No. _____

In The Supreme Court of the United States

JAMES K. COLLINS, M.D.,

Petitioner,

v.

D.R. HORTON-TEXAS, LTD.,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The Fourteenth Amendment protects citizens against takings of property without due process. Due process includes, at a minimum, personal jurisdiction, notice, and an opportunity to be heard. Can a judgment of a court that undisputedly lacked personal jurisdiction over a citizen nevertheless be the sole basis for taking his real property?

Under the Supremacy Clause, federal courts have final authority to determine the constitutionality of statutes and their own court actions, and this Court holds that Fed. R. Civ. P. 60 vests sole authority to revisit the judgment of a federal court in the originating federal court. Could the actions of a state court or a res judicata holding estop a citizen from bringing a suit to vacate a federal judgment—void for want of personal jurisdiction—in the originating federal court?

Circuit courts are irreconcilably split on this issue.

PARTIES TO THE PROCEEDING BELOW

Petitioner here, and appellant below, is James K. Collins, M.D., an individual 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. 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. Judgment entered July 26, 2019.

RELATED CASES—Continued

James K. Collins, et ux. v. D.R. Horton—Texas, Ltd., No. 19-1297, Supreme Court of the United States, Judgment entered Jun. 15, 2020.

James K. Collins, M.D. v. D.R. Horton—Texas, Ltd., No. H-20-1897, District Court of the United States for the Southern District of Texas. Judgment entered Feb. 9, 2021.

James K. Collins, M.D. v. D.R. Horton—Texas, Ltd., No. 21-20125, United States Court of Appeals for the Fifth Circuit. Opinion dated Oct. 28, 2022.

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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit that has decided an important federal question in a way that conflicts with the relevant decisions of this Court and conflicts with the decisions of another United States court of appeals on the same important matters.

OPINION BELOW

The Fifth Circuit affirmed the trial court's decision. (App. 1). The United States District Court's decision, arising from the Southern District of Texas, Houston Division, is unpublished. (App. 14).

JURISDICTION

The Fifth Circuit entered judgment on Oct. 26, 2022, and Collins timely moved for rehearing. The Court of Appeals denied rehearing on Nov. 29, 2022. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL 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. The Supremacy Clause, U.S. Const. Art. VI, para. 2, provides: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

3. Federal Rule of Civil Procedure 12(b)(6) provides: "a party may assert the following defenses by motion . . . failure to state a claim upon which relief can be granted."

4. Federal Rule of Civil Procedure 60(b)(4) provides: "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."

5. Federal Rule of Civil Procedure 60(d) provides: "[t]his rule does not limit a court's power to: . . . relieve a party from a judgment . . . grant relief . . . to a defendant who was not personally notified of the action; or . . . set aside a judgment for fraud on the court."

STATEMENT OF THE CASE

An infirm judgment cannot be the sole basis for land title

This Court holds that a) an infirm judgment, void for undisputed want of personal jurisdiction, is a legal nullity, b) no court can give effect to such void judgment, and c) the originating federal court that renders a judgment is the only court with competent jurisdiction to vacate it under Federal Rule 60—not a state court. The Fifth Circuit's decision directly conflicts with this Court's jurisprudence, does not follow Congress's intent, creates a split among the circuit courts, and is manifestly unjust.

This case has jurisprudential significance involving the violation of constitutional rights, state versus federal authority, and the exclusivity of federal courts to police their own judgments. The instant case is an important vehicle to direct compliance with the Constitution so that state courts do not usurp federal authority or permit the taking of property without due process. This Court should grant certiorari to harmonize the circuit courts as to the Supremacy Clause, ensure the Fourteenth Amendment is employed to comport with the holdings of this Court to protect property rights and so that res judicata is properly applied so as to give *rather than deny* justice.

A. Legal Background

The Fifth Circuit's decision directly conflicts with this Court's holdings, the Constitution, and other

circuit decisions. It permits taking of land from a record title owner without service, notice, joinder, or appearance in violation of the Fourteenth Amendment. It permits a state court to usurp the laws of the Constitution by permitting the conversion of an infirm federal judgment into a valid one. It misapplies the doctrine of res judicata because want of personal jurisdiction that causes the infirmity of the judgment voids res judicata. This Court holds it is a grave injustice when a person's land is taken without notice, service, joinder or appearance and demands an exception to res judicata.

Here a bad actor secreted proceedings in federal court from the record title land owner, then knowingly used the infirm federal judgment in state court to "prove" ownership, then argued since the state approved the federal judgment it became a valid judgment and res judicata prevents the federal court from properly vacating it. The result is a state court breathed life into a void federal judgment to facilitate land theft by a $27 billion dollar developer and opined a state original land grant patent out of existence in violation of the Fourteenth Amendment, the Supremacy Clause and the legitimate purpose of res judicata. This Court should grant certiorari.

1. Fourteenth Amendment

The Fourteenth Amendment holds that a judgment that deprives one of constitutional rights without jurisdiction over the person is not just voidable, but

void. *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.*; *Cooper v. Newell*, 173 U.S. 555, 568 (1899); U.S. CONST. amend. XIV.

A judgment rendered in violation of the Fourteenth Amendment of the Constitution is void and cannot serve as any basis for depriving a person of their rights. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291 (1980). If a complaint is to void a judgment under Fed. R. Civ. P. 60(b)(4), a court has no discretion when a judgment is void, the judgment is either void or it is not. *Jackson v. FIE Corp*., 302 F.3d 515, 518 (5th Cir. 2002).

2. Supremacy Clause, U.S. Const. IV, art. 2

This Court holds state courts are bound by the Constitution's Supremacy Clause that "the Judges in every State shall be bound" by the laws of the Constitution. A state court cannot effectuate or vacate a federal judgment void for want of personal jurisdiction. *Marrese v. Am. Acad. of Orthopaedic Surgeons*, 470 U.S. 373, 382 (1985) (holding that with respect to matters that were not decided in the state proceedings, **"a state judgment will *not* have claim preclusive effect on a cause of action within the exclusive jurisdiction of the federal courts"**); *Semtek Int'l Inc. v. Lockheed Martin Corp*., 531 U.S. 497, 507 (2001) (asserting "whether a Federal judgment has been given due force and effect in the state court is a Federal question."). Vacating a void federal judgment under

Rule 60 is the sole province of the federal courts. *Caron v. TD Ameritrade*, 2020 U.S. Dist. LEXIS 223310, at *7 (S.D.N.Y. 2020) (holding "Rule 60(b) allows for a federal *district court* to set aside a judgment that was rendered *in that court*.").

