

**IN THE THIRD DISTRICT COURT OF APPEAL  
STATE OF FLORIDA**

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**CASE No.: 3D2024-0898  
L.T. NO.: 23-17611-CA**

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**KRISTINA VEGA,**

**Petitioner**

**vs.**

**WILMINGTON TRUST, NATIONAL ASSOCIATION,  
not in its individual capacity, but solely as Owner Trustee  
for Bravo Residential Funding Trust 2020-NQM1 and GOLDEN  
DREAMS CONDOMINIUM ASSOCIATION, INC. f/k/a Golden  
Dreams Condominium, Inc.,**

**Respondent**

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**AMENDED PETITION FOR WRIT OF PROHIBITION**

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**RESPECTFULLY SUBMITTED BY:**

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## INTRODUCTION

Petitioner, Kristina Vega (“Petitioner”), by and through *Pro Se* submission and pursuant to Florida Rules of Appellate Procedure 9.100(e) and 9.030(b)(3), seeks a Writ of Prohibition precluding the lower tribunal Judge Ariana Fajardo Orshan (“the Judge”) from presiding over the Case No. 2023-017611-CA-01 (“the Case”) WILMINGTON TRUST, NATIONAL ASSOCIATION, not in its individual capacity, but solely as Owner Trustee for Bravo Residential Funding Trust 2020-NQM1 vs. Golden Dreams Condominium Association and Kristina Vega, Case No. 2023-017611-CA-01.

On April 12, 2024, Petitioner moved to disqualify the Judge under Fla. R. Jud. Admin. 2.330 via verified motion<sup>1</sup> with an affidavit in support, which stated at least **nine** (9) distinct legally sufficient reasons showing Petitioner’s reasonable fear of not receiving a fair trial. Petitioner’s fear was centered around the fact that the Judge’s decisions, actions, and comments during the pre-trial hearings violated the Preamble and Canons of the Florida Code of Judicial

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<sup>1</sup> See Appendix at Page 6: Motion to Disqualify.

Conduct, the ethical standards for the administration of justice that every judge in Florida is bound to follow.

Petitioner's motion to disqualify was denied<sup>2</sup> without hearing on April 16, 2024. Because the motion was legally sufficient and timely, providing detailed reasons showing that fear of receiving an impartial and fair trial is reasonable, this petition should be granted and the case should be reassigned to another judge.

Petitioner is the Defendant in this Case. Wilmington Trust, National Association, is the Plaintiff in this Case and will be referred to as "Respondent".

### **JURISDICTIONAL BASIS**

This Honorable Court has jurisdiction to review a trial judge's refusal to disqualify himself/herself. See *Bundy v. Rudd*, 366 So. 2d 440, 442 (Fla. 1978) (if a basis for disqualification has been established "prohibition is both an appropriate and necessary remedy"); *Hill v. Feder*, 564 So. 2d 609, 609 (Fla. 3d DCA 1990)

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<sup>2</sup> See Appendix at Page 3: Order Denying Motion to Disqualify.

(same); see also Fla. R. App. P. 9.030(3) (district courts of appeal may issue writs of prohibition).

This Honorable Court has jurisdiction to issue a Writ of Prohibition under Art. V, §4(b)(3) Fla. Const., and pursuant to Fla. R. App. P. 9.100(e) and 9.030(b)(3).

Moreover, Prohibition is the proper action when there is no other appropriate and adequate legal remedy (see *Sutton v State*, 975 So. 2d 1073(2008)).

### **NATURE OF THE RELIEF SOUGHT**

Petitioner respectfully asks this Court to grant this Petition, to issue a Writ of Prohibition, precluding the Judge from presiding over the Case, to quash the order denying the motion to disqualify, and to instruct the trial court to enter an order of disqualification, directing that the Case be re-assigned to another judge.

### **STATEMENTS OF FACTS IN THIS CASE**

#### **A. Petitioner's Statement of the Facts as to the Fraudulent Misrepresentations in the Mortgage Application**

Petitioner is an affinity fraud victim. For several decades, the board members of the Golden Dreams Condominium Association,

codefendant in this case, have been defrauding the elderly and foreigner owners of the condominium by inducing them to take fraudulent mortgages or taking mortgages on the elderly owners without their knowledge, committing bankruptcy fraud, executing fraudulent quit claim deeds, using the identities of the owners to obtain fraudulent city permits and insurance policies, and becoming owners of the deceased owners' condos.

During the origination of this mortgage loan subject to this lawsuit in 2017, the Petitioner was defrauded by a board member of the Golden Dreams Condominium Association, her landlord at the time, who used a position of trust to her advantage, and preyed upon the fact that the Petitioner was a foreigner from Eastern Europe who lacked knowledge regarding real estate laws and the terms of mortgage paperwork, and conveniently set up the Petitioner to obtain a mortgage from her business associate who is a mortgage broker. She was given prefilled mortgage applications to obtain the mortgage from the Nationwide Home Loans lender, which contained fraudulent material misrepresentations concerning the key property characteristics: the building address was changed, the year built was

shown to be 2000 instead of 1960, the legal description was incorrect. The title report was also forged, and omitted the information on the open mortgages and prior liens on the property.

**B. Petitioner's Statement of the Facts as to the Fraud in the Delivery and Recording of the Mortgage Note**

During the closing, the Petitioner was further defrauded where she was given two mortgage notes to sign and explained that one mortgage note is for the lender Nationwide Home Loans Inc to provide a mortgage loan, and a second mortgage note for the mortgage servicer Caliber Home Loans Inc to be able to collect the payments on the lender's behalf. "The servicer note" indicating Caliber Home Loans as a lender was recorded in the Miami-Dade Official Records, instead of the mortgage note that indicated the true lender name Nationwide Home Loans Inc for which Petitioner submitted her mortgage applications during the underwriting.

Petitioner only discovered this fraud when she fell behind in mortgage payments, forcing her to consider selling her condo, and to investigate her loan documentation and the chain of title.

