No. _____

In The
Supreme Court of the United States

JAMES K. COLLINS AND
TONI SHARRETTS COLLINS,

Petitioners,

v.

D.R. HORTON-TEXAS, LTD.,

Respondent.

On Petition For Writ Of Certiorari To The Court Of Appeals Of Texas, Fourteenth District

PETITION FOR WRIT OF CERTIORARI

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May 11, 2020

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QUESTIONS PRESENTED

Whether the Fourteenth Amendment allows a state to enforce a void federal judgment obtained without personal jurisdiction over and notice to the defendant.

Whether the Tenth Amendment allows a federal court to extinguish a state's sovereign land grant and property owner rights without application of substantive state law.

PARTIES TO THE PROCEEDING BELOW

Petitioners here, and appellants below, are James K. Collins, M.D. and wife, Toni Sharretts Collins, individuals residing in Montgomery County, Texas.

Respondent here, and appellee below, is D.R. Horton-Texas, Ltd., a real estate developer and home builder headquartered in Texas.

RELATED CASES

Lillie B. McCormack, et al. v. Grogan-Cochran Lumber Co., et al., No. 666, District Court of the United States for the Southern District of Texas. Judgment entered May 31, 1944.

Perry McComb, et al. v. Lillie B. McCormack, et al., No. 11482, United States Court of Appeals for the Fifth Circuit. Judgment entered Jan. 8, 1947.

D.R. Horton-Texas, Ltd. v. James K. Collins, M.D., et ux., No. 15-04-04236-CV, 284th District Court of Montgomery County, Texas. Judgment entered Jun. 9, 2017.

James K. Collins, et ux. v. D.R. Horton-Texas, Ltd., No. 09-17-00337-CV, Ninth Court of Appeals, Texas. Transferred Oct. 2, 2017.

James K. Collins, M.D., et ux. v. D.R. Horton-Texas, Ltd., No. 17-03-03620-CV, 284th District Court of Montgomery County, Texas. Judgment entered Apr. 13, 2019.

RELATED CASES—Continued

James K. Collins, M.D., et ux. v. D.R. Horton-Texas, Ltd., No. 19-03-03325-CV, 284th District Court of Montgomery County, Texas. Judgment entered Jan. 29, 2019.

James K. Collins, et ux. v. D.R. Horton-Texas, Ltd., No. 09-19-00150-CV, Ninth Court of Appeals, Texas. Judgment pending.

James K. Collins, et ux. v. D.R. Horton-Texas, Ltd., No. 09-19-00151-CV, Ninth Court of Appeals, Texas. Judgment pending.

James K. Collins, et ux. v. D.R. Horton-Texas, Ltd., No. 14-17-00764-CV, Fourteenth Court of Appeals-Houston Division, Texas. Judgment entered Dec. 20, 2018.

James K. Collins, et ux. v. D.R. Horton-Texas, Ltd., No. 19-0397, Supreme Court of Texas. Judgement entered July 26, 2019.

James K. Collins, et ux. v. D.R. Horton-Texas, Ltd., No. Pending, Supreme Court of the United States. Judgment pending; Petition due May 11, 2020.

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PETITION FOR WRIT OF CERTIORARI

Petitioners respectfully petition for writ of certiorari to review the judgment of the court below.

OPINIONS BELOW

The Supreme Court of Texas denied Petitioners' Petition for Review. (App. F, *infra*, *53a*). The opinion of the Texas Fourteenth Court of Appeals affirming the trial court's decision was reported at 574 S.W.3d 39. (App. A, *infra*, *1a*). The trial court, the 284th District Court for Montgomery County, Texas, issued no opinion. (App. D, *infra*, *24a*).

JURISDICTION

On December 20, 2018, the state Fourteenth Court of Appeals affirmed the trial court's summary judgment that, in effect, enforced a federal judgment that was infirm in the absence of personal jurisdiction. The Texas Supreme Court denied review, and rehearing. On March 18, 2020, Justice Alito extended time for filing this petition for certiorari to and including May 11, 2020.