The circuits are split on application of the Supremacy Clause. Contrary to the Fifth Circuit, the Ninth Circuit holds that "[s]tate courts have no power to void federal court decrees." *Western Sys., Inc v. Ulloa*, 958 F.2d 864, 868 (9th Cir. 1992), *cert. denied*, 506 U.S. 1050 (1993); *accord G.C. and K.B. Inv., Inc. v. Wilson*, 326 F.3d 1096, 1109 (9th Cir. 2003). Contrary to the Fifth Circuit, the Tenth Circuit holds when "a judgment is void, it is a nullity from the outset and any 60(b)(4) [action] for relief is therefore [automatically] filed within a reasonable time" and "relief is not a discretionary matter; it is mandatory." *See Venable v. Haislip*, 721 F.2d 297, 299-300 (10th Cir. 1983) and *V.T.A., Inc. v. Airco, Inc.*, 597 F.2d 220, 224 n.8 (10th Cir. 1979), respectively. The Tenth Circuit splits from the Fifth Circuit as to the federal courts' jurisdiction authority over Rule 60, to-wit "[w]hen a court wrongfully extends its jurisdiction beyond the scope of its authority, collateral attack of its judgment is permissible." *Gschwind v. Cessna Aircraft Co.*, 232 F.3d 1342, 1346 (10th Cir. 2000).

"An action of nullity can **only** be brought in the court which rendered the judgment." *Barrow v. Hunton*, 99 U.S. 80, 85 (1878). Contrary to the Fifth Circuit, four circuits hold that under Rule 60, the court that rendered the judgment is in the best position to judge the equities as to whether it should be set aside. *Hicklin v.*

Edwards, 226 F.2d 410, 413 (8th Cir. 1955); *Crosby v. Mills*, 413 F.2d 1273, 1275 (10th Cir. 1969); *Taft v. Donellan Jerome, Inc.*, 407 F.2d 807, 809 (7th Cir. 1969); *Weisman v. Charles E. Smith Mgmt., Inc.*, 829 F.2d 511, 513-14 (4th Cir. 1987); 12 Moore's Federal Practice—Civil § 60.60 (2022). "It is clear that a Rule 60(b) motion is considered ancillary to or a continuation of the original suit." *Smith v. Widman Trucking & Excavation, Inc.*, 627 F.2d 792, 799 (7th Cir. 1980); 12 Moore's Federal Practice—Civil § 60.61 (2022). "Because a Rule 60(b) action presupposes the existence of a prior federal court judgment, order, or proceeding, however, it is clear that the drafters of the rule contemplated that the motion . . . would always be brought 'in the court and in the action in which the judgment was rendered.'" 12 Moore's Federal Practice—Civil 60.60 (quoting Committee Note to 1946 Amendment of Rule 60(b), Amended Dec. 27, 1946; Eff. Mar. 19, 1948). The intractable split of authorities can be resolved only with this Court's invention to establish uniform law that no res judicata applies for federal vacatur claims in a state court.

3. Res judicata not applicable without personal jurisdiction

Contrary to the Fifth Circuit, this Court holds that actions to vacate judgments infirm for want of personal jurisdiction are excepted from the doctrine of res judicata. *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 244 (1944); *Marshall v. Holmes*, 141 U.S. 589 (1891); *United States v. Beggerly*, 524 U.S. 38 (1998).

This Court should grant certiorari to resolve the conflict with the decision of this Court creating a schism in the law, to harmonize expressly divided circuit courts and ensure the Constitution is properly interpreted so that a person's property is not taken without due process, nor the authority that rests solely with the federal court be usurped by the state.

B. Factual Background

The facts of this case are colorful and complex—a land title with origins in the War for Texas independence, an obscure 77-year-old case that defrauded unknowing landowners, and a revival of the dispute in this century as a builder turns woodland into suburbs. But the legal principle at the heart of this case couldn't be simpler: a court can't deprive an owner of property without basic due process.

In a partition action in federal court in 1944, claimants to a parcel—the "Hodge Survey" in Montgomery County, Texas—defrauded neighboring property owners of their land on what was called the "Sieberman Survey." They did so by failing to join and serve the Sieberman Survey owners in their federal case, and then persuading an unwitting court to approve legal boundaries of the Hodge Survey that included—and thereby effectively eliminated—the adjacent Sieberman Survey.

This Court should grant certiorari. **Collins has, to date, been denied a forum for his claim that the *McComb* judgment obliterating his property**

rights is fraudulent and void and that he was deprived of property without due process. "No fraud is more odious than an attempt to subvert the administration of justice." *Hazel-Atlas Glass Co. v. Hartford Empire Co.*, 322 U.S. 238, 251 (1944) (Roberts, J., dissenting). Nor should a federal court be able to ignore state property records while altering recognized boundary lines, making a mockery of basic notions of federal-state comity. Collins's claim raises questions about the interplay of federal and state authorities in the form of law, as well as the sanctity of the federal judiciary's exclusive jurisdiction over its own decisions. This Court should grant certiorari so circuit decisions are harmonized with the Constitution and set the record straight on a question of national significance as to both the supremacy and limitations of federal authority.

1. The Sieberman and Hodge Surveys and the 1940s Federal Litigation

As "one of the colonists introduced by the Honorable Empresario [Stephen F.] Austin" in Mexico in 1831, James Hodge obtained a land grant from that government in present-day Montgomery County, Texas. ROA.109, ROA.17 (¶17); *see also McComb v. McCormack*, 159 F.2d 219, 220 (5th Cir. 1947).[1] Nearly 200

[1] These facts are drawn chiefly from the allegations in Collins's complaint, which are taken as true since the case was dismissed under Fed. R. Civ. P. 12(b)(6). *See White v. U.S. Corrections, LLC*, 996 F.3d 302, 306-07 (5th Cir. 2021); *Test Masters Educ. Serv. v. Singh*, 428 F.3d 559, 570 (5th Cir. 2005) (same

miles to the southwest and five years later, Frederick Sieberman fell with James Fannin and his men at Goliad, massacred on the orders of Mexican General and President Antonio Lopez de Santa Anna out of vengeance for the Texians' incipient revolt. ROA.16 (¶16). To repay Sieberman's heroism, the State of Texas granted his heirs a land patent in 1866. ROA.16-17 (¶16). The Sieberman Survey abuts the Hodge Survey to the south, as confirmed by surveys recorded in the Texas General Land Office in the 19th century *and exist to this day*. *Id*. ROA.12-12 (¶11). The current governing General Land Office records show the Sieberman survey is mutually exclusive of the Hodge survey, and both are to the north of the David Thomas survey:

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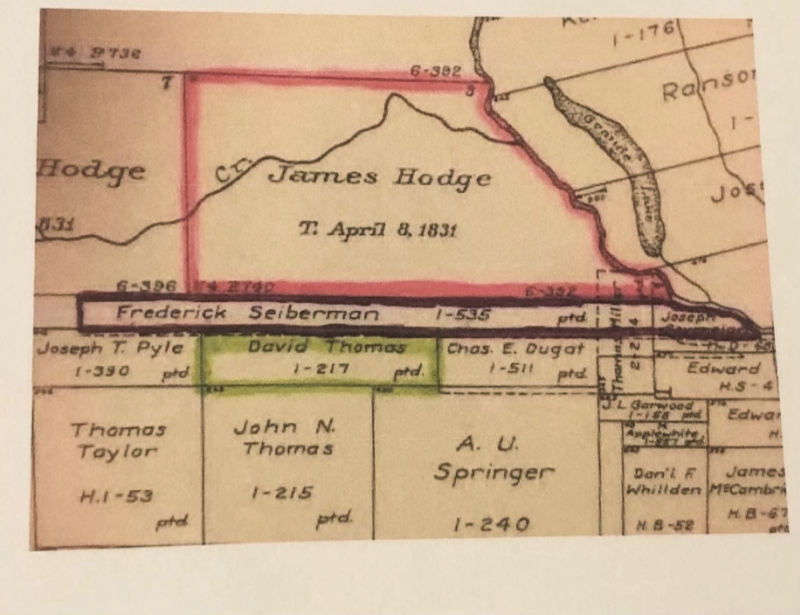
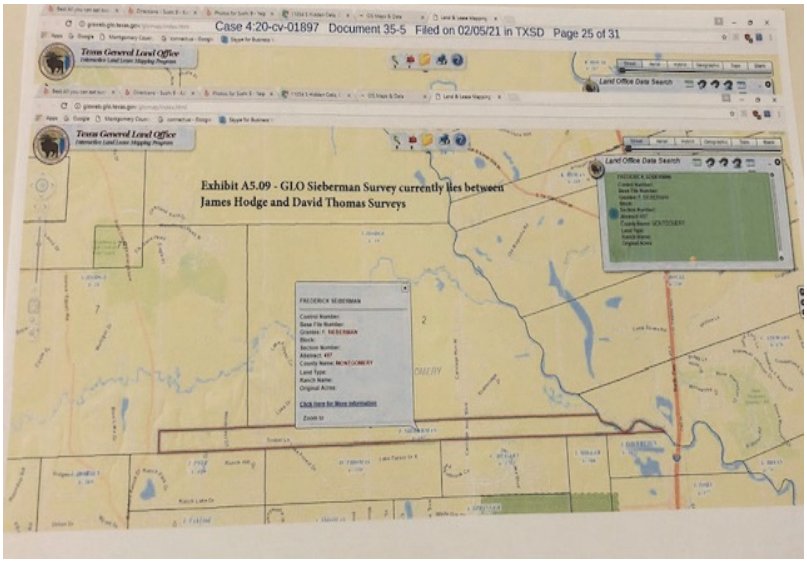
adjudicating res judicata), *cert. denied*, 547 U.S. 1055 (2006). All factual inferences are also construed in Collins's favor. *See id.*


Hodge
James Hodge
T. April 8, 1831
6-382
6-326
Frederick Seiberman 1-535 ptd.
Joseph T. Pyle 1-390 ptd
David Thomas 1-217 ptd.
Chas. E. Dugat 1-511 ptd.
Thomas Taylor H.1-53 ptd.
John N. Thomas 1-215 ptd.
A. U. Springer 1-240
Edward H.S-4
Don'l F Whillden H.B-52
1-176

ROA.13



ROA.1150.

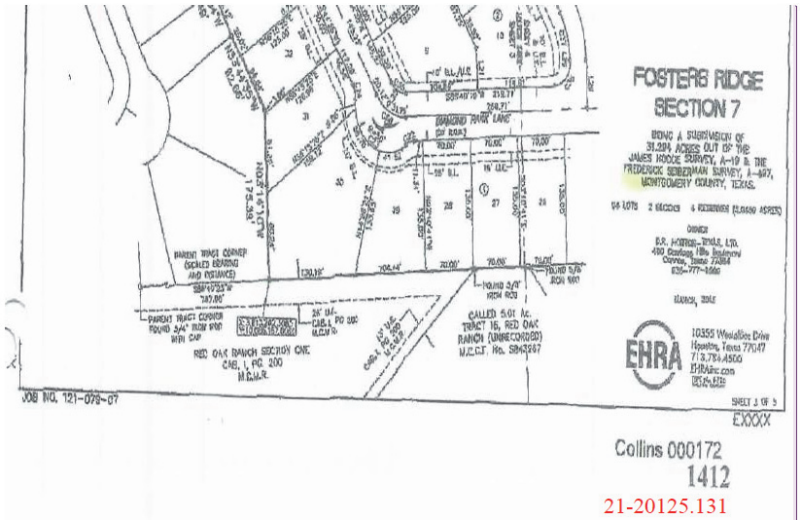
In 1941, several claimants to portions of the Hodge Survey sought partition in federal court in the Southern District of Texas. ROA.17 (¶18), ROA.52-57. At

trial before Judge Thomas Kennerly, the litigants presented a survey showing the Hodge Survey as encompassing, but making no mention of, the Sieberman Survey. ROA.23-24 (¶29), ROA.26 (¶36). Unaware of the Sieberman Survey's existence, the district court issued a judgment that partitioned a "new" Hodge Survey and set its boundaries to include–and thereby, effectively eliminate–the Sieberman Survey. ROA.17-18 (¶19), ROA.44-51. It did so in contravention of Texas General Land Office Records and despite the fact that not one owner of any Sieberman Survey property was before the district court and none had been served or joined. ROA.17-18 (¶19), ROA.23-24 (¶29). The lower court affirmed the judgment in 1947. *See McComb, supra*. As a result, the 1940s Hodge Survey litigants, abetted by the federal district court, deprived the Sieberman Survey owners of their property without due process of law. *Id*. ROA.19-20 (¶22).

Parties to the Hodge Survey litigation included timber companies, but little harvesting or other activity occurred on the property over the succeeding decades. ROA.25 (¶34). Collins eventually moved to a home abutting the Sieberman Survey and began occupying a vacant, thickly forested portion of it. ROA.185.[2] In 2012, however, Horton purchased a section of the Hodge Survey in order to clear the property and build and sell homes there. *Id*. **In requests for permits and filings with municipal bodies, Horton filed**

[2] This record citation is to a Texas appellate court decision between the parties reported at *Collins v. D.R. Horton-Texas Ltd.*, 2018 WL 6684270 (Tex. App.—Houston [14th Dist.] 2018, rev. denied) (not designated for publication).

documents and maps acknowledging the Sieberman Survey's existence and proper boundaries (but Horton fraudulently redacted Sieberman Survey references on its plats/records, then filed suit claiming the Sieberman Survey did not exist when Horton learned Collins owned it), **as shown below**:



ROA.131

2. State Court Litigation Between the Collinses and Horton

After a confrontation between Collins and a Horton bulldozer, Horton sued Collins and his wife Toni Sharretts Collins in Texas state court for trespass and to quiet title of only 2.5 acres. *Id.* The Collinses counterclaimed for title through adverse possession and later amended their answer to add counterclaims for trespass to try title and to quiet title based on their lawful acquisition of record title to the Sieberman Survey, covering 2543 acres, from its previous owners, the heirs of Frederick Sieberman. *Id.*; ROA.11 (¶9).

