriguez objects that the declaration of Jessica L. Valdez (D.E. 31-1) is hearsay because it is based on "working knowledge" and "review of books and business records?" The Court has reviewed the declaration and finds that it qualifies for the business records exception to the hearsay rule. Fed. R. Evid. 803(6). Rodriguez's hearsay objection is **OVERRULED**.

Rodriguez further objects that the Corporation Assignment of Deed of Trust/Mortgage (D.E. 31-4) by which Bank of America purports to have obtained rights to Rodriguez's deed of trust is fraudulent because it is signed by Melanie Cowan as Vice President of Countywide Home Loans, Inc. and dated May 1, 2012. According to Rodriguez, Ms. Cowan's unauthenticated LinkedIn profile (D.E. 44-1, p. 2) shows that she was employed by ReconTrust/Bank of America during the relevant time period and does not list Countrywide Home Loans as an employer. Rodriguez has not complied with the law with respect to authentication of documents as summary judgment proof. Additionally, the LinkedIn profile, without more, is not evidence of fraud. Therefore, the Court **OVERRULES** Rodriguez's objection to Defendants' use of the Corporation Assignment of Deed of Trust/Mortgage as proof of its right to foreclose the lien on Rodriguez's property.

C. Claims on the Merits

All of Rodriguez's allegations and all of the matters he raised in his summary judgment response go to the issue of whether Defendants were the owners and holders of the note and deed of trust so as to have authority to foreclose. He cannot prevail on a "show me the note" theory because it is well-settled in Texas law that Defendants were not required to own the note when they foreclosed the deed of trust lien. *E.g., Bierwirth v. BAC Home Loans Servicing, L.P.*, No. 03-11-00644—CV, 2012 WL 3793190, *3 (Tex. App.—Austin, no pet.).

Defendants have provided adequate proof that they were assignees of the deed of trust and that the note was in default—a matter that Rodriguez does not dispute. D.E. 31-1 (business records affidavit proving up documents, including note payment history), 31-2 (copy of the original note endorsed by Countrywide Home Loans, Inc. in blank), 31-3 (copy of the deed of trust), 31-4 (assignment of the deed of trust to Bank of America, N.A.), 31-5 (payment history for the note), 31-6 (Substitute Trustee's Deed). Defendants have shown that they had the authority to foreclose the lien. Therefore, without contrary proof, Rodriguez has failed to demonstrate his right to prevail on any of his legal theories.

D. Vexatious Litigant and Pre-Filing Injunction

Whether to impose a pre-filing injunction against a vexatious litigant is a matter within the court's discretion, after affording notice and an opportunity to be heard, as part of its inherent power to control its dockets and issue sanctions in that effort.

Ferguson v. MBank Houston, N.A., 808 F.2d 358, 360 (5th Cir. 1986); *Day v. Allstate Ins. Co.*, 788 F.2d 1110, 1115 (5th Cir. 1986). The court may impose fines, hold a party in contempt, and require a party to obtain the court's approval before filing additional litigation against the present parties or more globally. *Day, supra*. While this Court declines to exercise its discretion to impose such a sanction on Rodriguez at this time, this Court will not look favorably on any additional attempts by Rodriguez to challenge its judgments in this case and in 2:12-cv-325 by collateral attack rather than by appeal.

Conclusion

For the reasons set out above, the Court DENIES Rodriguez's Motion to Strike (D.E. 44), GRANTS IN PART Defendants' Motion for Summary Judgment (D.E. 31) and dismisses Rodriguez's action, and DENIES IN PART Defendants' Motion for Summary Judgment with respect to the request for a pre-filing injunction against Plaintiff.

/s/ Nelva Gonzales Ramos
United States District Judge

January 28, 2014

**FINAL JUDGMENT
(JANUARY 28, 2014)**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

JOE O. RODRIGUEZ, JR.,

Plaintiff,

v.

BANK OF AMERICA, N.A., ET AL.,

Defendants.

Civil Action No. 2:13-CV-00133

Pursuant to the Court's Order (D.E. 45), the Court enters Final Judgment dismissing this action with prejudice.

/s/ Nelva Gonzales Ramos
United States District Judge

January 28, 2014

**ORDER OF DISTRICT COURT DENYING
MOTION TO DISMISS AMENDED COMPLAINT
(MARCH 6, 2013)**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

JOEY O. RODRIGUEZ,

Plaintiff,

v.

BANK OF AMERICA, N.A.,

Defendant.