This petition arises from a final decree of the State of Texas' highest court, and this Court has jurisdiction to review it on writ of certiorari because Collins seek to vindicate their rights and privileges recognized and protected by the Constitution of the United States. 28 U.S.C. § 1257(a). Throughout the proceedings below, Collins consistently claimed their due process

rights were not recognized, and such infringement is repugnant to the Constitution of the United States. Accordingly, Collins properly invokes jurisdiction by this Petition. *Id.* This court has the power over the state judgment to correct it to the extent that it incorrectly adjudges federal rights. *Id.*

STATUTORY PROVISIONS AND RULES INVOLVED

1. U.S. Const. amend. XIV, Section 1, provides, in relevant part, "No state shall . . . 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."

2. U.S. Const. amend. X, provides "[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people."

3. FED. R. PROC. 60(b)(4), provides, "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: (4) the judgment is void."

4. FED. R. PROC. 60(d)(3), provides, "Relief from a Judgment or Order. (d) Other Powers to Grant Relief. This rule does not limit a court's power to: (3) set aside a judgment for fraud on the court."

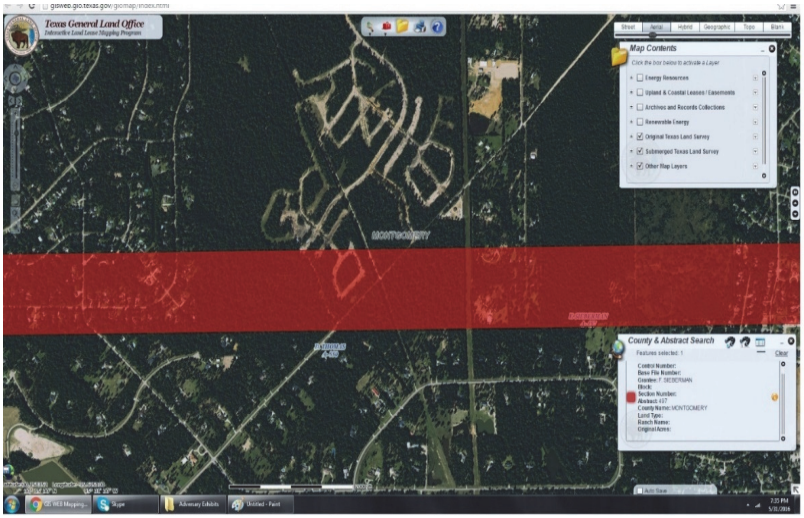
STATEMENT

This case arises from Collins' appeal of a summary judgment in favor of Respondent D.R. Horton-Texas, Ltd., a $17 billion Texas real estate developer. Contrary to its own certified government records and this Court's law, the state of Texas ruled its own sovereign land grant, the Frederick Sieberman Survey A-497, does not exist. The state trial court relied upon a void federal judgment having substantial adverse impact on Collins' rights as landowners but that was undisputedly entered without notice to or personal jurisdiction over Collins. That void judgment—later affirmed as *McComb v. McCormack*, 159 F.2d 219 (5th Cir. 1947), likewise without notice to the excluded necessary parties—was the sole basis for Horton's claim to superior title.[1] The state trial court improperly awarded summary judgment in derogation of Collins' constitutional right to due process. An intermediate Texas appellate court affirmed the judgment. *See Collins v. D.R. Horton-Texas, Ltd.*, 574 S.W.3d 39 (Tex. App.—Houston [14th Dist.] 2018, pet. denied). The Texas Supreme Court denied review.

At all relevant times, Collins held record title to the Frederick Sieberman Survey, A-497 (Sieberman

[1] As will be discussed *infra*, *McComb* set out to define the timber rights of landowners on an adjacent survey—the James Hodge Survey—but improperly assigned interest in undeveloped lands of the Frederick Sieberman Survey to the parties before the court in that case. Horton later purchased the land interest assigned by *McComb*, using the federal court's decision as the basis for claiming title to the portion of its purchase that fell within the Sieberman Survey.

Survey), the land that is the subject of this suit. The Sieberman Survey is a recognized land survey in the records of the Texas General Land Office (GLO), having been originally awarded by and descended from the sovereign Republic of Texas.[2] *See* GLO Feb. 2016 record below showing GLO's online information for the Sieberman Survey:



Collins acquired title to the Sieberman Survey from the successors of Frederick Sieberman, to whom the Republic of Texas originally granted the land in 1866.