**C. Petitioner's Statement of the Facts as to the Fraud in Declaring Default**

On or about December 31, 2022, when the Petitioner was 6 weeks behind in making her mortgage payments, and before the default event was declared, the Petitioner faxed and mailed her findings about the fraud that occurred in connection with her mortgage application and closing to her mortgage servicer. The Petitioner asked the servicer to produce the mortgage note. In response, California-based mortgage servicer Rushmore Loan Management Services LLC (now Rushmore Servicing) mailed Vega a four-page forged mortgage note which Vega had never seen or signed before. This mortgage note contained same provisions that were included in the original mortgage instrument, except that the payment terms and default notice requirements were altered. It also contained Vega's signature which was forged.

Instead of declaring the default for the fraud and misrepresentations in the loan applications, as required by the provisions of the mortgage instrument, the servicer waited until the Petitioner was in default for the failure to make payments, and then mailed her a default notice stating that the lender is Wilmington Trust. The last mortgage ownership sale notice that was mailed to

Vega previously, however, stated that the lender is UMB Bank, and the tax statements, the credit reports showed that the lender is the servicer Rushmore Loan Management. The mortgage assignment to Wilmington Trust was only recorded two months later after the default notice was sent.

**D. Petitioner’s Statement of the Facts as to the Fraud in the Foreclosure Action Initiation**

On or about April 28, 2023, Rushmore Loan Management Services LLC (“Rushmore”) then hired a Florida-based law firm Diaz Anselmo & Associates P.A. to institute the foreclosure proceedings on behalf of the Wilmington Trust, Respondent. Diaz Anselmo & Associates P.A. combined the 4-page forged mortgage note, received from Rushmore, with the original 22-page mortgage instrument, and mailed this forged mortgage note to the Petitioner together with the original mortgage note and a “Certification of Possession” Affidavit.

This, now 26-page mortgage instrument comprising the original and the forged mortgage notes was filed with the Foreclosure Complaint on June 2, 2023. Because the forged mortgage note is a security under the Florida and federal law, the mailing of which from

California to Florida constituted the criminal violations of the federal law such as the Travel Act, the National Stolen Property Act, and Florida's Securities Fraud and Money Laundering statutes<sup>3</sup>. On or about September 15, 2023, the Petitioner found her mailbox vandalized and broken, and an envelope from Diaz Anselmo & Associates P.A. with a forged postage mark inside of her mailbox. The envelope contained the "Notice of Publication".

**E. Petitioner's Statement of the Facts as to the Judge's Conduct in the Pretrial Hearings**

Petitioner answered Wilmington Trust's complaint, where she disputed Respondent's standing to foreclose and the legality of the mortgage instrument, and asserted counterclaims. The counterclaims contained, among other things, claims for fraud, RICO, screenshots of the original mortgage applications showing fraudulent misrepresentations, and pictures of her vandalized mailbox and forged postage marks. Wilmington Trust filed a motion

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<sup>3</sup> 18 U.S. Code § 1952 - Interstate and foreign travel or transportation in aid of racketeering enterprises. 18 U.S. Code § 2314 - Transportation of stolen goods, securities, moneys, fraudulent State tax stamps, or articles used in counterfeiting. Fla. Stat § 517.011 "Florida Securities and Investor Protection Act". Fla. Stat § 896.101 "Florida Money Laundering Act".

to dismiss, which was granted. Petitioner amended counterclaims<sup>4</sup> and included the detailed description of the fraud scheme, as well as the examples of other foreclosures currently being litigated by the Respondent in the same Court, where similar fraudulent representations such as an incorrect property address or the name of the borrower were used in the mortgage documentation. Respondent again filed a motion to dismiss claiming its standing to foreclose based on the same forged mortgage note.

To protect her right to countersue and assert the counterclaims, on March 26, 2024, the Petitioner filed her Motion to Strike Based Upon Fraud on the Court with evidence such as screenshots from the public records demonstrating that the mortgage note is forged because it contains the inserted four pages that never existed before, and forged the Petitioner's signature.

On April 8, 2024, upon hearing Petitioner's arguments opposing the dismissal of the counterclaims and arguments showing that the forged mortgage note violates federal money laundering and bank fraud crimes, without allowing the Petitioner to demonstrate the

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<sup>4</sup> See Appendix at Page 27: Amended Counterclaims.

evidence and without asking the Respondent a single question, the Judge entered an order denying the Motion to Strike Based upon Fraud on the Court and an order dismissing the amended counterclaims with prejudice, reasoning that the counterclaims and claims of the fraud on the court are “futile”.<sup>5</sup>

Petitioner then filed the Motion to Disqualify the Judge because she feared that a fair trial is not possible where the judge’s conduct showed multiple violations of the Florida Code of Judicial Conduct Canons governing the fair administration of justice. Motion was denied. Petitioner then filed notices of appeals, the Petition for Certiorari, and motion to stay proceedings. In response, the Respondent requested the Petitioner to pay a bond to cover the attorney fees.

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<sup>5</sup> See Appendix at Page 24: Order Dismissing Counterclaims.

## ARGUMENTS

The standard of review for the legal sufficiency of a motion to disqualify is *de novo*. See *R.M.C. v. D.C.*, 77 So.3d 234, 236 (Fla. 1st DCA 2012). The only issue before this Court is the question of legal sufficiency of the motion to disqualify; there is no deference owed to the lower court. *Smith v. Santa Rosa Island Authority*, 729 So. 2d 944, 946 (Fla. 1st DCA 1998).

“A motion is legally sufficient if it alleges facts that would create in a reasonably prudent person a well-founded fear of not receiving a fair and impartial trial.” *Id.* (quoting *MacKenzie v. Super Kids Bargain Store, Inc.*, 565 So.2d 1332 (Fla.1990)).

Additionally, the Florida Supreme Court has stated that:

[A] party seeking to disqualify a judge need only show ‘a well-grounded fear that he will not receive a fair [hearing] at the hands of the judge. **The question of disqualification focuses on those matters from which a litigant may reasonably question a judge's impartiality rather than the judge's perception of his ability to act fairly and impartially.**

*Livingston v. State*, 441 So. 2d 1083, 1086 (Fla. 1983).

Petitioner’s Motion to Disqualify the Judge complies with the procedural and statutory requirements; it lists enough facts that demonstrate a well-grounded fear on the part of the Petitioner that

she was not receiving a fair trial at the hands of the presiding judge. The reasons showing the Petitioner's fear of not receiving an impartial and fair trial are also provided in this Petition.