Horton moved for partial summary judgment on its claim to quiet title and on the Collinses' counterclaim for title. ROA.11 (¶9), ROA.192-203. Horton based its claim to title entirely on the purportedly preclusive effect of the *McComb* judgment: "The boundaries of the James Hodge Survey were established by a trial court judgment and subsequent court of appeals opinion over seventy years ago. These prior court decisions are conclusive as to the boundaries of the James Hodge Survey and [the Collinses] may not now claim otherwise." ROA.194. Although neither the Sieberman heirs nor the Collinses, who acquired their interests, were involved in the federal case, Horton claimed stare decisis precluded the state court from reexamining it "even if the suit is between different parties and even if the issues of fact or questions of law are different." *Id.* Horton then argued that the deed by which Collinses acquired their homestead, located on a third parcel exclusive of the Sieberman Survey called the

"David Thomas Survey," made reference to the *McComb* federal judgment on their subdivision plat by citing the judgment's county recording file number, and thus supposedly precluding them from attacking that judgment under the Texas state law doctrine of "estoppel by deed." ROA.200.

In response, the Collinses contended that Horton lacked title over the property in dispute because, unlike Horton, the Collinses could trace their title through the Sieberman's heirs to the sovereign of the soil (original and existing patent); that, the Texas General Land Office continues to recognize the Sieberman Survey as an exclusive non-conflicted land survey in its records; that the 1940s federal case was not a trespass to try title action (the only method to determine land title in Texas) purporting to adjudge title to the Sieberman Survey; that the Sieberman Survey owners hadn't been parties to the federal case, violating due process; that no mutuality of deed existed thus precluding Horton's estoppel argument; and, that Horton was itself quasi-estopped to deny the legal existence of the Sieberman Survey given its recognition of the survey in filings with municipal planning agencies. ROA.293-329, ROA.765-74.[3]

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[3] **Moreover, state property records do not cease to exist simply because a party, here Horton, chooses to ignore them.** Initially, Horton recognized the existence of Collins' Sieberman Survey (*see* Horton' subdivision plats filed with the city, *e.g.*, ROA.131, *supra*). However, in 2016, Horton learned of Collins' sovereign title ownership of the 2,543 acre Sieberman Survey, and subsequently commenced redacting the Sieberman nomenclature from its filings with government agencies—asserting the

The state trial court granted Horton's partial summary judgment and ordered that the Collinses take nothing on their counterclaims "related in any manner to" the Sieberman Survey. ROA.262. It failed to specify a ground for its decision. *Id*. The court then tried the counterclaim for adverse possession as to only 2.5 acres, but barred Collins from mentioning or proving his 2,543 acre Sieberman land ownership, not even allowing the true and correct official maps with the word "Sieberman" thereon, and the jury found for Horton. ROA.185-86. As a result, the state trial court entered final judgment enjoining the Collinses from interfering with Horton's use and occupancy of the disputed property. ROA.264-66.

On appeal, the Texas Court of Appeals, Fourteenth District, affirmed the partial summary judgment dismissing the Collinses' counterclaim of title through acquisition of the Sieberman Survey based solely on the Collinses' appellate waiver of the estoppel-by-deed ground for summary judgment. ROA.186-87. As such, the court conducted no further examination of Collinses' other points on appeal and affirmed the trial court's final judgment in other respects. ROA.187-91. The Collinses petitioned the Texas Supreme Court and United States Supreme Court for review but were

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Sieberman Survey now did not exist despite state patent records to the contrary. Beginning 2017, during the pendency of litigation with Collins, Horton built over $384,000.00 of homes (improvements) on Collins' forested Sieberman land that Horton KNEW it did not own because Horton KNEW (and did not dispute) the basis for its title was a federal judgment, void for want of personal notice to and joinder of the Sieberman owners.

denied. ROA.840; *Collins v. D.R. Horton—Texas, Ltd.*, 141 S. Ct. 115 (2020).

C. Proceeding Below

Collins brought this action seeking relief from the *McComb* judgment under Fed. R. Civ. P. 60. ROA.8-43. The complaint recites the history of the Sieberman and Hodge Surveys and the 1940s litigation and seeks to undo the fraudulently obtained federal judgment that extinguished the Sieberman owners' and later Collins's property rights without their participation or bare notice. *Id*. In one claim (Count 2), Collins moves under Rule 60(b)(4), which permits courts to grant relief from void judgments. ROA.30-38. In another claim (Count 3), he brings an independent claim for relief from the *McComb* judgment under Rules 60(d)(1) and (3), which recognize judicial authority to set aside judgments for fraud on the court. ROA.38-40. Finally, Collins asserted a claim asking the district court to try title and declare him the rightful owner of the Sieberman Survey. ROA.40-42. For relief, he requested a declaratory judgment that the *McComb* federal judgment is void and unenforceable as to all parties and that the Sieberman Survey exists with Collins as its legal owner. ROA.42. He also requested damages, attorneys' fees, and costs. *Id*.

Horton moved to dismiss the complaint under Fed. R. Civ. P. 12(b)(6) as barred by res judicata in light of the Texas state court litigation. ROA.172-79. Other

than citing Rule 60 as the source of Collins's claims and noting that he had also argued in state court that the federal judgment should be considered void, Horton's motion and later briefing contained no analysis of the rule or a state court's authority to void a federal judgment. *Id.*; ROA.1031-38. Collins argued that only a federal court could hear a challenge to, and order relief from, an earlier federal ruling. ROA.901-07, ROA.960, ROA.970, ROA.1007.

At argument on Horton's motion, its counsel told the district court that Collins had the opportunity to litigate his claim to title in state court, though in fact Horton had urged that court *not* to reexamine title but simply apply the *McComb* judgment as preclusive: "[The Collinses] have to recover on the strength of their own title and the [state] Court ruled against them on that thing and that's a final judgment now. So we know their title is no good. Their claim to title is no good because that's been adjudicated against them." ROA.2158. Horton's argument being circularly ludicrous because the "adjudication against" Collins was by a state court that impermissibly effectuated the undisputedly infirm judgment rendered by this very federal court that originated the void judgment and to which this Collins' action to vacate was being properly presented. For his part, Collins argued that "[t]he 1944 judgment could never have been contested in the state court." ROA.2135-36. The state court relied solely on the infirm McComb judgment and forbade Collins from presenting evidence of his Sieberman land ownership at trial. The Sieberman owners have never been

afforded an opportunity to defend their sovereign land title.