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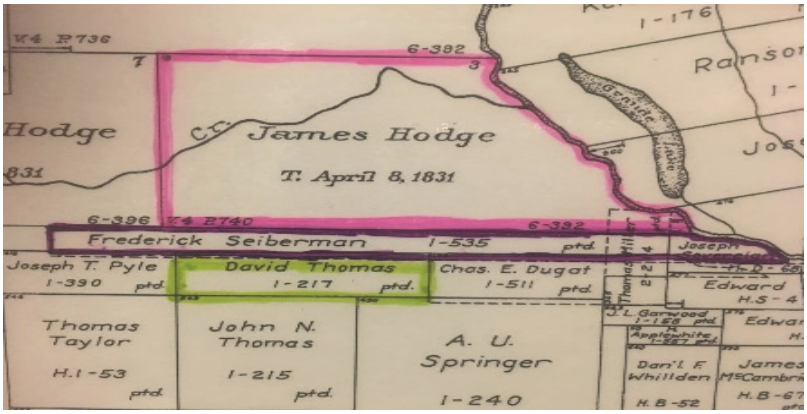
[2] *See* Certificate No. 109, "Frederick Seibermann (sic)," GLO archives, Vol. 17, No. 325 (May 8, 1866). The official documentation of the land grant is also available at http://s3.glo.texas.gov/ncu/SCANDOCS/archives_webfiles/arcmaps/webfiles/landgrants/PDFs/3/1/1/311087.pdf and https://cgis.glo.texas.gov/cfGIS/glomapjs/basefile.cfm?SDENUM=483390449

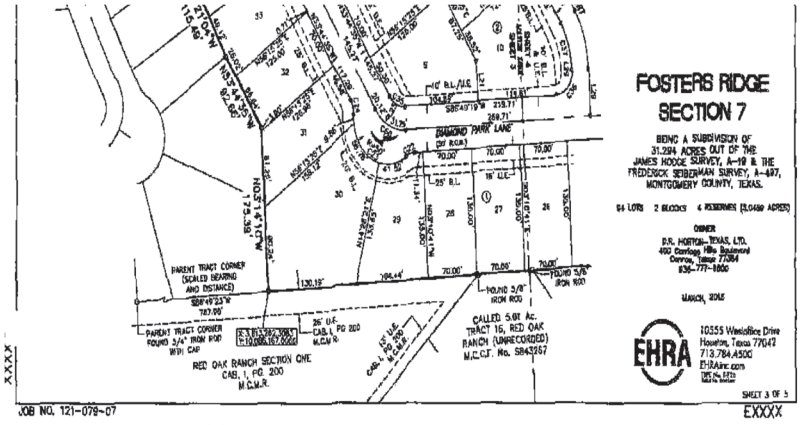
In October of 2012, Horton entered an earnest money contract to purchase over 600 acres of forested land in the James Hodge Survey, A-19 ("Hodge Survey") for cash without warranty. The Hodge Survey is an exclusive survey contiguous to the north of the Sieberman Survey. *See* GLO July 2016 certified record below showing an excerpt from the GLO's Montgomery County, Texas survey master plat showing the current location of the surveys:



In December, 2012, Horton drafted a deed **to itself** of the Hodge Survey land.

In August 2015, Horton submitted applications to the city of Conroe for Horton's Fosters Ridge, Section 7 Subdivision (FR7), wherein Horton expressly identified that Horton's proposed 31.294-acre subdivision included therein Collins' "*Frederick Sieberman Survey, A-497.*" Horton later supplemented its FR7 application to include survey plats and submissions completed by Horton's licensed surveyors, EHRA, that expressly identified its 31.294-acre FR7 to include Collins' "*Frederick*

Sieberman Survey, A-497." (App. K, *infra*, p. *58a*). *See* below City of Conroe's certified record of Horton's subdivision survey dated March 2016 showing the Sieberman Survey is included in Horton's FR7.



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Consequently, that June, Collins sued Horton for trespass to try title of Collins' Sieberman Survey land in the 284th District Court of Montgomery County, Texas. Horton moved for summary judgment on the theory that Collins did not own the Sieberman Survey land because the Survey did not "exist," contrary to GLO records and Horton's own surveys. Horton now argued that the judgment in *McComb v. McCormack* "extinguished" the Sieberman Survey, thereby improperly claiming it as if Hodge land. However, no Sieberman Survey owner was ever joined, served or notified of the suit or judgment upon which Horton relied. Horton denies the Sieberman Survey was adversely possessed; they rely solely on the void federal judgment as their basis for title.

