

24-5472
Case No.

ORIGINAL

In The Supreme Court for the United States of America

AUG 29 2024

In re: Jayaton-Kerry: Thomas: Petitioner,

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On Petition for Writ of Mandamus or Prohibition to the Ninth
Circuit for the United States of America Court of Appeals, San

Francisco Division

2:23-cv-02298-TLF-AC; 24-2582

Extraordinary Writ of Mandamus/Prohibition

Jayaton-Kerry: Thomas, Aboriginal Muskogee Seminole Creek American
State National; Californian National Indian: "Living Man on the Land";
"Sui Juris" [i.e., of the age of maturity and can handle his own affairs]
Rural free delivery: 2072 50th Avenue. Sacramento. California (nation-state)
[00000].

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QUESTION(S) PRESENTED

1. Did the Ninth Circuit err by dismissing Thomas: Jayaton-Kerry's Writ of Mandamus because of their stated frivolous filing due and related In Forma Pauperis, thereby denying Thomas due process and the opportunity to the full benefit of the court and the fulfillment of the judicial machinery?

PARTIES TO THE PROCEEDING

1. Petitioner Thomas: Jayaton-Kerry ("Thomas"): was plaintiff in the Eastern District Court for the United States of America, Sacramento County.
2. Jim Cooper, Elected Sheriff in Sacramento County.
3. Alex Delgadillo, Sergeant, Sacramento County Sheriff's Civil Bureau
4. Kandice Leon, Deputy Superior Court Clerk, Sacramento County
5. Lee Seales, Superior Court Clerk, Sacramento County
6. John Doe #1 - #100, Sacramento Sheriff Deputy, Sacramento County
7. Melissa Robbins Coutts, Attorney, CalBAR# 246723; Lead Attorney for Chase in Unlawful Detainer Case Numbers 22UD00860; 23UD03814; Junior Partner with Law Firm McCarthy & Holthus LLP.
8. Kevin [Ralph] McCarthy, Attorney, CALBAR# 149099; Partner with Law Firm McCarthy & Holthus LLP; Executive Director for foreclosure trustee Quality Loan Service Corporation
9. Gary Scott Decker, Attorney CalBAR# 74007; Trial Attorney for Chase in Unlawful Detainer Case Numbers 22UD00860; 23UD03814; Not affiliated with, or employed by McCarthy & Holthus LLP.

10. Nathan Cleaver, CalDRE# 01372444, Real Estate Agent in Sacramento, California and owner of United Property Advocates, Inc.

11. Scott Olson, CalDRE# 01372444, Real Estate Agent in Sacramento, California and owner of Compass Realty, Northpoint Asset Management. Scott specializes in Bank Owned (REO) Property Sales, Evictions, and Lockouts.

12. And all other parties known and unknown who participated with these nine (9) Defendants in the criminal and civil violations done against Thomas.

STATEMENT OF RELATED CASES

District Court of the United States for the Eastern District, Sacramento Division

- *Thomas: Jayaton-Kerry, Third Party Intervenor/Injured Party., vs. Jim Cooper, et al*, No. 2:23-cv-02298-TLN-AC --- Tort to Land.

Ninth Circuit Court of Appeals for the United States

- *Thomas: Jayaton-Kerry, Third Party Intervenor/Injured Party., vs. Jim Cooper, et al*, No. 2:23-cv-02298-TLN-AC --- No. 24-2582 --- Tort to Land

Superior Court of California, Sacramento County:

- *JPMorgan Chase Bank, N. A, et al. v. ROGERS, MARY ALICE NELSON*, and added defendants *Kim Edward Rogers, Paula Carrie Rogers, Harold Edward Rogers, Jr, Jayaton Kerry Thomas* No. 22UD00860 --- Unlawful Detainer, Judgment for Plaintiff, Writ of Possession and Eviction Granted, Wirt Recalled and Reissued

Superior Court of California, Sacramento County:

- *JPMorgan Chase Bank, N. A, successors and/or assignees. v. Mary Alice Nelson Rogers, Kim Edward Rogers, Paula Carrie Rogers, Harold Edward Rogers, Jr, Jayaton Kerry Thomas*, No. 23UD03814 --- Forcible Detainer, Trial by Judge, Judgment for Plaintiff, Writ of Possession and Eviction Granted

Bankruptcy Court of the United States for the Eastern District, Sacramento Division

- *Adversary Proceeding Thomas: Jayaton-Kerry. et al vs. J.P. Morgan Chase Bank N.A., et al*, No. 24-02001 --- Pure bill in Equity...