The district court granted Horton's 12(b)(6) motion and entered an order of dismissal, but then vacated its order to enable it to hear Collins's motion for reconsideration. ROA.995-96, ROA.1030.[4] After further briefing and argument, however, the court denied reconsideration and again dismissed the case. ROA.1157. It also issued a seven-paragraph opinion with essentially no reasoning or explanation beyond reciting the legal standard and procedural history. ROA.1158-59. As with Horton's motion, the opinion included no discussion of how a state court could preclude an aggrieved party from asking a federal court for relief under the Federal Rules from a void federal judgment. *Id*. Collins timely appealed. ROA.1667.[5]

On Oct. 26, 2022, the Fifth Circuit's Opinion reasoned that a) the state court had competent authority to vacate a federal judgment under Rule 60, b) a judgment that is void for want of personal jurisdiction is not a legal nullity, and c) absence of personal jurisdiction does not void res judicata—contrary to this Court,

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[4] Collins noticed an appeal of the district court's initial dismissal order, ROA.1019, but the Fifth Circuit dismissed that appeal as moot in light of the district court's reassertion of jurisdiction over the case. ROA.1060-61.

[5] After Collins noticed the appeal, the parties litigated over whether to strike certain of Collins's post-dismissal filings, ROA.1675, and the district court granted Horton's motion to strike and denied Collins's motion to reconsider that ruling. ROA.2108, ROA.2117.

other circuits and the U.S. Constitution. The result deprives an owner of his property without due process. This petition for certiorari follows.

REASONS FOR GRANTING THE PETITION

A. This Petition Presents an Important Question Because the Decision Below Conflicts with this Court's Jurisprudence, the Circuit Courts are Divided, and Proper Implementation of the Constitution is Significant

This appeal presents an important question of whether a state can vacate a federal judgment under Fed. R. Civ. 60. The federal rules alone allow for voidance of a federal judgment at any time. The United States Constitution embodies the civil liberties due all citizens of the United States and the due process that must be afforded all citizens, including those of Texas: no state may effectuate a void federal judgment obtained without notice and without personal jurisdiction over a defendant, but nor can it vacate such a judgment. This case calls upon the Court to exercise its preeminent authority to guarantee that the legislative and judicial pronouncements of the states conform with the United States' Constitution.

Also, does the Constitution allow a court to "opine out of existence" a state's sovereign land grant and vested property rights of state landowners? Here numerous violations of procedures designed to protect parties and ensure fairness in adjudication constitute

a denial of due process. This Court recognized in *Eagles v. United States*, 329 U.S. 304, 314 (1946) that flagrant violations of procedural requirements that result in an unfair hearing may render the judgment subject to collateral attack. This case calls for this Court to harmonize the law with its own jurisprudence, the Constitution, and other circuits, to hold that a citizen's property cannot be taken absent personal jurisdiction, that state courts cannot usurp federal authority, and that res judicata should be applied to ensure justice, not as a judicial trick to deny it.

1. 14th Amendment of the U.S. Constitution Violation

The Fourteenth Amendment exists to ensure due process, not deny it. The Amendment **does not** allow a state to enforce a void federal judgment, particularly when such infirm judgment is used as the sole basis of title to "deprive" an actual title owner of his property without due process of law. An elementary and fundamental requirement of due process in any proceeding is 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). "A judgment entered without notice or service is constitutionally infirm," and some form of attack must be available when defects in personal jurisdiction violate due process. *Peralta v. Heights Med. Ctr., Inc*., 485 U.S. 80, 84 (1988); *Mullane v. Cent. Hanover Bank & Trust*

Co., 339 U.S. 306, 314 (1950); *Armstrong v. Manzo*, 380 U.S. 545, 550 (1965).

Collins has always contended—and it is undisputed—by Horton or any others—that the Sieberman owners, including Collins, were never personally served with process, joined, or provided notice of the *McComb* federal suit. These contentions have never been controverted. Further, Collins proved superior title, an unbroken chain from the sovereign to Collins, as set out in the perfected GLO patent that very much still exists in Texas state governmental records.

Collins's title to lands within the Sieberman survey are evidenced by records and an abstract of title in the Fifth Circuit's record. They demonstrate that, with proper notice of suit and opportunity to appear, Collins's predecessors could easily have defended their title to the lands. But a judgment rendered without notice to them or opportunity to be heard wiped out their ownership and the state's recognition of Frederick Sieberman for his service and heroism in the war for the independence of Texas from Mexico.[6] The Hodge Survey owners, including Horton, made no effort to enforce the void *McComb* federal judgment as to the Sieberman Survey until 2016. Only in 2016 did the $27

[6] The judgment, in a very real way, erases history. Frederick Sieberman's memorial land grant for his heroism at Goliad will be eradicated forever, absent action by this Court. The void Federal Judgment doesn't mention his name and the state court ignores that neither he nor his progeny were ever joined, served or noticed to preserve his honor, "good name, reputation and integrity." *Wisconsin v. Constantineau*, 400 U.S. 433, 437 (1971).

billion developer Horton assert legal ownership of the Sieberman land in derogation of the Constitution and without the state requisites of trespass to try title.

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). There can be no fundamental fairness where a state court bases its entire holding on a federal judgment that is Constitutionally infirm for lack of personal jurisdiction.

a. "A Void Judgment is a Legal Nullity"[7]

A judgment that deprives one of constitutional rights without jurisdiction over the person is not just voidable, but void. *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).[8] **And, once void, forever void.** *Id.* 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 U.S. 286, 291 (1980). If a complaint is to void a judgment under Fed. R. Civ. P. 60(b)(4), this district court has no discretion when a judgment is void—the

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[7] *United States Aid Funds, Inc. v. Espinosa*, 559 U.S. 260 (2020).

[8] *Ergo*, a Fourteenth Amendment due process violation.

judgment is either void or it is not. *Jackson v. FIE Corp*., 302 F.3d 515, 518 (5th Cir. 2002).

The *McComb* judgment—void as to the Sieberman survey owners and their successor, Collins—could not have deprived those owners of their property interest, but the Fifth Circuit's holding and the trial court's holding mean that a mere *reference* to that void judgment in a deed record somehow does what the judgment itself could not. Where is the sense? Either a judgment is void as to a party or it is not. Here, the *McComb* judgment unmistakably is and could not have the effect of *requiring* Collins to challenge it. A void judgment can never serve as the basis for depriving a citizen of his rights.

In an analogous case, *Cooper v. Newell*, 173 U.S. 555, 568 (1899), Cooper transferred Newell's land to himself by fraudulent deed in 1848. In 1850, Cooper instigated a "faux" suit to sue Newell, a New York resident, in Texas state court for a judgment to quiet title. Newell never received any sort of citation or process and never received actual notice of the suit. In 1890—forty years later—Newell learned of the false deed and subsequent judgment and sued in federal court arguing that his lack of knowledge and personal service rendered the 1850 judgment void. The Supreme Court agreed.

