

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT,
IN AND FOR MIAMI DADE COUNTY, FLORIDA**

THE BANK OF NEW YORK MELLON FKA
THE BANK OF NEW YORK, AS TRUSTEE
FOR THE CERTIFICATE HOLDERS OF THE
CWALTS, INC., ALTERNATIVE LOAN TRUST
2006-OA10 MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2006-OA10,

GENERAL JURISDICTION DIVISION

CASE NO.: 2009-62378-CA

Plaintiff,

vs.

LAZARA A. RODRIGUEZ

Defendant.

**DEFENDANT'S EMERGENCY MOTION TO STOP WRIT OF POSSESSION
AND/OR FOR ORDER ON MOTION FOR STAY PENDING APPEAL**

Lazara A. Rodriguez, ("Ms. Rodriguez"), by and through undersigned counsel, hereby files this Emergency Motion to Stop Writ of Possession and/or for Order on Motion for Stay Pending Appeal, and states:

1. Ms. Rodriguez is an 80 year old former political prisoner of the Castro regime who emigrated to Miami and eventually wrote a book about her powerful experience called Diary of a Survivor: 19 years in a Cuban Woman's Prison.¹



¹https://www.amazon.com/dp/0312130503/ref=cm_sw_em_r_mt_dp_W8NC4Y87FTRS_TN5FSP8T

2. She is a true freedom fighter worthy of great respect after enduring such difficult circumstances in her decades long fight against communism and Fidel Castro. FreedomCollection.org preserved Ms. Rodriguez's story of faith, truth and freedom.² Ms. Rodriguez's interviews are an important piece of history for Miami's Cuban-Americans.

3. In March of 2019, the Miami Herald published a series of articles explaining how the Cuban exile community established a "Go Fund Me" campaign to help Ms. Rodriguez who faced eviction from a foreclosure on her subprime mortgage.³ According to the Go Fund Me campaign⁴ which raised \$24,175.00 from 307 donors:

Ana never married, as she was beyond the normal marrying age when she was released from prison. Now, 80 years old and in failing health has no family and is fact supporting her longtime friend and fellow prisoner Miriam Ortega, who has been living with Ana for many years. Miriam is very frail, has no family, not receiving any income, no social security and gets no welfare. As a result of the foreclosure sale on January 8, 2019, both Ana and Miriam will soon be evicted from their home a home Ana has loved and cherished for 22 years; a home Ana hoped she and Miriam could spend their last days. Now, it is only a matter of time until the bank serves her with a Writ of Possession, evicting them and literally throwing all their worldly possessions onto the curb.

While in a Cuban prison of 19 years, Ana Rodriguez soon gained the reputation as being a Planted (one that cannot be broken); a hard case. During these long years, she was "beaten, starved, threatened and bullied, locked in blackout cells for months at a time, denied water and medical treatment for long stretches. She resisted with astonishing courage, guile and an unshakable will, breaking her captors rather than being broken herself..."

We are starting a fund to buy Ana's home back from the bank so she can spend her last few years in peace and harmony as Ana has certainly earned that much.

² https://youtu.be/q_vye6Rq35U

³ <https://www.miamiherald.com/latest-news/article228161264.html>
<https://www.google.com/amp/s/amp.miamiherald.com/news/nation-world/article228072159.html>

⁴ <https://ie.gofundme.com/f/save-ana039s-home-spent-19-years-in-castro039s-prison>

4. After reading the Herald articles, undersigned counsel reached out and agreed to assist Ms. Rodriguez in stopping her foreclosure on a *pro bono* basis. At the same time, prominent members of the Cuban exile community reached out to the Bank and offered to pay the value of the property to stop the foreclosure. The Bank demanded over \$700,000.00 which was far more than the home was worth.

5. A careful review of her case, Ms. Rodriguez's counsel filed a lawsuit to vacate the judgment in her foreclosure case under Fla. R. Civ. P. Rule 1.540(b) in Miami-Dade Circuit Court case number 2019-25195-CA-01. The lawsuit alleged Bank of America committed fraud upon the court as the servicer for Bank of New York Mellon which is grounds to vacate her consent judgment. The lawsuit is still pending.