**I. Petitioner's Motion to Disqualify the Judge Is Legally Sufficient Because It Met the Statutory and the Procedural Requirements.**

When a party believes she cannot obtain a fair and impartial trial before the assigned trial judge, she must present the issue of disqualification to the court in accordance with the process designed to resolve this sensitive issue.

The requirements set forth in section 38.10, Florida Statutes (1981), were established to ensure public confidence in the integrity of the judicial system. *See generally Livingston v. State*, 441 So.2d 1083, 1086 (Fla. 1983) (holding that the requirements set forth in the statutes and rules regarding judge disqualification "were established to ensure public confidence in the integrity of the judicial system.").

First, there must be a verified statement of the specific facts which indicate a bias or prejudice requiring disqualification. Under Florida law, bare allegations of bias are insufficient for judicial disqualification. *Schultz v. Wainwright*, 701 F.2d 900 (11th Cir. 1983). *See also Fischer v. Knuck*, 497 So.2d 240, 242 (Fla. 1986) (holding that "[a] verified motion for disqualification must contain an

actual factual foundation for the alleged fear of prejudice.”). Second, the motion must be timely made.

In addition, when making a determination on an initial motion for disqualification, the trial court must also follow the requirements of rule 2.330(f) of the Florida Rules of Judicial Administration. This provision requires the trial court to determine only if the motion is legally sufficient; the trial court may not consider whether the factual assertions of the motion are true.” *Messianu v. Pigna*, 180 So.3d 229 (Fla. 3rd DCA 2015); *See also Bundy v. Rudd*, 366 So.2d 440, 442 (Fla.1978). “The facts alleged in a motion seeking to disqualify a trial judge must be evaluated as true for the purposes of determining legal sufficiency.” *Messianu v. Pigna*, 180 So.3d 229 (Fla. 3rd DCA 2015); *see also City of Hollywood v. Witt*, 868 So.2d 1214, 1217 (Fla. 4th DCA 2004).

Petitioner’s Motion to Disqualify the Judge met the statutory and procedural Court’s requirements.

Petitioner’s Motion to Disqualify the Judge contains specific facts indicating bias and prejudice, demonstrating that the Petitioner has a well-grounded fear of not receiving a fair trial at the hands of the presiding judge.

Petitioner's Motion to Disqualify the Judge was properly filed with a supporting affidavit, containing a certificate of good faith. The petitioner swore under oath that the allegations were true and correct.

The motion was timely as it was filed within 10 days of the order.

**II. Petitioner's Motion to Disqualify the Judge Is Legally Sufficient Because It Alleged Enough Facts That Caused a Well-founded Fear of Not Receiving a Fair and Impartial Trial.**

**A. Fact: during all pretrial hearings, the judge violated 7 Canons of Florida Code of Judicial Conduct. When the judge does not follow the rules during the proceedings, the fear of not receiving a fair trial is reasonable.**

All Florida judges are bound to follow the Florida Code of Judicial Conduct, created by the Florida Supreme to provide the ethical standards for the fair administration of justice.

Petitioner's Motion to Disqualify provided detailed reasons showing that the Petitioner fears not being able to receive an impartial and fair trial, which were based on the instances of Judge's conduct during the pre-trial hearings that violated seven **(7)** Canons of Florida Code of Judicial Conduct.

**First legally sufficient and compelling reason: the judge demonstrated personal bias and prejudice against Petitioner, in violation of Canon 3B (5).**

The Judge violated Canon 3B (5) of the Florida Code of Judicial Conduct (which prohibits the judge from performing the judicial duties with bias or prejudice) by conveying personal, embarrassing, prejudiced comments toward Petitioner, unrelated to the subject matter of the evidentiary hearing held on April 3, 2024.

During this hearing, the Petitioner noticed a pattern where the Judge interrupted Petitioner and cut her arguments short every time the Petitioner was speaking; displayed personal animus toward Petitioner with an annoyed, aggravated facial expression and sarcastic comments about Petitioner's thorough preparation in the Opposition to Dismiss Amended Counterclaims and the Motion to Strike Plaintiff's Complaint Based Upon the Fraud on the Court:

THE JUDGE: You put so much effort into this, so why aren't you paying the mortgage?

The issue of the defenses of "not paying the mortgage" was not even at issue during the April 3, 2024 hearing.

**Second and third legally sufficient and compelling reasons:**  
**the matter of the case was decided during the pre-trial hearing**  
**and without the opportunity to present the necessary evidence,**  
**in violation of Canon 3B (7) and (9).**

The trial court's prejudgment in the pretrial motion on the matter to be decided during the trial and without considering the necessary evidence are the *second* and *third* compelling legally sufficient reasons Petitioner filed the motion to disqualify.

During the April 3, 2024 hearing, the Trial Court prejudged the validity of the forged mortgage note on which the foreclosure action is predicated without considering the *prima facie* evidence derived from the public records, proving the Plaintiff was never entitled to file a foreclosure action due to the forged mortgage note being attached to its complaint, and by making a public statement that commits, or appears to commit, the Judge with respect to party an issue in the pending proceeding. The judge prejudged the issues in the case with comments such as:

THE JUDGE: You need to be working and  
paying your mortgage.

But the Petitioner has never communicated to the Court that she is not working, and never used this as her foreclosure defense. The matter to be decided at the April 3, 2024 pre-trial evidentiary hearing was whether Respondent's Verified Complaint contained a forged mortgage note, a central issue in both motions that were at issue for the hearing. Judge's questioning of Respondent inquiring into circumstances on the possession of the note, and a careful review of evidence would have proved the fraud upon the court has been committed and that Petitioner's amended counterclaims are valid.

Notably, Respondent had not answered or opposed the Petitioner's Motion to Strike Complaint based on the Fraud Upon the Court; and did not offer any other evidence proving the entitlement to enforce the mortgage terms and standing to initiate the action against the Petitioner. Thus, there was an absolute need for the court to determine whether the court should proceed with the foreclosure complaint when there was *prima facie* evidence that the mortgage contract in the lawsuit is forged. This was not done. Respondent was not asked a single question on why the mortgage note being enforced

is different from the mortgage note executed by the Petitioner during the mortgage closing in December 2017.