Yet, with analogous facts, the Fifth Circuit reached the opposite conclusion. The Circuit court broke with this Court's precedents to hold that a constitutional right will fall by mere reference to a judgment that

never should have infringed upon it, indeed, never properly could have infringed upon it. The Fifth Circuit failed to reach the underlying flaw by relying instead on estoppel by virtue of a suspect deed.

b. Want of Personal Jurisdiction Voids a Judgment and its preclusive effects

It is well-settled law that a judgment entered without jurisdiction is a nullity.[9] This Court should grant certiorari to correct this error that improperly gives effect to an undisputedly void judgment. A grave miscarriage of justice may demand an exception; a departure from rigid adherence to res judicata. *United States v. Beggerly*, 524 U.S. 38, 46-47 (1998). The exception should apply here, because even though the ground for the Fifth Circuit's affirmance was a state court's reliance on the doctrine of estoppel by deed, the deed itself was based upon the same void judgment. The questions of personal jurisdiction and estoppel by deed were, at their root, *the same question.* The Fifth Circuit needed to reach and fully address the issue of

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[9] *Harper Macleod Solicitors v. Keaty & Keaty*, 260 F.3d 389, 393 (5th Cir. 2001) (holding "deficient service means a court lacked personal jurisdiction over a defendant, and lack of personal jurisdiction is an independent basis for voiding a judgment"); *Norris v. Causey*, 869 F.3d 360, 368 (5th Cir. 2017) (holding "[a] district court *must* set aside a default judgment as void if it determines that it lacked personal jurisdiction over the defendant because of defective service of process"); *Chum v. Gray*, 51 Tex. 112, 114 (1879) (holding "if it be shown in such suit that in fact jurisdiction did not attach, the judgment is a nullity").

a lack of personal jurisdiction as a bar to res judicata, but did not.

c. Res judicata gives way in instances of manifest injustice

Rule 60(b) reserves relief via an independent action for those cases deemed sufficiently gross to call for it. *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 244-45 (1944); *Turner v. Pleasant*, 663 F.3d 770, 775 (5th Cir. 2011) (holding "res judicata must at times yield to a well-pled independent action in equity").

Beggerly, 524 U.S. at 47, cites *Marshall v. Holmes*, 141 U.S. 589 (1891), for an example of such a grave miscarriage of justice. In *Marshall*, the Supreme Court reasoned that judgments in question would not have been rendered against Mrs. Marshall but for the use in evidence of a letter alleged to be forged, so res judicata should not be applied to bar her claim. *Id.* at 596.

Likewise, in the instant case, the *McComb* judgment would not have been rendered but for the use in evidence of a fraudulent Hodge Survey. Had Collins's ancestors-in-title been properly joined and served, they would have easily defended their title. The case is one where, without negligence, laches or other fault upon the part of Collins, void judgment was fraudulently rendered that Horton seeks, against conscience, to enforce.

d. The foundation for Horton's estoppel-by-deed argument was the same state court decision that failed to include the Sieberman owners

The Court's reliance on Horton's estoppel-by-deed argument misses the fact that the argument is rotten, not superficially, but at its foundation. Like the state appellate court, the Court notes that estoppel by deed was an independent ground for affirming the trial court judgment. But the basis for the estoppel was a deed's reference to the recording file number of the *McComb* judgment. Thus, it is false to say that estoppel by deed is "independent," at all. It depends entirely upon the same jurisdictional basis that Collins attacked by his arguments on res judicata. If *McComb* cannot bind Collins for one purpose, it cannot bind him for any purpose.

Moreover, the Constitution precludes a state from enforcing a nullity in the rendering state or any other state. *Hanson v. Denckla*, 357 U.S. 235, 250 (1958). A *fortiori* no state can place conditions on an individual's right to obtain relief from a federal judgment. Importantly, if rendering a judgment without notice violates the Fourteenth Amendment, restricting an individual's ability to attack that judgment must also violate the Fourteenth Amendment.

Certainly, the proceedings complained of here cannot be characterized as fundamentally fair where virtually every rule designed to inform the litigant that judicial proceedings have been initiated to deprive

him, his predecessors and now the true title owner, Collins, of his property were violated and ignored. This Court should grant certiorari to ensure a person's Constitutional right is upheld that he will not be deprived of his land without due process of law by allowing a bad actor's infirm judgment be the sole basis of the conversion of a sovereign title owner's land.

2. Supremacy Clause of Art. VI, U.S. Constitution Violation

a. State courts may not vacate or effectuate infirm federal judgments obtained without personal jurisdiction over and notice to the defendant

It is well-settled law that a state court is not competent to vacate a federal judgment void for lack of personal jurisdiction.[10] The Southern District of Texas

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[10] "The action of nullity **must** be brought in the same court which rendered the judgment." *Barrow v. Hunton*, 99 U.S. 80, 84 (1878); Rule 60(b) motion must be filed in court that rendered original judgment. *United States v. Shaughnessy*, 175 F.2d 211, 212 (2d Cir. 1949); A vacatur claim may only be heard by the federal court of origin because it "**must** be filed in the district court . . . in which the original judgment was entered." *Wilson v. Comm'r*, 309 Fed.Appx. 829, 833 (5th Cir. 2009); *Chewning v. Ford Motor Co.*, 35 F. Supp. 2d 487, 491 (D.S.C. 1998) (holding **the proper forum in which to assert that a party has perpetrated a fraud on the court is the court which allegedly was a victim of that fraud**); *Universal Oil Prods. Co. v. Root Refining Co.*, 328 U.S. 575, 576-66 (1946) (holding "**the inherent power of a federal court to investigate whether a judgment was obtained by fraud, is beyond question**"); *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 817-18 (1976) (stating "federal concurrent jurisdiction stems from the

entered the void *McComb* judgment, and—under Rule 60—only the Southern District of Texas had exclusive jurisdiction to vacate it.[11] The Fifth Circuit erred when it held the state court was competent to vacate the *McComb* judgment.

b. Restatement of Judgments echoes the principle that a state may not attack a federal judgment

"Even when relief through an independent action is warranted, it may be *inappropriate* that the action

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virtually **unflagging obligation of the federal courts to exercise the jurisdiction given them**."); *Aerojet-General Corp. v. Askew*, 511 F.2d 710, 716 (5th Cir. 1975) (asserting **"[t]he importance of preserving the integrity of federal court judgments cannot be overemphasized – out of respect for the federal courts. . . . If state courts could eradicate the force and effect of federal court judgments through supervening interpretations of the state law of res judicata, federal courts would not be a reliable forum for final adjudication of a diversity litigant's claims"**); *Aptim Corp. v. McCall*, 888 F.3d 129, 135 (5th Cir. 2018), *cert. dismissed*; *Franklin v. Laughlin*, 2011 U.S. Dist. LEXIS 6060, *7-8 (5th Cir. Jan. 13, 2011) (holding " . . . [r]elief under **Rule 60(b) is sought** in the court that rendered the judgment at issue").