Ninth Circuit Court of Appeals for the United States

- *Jayaton-Kerry. et al vs. J.P. Morgan Chase Bank N.A., et al*, No. 24-4846 on Appeal from 24-02001; Pet. 23-24331

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OPINIONS AND ORDERS ENTERED

For cases from federal courts:

The opinion of the United States Court of appeals appears at Appendix A to the writ and is reporting at the Ninth Circuit Court of Appeals of the United States of America, San Francisco, California.

The opinion of the United States district court appears at Appendix B to the petition and is reported at the Eastern District Court of the United States of America, Sacramento County, California.

JURISDICTION

For cases from federal courts:

The date which the United States Court of Appeals decided my case was July 18, 2024.

No petition for rehearing was timely filed in my case.

The jurisdiction of this court is involved under 28 U.S.C. Section 1254(1) and Federal Rules of Appellate Procedure Rule 21.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Federal rules of Civil Procedure 28 U.S.C. section 636(b)(1)(A): Magistrates can not hear pretrial matters concerning "motions for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss....."

First Amendment "petition the government for a redress of grievances"

Fourth Amendment "The right of the people to be secure in their persons, houses, papers, and effects...."

Fifth Amendment "no person shall be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Fourteenth Amendment, deprive "any person of life, liberty, or property, without due process of law"

Article 1, Section 7 of the California Constitution "A person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws."

Bill of Rights 10th Amendment "The Tenth Amendment says that the Federal Government only has those powers delegated in the Constitution. If it isn't listed, it belongs to the states or to the people."

Full Faith and Credit Clause under Article 4 Section 1 of the U.S. Constitution
Judicial Conduct and Disability Act of 1980 Statute, civil rights statute, 28 USC §§ 351-364 et seq.

1968 Indian Civil Rights Act and all associated Acts; Title VI of the Civil Rights Act of 1964 and 28 C.F.R. §§ 42.101 et seq. 42 U.S.C. § 1983, Title VI of the Civil Rights Act of 1964 and 1968 (The Indian Civil Rights Act), 42 U.S.C. § 2000d, Title VI of the 1964 and 1968 Indian Civil Rights Act, Fourteenth Amendment and 42 U.S.C. § 1983, 42 U.S.C. § 1983, 42 U.S.C. § 1985, Government Code §§ 11135 and 11139, Article 1, § 7 (a) of the California Constitution, Article 1, § 13 (a) of the

California Constitution, Civil Code § 52.1(b), Title 18 U.S.C. §§ 241, 242, 245 Conspiracy Against Rights; Deprivation of Rights Under Color of Law; Federally Protected Activities; Title 25 U.S.C. Chapter 5 - “Protection of Indians” § 175 - “United States attorneys to represent Indians”. “In all States and Territories where there are reservations or allotted Indians the United States attorney shall represent them in all suits at law and in equity.”; 15 U.S.C. §§ 1 – Trusts, etc., in restraint of trade illegal; penalty” and and §§ 2 – Monopolizing trade a felony; penalty; 18 U.S. Code § 2076 - Clerk of United States District Court; 18 U.S. Code § 2071 - Concealment, removal, or mutilation generally.

RULE 20.1 STATEMENT

There exists truly exceptional circumstances that mandate the issuance of the writ sought by Thomas in this matter. The Ninth Circuit has a clear legal duty to order the Eastern District Court to reverse Judge Nunley’s adoption of Magistrate Claire’s Findings and Recommendations pursuant to 28 U.S.C. § 636(b)(1)(A), and Thomas’ denial of the magistrate in his tort claim proceedings. As set forth in detail, Thomas was denied the opportunity to have his writ of mandamus heard as the Ninth Circuit deemed my appeal and/or writ frivolous and dismissed it with prejudice.

This is fundamentally wrong on two levels—first, it violates Thomas’ sacrosanct due process rights as guaranteed to him under the Fourteenth and Fifth Amendments to the Constitution since he is a self-litigant, and it was done by capricious and arbitrary methods.

On a more macro level, the Ninth Circuit’s decision is further evidence of the

highly politicized nature of many courts today—the California courts for sure, but also the Ninth Circuit. This is, of course, highly improper, as it runs counter to the sole function of the court system, which is to provide a non-biased and fair resolution to everyone, regardless of political affiliation and ideological belief, based solely on the facts at issue and the relevant law. The result of this politicization is the those who happen to be melanated, or of dark hue commonly titled Black American, and African American, etc., are frequently discriminated against, that is “left out in the cold” by today’s frequently dysfunctional legal system. This has become so apparent that the three panel judges ignored the merits and refused to give Thomas the opportunity correct in errors or mistakes.