In September 2016, Horton supplemented its FR7 application to **change all references** to the "*Frederick Sieberman Survey, A-497*" to "*David Thomas Survey, **A-497.***" But the Thomas Survey is not part of FR7, nor is its abstract number A-497, that belonging to the Sieberman Survey. In October 2016, Horton supplemented and altered its FR7 application plats once again identifying FR7 to include the "*Frederick Sieberman Survey, A-497*"; **the same survey it argued no longer existed in its August Motion for Summary Judgment**.

In response to Horton's Motion for Summary Judgment, Collins presented a) evidence of superior title to the Sieberman Survey in a direct line from the sovereign, b) sworn testimony that the Sieberman owners had never been joined, served or noticed on any federal suit, c) documentary evidence that the GLO and all other state agencies recognize the current existence of the Sieberman Survey (App. H, I, J, *infra*, pp. *55a-57a*), d) evidence that the only Sieberman Survey boundaries and patent recognized by all persons (except Horton) are those asserted by Collins as set out in the GLO certified files, e) evidence that Sieberman's successors, now including Collins, have continually used the Sieberman Survey land since the Texas land grant in 1866; and, f) evidence that Horton had no adverse possession claim of the Sieberman land.[3]

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[3] Under Texas law, Horton had the burden to prove superior title under Collins' trespass-to-try-title claim, as it "is the only way or method to perfect, claim or vest title to real property in Texas." *Martin v. Amerman*, 133 S.W.3d 262, 265 (Tex. 2004). "To

Collins raised the federal constitutional question of violation of the Fourteenth Amendment at each stage of legal proceedings with Horton related to the Sieberman Survey claim. First, in the trial court, Collins asserted in their claim for trespass to try title against Horton that the federal judgment under which Horton claimed was void as to the Sieberman Survey. Collins argued that the basis for the federal suit was to partition only the one-league Hodge Survey between the Hodge Survey owners to resolve allegations of improper timber operations and theft. It is undisputed that neither the Sieberman record title owners nor their successors in title, Collins, were served, joined, or notified of the *McComb* suit or judgment, leaving the Sieberman Survey fully vested and intact. Second, on September 9, 2016, Collins asserted in their summary-judgment response that " . . . the [federal judgment] does not affect or divest [the Sieberman owners of their] interest since [they were never] joined as parties to such suit . . . This [federal suit] was not a Trespass to Try Title cause of action . . . There is no evidence of actual or constructive ouster. . . ."? As further assertion

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prevail in a trespass-to-try-title action, a plaintiff must (1) prove a regular chain of conveyances from the sovereign, (2) establish superior title out of a common source, (3) prove title by limitations, or (4) prove title by prior possession coupled with proof that possession was not abandoned." *Id.* Collins asserted a trespass-to-try-title claim on the Sieberman tract in June 2016 in their first amended counterclaim. Horton demurred, constituting an admission that Collins' trespass-to-try-title claim was properly before the court. TEX. R. CIV. P. 790 (mandating "such a plea or answer to the merits shall be an admission, by the defendant, for the purpose of that action, that . . . he claimed title thereto . . . ").

of their rights, Collins asserted in their Sur-Reply to Horton's MSJ that "[t]he record title holders of the Frederick Sieberman Survey were not parties to the 1944 lawsuit." The argument further noted that it is fundamental due process that a party must have notice and opportunity to be heard before it can be bound by a judgment. It is well settled law that those with colorable title to real property are necessary parties who must be included in a suit divesting their title. Collins noted specifically that the 1944 final judgment that would be appealed and affirmed in *McComb* neither recited the parties before the court, failed to note the presence of any of the Sieberman Survey owners in the suit, and, although it did not actually purport to divest the Sieberman Survey owners of their interest in land, did exactly that by opining the Sieberman Survey out of existence.