[11] In addition to the obvious concerns under Rule 60, such action by a state court implicates the Supremacy Clause of Art. VI, U.S. Constitution that state courts shall be bound by the authority of the United States and the Constitution. "State courts are 'destitute of all power' to interfere with the proceedings or decisions of the national courts. *Central National Bank v. Stevens*, 169 U.S. 432, 460-61 (1898) (exemption from interference by state judicial action is 'essential' to the 'independence and efficiency of United States courts).' " *Del. Valley Citizens' Counsel for Clean Air v. Pennsylvania*, 755 F.2d 38, 45 (3d Cir. 1985).

be entertained in a court *other* than that in which the judgment was rendered . . . *a state court may not entertain an action attacking a federal judgment*." RESTATEMENT 2D OF JUDGMENTS, § 79(d) (emphasis added). Thus, the state court was incompetent to vacate the *McComb* judgment.

Importantly, this Court holds "[w]hen the judgment of a state court, ascribing to the judgment of another court the binding force and effect of res judicata, is challenged for want of due process it becomes the duty of this Court to examine the course of procedure in both litigations to ascertain whether the litigant whose rights have thus been adjudicated has been afforded such notice and opportunity to be heard as are requisite to the due process which the Constitution prescribes." *Hansberry v. Lee*, 311 U.S. 32, 40 (1940). Due process requires that no other jurisdiction shall give effect, even as a matter of comity, to a judgment elsewhere acquired without due process. *Id.*

3. Res Judicata Precluded When Underlying Judgment Infirm and State Court Lacks Jurisdiction Over Federal Vacatur Claim

Res judicata cannot bar Collins's motion and independent claims for relief from the *McComb* federal judgment. Fed. R. Civ. P. 60. The federal courts have exclusive jurisdiction to vacate an infirm federal judgment. *See* fn. 10, *supra*. Thus, the state court that issued judgment for Horton in 2017 had no power to void

or provide relief from the judgment of a federal court. Consequently, Collins's Rule 60 motion and claims could ***not*** have been brought in state court, and the state court could not extinguish Collins's right to have those claims decided, so res judicata is inapplicable.

a. Res Judicata Fails Where the First Court Lacked Jurisdiction Over the Claim at Issue, or Couldn't Have Awarded the Relief Requested, in the Second Case

Contrary to the Fifth Circuit's holding, "[t]he well established rule . . . [is] where the action is one *in rem* that court—whether state or federal—which first acquires jurisdiction draws to itself the exclusive authority to control and dispose of the *res* . . . ". *Kline v. Burke Constr. Co.*, 260 U.S. 226, 235 (1922). That is, a federal court nor a state court can bar a claim to vacate an infirm judgment over which the originating federal court first acquired jurisdiction and maintained continuing jurisdiction. In the instant case, the first *McComb* judgment, originating in the district court in 1944, was infirm for want of personal jurisdiction. Then, Horton improperly brought suit in state court in 2017 using such infirm federal judgment as the sole basis for its title for a simple trespass claim covering only 2.5 acres, which improperly extinguished Collins's entire 1476 acre Sieberman land patent. So, Collins properly brought a post-judgment action in the originating federal court under Fed. R. Civ. P. 60—the rule that gives federal courts exclusive jurisdiction to vacate the null 1944 *McComb* judgment. Because it was

not and could not have been considered by a state court, Collins's Rule 60 action is not barred by res judicata arising from a state court proceeding.

Also, contrary to the Fifth Circuit's holding in *Marrese v. Am. Acad. of Orthopaedic Surgeons*, this Court required federal courts to use state standards governing res judicata when deciding whether a prior state decision precludes a later federal claim. 470 U.S. 373 (1985). The Court also noted:

> With respect to matters that were not decided in the state proceedings, we note that claim preclusion generally does not apply where the plaintiff was unable to rely on a certain theory of the case or to seek a certain remedy because of the limitations on the subject matter jurisdiction of the courts. . . . If state preclusion law includes this requirement of prior jurisdictional competency, which is generally true, a state judgment will *not* have claim preclusive effect on a cause of action within the exclusive jurisdiction of the federal courts.

Id. at 382 (emphasis in original).

Of note, "[u]nder Texas law, which applies when federal courts determine the preclusive effect of Texas judgments, res judicata bars assertion of a claim in a subsequent case when: (1) there is a prior final judgment on the merits by a court of competent jurisdiction; (2) the parties in the second action are the same or in privity with those in the first action; and (3) the second action is based on the same claims as were raised or could have been raised in the first action."

Basic Capital Mgmt., Inc. v. Dynex Capital, Inc., 976 F.3d 585, 591 (5th Cir. 2020) (quotation omitted); *accord Eagle Oil & Gas Co. v. TRO-X, L.P*., 619 S.W.3d 699, 705-06 (Tex. 2021). Texas's test for res judicata **does** require that the first court have jurisdictional competency, which the first *McComb* court lacked. As a result, Texas courts will not apply res judicata when the initial court lacked jurisdiction to consider the claim or order the remedy at issue in the second case, and thus the federal court cannot either. Thus, in the instant case, the Texas court could not apply res judicata for three reasons: first, because the *McComb* court lacked personal jurisdiction; second, because the action was not based on the same claims; and, third, because the Texas court could not adjudge a federal Rule 60 vacatur claim—so no res judicata.

The appearance of justice is often as significant as justice itself. Consequently, the policy of the law is to reach the substantive merits of a claim wherever possible, so that any doubts which may exist should be resolved in favor of the application, to the end of securing a trial upon the merits. *Butner v. Neustadter*, 324 F.2d 783, 786 (9th Cir. 1963). Further, while "Rule 12(b)(6) judgments are dismissals on the merits," *Rogers v. Stratton Indus., Inc.*, 798 F.2d 913, 917 (6th Cir. 1986), at no time did any tribunal provide Plaintiff or his predecessors in title the opportunity to present the merits of *his* claim. That is, Collins was never afforded an opportunity to demonstrate his clear, convincing and undisputed evidence of the boundaries of his Seiberman Survey and his title from the sovereign, all courts

having relied either upon a dubious judgment, a record's reference to that same dubious judgment, or estoppel based upon one or both.