Civil Action No. 2:12-CV-00325

Before the Court is Defendant's "Motion to Dismiss Plaintiff's Amended Complaint" (DE. 10). Pursuant to Local Rule 7.3, opposed motions will be submitted to the judge 21 days from filing. The Motion was filed on February 8, 2013 and its submission date was March 1, 2013. Plaintiff has not filed a response to the Motion. Pursuant to Local Rule 7.4, failure to respond is taken as a representation of no opposition to the relief sought. The Court finds that Respondent's default demonstrates a failure to prosecute his claims subject to the Motion. Additionally, the Court has reviewed the substance of the Motion and finds that it is well-taken. Plaintiff

has already been given an opportunity to amend after being provided notice of Defendant's complaints (D.E. 4) and any additional opportunity to amend would be futile. For these reasons, the Motion (D.E. 10) is GRANTED and the Plaintiff's claims are DISMISSED.

ORDERED

/s/ Nelva Gonzales Ramos
United States District Judge

March 6, 2013

**FINAL JUDGMENT
(MARCH 6, 2013)**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

JOEY O. RODRIGUEZ,

Plaintiff,

v.

BANK OF AMERICA, N.A.,

Defendant.

Civil Action No. 2:12-CV-00325

Pursuant to the Court's Order (D.E. 11), the
Court enters Final Judgment dismissing this action.

ORDERED

/s/ Nelva Gonzales Ramos
United States District Judge

March 6, 2013.

**REHEARING EN BANC DENIED BY
COURT OF APPEALS FOR THE FIFTH CIRCUIT
(JANUARY 27, 2015)**

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

JOE O. RODRIGUEZ, JR.,

Plaintiff-Appellant,

v.

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

Defendants-Appellees.

No. 14-40096

Appeal from the United States District Court
for the Southern District of Texas, Corpus Christi

On Petition For Rehearing En Banc
(Opinion 12/22/14, 5 Cir., ____, ____, F.3d ____)

Before KING, JOLLY, and PRADO, Circuit Judges.

PER CURIAM

Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is DENIED. No member of the panel nor judge in regular active service of the court having

requested that the court be polled on Rehearing En Banc (FED R. APP. P. and 5th CIR. R. 35), the Petition for Rehearing En Banc is DENIED.

Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is DENIED. The court having been polled at the request of one of the members of the court and a majority of the judges who are in regular active service and not disqualified not having voted in favor (FED R. APP. P. and 5th CIR. R. 35), the Petition for Rehearing En Banc is DENIED.

Entered for the court:

/s/ Signature not legible
United States Circuit Judge

*Judges Davis, Jones, Clement, and Costa did not participate in the consideration of the rehearing en banc.

**AFFIDAVIT OF JOE O. RODRIGUEZ
IN SUPPORT OF PLAINTIFF'S PETITION FOR
WRIT OF CERTIORARI
(APRIL 24, 2015)**

IN THE SUPREME COURT OF 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

1. My name is Joe O. Rodriguez JR., being sworn, under oath, and states as follows:

I am over the age of eighteen (18) of sound mind, competent, and authorized to make this affidavit. The facts stated within this affidavit are based on personal knowledge of my Original Promissory Note, Deed of Trust, to the property at 1211 Washington Street Alice, Texas 78332, and are true and correct.

2. I make this affidavit based on newly found discovered evidence that was withheld or concealed by Bank of America N.A. and its representatives.

3. The documents attached to this affidavit are true and correct copies of records that are kept by Bank of America in its concealed collateral file which is not in the ordinary course of business. The acts, events, condition, or opinions contained in each attached documents were made by, or from Bank of America's deceitful employees or representatives with actual knowledge of such act, event, condition, or opinion were made intentionally to deceive the court of Bank of America's interest in the property and title.

4. On March 10, 2015, Bank of America's corporate attorney Andrew M. LaBreche, with McGuire Wood LLP, responded to a Consumer Financial. Protection Bureau (CFPB) complaint No. 1-539768153. Via U.S. Mail a letter¹ of "summary of research" was sent to the Plaintiff by Mr. LaBreche, which revealed a concealed document the 1998-Assignment that Bank of America's had in its collateral file.

5. On October 21, 1998 the Deed of Trust was assigned by Countrywide to Government National Mortgage Association Government (the 1998-"Assignment")²

¹ A true and correct copy of the corporate attorney's letter which revealed the concealed 1998-Assignment is attached hereto as Exhibit A

² A true and correct copy of the 1998-Assignment is attached hereto as Exhibit A-1

6. On October 21, 1998, the Plaintiff executed a Note³ in favor of Countrywide Home Loan Inc. encumbering the property located at 1211 Washington Street, Alice, Texas 78332. (the “DEBT”)

7. On May 1, 2012, the Deed of Trust was purportedly to be assigned by Countrywide to Bank of America (the “2012-Assignment”).⁴

I declare, under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

/s/ Joe O. Rodriguez JR
Joe O. Rodriguez JR

Executed on this 24th day of April, 2015.