The Petitioner has made a formal request to the Ninth Circuit to perform the duty in the form of Writ of Mandamus, which has been ignored and refused.

The Court’s decision to grant Thomas’ Petition would go a long way towards remedying this phenomenon, as it shows that the courts are not to be used as a political weapon against those who simply happened to have no access to big money to afford a lawyer but have fortitude to want to seek remedy in the court as a self-litigant.

Lastly, Thomas is left without any adequate relief from any other court, as the Ninth Circuit clerk issued me a form for me to fill out on why Thomas’ appeal should not be dismissed with prejudice for being frivolous. Thomas’ writ of mandamus was dismissed with prejudice without leave to amend. Thus this Writ of Mandamus is Thomas’ only avenue for relief.

STATEMENT OF FACTS

I. Background of Facts

Thomas: Jayaton-Kerry (“Thomas”) is a living Californian man on the land known as California Republic represented by the banner picture of a bear and the “STATE OF CALIFORNIA” that is a territory of the “UNITED STATES”. Thomas, to the best of his knowledge was born, raised, learned in all the ways of California and is son to Jayaton Thomas, and Mary Alice Nelson(-Rogers) in what is known as Sacramento city within Sacramento County at Sutter Memorial Hospital in the Month known as March on the Twenty Fifth day, in the year Nineteen hundred and Seventy-Three (March 25, 1973). Thomas is very competent; of the age of majority and very capable of managing his own affairs. Thomas, has ancestry in aboriginal lands of Oklahoma, Louisiana, Florida, Texas, Alabama, Carolinas, and Virginia. Thomas’ connection to the Powhatan, Muskogee, Creek, Seminole, is documented and led Thomas to correct his records to reflect his origin on the land known as “America”. Per the Constitution of and for America, Thomas is an American Indian, not taxed which is reflected in the Articles of Confederation; Bill of Rights; Constitution, codes and statutes under Article Section 2, Clause 3; the Fourteenth Amendment; Code of Federal Regulations “eCFR 25” “Indians”; Title 25 of the United States Code “Indians”; Indian Bill of Rights; Self-Determination; Indian Civil Rights Act of 1866; 1871; 1875; 1957; 1960; 1964; 1968, 1987; 1991; and the Treaties which preceded or instituted Articles of Confederation and the Constitution.

What stemmed from this complaint being filed was Thomas was injured

by defendants and physically assaulted by Sacramento County Sheriffs. Thomas filed a Tort to Land Claim. Thomas had one Clerk Default entered against Defendant Cleaver. Defendants Olson, Decker, Leon, and Seales never answered, and failed to appear, plead or otherwise defend, the default of these defendants, and there was no service of the former.

On the 10th of January 2024 hearing, Claire was very abusive, intimidating, threatening, belligerent, partial, prejudice, and bias. Her discrimination was obvious; her conduct was unbecoming of a constitutional oath taker, officer of the court and fiduciary. Nunley adopted Claire's F&R under 28 U.S.C. § 636(b)(1)(C) in violation of 28 U.S.C. § 636(b)(1)(A). I filed a judicial complaint with the Ninth Circuit Judicial ethics committee and have a case number 24-20026 on March 8, 2024, and still have received no response.

Thomas has been on the land where the tort injury took place since he was about two years of age and plans on continuing the mission to have his and his immediate family's inheritance restored and repaired.

II. Background of Ruling in Ninth Circuit

Thomas filed a Writ of Mandamus to the Ninth Circuit immediately after Judge Nunley adopted Magistrate Claire's Findings & Recommendations ("F&R"). The Ninth Circuit responded by sending Thomas a notice stating that his Writ might be frivolous. I was instructed to answer questions from a form issued (see App. D) by the Ninth Circuit to answer specific questions regarding the decision and particulars of what happened in the 02298 case in the Eastern District of California. Thomas acknowledged and accepted

the presentment, responded to the presentment, provided his In Forma Pauperis and mailed it back to the clerk. The three panel justice and the clerk, found Thomas' writ or appeal frivolous and dismissed it with prejudice or without leave to amend.

Thomas did not seek a Motion for Rehearing – En Banc, but decided to appeal straight to Supreme Court, as the Ninth Circuit and the Eastern District has been quite prejudice and abusive to Thomas.