No dispute exists that Horton and Collins have neither privity nor mutuality of deed. Horton did not assert, in fact vehemently denied, that Horton or their predecessors adversely possessed the Sieberman Survey. No dispute exists that no suit to oust the Sieberman Survey owners existed or that the Sieberman record title owners had not always used and occupied the Sieberman land. No dispute exists that Horton provided no abstracts of title, no citations by publication, no guardians *ad litem* appointed, no vesting of title, no adverse possession, or no warranty of title from their sellers. (App. L, *infra*, pp. *61a-62a*).

On November 8, 2016, the trial court entered summary judgment in Horton's favor. The Fourteenth

Court of Appeals affirmed the trial court's decision. The Supreme Court of Texas denied Collins' petition for review. This petition timely followed.

DECISION BELOW CONFLICTS WITH SUPREME COURT

Two very strong reasons exist for this Court to grant Collins' petition. The lower court decision is an absolutely incorrect application of Supreme Court precedent in *Peralta.* Further, the general importance beyond its effect on these particular litigants is enormous because the lower court decision deprives basic due process rights enshrined in the Constitution by sanctioning fraud on the court to obtain land title.

The following facts support the above reasons:

- First, this Court recognizes that, "a judgment entered without notice or service is constitutionally infirm," and the instant judgment below relies upon a judgment that deprived Collins of constitutional rights with neither notice nor opportunity to be heard. An attack on that judgment may be brought when a failure to establish personal jurisdiction violates due process resulting in a void judgment as to the non-joined third party, but the decision below enforces a judgment in derogation of constitutional rights. *See infra* this Section A.
- Second, the state trial court's decision directly conflicts with this Court's holding in *Peralta v. Heights Medical Center, Inc.*, 485 U.S. 80, 108

S. Ct. 896 (1988). *Peralta* held that a judgment against an appellant who was never served but nevertheless had his rights affected was void. The judgment below stands for the opposite prospect—that a party may have their rights decided *in absentia*, without even rudimentary notice. *See infra* this Sections B and C.

- Third, the trial court's summary judgment, affirmed by the state court of appeals, ignores constitutional safeguards afforded all citizens, and sets a disturbing precedent that distant federal court decisions can override the boundary decisions and disregard the recording systems that form the basis of all state-law based property ownership—effectively extinguishing property interests by judicial fiat. More significantly, it suggests that they may do so without providing a landowner the barest due process. The judgment implicates both the sanctity of state-law based title and the integrity of federal court decisions and process. *See infra* this Section D.

A. This Court's Decision in *Peralta* stands for the constitutional infirmity of the trial court judgment.

"[A] judgment entered without notice or service is constitutionally infirm[.]" *Peralta v. Heights Medical Center*, 45 U.S., at 84. "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under the circumstances, to apprise interested

parties of the pendency of the action . . . " *Id*. (quoting *Mullane v. Cent. Hanover Bank & Trust Co*., 339 U.S. 306, 314 (1950)) (internal quotes omitted). Thus, the failure to give notice violates that most rudimentary demand of due process of law. *Id.*

A judgment that deprives one of constitutional rights without jurisdiction over the person is not just voidable, but void. *See Pennoyer v. Neff*, 95 U.S. 714, 721 (1877) (judgment rendered against a defendant in proceeding without service or appearance is void as to that defendant). And, once void, forever void. *Id.*, at 728. When a court wrongfully extends its jurisdiction beyond the scope of its authority, collateral attack of its judgment is permissible and such attack is "not subject to any time limitation." *Gschwind v. Cessna Aircraft Co.*, 232 F.3d 1342, 1346 (10th Cir. 2000); FED. R. PROC. 60(b)(4) (a court may relieve a party from judgment when it is void); *see* FED. R. PROC. 60(d)(3) (a court may set aside a judgment for fraud on the court). The judgment can have no effect and must logically be subject to attack because the court rendering it never had power to do so.

This Court's holding in *Peralta* and *Pennoyer* are analogous to the controversary at bar. Specifically, an infirm judgment was unconstitutionally enforced in both *Peralta* and the instant case.

In the decision below, the trial court judgment deprived Collins of their superior title to the Sieberman Survey land by enforcing a void federal judgment–one obtained without personal jurisdiction over Collins—

that nevertheless severely impacted their property rights.

B. The trial court relied upon a "constitutionally infirm" federal court decision that decided the rights of Collins and their predecessors without their presence in the suit.

The case relied upon by the trial court—*McComb, et al. v. McCormack, et al.*—requires some discussion. Collins provides a brief history.