SUBSCRIBED AND SWORN TO BEFORE ME, on
the 24th day of April, 2015

/s/ Joanna Hayes
Notary Public
State of Texas

My Commission Expires: 7-31-2018

³ A true and correct copy of the promissory note (the DEBT) is attached hereto as Exhibit A-2

⁴ A true and correct copy of the 2012-Assignment is attached hereto as Exhibit A-3

EVIDENCE EXHIBITS

Exhibit A A copy of reply letter from corporate attorney to Consumer Financial Protection Bureau Bank, which revealed the concealed document “1998-Assignment” that Bank of America’s had in its collateral file, received on March 10, 2015.

Exhibit A-1 A copy of the October 21, 1998, the Assignment of Deed of Trust that indicates Countrywide assigning its ownership rights to Government National Mortgage Association Government (the 1998 “Assignment”).

Exhibit A-2 A copy of the Plaintiff’s promissory note that was executed on October 21, 1998, in favor of Countrywide Home Loan Inc. encumbering the property located at 1211 Washington Street, Alice, Texas 78332. (the “DEBT”),

Exhibit A-3 A copy of the May 1, 2012, the Assignment of Deed of Trust/Mortgage that indicates Countrywide purporting to assigned its ownership rights to Bank of America (the “2012-Assignment”).

/s/ Joe O. Rodriguez
State of Texas
County of Travis

Subscribed and sworn before me on April 24, 2015

/s/ Joanna Hayes
Notary Public
State of Texas
My Comm. Exp. 3/31/18

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED
(MARCH 4, 2015)**

McGuireWoods LLP
Fifth Third Center
201 North Tryon Street
Suite 3000
Charlotte, NC 28202
Tel: (704) 343-2000
Fax: (704) 343-2300
www.mcguirewoods.com

Andrew Labreche
alabreche@mcguirewoods.com
Direct: (704) 343-2274
Fax: (704) 343-1400

Joe Rodriguez
13730 FM 6-20 N., Apt. 810
Austin, TX 78717

Service Request Number: 1-539768153

Re: Joe Rodriguez CFPB Complaint:
Sent February 3, 2015

Dear Mr. Rodriguez,

Thank you for taking the time to submit your inquiry to us. We are writing to inform you that The Office of the Chairman and CEO at Bank of America, N.A. ("BANA") has received your complaint, which was forwarded on your behalf from the Consumer Financial Protection Bureau ("CFPB"). Your complaint has been assigned a service request number which is listed above.

Summary of Research

Although your complaint refers to two separate loans, it is BANA's understanding, based on the account number and property address identified in your complaint, that your complaint relates only to your account with BANA ending in 766. As a result, it is BANA's position that no response is required to your allegations regarding a purported loan modification with respect to an unidentified account.

On October 30, 1998, you entered into a loan agreement with Countrywide Home Loans, Inc. ("Countrywide") for \$59,670.00 in exchange for a mortgage on property located at 1211 Washington Street, Alice, Texas 78332 ("Property"). On April 10, 2012, BANA became the owner and servicer of the loan. See Notice of Assignment.

BANA's records show that you defaulted on your loan obligations and, as a result, the Property was sold at a foreclosure auction on June 5, 2012. Enclosed is a payment history that lists the transactions relating to this loan prior to the foreclosure sale. This history provides pertinent information on payments received, tax and insurance payments, and late charges assessed and paid. There are no codes used in the Payment History that require specific definitions. At the time of the foreclosure sale, the Loan was due for the April 2011 installment.

In your complaint, you state that you asked BANA for "the title and note and [BANA] refused to show (you) anything." Although your complaint provides no indication of when you allegedly made this request, or to which BANA employee your request was directed, BANA has reviewed its records

and found no evidence that it refused to provide you with this (or any other) information. As a courtesy, however, BANA is enclosing a copy of the original title work related to your loan (as it is unclear, what information you are seeking in your request for “the title”), including the deed of trust, warranty deed, assignment of deed of trust, and note for your review.

We trust that this resolves the issues identified in your complaint. It is BANA’s position that no further response is required at this time.

If You Have Any Questions

If you have any questions about this decision, please contact BANA’s counsel, Andrew LaBreche, at telephone number (704) 343-2274.