Instead of allowing the Petitioner to take control of the Zoom screen to present the aforementioned evidence of the forged mortgage note, the Judge inappropriately commented about the Petitioner's obligation to work and pay the mortgage, rendering the Petitioner's asserted claims as "futile". Thus, the Judge committed her decision to enforce the terms of the forged mortgage note prior to the trial.

These decisions and comments unambiguously demonstrate the trial court prejudged the facts related to the parties to the lawsuit and the outcome of the lawsuit, when the matter was not even before the trial court. This is also a violation of the Canon 3B (9) which provides that a judge shall not, while a proceeding is pending, make any public comment that might reasonably be expected to affect its outcome or impair its fairness, and Canon 3B (7) which provides that a judge shall accord to every person the right to be heard according to law, was also violated.

**Fourth legally sufficient and compelling reason: the central matter of the case in the pre-trial hearing was decided to the contrary of the Florida law and Florida Rules of Civil Procedures,**

**and in violation of Canons 2A and 3B (2).** Given the blatant prejudgment by the Judge on Petitioner’s well-plead Opposition to the Motion to Dismiss Amended Counterclaims along with a clear and convincing evidence of Plaintiff’s Fraud on the Court, in disregard of the Florida Statutes and Florida Rules of Civil Procedures<sup>6</sup> that mandate a true, original, and correct copy of the mortgage note to be attached to the foreclosure complaint, Petitioner had a well-grounded fear that she will not receive a fair trial.

These decisions were reached without following the procedures that confer legitimacy and credence upon judicial actions, thus violating the Canon 2A (a judge shall respect and comply with the law) and Canon 3B (2) (a judge shall be faithful to the law and maintain professional competence in it). The judge's orders were unfaithful and disrespectful to the law, and excluded judicial discretion.

**Fifth legally sufficient and compelling reason: in violation of Canons 1 and 3, the Judge demonstrated a pattern of executing the judicial duties impartially by blindly relying on the**

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<sup>6</sup>Fla. § Stat. 702.015(4) and Fla. R. Civ. P. Rule 1.115 (c) Pleading Mortgage Foreclosures provides, in a pertinent part, that “correct copies of the note” are required to be attached to the Complaint in order to institute the foreclosure action.

**Respondent's faulty and fraudulent arguments, and at the same time ignoring Respondent's criminal conduct in the pretrial proceedings.** The Judge failed to execute the duties of Judicial Office impartially by (1) ignoring the fact that Plaintiff filed pleadings under penalty of perjury contain fabricated evidence, false and fraudulent statements, frivolous legal arguments, which constitute the crimes of forgery, perjury, official misconduct, falsifying records; by (2) failing to recognize the fact that the fabricated mortgage note violates Florida securities laws taking the precedence over the Universal Commercial Code laws on which the Respondent bases its standing to foreclose; and by (3) disregarding the Petitioner's arguments that the forged mortgage note not only violates the money laundering laws, but also will make the Court itself to become an instrumentality of the federal money laundering crime to continue.

**Sixth legally sufficient and compelling reason: the Judge demonstrated a pattern of not reading the pleadings and arguments before the hearings, and then not questioning the parties during the hearings on the facts necessary to make fair and impartial decisions, in violation of Canons 1 and 3.** As indicated in the verified Motion to Disqualify, the trial court's

prejudging the validity of the mortgage note and Petitioner's obligation to make payments on the forged mortgage note prior to the trial, without considering the evidence, reading the pleadings and motions before the hearing, and without questioning both parties in the hearing on the matters necessary to establish facts central to the make fair and informed decisions for the hearings, the Judge engaged in a pattern of performing the judicial duties impartially and unfairly. This is a violation of Canons 1 and 3, that mandates a Judge to perform the duties of judicial office impartially and diligently, so that the confidence of the citizens of the state in the integrity of the judicial system is not impaired.

**Seventh legally sufficient and compelling reason: the Judge engaged in a pattern of making unfair and impartial decisions that violate Petitioner's constitutional rights of due process, equal protection, and jury trial, in violation of Canons 1 and 3B (7).** Every litigant in the United States is entitled to the constitutional guarantees of substantive and procedural due process, jury trial, and equal treatment under the law. The Judge violated the Petitioner's constitutional rights by (1) rejecting Petitioner's requests for the jury trial on the counterclaims during the January 4, 2024 hearing; (2)

preventing the evidence on the Fraud Upon the Court Motion to be introduced during the April 3, 2024 evidentiary hearing, and by failing to question the Respondent on the forged mortgage note filed with the Foreclosure Complaint; and (3) issuing orders without any factual support.

**Eighth legally sufficient and compelling reason: by allowing the foreclosure lawsuit to proceed where the underlying mortgage note was obtained by fraud, in violation of federal banking and money laundering laws, and then fabricated before the foreclosure action was initiated, the Judge demonstrated that she is not faithful to the law, in violation of Canons 1, 2A, 3B (2).** This decision demonstrates that the Judge failed to show professional competence in the law and act impartially and neutrally by (1) allowing the Respondent to proceed with the foreclosure lawsuit predicated on the fabricated mortgage note, contrary to the Florida law and the Rules of Florida Civil Procedures; (2) dismissing Petitioner's argument as "futile" where Petitioner asserted that by possessing a forged mortgage note, the Respondent is in a continuous violation of the National Stolen Property Act, enacted by Congress to prohibit the receipt of certain illegally obtained property in interstate

commerce, including forged securities; and by (3) failing to consider the legal implications and the ultimate damage to the Court, should the Respondent succeed in foreclosing on the forged mortgage note, resulting in Respondent's surrender of the forged mortgage note to the Court and thus causing the Court to be in violation of the National Stolen Property Act.

Simply put, the decision to allow the Respondent to proceed with the criminal act has unfavorable and unfair outcome to all parties in this lawsuit that had not committed any crimes and did not violate the Florida Rules of Civil Procedures.