6. The Florida Supreme Court instructs that “***a consent judgment ... may only be attacked in cases alleging fraud on the court.***” *Arrieta-Gimenez v. Arrieta-Negron*, 551 So. 2d 1184, 1186 (Fla. 1989) (emphasis added). In *Arrieta-Gimenez*, the Florida Supreme Court refused to “differentiate between a consent judgment and a final judgment entered after trial on the merits” for purposes of Rule 1.540(b). *Id.*

7. Florida law expressly allows Ms. Rodriguez to challenge her fraudulent foreclosure even if she agreed to the consent judgment unaware of the fraud. The fraud actually began in 2006, fifteen years ago, when Countrywide Home Loans, Inc. (“Countrywide”) gave Ms. Rodriguez a predatory 30 year adjustable rate mortgage loan. Today, in her 80s, Ms. Rodriguez would still have 15 more years to go on the loan.

8. The mortgage was a time bomb with a 1.25% teaser rate for the first month and a negative amortization provision. Countrywide targeted these predatory loans at unsophisticated, elderly borrowers from communities of color.

9. When a borrower makes the teaser rate payment, the unpaid interest is added to the principal balance, which increases the minimum monthly payment. In time, the monthly payment gets so high the borrower defaults. This loan product made billions for these subprime lenders before the economy imploded in 2008.

10. After the economy crashed, Bank of America acquired Countrywide, JP Morgan Chase acquired Washington Mutual, and Wall Street deployed an endless army of lawyers and lobbyists to defend housing discrimination, predatory lending, securities fraud, foreclosure fraud and an ongoing list of criminal activity.

11. In 2009, Bank of America acted as the mortgage servicer for Bank of New York Mellon (“BONYM”) and filed a foreclosure action against Ms. Rodriguez. The complaint failed to attach a copy of Ms. Rodriguez’s promissory note. The only evidence attached to the complaint that showed BONYM had standing to foreclose was an assignment of mortgage signed by Mary Kist.

12. A google search for “Mary Kist robo-signer” returned 250,000 hits. The robo-signed mortgage assignment was fraud on the court.

13. In 2011, the media reported on the Florida Attorney General’s office powerpoint presentation that exposed this widespread “robo-signing” and fraud on the court in foreclosures by Bank of America, JP Morgan Chase, and other lenders.⁵

14. The Federal Bureau of Investigation called the robo-signing scandal one of the top ten financial crimes in its history. The Office of the Comptroller of the Currency (“the OCC”) investigated and found Bank of America and others had litigated foreclosures without proper mortgage assignments or properly endorsed notes.

⁵ <https://documents.latimes.com/florida-ag-report-on-foreclosure-law/>

15. In 2011, the OCC forced Bank of America, JP Morgan Chase and others into a Consent Judgment that required they identify every case pending in 2009 and 2010 that was filed without a proper mortgage assignment or properly endorsed note.

16. As set forth in her lawsuit, Ms. Rodriguez's foreclosure was one such case. The OCC Consent Judgment required Bank of America identify those cases to compensate the homeowners for the fraud. Instead, Bank of America engaged in a criminal cover up to hide that it falsified different evidence of standing to foreclose.

17. Bank of America fraudulently affixed rubberstamped blank endorsement signatures of Countrywide to original notes with the intention to pass the signatures off as the true signatures of Countrywide. Then, Bank of America sent out senior executives and corporate representatives to give perjured testimony swearing these were true signatures of Countrywide when they were not.

18. This systemic pattern of forgery and perjury was already in full operation when Bank of America negotiated the \$25 Billion National Mortgage Settlement and promised to stop using fraudulent evidence in foreclosures.

19. Then, Bank of America and its counsel engaged in scorched earth, bad faith obstruction of justice. They ordered the destruction of nearly 2 billion records in violation of multiple subpoenas for those records. They backdated records, defied court orders, and made materially false and misleading argument to Courts to cover it up.