Sincerely,

/s/ Andrew M. LaBreche
McguireWoods LLP

AML/mre
Enclosures (2)
cc: Consumer Financial Protection Bureau (CFPB)
Case Number: L93356-20150209

**ASSIGNMENT OF DEED OF TRUST
(OCTOBER 21, 1998)**

WHEN RECORDED MAIL TO:

Countrywide Home Loans, Inc.
MSN SV-79/Document Control Dept.
P.O. Box 10266
Van Nuys, California 91450-0266

Loan #: 1268766
Escrow/Closing #: 98001970-GLS
Case #TX4955170358
Parcel ID#: 1140504300000

ASSIGNMENT OF DEED OF TRUST

The State of California
County/Parish of Los Angeles
Know all men by these presents:

That Countrywide Home Loans, Inc., acting herein by and through a duly authorized officer, the owner and holder of one certain promissory note for the sum of \$59,670.00 executed by Joey Rodriguez, an Unmarried Man, payable to the order of Countrywide Home Loans, Inc., and secured by a Deed of Trust even date therewith to

Denise S. Gunnerson
6537 S. Staples, Suite 110,
Corpus Christi, Texas 78413

Trustee, which was filed for record on _____ under Pile No. _____ or recorded in Volume _____ Page _____ of the Deed of Trust Records of _____ County, on the following described lot, or

parcel of land situated in the County of _____ State of Texas, to-wit:

Lot Ten (10), Block Eight (8) of Edgewood Addition No. 2, Situated in the City of Alice, Jim Wells County, Texas. According to Plat Thereof Recorded in Volume 5, Page 44 of the Map Records, Jim Wells County, Texas.

for and in consideration of the sum of _____ Dollars, and other good, valuable and sufficient consideration paid, the receipt of which is hereby acknowledged, does hereby transfer and assign set over and deliver unto GOVERNMENT NATIONAL MORTGAGE ASSOCIATION the above described note, together with the liens against said property securing the payment thereof, and all title held by the undersigned in and to said land.

TO HAVE AND TO HOLD UNTO said grantee said above described note, together with all and singular the lien, rights, equities, title and estate in said real estate above described securing the payment thereof, or otherwise.

Countrywide Home Loan, Inc.

By: /s/ Annias D. Smith
Annias D. Smith, Asst. Sec

Executed this the 21st day of October, 1998.

State of California
County of Los Angeles

On 10/21/1998 before me N. Pena personally appeared Annias D. Smith, Asst. Sec., personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

/s/ Nora Y. Pena
Comm. #: 1129836
Notary Public-California
County of Los Angeles
My Commission Ends on
March 12, 2001

**NOTE
(OCTOBER 21, 1998)**

Multistate

Loan #: 1268766

PHA Case No.: TX4955170358

October 21, 1998

1211 Washington Street Alice, TX 78332

1. Parties

“Borrower” means each person signing at the end of this Note, and the person’s successors and assigns. “Lender” means Countrywide Home Loans, Inc and its successors and assigns.

2. Borrower’s Promise to Pay Interest

In return for a loan received from Lender, Borrower promises to pay the principal sum of Fifty Nine Thousand Six Hundred Seventy and 00/100 dollars (U.S. \$ 59670.00), plus Interest, to the order of Lender. Interest will be charged on unpaid principal, from the date of disbursement of the loan proceeds by Lender, at the rate of Six & One-Half percent (6.500%) per year until the full amount of principal has been paid.

3. Promise to Pay Secured

Borrower’s promise to pay is secured by a mortgage, deed of trust or similar security instrument that is dated the same date as this Note and called the “Security Instrument.” The Security Instrument protects the Lender from losses which might result if Borrower defaults under this Note.

4. Manner of Payment

(A) Time

Borrower shall make a payment of principal and interest to Lender on the first day of each month beginning on, December 1st, 1998. Any principal and interest remaining on the first day of November, 2013 will be due on that date, which is called the "Maturity Date."

(B) Place

Payment shall be made at 4500 Park Granada, Calabasas, CA 91302-1613 or at such place as Lender may designate in writing in notice to Borrower.

(C) Amount

Each monthly payment of principal and interest will be in the amount of U.S. \$ 519.79. This amount will be part of a larger monthly payment required by the Security Instrument, that shall be applied to principal, interest and other items in the order described in the Security instrument.

(D) Allonge to This Note for Payment Adjustments

If an allonge providing for payment adjustments is executed by Borrower together with this Note, the covenants of the allonge shall be incorporated into and shall amend and supplement the covenants of this Note as if the allonge were a part of this Note.