REASONS FOR GRANTING THE WRIT

I. This Case Involves Thomas' Constitutional Due Process Rights

Petitioner/Plaintiff has shown and proven to the Ninth Circuit that the lower court judges knowingly dismissed my case in its entirety violating Thomas' constitutional protected right to due process and equal protection of the law. Thomas' attempts to obtain relief, on merits, have been exhausted and proven to be unobtainable in the lower courts, given the cover-up, conflict of interest, fraud on the court, corrupting of the judicial process. Thomas' Constitutional protected rights under the Fifth Amendment was unprotected as due process of law was deprived and private land and/or property was taken without just compensation. "When . . . [the] power [of eminent domain] is exercised it can only be done by giving the party whose property is taken or whose use and enjoyment of such property is interfered with, full and adequate compensation, not excessive or exorbitant, but just compensation." Backus

v. Fort Street Union Depot Co., 169 U.S. 557, 573, 575 (1898). The Fifth Amendment's guarantee "that private property shall not be taken for a public use without just compensation was designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." Armstrong v. United States, 364 U.S. 40, 49 (1960). "The political ethics reflected in the Fifth Amendment reject confiscation as a measure of justice." United States v. Cors, 337 U.S. 325, 332 (1949).

The Fourteenth Amendment addresses many aspects of citizenship and the rights of citizens. The most commonly used and frequently litigated phrase is "equal protection of the laws." Section makes plain that, "... No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

There is no other forum, recourse, other than this court, to seek justice. The Ninth Circuit has obstructed justice by shutting Thomas, the Trust and other heirs out, despite Thomas doing everything necessary to obtain

justice on the merits. The Ninth Circuit summarily dismissed the claims, for no good cause other than frivolous, simply to avoid addressing them on its merits.

II. This Case Involves Thomas' Constitutional Protected Rights to be Safe and Secure in One's own person.

The Fourth Amendment of the Constitution originally enforced the motion that "each man's home is his castle", secure from unreasonable searches and seizures of property by the government. It protects against arbitrary arrests and is the basis of the law regarding search warrants, stop-and-frisk, safety inspections, wiretaps, and other forms of surveillance, as well as being central to many other criminal law topics and to privacy law. Thomas stated facts, affidavit and declaration, and provided unrebutted evidence to support these stated facts of the constitutional violation; had one clerk default, five unresponsive defendants and four FRCP Rule 5 violation defendants. These acts were done by an elected sheriff and his department; licensed attorneys or officers of the court; licensed real estate agents; all who have taken an oath of office and sworn to protect and fulfill their fiduciary duties.

III. The Lower Courts Decision is a continuation of the Arbitrary and Capricious Acts Against Self-Litigants.

Under Title 42 2000d, no exclusion to participate in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance should take place. Thomas was forced

into this situation by defendants claiming a right on behalf of them in the name of a "Bank" which resulted in the injury done to Thomas by defendants who are individuals apart of federal financially funded agencies. The STATE OF CALIFORNIA and their sub-departments receive federal funding. Moreover, the courts have not provided Thomas with a clear nature and cause of these actions and acts that have been done and have not compelled defendants to provide disclosure by rubber stamping dismissals and denials. The Administrative Procedures Act ("APA") establishes a private right of action to challenge federal agency action. These lower courts in this matter have arbitrarily and capriciously taken action against Thomas in order to validate these statutory authorities giving defendants' deference.

IV. There will be no prejudice to the Ninth Circuit Granting This Writ of Mandamus to the Eastern District.

There is absolutely no prejudice that would result from the Ninth Circuit simply granting Thomas' Wirt of Mandamus, as he has clearly stated the facts, and provided evidence to those facts. This simple solution ensures that Thomas' constitutional rights are protected, while at the same time, not harming or prejudicing the Ninth Circuit in any way. "The All Writs Act confers on the Courts of Appeals the discretionary power to issue writs of mandamus in the exceptional circumstances existing here." *La Buy v. Howes Leather Co.*, 352 U.S. 249, 259-60."

Now, however, in the absence of the implementation of this constitutional

(and common sense) solution, Thomas is left without shelter, without counsel to represent him, and is severely prejudiced and stands to lose all of his appellate rights.

CONCLUSION

This flies in the face of the sole purpose of the legal system—to provide a non-biased and fair resolution to everyone, regardless of political affiliation or ideological belief, based solely on the facts at issue and the relevant law. The Court's decision to grant Thomas' Petition can be one of the first of many steps necessary to restore the Courts to its intended function. Time is of the essence in considering and ruling upon this Petition, as the Ninth Circuit has denied Thomas of his right to appeal which will assist in restoring him and his family back to their land and property, or if deemed lawful just compensation for the eminent domain. Writ of mandamus, et al., should be granted.

Respectfully submitted,

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By: Thomas Jayaton-Kerry, L.S.
Signature by Accommodation
Under Reservation of Right