Frederick Sieberman fought for the independence of Texas from Mexico. On March 27, 1836, he and over 400 other Texians were massacred at Goliad. For his service, the State of Texas issued Sieberman's estate 1/3rd league of land, the Frederick Sieberman Survey, memorializing his heroism. *See supra* fn. 2. From May 1-4, 1866, John Marshall Wade, Surveyor of Montgomery County, surveyed the land, then subsequently filed the plats and field notes with the GLO. On May 29, 1866, Texas' Governor Andrew Hamilton granted Sieberman's estate a land patent and assigned Abstract 497. The Sieberman Survey is situated to the south of the James Hodge Survey and north of the David Thomas Survey. In 1878, a second field survey by special deputy Montgomery County surveyor Sam Clepper confirmed the Seiberman Survey did not conflict with other adjacent land surveys. The GLO records confirmed Mr. Clepper followed Mr. Wade's original footsteps and found Mr. Wade's witness marks to corroborate with no conflict, then filed his plats and notes

with the GLO, thus confirming the exclusivity and existence of the Sieberman Survey. Collins acquired title of the Sieberman Survey by special warranty deeds from Sieberman's successors.

In 1831, Mexico granted to colonist James Hodge one-league of land surveyed by Elias Wightman with the ground survey and patent filed with the GLO. The Hodge Survey is located to the north and contiguous to the Sieberman Survey. It was determined in 1878 by Mr. Clepper to be mutually exclusive of the Sieberman Survey. *See supra* fn. 2.

On Dec. 7, 1941, the Hodge Survey owners brought suit against each other in federal diversity under Cause No. *666* over timber rights and operations but limited *only* to the Hodge Survey ("Federal Suit"). Only the Hodge Survey owners were joined, served or notified of the Federal Suit. "The principal purpose of the suit and controlling matter in the suit . . . was the establishment of their [timber conversion and interior partition] claims regardless of the location of the James Hodge Survey." *McComb, et al. v. McCormack, et al.*, 159 F.2d 219, 225 (5th Cir. 1947).

Ultimately, the federal court rendered a judgment that purports to locate and partition the James Hodge survey amongst the parties therein but that also inadvertently allocated a portion of the Sieberman Survey, without accounting for or even making reference to that survey or the records of the GLO—the repository of state property records that actually defines real property ownership in Texas as a matter of law. The

decision amounted to the court's simply ignoring Texas law and its requirements for setting boundaries in favor of a system of its own devising. It is undisputed that the Sieberman owners were never served or notified of the federal judgment, nor did they voluntarily appear. It is undisputed that the Sieberman owners, now Collins, never received actual, legal or constructive notice of the federal judgment until Horton filed the trial court suit to quiet title, below.

C. The state trial court erroneously relied upon a judgment that was void as to Collins.

Collins informed the trial court of the Sieberman patent, title history, Federal Judgment and its constitutional infirmity as to Collins' interest in the Sieberman survey in absence of personal jurisdiction over the owners. Collins informed the trial court of the details of the federal questions sought to be reviewed with sufficient precision to enable the state court to have considered such Constitutional violations in Collins' petition for trespass to try title in June 2016, their Response to Horton's MSJ in September 2016, and their Sur-Reply to MSJ in October 2016. Collins argued to the trial court that "for one to be bound by a judgment in a suit to which it was not a party and of which it had no notice is unconstitutional." *Auster Oil & Gas, Inc. v. Stream*, 891 F.2d 570, 581 (5th Cir. 1990). Collins requested that, since no Sieberman title owners received notice of the Federal Suit or Federal Judgment, the trial court should set aside consideration of the void federal judgment as a basis for Horton's title to Collins'

Sieberman Survey land. Nevertheless, the trial court—by summary judgment—granted title to Horton in derogation of the requisites of Texas' title law and federal constitutional protections.

A state court cannot "unvoid" an infirm federal judgment so it can be used. The state trial court summarily enforced an infirm federal judgment as the only grounds to vest title in a stranger to the title of the Sieberman Survey. Two wrongs don't make a right. This Court should grant certiorari to a) correctly adjudicate federal rights, b) set precedent that a void judgment cannot be the basis for title, c) uphold the Constitution, d) for national significance to discourage and prevent similar future land title theft, and e) uphold this Court's mandate that a void judgment remains void.