5. Borrower's Right to Prepay

Borrower has the right to pay the debt evidenced by this Note, in whole or in parts, without charge or

Penalty, on the first day of any month. Lender shall accept prepayment on other days provided that Borrower pays Interest on the amount prepaid for the remainder of the month to the extent required by Lender and permitted by regulations of the Secretary. If Borrower makes a partial prepayment, there will be no changes in the due date or in the amount of the monthly payment unless Lender agrees in writing to those changes.

6. Borrower's Failure to Pay

(A) Late Charge for Overdue payments

If Lender has not received the full monthly payment required by the Security Instrument as described in Paragraph 4(C) of this Note, by the end of fifteen calendar days after the payment is due. Lender may collect a late charge in the amount of Four percent (4.000 %) of the overdue amount of each payment.

(B) Default

If Borrower defaults by failing to pay in full any monthly payment, then Lender may, except as limited by regulations of the Secretary in the case of payment defaults, require immediate payment in full of the principal balance remaining due and all accrued interest. Lender may choose not to exercise this option without waiving its rights in the event of any subsequent default. In many circumstances regulations issued by the Secretary will limit Lender's rights to require immediate payment in full in the case of payment defaults. This Note does not authorize acceleration when not permitted by HUD

regulations. As used in this Note, "Secretary" means the Secretary of Housing and Urban Development or his or her designee.

(C) Payment Oil Costs and Expenses

If Lender has required immediate payment in full, as described above, Lender may require Borrower to pay costs and expenses including reasonable and customary attorneys' fees for enforcing this Note to the extent not prohibited by applicable law. Such fees and costs shall bear Interest from the date of disbursement at the same rate as the principal of this Note.

7. WAIVERS

Borrower and any other person who has obligations under this Note waive the rights of presentment and notice of dishonor. "Presentment" means the right to require Lender to demand payment of amounts due. "Notice of dishonor" means the right to require Lender to give notice to other persons that amounts due have not been paid

8. Giving of Notices

Unless applicable law requires a different method, any notice that must be given to Borrower under this Note will be given by delivering it or by mailing it by first class mail to Borrower at the property address above or at a different address if Borrower has given Lender a notice of Borrower's different address.

Any notice that must be given to Leader under this Note will be given by first class mail to Lender at the address stated in Paragraph 4(B) or at a different

address if Borrower given a notice of that different address.

9. Obligations of Persons Under This Note

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, solely or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. Lender may enforce its rights under this Note against each person individually or against all signatories together. Any one person signing this Note may be required to pay all of the amounts owed under this Note.

BY SIGNING BELOW Borrower accepts and agrees to the terms and covenants contained in this Note.

/s/ Joey Rodriguez
Borrower

Pay to the order of without recourse Countrywide Home Loans, Inc.

By: /s/ Nora Yord
Asst. Secretary

**CORPORATION ASSIGNMENT OF
DEED OF TRUST/MORTGAGE
(MAY 1, 2012)**

After Recording, Return to:
LSI Title Agency, Inc.
Land Records of Texas
1525 W. Walnut Hill Lane #300
Irving, Texas 75038

TS No: 12-0030858
TSG No: 12-005396-01
APN: 1140504300000

For value received, the undersigned hereby grants,
assigns and transfer to:

Bank of America., N.A.

All beneficial interest under that certain deed of trust dated 10/21/1998 executed by: Joey Rodriguez, an unmarried man, Trustor: to Denise S. Gunnerson, as Trustee and recorded as Instrument No. 317005 on 11/04/1998, in Book 667 Page 470 of official records in the County Recorders Office of Jim Wells County, the State of Texas. This land affected by this assignment is located in Jim Wells County, the State of Texas and is described as follows:

Lot Ten (10) Block Eight (8) of Edgewood Addition No. 2 situated in the City of Alice, Jim Wells County, Texas. According to Plat thereof recorded in Volume 5, Page 44 of the Map Records, Jim Wells County, Texas.

Together with the note or notes therein described or referred to, the money due and to become due

thereon with interest, and all rights accrued or to accrue under said Deed of Trust/Mortgage.

/s/Melanie Cowen
Vice President
Countrywide Home Loans, Inc

May 1, 2012

State of Texas
County of Dallas

On May 1, 2012, before me Michele Christina Preston, personally appeared Melanie Cowen known to me (or proved to me on the oath of _____ or through _____) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed.

Witness My hand and Official Seal.

/s/ Michele Christine Preston
Notary Public's Signature