If the Petitioner decides to reinstate the loan and continue making payments on the enforced fabricated mortgage note. If Petitioner continues making payments on the mortgage, she will be guilty of money laundering and bank fraud crimes since the forged mortgage note represents the proceeds of the money laundering, bank fraud, lending institutions fraud, securities crimes. On the other hand, if Respondent succeeds in foreclosing on Petitioner's property, the forged mortgage note will be surrendered to the Court, thereby making the Court violate the National Stolen Property Act

which criminalizes the possession of forged securities. In both scenarios, the third party – the mortgage servicer - the party that enabled the Fraud on the Court to be committed by hiring the counsel to institute the foreclosure proceedings based on the forged mortgage note, will remain unpunished because the Petitioner’s Counterclaims were dismissed with the prejudice, and without a valid explanation or legal reasoning.

**Ninth legally sufficient and compelling reason: by ignoring the opposing counsel’s fraud upon the court and the violations of Florida Rules of Professional Conduct, the Judge failed to discipline the opposing counsel, thereby giving a green light to proceed with the criminal conduct, in violation of Canon 3D (2).**

The Judge had failed to discipline and report the opposing counsel for the numerous violations Florida Rules of Professional Conduct, which also includes the violations of the rules related to the criminal conduct of the opposing counsel and their client. By failing to discipline and report the opposing counsel, the judge not only gave an unfair advantage to Respondent to proceed with the lawsuit while continuously breaking the law and the rules of court, but also

violated the Canon 3D (2) which provides that a judge shall take appropriate disciplinary action upon the discovery that a lawyer has committed a violation of the rules regulating the Florida Bar. In sum, the Petitioner identified 10 (ten) rules of Florida's Rules of Professional Conduct that were violated by the opposing counsel.

If the judge allows the laws and rules continuously to be violated by one party of the lawsuit, whereas the second party of the lawsuit is denied every request to defend her position and present the evidence, a reasonable conclusion can be made that the fair and impartial trial is not possible.

**B. Fact: during the course of the ongoing litigation, the opposing counsel committed criminal acts forbidden by the State and federal law. When the judge does not discipline the counsel and allows the party to use the legal process for the unlawful goals, the fear of not receiving a fair trial is reasonable.**

Here, the opposing counsel committed multiple federal and State crimes during the course of the initial phases of the litigation.

Significantly, “[t]he Supreme Court does not view violations of the Bar Rule governing misconduct involving dishonesty, fraud, deceit, or misrepresentation as minor.” *The Florida Bar v. Gilbert*, 246

So. 3d 196, 203 (Fla.2018). The Judge ignored the criminal violations, did not discipline the counsel and allowed the Respondent to use the legal process to achieve the legal process for the unlawful goals. Thus, the fear of not receiving a fair trial is reasonable.

**C. Fact: during the course of the ongoing litigation, the opposing counsel violated the Rules of Professional Conduct. When the judge does not discipline the counsel or report their misconduct to the Florida Bar, the fear of not receiving a fair trial is reasonable.**

All Florida judges are, first and foremost, attorneys and members of The Florida Bar. See generally art. Article V, § 8, Fla. Const. provides that “*no person is eligible for the office of county court judge unless the person is, and has been for the preceding five years, a member of the bar of Florida*”. As such, Florida judges, just like every other Florida attorney, have an obligation to maintain the integrity of the legal profession and report to The Florida Bar any professional misconduct of a fellow attorney. See R. Regulating Fla. Bar 4-8.3(a).

This obligation is reiterated in the Florida Code of Judicial Conduct. Fla. Code Jud. Conduct, Canon 3D (2)<sup>7</sup>, explicitly provides

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<sup>7</sup> The commentary to immediately related Canon 3D.(3) provides in pertinent part that “[a]ppropriate action may include . . . reporting the violation to the appropriate authority or other agency. . . . A judge having knowledge . . . that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial

that "[a] judge who receives information or has actual knowledge that substantial likelihood exists that a lawyer has committed a violation of the Rules Regulating the Florida Bar shall take appropriate action." The Florida Code of Judicial Conduct further mandates that judge "should participate in establishing, maintaining, and enforcing high standards of conduct," "shall require order and decorum in proceedings before the judge" Fla. Code Jud. Conduct, Canons 1, 3B (3). During the course of the ongoing litigation, the opposing counsel violated the Rules of Professional Conduct which sets the fair administration of justice standards for lawyers.

In filing a verified mortgage foreclosure complaint with a forged mortgage note attached to it, the opposing counsel violated federal and State of Florida laws. The opposing counsel showed at the very least a "substantial likelihood" that they had compromised the integrity of the legal profession, engaged in professional misconduct, or violated one or more of the Rules Regulating The Florida Bar.

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question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, is required under this Canon to inform the appropriate authority."

The Judge, however, did not report the opposing counsel's conduct to the Florida Bar. This confirmed by the Florida Bar via email sent to the Petitioner on April 26, 2024.

When the judge does not discipline the counsel or report the criminal conduct, the fear of not receiving a fair trial is reasonable.

**D. Fact: during the pretrial hearings, the opposing counsel demonstrated a pattern of repeatedly abusing the process and obstructing justice. When the judge ignores such abuse, the fear of not receiving a fair trial is reasonable.**

Judicial neutrality is abandoned and the orderly administration of law and justice is interfered, when lawyers are permitted to disregard the rules of Court and civil legal procedures, to willfully and intentionally misuse the legal process for a wrongful and unlawful purpose, and to misrepresent material facts and distort reality.

Here, the opposing counsel abused the process and obstructed justice (1) by disregarding the Rules of Florida Civil Procedures that govern the foreclosure action initiation, when the forged mortgage contract was attached to the complaint; (2) by falsely certifying the accuracy of the mortgage contract documents under the penalty of

perjury; (3) by allowing the defamatory comments about the Petitioner and her condo to be filed in the summons documents as part of the official record; and (4) by vandalizing the Petitioner's mailbox by placing a counterfeit postage mark on the envelope to deliver the Notice by Publication.

These facts were properly brought to the Judge's attention by the Petitioner on multiple occasions (during the hearings and in the Answer/ Counterclaims documents). Yet, the Judge did not question or condemn such opposing counsel's conduct, nor were these facts considered when the Judge ruled on the matters discussed at the pre-trial hearings.