D. The Court of Appeals' decision simply reinforced the trial court's error.

On December 20, 2018, the Fourteenth Court of Appeals affirmed the trial court's decision but wholly failed to address Collins' paramount constitutional arguments citing inapposite case law and completely ignoring the Constitution. Even as the appellate court effectively acknowledged Horton's argument that the federal court judgment placed the boundary line between the Hodge and Thomas surveys "in the area that would have contained the Sieberman survey," it asked no other questions about that judgment, including the crucial questions as to whether Collins or any of their

predecessors—holders of interests in the Sieberman Survey—were party to it. The appellate court's opinion affirming summary judgment for Horton expressly relied upon the validity of the federal court judgment as affecting Collins' rights.

The Fourteenth Court of Appeals' opinion should have turned, in major part, on the validity and binding nature of the Federal Judgment and appellate holding, *McComb v. McCormack*, that opined out of existence the Sieberman Survey, a land grant from the sovereign Republic of Texas that *still exists* in the records of the GLO. Those records openly contradict the sole basis for Horton's summary judgment argument in the trial court and Horton's position taken at the very time Horton filed its MSJ. But neither Collins nor any other party in privity with Collins nor any owner of the Sieberman Survey was made a party to the federal suit or judgment much less notification or knowledge of an appeal and opinion of the Fifth Circuit. Consequently, the Federal Judgment had the effect of taking away vested property rights from parties and their successors who were never even made aware of the Federal Suit at the time when it could have been challenged directly. This court has the power over the state judgment to correct it to the extent that it incorrectly adjudges federal rights that Collins raised with sufficient precision and timeliness to have enabled the state court to have considered it.

REASONS FOR GRANTING THE PETITION

A. The Questions Presented are Important Beyond the Effect of the Particular Litigants

This appeal presents a conflict with the Court's own jurisprudence and the essential constitutional principle that no one may be deprived of his or her basic rights—including the right to hold property, peacefully and properly owned—without due process and due course of law. No void judgment can do what the Constitution simply will not allow. However, the trial court below made use of a decision from an Article III court to perpetuate, rather than alleviate, an injustice. The issue strikes at the heart of the integrity of federal court decisions, the propriety of such decisions, and the respect that such decisions will ultimately receive from the public. This case calls upon the Court to exercise its preeminent authority to guarantee that the legislative and judicial pronouncements of each state conform to the Constitution of the United States.

1. The Decision Below Violates the 14th Amendment of the U.S. Constitution.

The Fourteenth Amendment **does not** allow enforcement of a void federal judgment obtained without personal jurisdiction over and notice to the defendant. U.S. Const. amend. XIV, Section 1, provides, in relevant part, "No state shall . . . 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." An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. *Milliken v. Meyer*, 311 U.S. 457 (1940); *Grannis v. Ordean*, 234 U.S. 385 (1914); *Priest v. Las Vegas*, 232 U.S. 604 (1914); *Roller v. Holly*, 176 U.S. 398 (1900).

It is undisputed that the Sieberman owners, including Collins, were never personally served with process, joined or noticed of the Federal Suit. These contentions were not controverted at the trial court's summary judgment hearing. Further, Collins proved superior title of the Sieberman Survey from the sovereign into Collins as well as proved the Sieberman Survey had superior legal boundaries as set out in the perfected GLO patent that very much still exists. The trial court nor appellate court addressed the Constitutional conflict.

This means that the decision below is wrong. A judgment rendered in violation of the Fourteenth Amendment in the Constitution is void and cannot serve as any basis for depriving a person of their rights. *World-Wide Volkswagen Corp. v. Woodson*, 444 US. 286, 291 (1980). The Federal Judgment was entered without notice or service, making it a nullity. *Peralta*, 485 U.S., at 84. Allowing it to stand allows a conflict with this Court's own ruling.