Not only does Texas law rule out res judicata when a first tribunal couldn't adjudicate the claim at issue in the second case, the Fifth Circuit has done the same when applying state res judicata laws. In *Matter of Lease Oil Antitrust Litig.*, plaintiffs sued crude oil purchasers for Sherman Act violations in federal court, while other plaintiffs brought state law claims for identical conduct in Alabama state court. *See* 200 F.3d 317, 319 (5th Cir.), *cert. denied*, 530 U.S. 1263 (2000). After the Alabama action settled, one of the defendants claimed the federal suit was barred by res judicata, but the Circuit Court disagreed: "Because federal antitrust claims are within the exclusive jurisdiction of the federal courts, those claims could not have been litigated in the Alabama suit. Given current Alabama law requiring jurisdictional competency as a condition to the preclusive bite of res judicata, the Alabama judgment . . . does not bar the federal action under that doctrine." *Id.* at 321. Once again, the state law requirement of jurisdictional competency—a requirement that is mirrored in Texas state law—denied jurisdiction.

Finally, the Restatement (Second) of Judgments, often cited by Texas courts, further supports the rule against assigning preclusive effect to a judgment issued by a court that couldn't adjudicate the plaintiff's claim or award the requested relief. Res judicata will be rejected where:

> The plaintiff was unable to rely on a certain theory of the case or to seek a certain remedy or form of relief in the first action because of the limitations on the subject matter jurisdiction of the courts or restrictions on their authority to entertain multiple theories or demands for multiple remedies or forms of relief in a single action, and the plaintiff desires in the second action to rely on that theory or to seek that remedy or form of relief.

Restatement (Second) of Judgments § 26(1)(c) (1982); *accord Murchison Capital Partners, L.P. v. Nuance Commc'n, Inc*., 625 Fed. Appx. 617, 624 (5th Cir. 2015) (citing Restatement; "res judicata does not apply if a claim could not have been brought" (citation omitted)); *D-1 Enter., Inc. v. Commercial State Bank*, 864 F.2d 36, 39-40 (5th Cir. 1989) (must have been a claim that "could have been litigated" for res judicata to apply).[12]

b. Because the State Court Could Not Have Voided the *McComb* Federal Judgment, its Decision Did Not Preclude Collins From Seeking That Relief in the Only Court with Jurisdiction

In the dispute between these parties, no state court had jurisdiction to grant relief from or void the

[12] Texas Supreme Court decisions on res judicata often cite the Restatement (Second) of Judgments. *See*, *e.g*., *Eagle Oil & Gas*, 619 S.W.3d at 705-06; *Engelman Irrigation Dist. v. Shields Bros., Inc*., 514 S.W.3d 746, 752 (Tex. 2017); *Citizens Ins. Co. of Am. v. Daccach*, 217 S.W.3d 430, 449 (Tex. 2007); *Browning v. Prostok*, 165 S.W.3d 336, 348 (Tex. 2005).

McComb federal judgment extinguishing the Sieberman Survey. As a result, the judgment entered in the state court litigation in 2017 doesn't preclude Collins's claims under Rule 60 here.

Taking Collins's allegations as true, the Horton Survey owners committed fraud in the 1940s litigation by failing to serve or join the Sieberman Survey owners and thereby misleading the federal court into eliminating their title—despite state property records to the contrary. ROA.8-43. This states grounds for a motion under Rule 60(b)(4) and for an independent claim recognized by Rule 60(d) to have the *McComb* federal judgment declared void, and for relief from that judgment. *See*, *e.g.*, *Norris v. Causey*, 869 F.3d 360, 366 (5th Cir. 2017) ("a violation of due process that deprives a party of notice or the opportunity to be heard" is one of "the rare defects that renders a judgment void" under Rule 60(b)(4), citing and quoting *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260 (2010)).

More specifically, a state court has no power or jurisdiction to effectuate or order the relief provided for in Rule 60, and it could not do so here. As much as state court decisions are due respect from federal courts, the same is so of federal judgments in state court. Put differently, a state court cannot deprive a federal court of the ability to apply the Federal Rules to revisit its own ruling, however old, and it cannot substitute its own judgment for that of a federal court. A Rule 60 "motion for relief from final judgment must be filed in the district court and in the action in which the original judgment was entered." *Bankers Mortgage Co. v. U.S.*, 423

F.2d 73, 78 (5th Cir.), *cert. denied*, 399 U.S. 927 (1970). Collins therefore had no choice but to attack the federal judgment in the only forum with jurisdiction to reexamine it: the federal court of origin. The Fifth Circuit's error in assigning preclusive effect to the 2017 state court judgment directly conflicts with this Court and other circuits because the state court had no jurisdiction to revisit the *McComb* federal judgment or grant the relief set forth in Rule 60.

In the latter regard, the notion that the holders of property from the Sieberman survey and their successors, having received their right from the Republic of Texas, itself, had their rights stripped by a federal trial court decision to which they were not even parties is fundamentally offensive to due process. U.S. Const. Amend. XIV § 1. A state court had no jurisdiction to afford relief, yet its judgment has repeatedly been given preclusive effect. This Court should grant certiorari to correct this erroneous decision.

B. The Decision Below is Incorrect, and Collins's Claim Presents an Ideal Vehicle to Harmonize the Circuits

This Court sometimes denies certiorari when the resolution of the questions presented would be "irrelevant to the ultimate outcome of the case." *Eugene Gressman et al., Supreme Court Practice* 248 (9th ed. 2007). This is not such a case. On the contrary, a grant of certiorari and reversal not only might but *would* be outcome-determinative to allow title to remain vested

in the true record title owner from the sovereign,[13] who has proven superior title by an existing land patent. The alternative is to allow a large developer effectively to commit title theft at the cost of damage to fundamental Constitutional values.

The policy question remains: 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 be.[14] If the decision below stands, the implications for state-federal comity are significant. State courts will have permission to expropriate federal authority over federal courts' own judgments. Similarly, federal courts will apparently have authority to extinguish state records—enshrined as state law—that contradict the court's findings. Here, that was an existing patented land survey certified by the State of Texas. Who knows what might be next? 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 set precedent of national significance. This is not simply about how one real property dispute was decided but about the deprivation of civil rights and liberties afforded citizens under the United States' Constitution, which have been ignored. This Court should grant certiorari to correct

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[13] And, more important, Frederick Sieberman will lose his memorial honor "patent" he was awarded by the Governor of Texas for his valor.

[14] Importantly, "res judicata is a principle of public policy and should be applied so as to give *rather than deny* justice." 56 Harv. L. Rev. at 1, 29, *emphasis added*. *Dore v. Kleppe*, 522 F.2d 1369, 1374 (5th Cir. 1975).

the Circuit Court's erroneous decision that incorrectly permits an undisputedly void federal judgment to be the sole basis for land title and a state to usurp federal authority under Fed. R. Civ. P. 60. This matter is ideally situated for this Court to provide a much-needed guide to the split circuits of Congress' constitutional mandate for just and uniform application of its law.

CONCLUSION

Petitioner, James K. Collins, M.D., prays that the Supreme Court grant a writ of certiorari to review the judgment of the court below.

Respectfully submitted,

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