"A search for truth and justice can be accomplished only when all relevant facts are before the judicial tribunal. Those relevant facts should be the determining factor rather than gamesmanship, surprise, or superior trial tactics." *Dodson v. Persell*, 390 So.2d 704, 707 (Fla. 1980).

Thus, when the judge allows the opposing counsel to disregard the Rules of Florida Civil Procedures and omits the crucial facts when ruling on the questions presented at the hearings, the fear of not receiving a fair trial is reasonable.

**E. Fact: the judge’s conduct sarcastic remarks directed towards the petitioner shows the judge has a personal dislike and bias towards the petitioner, thus the fear of not receiving a fair trial is reasonable.**

“Disqualification remains available where it can be shown that "the judge has a **personal** bias or prejudice concerning a party or a party's lawyer[.]" Fla. Code Jud. Conduct Canon 3E.(1)(a) (emphasis added).” *5-H Corporation v. Padovano*, 708 So. 2d 244, 248 (Fla. 1998).

The judge injected extraneous matters into the proceedings, made explicitly demeaning remarks and statements in pre-trial proceeding that created the perception of a lack of impartiality. During the April 3, 2024 evidentiary hearing, this Court’s comments went so far that it provided a direction to the Petitioner as to her obligations to work and make mortgage payments, instead of questioning the Respondent on the subject matter of the hearing – the forged mortgage note

“Trial judges must studiously avoid the appearance of favoring one party in a lawsuit, and suggesting to counsel or a party how to proceed strategically constitutes a breach of this principle.” (emphasis added). *Shore Mariner Condo Ass'n v. Antonious*, 722 So.2d 247, 248 (Fla. 2d DCA 1998).

The trial court's comments concerning the central matter of the case, the Petitioner's obligation to make payments on the mortgage note, a continuous ignorance of Plaintiff's violations of law and rules of the Court, has given the Petitioner an impression of the unjustified favoritism, and an objectively reasonable well-grounded fear of not receiving a fair and impartial trial.

"A trial judge crosses the line when he becomes an active participant in the adversarial process, i.e., gives "tips" to either side. *Great Am. Ins. Co. of N.Y. v. 2000 Island Boulevard Condo. Ass'n, Inc.*, 153 So.3d 384 (Fla. 3rd DCA 2014). "It has long been said in the courts of this state that "every litigant is entitled to nothing less than the cold neutrality of an impartial judge." *Id.*

The judge's remarks imply a bias, that is, a preconception or predetermined point of view about the homeowners facing foreclosure should not seek justice when they discover that their mortgage contract is fraudulent, and should pay the mortgage instead. These remarks, reasonably understood, constituted the expression of a bias. The public perception and common understanding of those remarks would be indicative of a bias and lack of impartiality. "No judge under any circumstances is warranted in sitting in the trial of

a cause whose neutrality is shadowed or even questioned.” *State v. Steele*, 348 So. 2d 398, 401 (Fla. 3d DCA 1977) (emphasis added).

**F. Fact: judge’s decisions at the pre-trial hearings violated petitioner’s fundamental constitutional rights. Thus, the fear of not receiving a fair trial is reasonable.**

The appearance of impropriety violates state and federal constitutional rights to due process. A fair hearing before an impartial tribunal is a basic requirement of due process. *See In re Murchison*, 349 U.S. 133 (1955). “Every litigant[] is entitled to nothing less than the cold neutrality of an impartial judge.” *State ex rel. Mickle v. Rowe*, 131 So. 331, 332 (Fla. 1930). Absent a fair tribunal, there can be no full and fair hearing.

Petitioner is entitled to equal protection of the law within the meaning of the Equal Protection Clause of the Fourteenth Amendment. The Equal Protection Clause is part of the first section of the Fourteenth Amendment to the United States Constitution, which stipulates, "nor shall any state deny to any person within its jurisdiction the equal protection of the laws."

Due process guarantees the right to a neutral, detached judiciary in order “to

convey to the individual a feeling that the government has dealt with him fairly, as well as to minimize the risk of mistaken deprivations of protected interests.” *Carey v. Piphus*, 435 U.S. 247, 262 (1978). The Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases. This requirement of neutrality in adjudicative proceedings safeguards the two central concerns of procedural due process, the prevention of unjustified or mistaken deprivations and the promotion of participation and dialogue by affected individuals in the decision-making process.

When the Judge prevented the Petitioner from presenting the evidence showing that the mortgage contract on which this lawsuit is predicated is forged, the Petitioner’s constitutional rights have been violated. Thus, the Petitioner’s fear of not receiving a fair trial is reasonable.

**G. Fact: Judge’s comments at the pre-trial hearing suggested that judge intended to rule a certain way and pre-determined the petitioner’s obligations to make payments on the mortgage contract, validity of which has been contested by the petitioner. Thus, the fear of not receiving a fair trial is reasonable.**

The Judge has made it apparent that she has pre-determined certain issues at the pretrial hearing. Having done so just on the second pre-trial hearing in this case, and before the Petitioner had a chance to present her arguments, affirmative defenses, and supporting evidence during the trial, the Judge pre-judged the outcome of the case.

This is clearly prejudicial to the fair administration of justice and would reasonably cause a litigant to have a well-grounded fear of not receiving a fair trial.

### **III. The Florida Code of Judicial Conduct Requires a Judge to Disqualify Herself Because the Judge's Impartiality Was Reasonably Questioned.**

Canon 3E, Fla. Code Jud. Conduct, and Rule 2.330, Fla. R. Jud. Admin., mandate that a judge disqualify himself in a proceeding "in which the judge's impartiality might reasonably be questioned." The disqualification rules require judges to avoid even the appearance of impropriety:

It is the established law of this State that every litigant, including the State in criminal cases, is entitled to nothing less than the cold neutrality of an impartial judge. It is the duty of the court to scrupulously guard this right of the litigant and to refrain from attempting to exercise jurisdiction in any manner where his qualification to do so is seriously brought into question. The exercise of any other policy tends to discredit and place the judiciary in a

compromising attitude which is bad for the administration of justice.