2. The Decision Below Violates the 10th Amendment of the U.S. Constitution

The Tenth Amendment **does not** allow federal courts to ignore state law in federal diversity actions. *Erie Railroad Co. v. Tompkins*, 304 U.S. 64 (1938) (holding that federal courts, when confronted with the issue of whether to apply federal or state law in a lawsuit, must apply state law on issues of substantive law.). Texas law governs interest in land titles as well as surveys and is uniquely a creature of state law. *Severance v. Patterson*, 370 S.W.3d 705, 713 (Tex. 2009). It is indisputable that the federal court did not apply state law in adjudicating this partition action in federal diversity. *McComb v. McCormack*, 159 F.2d, at 226.[4] The decision amounted to the court's simply ignoring Texas law and its requirements for setting boundaries in favor of a system of its own devising.

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[4] The federal opinion evidences three flagrant judicial errors of omission of application of state law. First, in Texas "[t]he cardinal rule is that the footsteps of the original surveyor . . . should be followed." *T.H. Investments, Inc. v. Kirby Inland Marine, L.P.*, 218 S.W.3d 173, 207 (Tex. App.—Houston [14th Dist.] 2007, pet. denied). The federal court did not rely upon the GLO's original witness marks for the Hodge Survey in subject of the suit. Second, the federal courts did not review or rely upon the original footsteps or witness marks for the Sieberman Survey *certified* in the GLO files much less even review the survey or consider the title owners absence. *Id.* Third, *stare decisis* is never stronger than in protecting land titles, as to which there is great virtue in certainty." *Blaffer v. State*, 31 S.W.2d 172, 191 (Tex. 1930). The *stare decisis* in the instant case is the GLO's historic, certified and current Seiberman Survey boundaries and land titles never questioned until 2016.

But for the Fourteenth Amendment due process violation, the Tenth Amendment violation would certainly not have occurred. Had the Sieberman Survey owners been joined in the suit, they would have had the opportunity to object to the improper state law application by the federal court. This Court should grant certiorari to correct the state court's erroneous decision to the extent that it incorrectly adjudges rights of due process.

B. The Decision Below is in Direct Conflict with Supreme Court Precedent

The decision below is directly in conflict with the Supreme Court's decision in *Peralta*. "[A] judgment entered without notice or service is constitutionally infirm[.]" *Peralta v. Heights Medical Center*, 45 U.S., at 84. Collins questioned the violation of the Fourteenth Amendment, as held in *Peralta*, at each stage of legal proceedings with Horton related to the Sieberman Survey claim. (App. L, *infra*, pp. *61a-62a*). Given that the appellate court did not address *Peralta* or even include the word "Constitution" in its opinion, when such constitutional violation is the very root of the instant judicial error; Collins, in the alternative, request this Court grant, vacate, and remand for consideration of *Peralta*.

C. This is an Ideal Vehicle to Correct the Blatant Error of the Decision Below.

Resolution of the questions presented is central to the outcome of this case. A grant of certiorari and reversal would be outcome-determinative to allow title to remain vested in the true record title owner from the sovereign, and, more importantly, would vindicate due process rights, while recognizing the primacy of state real property law.

How can property owners be stripped of title when never made party to the suit that took away their rights? The answer is that, consistent with due process, they cannot. The decision below gives short shrift to this Court's long-standing protection of essential due process rights and the equally significant policy in favor of local control over real property, its ownership, and its regulation. While this Court is not a court of error correction but one of policy, policy itself cries out for correction of this error and to affirm the essentiality of Fourteenth Amendment rights. This is not simply about how one real property dispute was decided. It is about the deprivation of basic due process rights, enshrined in the Constitution.

This Court has consistently stated that the Fourteenth Amendment requires judicial proceedings to be conducted in a fundamentally fair manner. *Lassiter v. Department of Social Service of Durham City*, 452 U.S. 18, 33 (1981). How is it fundamentally fair or even legal for the state court to validate a void federal judgment that is irrevocably infirm under the Fourteenth

Amendment, then to summarily award land title against all requisites of state property law in violation of the Tenth Amendment?

This Court should grant certiorari to correct the state court's erroneous decision to the extent that it incorrectly abrogates constitutional rights. In the alternative, Collins request this Court grant, vacate, and remand for consideration of *Peralta*.

CONCLUSION

Petitioners, James K. Collins and Toni L. Sharretts Collins, pray that the Supreme Court grant a writ of certiorari to review the judgment of the court below. In the alternative, Petitioners request this Court grant, vacate, and remand the judgment below for consideration to comport with the precedent of the Supreme Court of the United States.

Respectfully submitted,

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May 11, 2020