20. As a result of this criminal course of conduct, Ms. Rodriguez had no choice but to agree to a consent judgment of foreclosure. The bank foreclosed on her home which sparked the uproar of Miami's Cuban exile community. The eviction never went forward. The Clerk's office delayed the fraud lawsuit because of COVID.

21. In October of 2020, while this action to vacate the foreclosure judgement was pending before the court, the Bank sold Ms. Rodriguez's home for \$414,000.00 to Vanessa Veytia of Chula Vista, California, which is less than what the Cuban exile community offered to pay in August of 2019.

22. On January 12, 2021, Ms. Veytia obtained leave of this Honorable Court to intervene in the lawsuit to vacate the foreclosure judgment in this action due to fraud.

23. On Friday, February 12, 2021, Ms. Veytia obtained an emergency hearing on her motion to intervene and for writ of possession in this case. The hearing was set for the next business morning on Tuesday, February 16, 2021. Due to the 3 day President's weekend, there was no time to brief the Court on these issues.

24. The Emergency Motion did not advise the judge presiding over the closed foreclosure case of this action to vacate that judgment due to fraud. Ms. Veytia's counsel did not contact Ms. Rodriguez's counsel to discuss the Emergency Motion. The emergency motion did not set forth any emergency that required the judge to expedite a writ of possession against an 80 year old woman during a pandemic.

25. On February 16, 2021, Ms. Rodriguez was delayed on her way to an office to appear on the zoom emergency hearing in person. Ms. Veytia's counsel proceeded on the emergency hearing without her and obtained an order granting a writ of possession without ensuring the Court was fully apprised of these circumstances.

26. In researching what type of person would use such aggressive tactics to remove an 80 year old former political prisoner loved by the Cuban exile community, undersigned counsel googled Ms. Veytia's name and address. The story that came up

adds more intrigue to this Miami foreclosure telenovela.⁶

27. Ms. Veytia is apparently the sister of Edgar Veytia, a former Mexican State Attorney General convicted by the U.S. Government for corruption. Mr. Veytia was essentially a U.S. Attorney for the Mexican government that was on the payroll of a drug cartel, abusing his power and authority to help a murderous criminal enterprise.

28. It is well documented that Miami real estate has become an epicenter of money laundering for international criminals.⁷ Ms. Veytia has not disclosed the source of her \$414,000.00. It would be most inequitable to allow Ms. Rodriguez to be forced from her home during a pandemic for a money laundering transaction by the sister of a corrupt Mexican law enforcement official serving 20 years in U.S. federal prison.

29. The Florida Supreme Court instructs a writ of possession “issues only when the right is clear and free from doubt, when there is no equity—or appearance of equity—in the defendant.” *Dixon v. Dixon*, 191 So. 292, 293 (Fla. 1939); *See also, Sarasota-Fruitville Drainage Dist. v. All Lands Within Said Dist. Upon Which Drainage Taxes for Year 1928 Have Not Been Paid*, 25 So. 2d 498, 500 (Fla. 1946); *Gorton v. Paine*, 18 Fla. 117, 121 (1881); *Bunch v. High Springs Bank*, 80 So. 319 (Fla. 1918).

30. The U.S. Supreme Court instructs that due process does not tolerate the use of false or fraudulent evidence because it “involve[s] a corruption of the truth-seeking function of the trial process.” *United States v. Agurs*, 427 U.S. 97, 107 (1976).

31. After the robo-signing scandal, the Fourth DCA certified a question of

⁶ <https://www.justice.gov/usao-edny/pr/former-mexican-state-attorney-general-sentenced-20-years-prison-participation>
<https://www.sandiegouniontribune.com/news/border-baja-california/sd-me-veytia-san-diego-20170411-story.html>

⁷ <https://www.miamiherald.com/news/business/real-estate-news/article213797269.html>

great public importance to the Florida Supreme Court finding “many, many mortgage foreclosures appear tainted with suspect documents... [which] may dramatically affect the mortgage foreclosure crisis in State.” *Pino v. Bank of New York, Mellon*, 57 So. 3d 950, 955 (Fla. 4th DCA 2011). The dissenting opinion in *Pino* wrote:

Decision-making in our courts depends on genuine, reliable evidence. The system cannot tolerate even an attempted use of fraudulent documents and false evidence in our courts. The judicial branch long ago recognized its responsibility to deal with, and punish, the attempted use of false and fraudulent evidence.... *Id.*

32. It should not be lost that Ms. Rodriguez is a victim of the same fraud BONYM attempted in the *Pino* case. She is a victim of a new fraud involving forgery and perjury Bank of America hid from the U.S. Department of Justice and Vice President Kamala Harris, who led those negotiations as California’s Attorney General.

33. The facts of this case fit a pattern of criminal activity that violates the Florida and federal Racketeering Influenced, Corrupt Organizations (RICO) Act, the doctrine of unclean hands, and the \$25 Billion National Mortgage Settlement.

34. Almost 20 years ago, the Dupont chemical company got sued across the country in state and federal court because their product destroyed crops they were meant to protect. After years of fraud on the court, Dupont admitted knowing the product destroyed crops, setting off a wave of fraud on the court motions. *See, Native Hammock Nursery, Inc. v. E.I. DuPont de Nemours & Co.*, 774 So. 2d 727 (Fla. 3d DCA 2000).

35. A group of farmers in Hawaii went a step further and sued Dupont under the federal RICO statute alleging the fraud on the court constituted mail fraud, wire fraud and obstruction of justice. The 9th Circuit Court of Appeal reversed finding the litigation privilege did not protect a criminal enterprise (Dupont and its lawyers) from

being prosecuted for RICO. *Living Designs v. E. I. Dupont De Nemours and Company*, 431 F.3d 353 (9th Cir. 2005).

36. “One who comes into equity must come with clean hands else all relief will be denied him regardless of merit of his claim, and it is not essential that act be a crime; it is enough that it be condemned by honest and reasonable men.” *Roberts v. Roberts*, 84 So.2d 717 (Fla. 1956). The Florida Supreme Court noted “the principle or policy of the law in withholding relief from a complainant because of ‘unclean hands’ is punitive in its nature.” *Busch v. Baker*, 83 So. 704 (Fla. 1920).

37. “[T]ampering with the administration of justice in the manner indisputably shown here involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated consistently with the good order of society.” *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 246, 64 S. Ct. 997 (1944).

38. The 5th Amendment to the U.S. Constitution and Article 1, §9 of the Florida Constitution both provide “No person shall be deprived of their property without due process of law.” Respectfully, a fraudulent foreclosure is not due process.

39. This Honorable Court should not allow Ms. Rodriguez to be deprived of her home during a pandemic without due process and an opportunity to be heard on these fraud issues. The equities clearly favor Ms. Rodriguez. Ms. Veytia should not be rewarded for forum shopping and obtaining the ultimate relief of eviction from a fraudulent foreclosure while Ms. Rodriguez has a fraud on the court case pending.

40. To add further injury, Ms. Veytia’s counsel submitted a proposed order to the court without providing a copy for comment to Ms. Rodriguez’s counsel.

41. As a result, the order did not address the ore tenus motion to stay enforcement of the writ of possession pending appeal. This only allows Ms. Veytia's counsel to seek enforcement of the writ while delaying Ms. Rodriguez's ability to seek protection for the appellate court.

42. Ms. Veytia's counsel has never contacted undersigned counsel to discuss a resolution to their motion for writ of possession, the emergency hearing, or the Court's order granting the writ of possession. Respectfully, this is not due process.

WHEREFORE, Ms. Rodriguez respectfully submits this Honorable Court should order the Sheriff shall not serve the writ of possession and evict her from her home during this pandemic and/or issue an order on Defendant's motion for stay pending appeal so she can ask the Third DCA to protect her constitutional right not to be deprived of her property without due process, and any other relief deemed just.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was filed with the Florida Courts e-filing Portal, and served on all those on the Service List, either via Notices of Electronic Filing generated by the e-Portal system or another authorized manner on February 16, 2021.

Respectfully submitted,

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