*Crosby v. State*, 97 So.2d 181 (Fla. 1957); *State ex rel. Davis v. Parks*, 141 Fla. 516, 194 So. 613 (1939); *Dickenson v. Parks*, 104 Fla. 577, 140 So. 459 (1932); *State ex rel. Mickle v. Rowe*, 100 Fla. 1382, 131 So. 3331 (1930).

Judge's impartiality was reasonably questioned in the Petitioner's Motion to Disqualify the Judge. Therefore, this motion should have been granted.

#### **IV. The Caselaw Provides the Judge Disqualification is Warranted in Similar Circumstances.**

Florida caselaw in similar cases proves that the disqualification of judge is proper in this action.

##### **A. Caselaw where the judge disqualification is warranted due to the judge prejudging the matter.**

Canon 3(B)(9) of the Code of Judicial Conduct requires: "A judge shall not, while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness or make any nonpublic comment that might substantially interfere with a fair trial or hearing." And where a judge has prejudged or predetermined issues

in a case—as the trial judge has here—impartiality is reasonably in doubt and disqualification is required. *Amato v. Winn Dixie Stores/Sedgwick James*, 810 So. 2d 979, 980-983 (Fla. 1st DCA 2002) (disqualification required where judge issued an order on the merits and thereafter vacated it upon realizing that discovery was not yet complete and all the evidence had not been heard).

“While a trial judge may form mental impressions and opinions during the course of hearing evidence in a case, the judge is not permitted to pre-judge the case.” *Kates v. Seidenman*, 881 So.2d 56 (Fla. 4th DCA 2004); *See also, Leslie v. Leslie*, 840 So.2d 1097, 1098 (Fla. 4th DCA 2003) (citing *Barnett v. Barnett*, 727 So.2d 311, 312 (Fla. 2d DCA 1999)).

In *Kates*, the trial judge made certain comments on the record indicating how the judge intended to rule *before* the motion or issue was before the court. Although the (Respondent) judge claimed that the judge did not make the alleged comments *prior* to the presentation of evidence; rather, made her findings "after the parties' presentation.", the court, nevertheless, must take the motion's sworn allegations of fact as true, and “if true, the comments create an

appearance that the judge has *pre-judged* ... issues that were not before the court at the hearing...”. See also *Wolfson v. Wolfson*, 159 So. 3d 394, 394 (Fla. 3d DCA 2015) (disqualification required where trial judge’s comments indicated she had prejudged the case); *Wade v. Wade*, 123 So. 3d 697, 698 (Fla. 3d DCA 2013) (disqualification required where court announced its ruling before hearing all the evidence); *Begens v. Olschewski*, 743 So. 2d 133, 133 (Fla. 4th DCA 1999) (comment suggesting that judge has already made up her mind before hearing all the evidence required disqualification); *Barnett v. Barnett*, 727 So. 2d 311, 311-12 (Fla. 2d DCA 1999) (“[w]hile it is well-settled that a judge may form mental impressions and opinions during the course of hearing evidence, he or she may not prejudice the case”); *Gonzalez v. Goldstein*, 633 So. 2d 1183, 1184 (Fla. 4th DCA 1994) (“[a] trial judge’s announced intention before a scheduled hearing to make a specific ruling” required disqualification).

Similarly, in *Irwin v. Marko*, 417 So.2d 1108, 1109 (Fla. 4th DCA 1982), the Fourth DCA ruled where a judge made certain comments on the record indicating that he intended to grant the subject motion for attorney’s fees, because the comments were made prior to any hearing before the trial court on the said motion (for

attorney's fees), the judge created the *appearance of having prejudged* the attorney's fee issue in advance of hearing it and, accordingly was required by law to recuse himself. *State v. Steele*, 348 So.2d 398 (Fla. 3d DCA 1977). *See also Martin v. State*, 804 So.2d 360 (Fla. 4th DCA 2001).

*LeBruno Aluminum Co. v. Lane*, 436 So. 2d 1039 (Fla. 1st DCA 1983), and *Nathanson v. Nathanson*, 693 So. 2d 1061 (Fla. 4th DCA 1997), are two additional cases where courts ordered disqualification when judges were found to have prejudged matters in advance of receiving all the evidence. In *LeBruno* (relied upon by *Amato v. Winn Dixie Stores/ Sedgwick James*, 810 So. 2d 979 (Fla. 1st DCA 2002)), the trial court remarked that he had already made up his mind even though he would still allow the party to present his witnesses).

In *Nathanson* (also relied upon by *Amato*), the Fourth District found the motion to disqualify legally sufficient where the judge "began to rule against the wife without ever affording the wife an opportunity to respond." 693 So. 2d at 1062. *See also Cummings v. Montalvo*, 135 So. 3d 389, 389 (Fla. 5th DCA 2014) (disqualification required based on judge's statements indicating that she had prejudged party's credibility "in an unfavorable fashion"); *A.L.P. v.*

*State*, \_\_ So.3d \_\_ (Fla. 5th DCA, No. 5D22-1566) (judge disqualified for making comments indicating she prejudged case); *DeMetro v. Barad*, 576 So. 2d 1353, 1354-55 (Fla. 3d DCA 1991) (judge's comments as to parties' believability in prior proceeding required disqualification as to future proceedings); *Deauville Realty Co. v. Tobin*, 120 So. 2d 198, 202 (Fla. 3d DCA 1960) ("statement by a trial judge that he feels a party has lied in the case . . . may operate to disqualify that judge from hearing any later or second trial of that case ... or from participating in any subsequent trial"); *Campbell Soup Co. v. Roberts*, 676 So. 2d 435, 435-36 (Fla. 2d DCA 1995) (judge's comments during a proceeding about the credibility of a party required disqualification); *see also Brown v. St. George Island, Ltd.*, 561 So. 2d 253, 254-57 (Fla. 1990) (judge's derogatory remarks as to witness' veracity in prior hearing required disqualification as to future proceedings).

The fact that the trial court has made these comments on the petitioner's obligation to pay the mortgage on the forged contract and *pre-judged* the validity of the mortgage contract – before even the trial date was set and the affirmative defenses were heard– has caused the Petitioner to have a well-ground fear of not receiving a fair and

impartial hearing and trial on this matter, requiring disqualification. Any litigant would reasonably question the impartiality of a trial court where the court prejudices an issue not properly before it. It is beyond a modicum of reason that any litigant should have a well-grounded fear of not receiving a fair trial where the court prejudices an unfiled sanction motion to the litigant's detriment.

**B. Caselaw where the judge disqualification is warranted due to the judge's personal opinion and negative commentary towards the party in the lawsuit.**

At the hearing on April 3, 2024, the judge sarcastically commented on the Petitioner's diligent efforts to oppose the motion to dismiss counterclaims and to assert the facts to support the motion to strike plaintiff's complaint due to the fraud on the court ("you put so much effort into this, so why aren't you paying the mortgage?"), and then labeled these efforts as "futile". The comment was said in a demeaning fashion and had no bearing on the issues before the Court.

"Disqualification based upon comments by a judge is required only when they indicate the judge has prejudged the case or is biased." *Pilkington v. Pilkington*, 182 So. 3d 776,779 (Fla. 5th DCA

2015). “The judge's decidedly negative commentary concerning his personal opinion of the petitioner's behavior, when viewed in the context of, and at this stage of ... a proceeding, is sufficient to create in a reasonably prudent person a well-founded fear that he would not receive a fair hearing before this judge.” *Molina v. Perez*, 187 So.3d 909 (Fla. 3rd DCA 2016). See also *Miami Dade College v. Turnberry Inv., Inc.*, 979 So.2d 1211 (Fla. 3d DCA 2008); *Valdes–Fauli v. Valdes–Fauli*, 903 So.2d 214, 216 (Fla. 3d DCA 2005); *Kopel v. Kopel*, 832 So.2d 108 (Fla. 3d DCA 2002); *Royal Caribbean Cruises, Ltd. v. Doe*, 767 So.2d 626 (Fla. 3d DCA 2000); *Tindle v. Tindle*, 761 So.2d 424 (Fla. 5th DCA 2000).

Because the judge’s decidedly negative commentary concerning her personal opinion of the petitioner's diligent efforts to defend her rights to countersue and point out the opposing counsel’s misconduct, when viewed in the context of, and at this stage of the proceeding, have given the Petitioner a well-founded fear of not receiving a fair and impartial trial. The trial court should be disqualified and the matter transferred to another judge.

**V. Failing to Follow The Binding Caselaw For The Judge Disqualification is Violates The Petitioners’ Due Process Right.**

Failing to follow binding case law when the order denying the Petitioner's Motion to Disqualify is tantamount to violating Petitioners' due process right to the cold neutrality of an impartial judge, requiring this Court to issue a writ of prohibition and require the circuit court reassign the case to another judge.

**VI. There is No Other Proper Remedy.**

When the Judge allowed Wilmington Trust to proceed with the foreclosure action predicated on the forged mortgage note, this, in turn, will force the Petitioner to commit a federal money laundering offense every time she makes a payment on a forged mortgage note once the loan is reinstated, or when she is forced to pay a bond for the opposing counsel's attorney fees (the hearing on the bond request will be held in June).

The harm is irreparable for which there is no other proper remedy other than have an impartial an objective judge to decide the matter because, as a result of this decision, during the course of the upcoming trial, all parties to the lawsuit will be committing money laundering crimes:

1. Petitioner will be forced to either pay the bond on the opposing counsel's attorney fees incurred litigating the foreclosure predicated on the forged mortgage note (these fees are subject to forfeiture by the government due to being the proceeds of a federal crime), knowing that the property involved in the transaction represents the proceeds of a federal crime such as the Bank Fraud, Money Laundering, National Stolen Property Act and Travel Act violations; or the Petitioner will have to make payments on the forged mortgage note once the mortgage loan is reinstated. Every financial transaction on a forged mortgage note is considered a promotional money laundering offense.
2. Respondent's counsel will continue violating the federal National Stolen Property Act by possessing the forged mortgage note at their law office.
3. Respondent's counsel's client, the mortgage servicer who hired the law firm to litigate this foreclosure action on behalf of Wilmington Trust, will continue violating federal AntiMoney Laundering and Bank Fraud laws.

4. Should Wilmington Trust succeed in enforcing the forged mortgage note and in foreclosing at the end of this lawsuit, the forged mortgage note will be surrendered to the lower court, thereby making the Court to be in violation of the federal National Stolen Property Act by possessing the forged mortgage note.

Even if the Petitioner succeeds in having the Appellate Court reverse or quash the orders dismissing the Petitioner's counterclaims and the Motion to Strike Plaintiff's Complaint Based Upon the Fraud on the Court, for which the Petitioner filed the Writ of Certiorari and Appeals with this Court, the judge's bias will preclude the possibility of a fair and objective re-hearing.

## **CONCLUSION**

In determining the legal sufficiency of a motion for disqualification, the test is “whether ‘the facts alleged (which must be taken as true) would prompt a reasonably prudent person to fear that he could not get a fair and impartial trial. Based on this well-known standard, Petitioner has set forth distinct legally sufficient grounds for disqualification, all of which on their own would require disqualification. Taken in context of the case and viewed together in the mind of the Petitioner, the combination of all facts clearly would prompt a reasonably prudent person to fear that he could not get a fair trial. The cumulative effect of the judicial behavior in this case is a legally sufficient basis for a motion to disqualify. For those compelling reasons, this Court must issue the writ of prohibition and enter an order remanding the case to the circuit court for reassignment to another judge.

**WHEREFORE**, Petitioner respectfully requests this Court GRANT this Petition and issue writ of prohibition disqualifying the trial court judge and enter an order remanding the case to the circuit court for reassignment to another judge and provide any other relief this Court deems just and proper.

Dated: May \_\_23\_\_, 2024.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

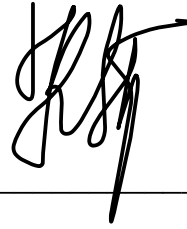
**I HEREBY CERTIFY** that a true and correct copy of the foregoing was served on the parties listed below on this \_\_23\_\_ day of May 2024.

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Kristina Vega  
*Pro Se Petitioner*

**CERTIFICATE OF COMPLIANCE**

In accordance with Florida Rule of Appellate Procedure 9.045(b), this Petition has been prepared using Bookman Old Style 14-point font.



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Kristina Vega  
*Pro Se Petitioner*