

No. 22-825

**In The
Supreme Court of the United States**

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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 REHEARING

—◆—
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PETITION FOR REHEARING

Pursuant to Supreme Court Rule 44.2, petitioner requests this Court (1) grant rehearing, (2) vacate the Court's March 27, 2023 order denying certiorari, and (3) dispose of this case by granting the petition for writ of certiorari and remanding to the Fifth Circuit for further consideration in light of *Mortg. Corp. of the S. v. Bozeman (In re Bozeman)*, 57 F.4th 895 (11th Cir. 2023), *Blackwood v. Berry Dunn, LLC*, Civil Action No. 2:18-cv-1216, 2023 U.S. Dist. LEXIS 51614 (S.D. W. Va. 2023) and *Wilkins v. United States*, 143 S. Ct. 870, Decided March 28, 2023 and other cases with intervening circumstances of a substantial effect. This will allow the Fifth Circuit to make the necessary modifications to align itself with the recent rulings, homogenize the circuit court split, and uphold the principle that jurisdictional doctrine does not trump a constitutional right so that undisputedly void federal judgments are not miraculously given life by state courts to wrongly become proof of land title.

The schism among the circuits, as well as the silence in the Federal Rule 60 statute, create judicial uncertainty. It warrants rehearing and either a grant or hold of Dr. Collins' petition for certiorari. Judicial order cannot take a citizen's property when he has neither been joined in a suit nor afforded the opportunity for a trial on the merits to defend his title.

Contrary to the Fifth Circuit, the Eleventh Circuit holds a judgment void for depriving parties of notice "cannot be afforded a res judicata effect." *Mortg. Corp.*

of the *S. v. Bozeman (In re Bozeman)*, 57 F.4th at 912-13. The Fourth Circuit District Court concurrently issued an intervening opinion on March 27, 2023 that a jurisdictional doctrine [*res judicata*] cannot trump a constitutional right [Fourteenth Amendment right of due process]. *Blackwood v. Berry Dunn, LLC*, at *7. On March 28, 2023 in *Wilkins v. United States*, 143 S. Ct. 870, this Court asserted well-reasoned principles that threshold facts must be established prior to dismissing a case for lack of jurisdiction as “drive-by jurisdictional rulings” are improper. This is an appropriate case for rehearing.

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REASONS FOR REHEARING

This Court’s Rule 44.2 authorizes a petition for rehearing based on “intervening circumstances of a substantial . . . effect.” Just weeks ago, circuit courts issued concurrent intervening decisions that substantially deepen the lower courts’ conflict described in Dr. Collins’ filings in this Court—that an undisputed void judgment cannot be barred by *res judicata*. The concurrent intervening decisions from the circuit courts support the Constitution and this Court’s precedent that a jurisdictional doctrine cannot defeat a person’s constitutional rights.

The Fifth Circuit’s holding conflicts with other circuits and imbues the improper precedential effect of permitting the fundamentally wrong taking of property without due process based on what is effectively a

drive-by jurisdictional ruling. A claim to vacate an undisputedly void judgment in the rendering federal court cannot be dismissed for lack of jurisdiction under Rule 12(b)(6) *res judicata* because an administrative doctrine, which results in the judicial branch sanctioning the taking of a person's property without due process for want of personal jurisdiction, is a violation of the Fourteenth Amendment. A void judgment cannot be the sole basis for a land title and a claim to vacate such judgment is not barred by *res judicata*.

I) In Light Of Intervening Decisions, This Case Should Be Remanded To The United States Court Of Appeals For The Fifth Circuit For Further Consideration To Determine Whether Void Judgments Are Excepted From Res Judicata.

A. The Eleventh Circuit's intervening decision in *Mortg. Corp. of the S. v. Bozeman (In re Bozeman)*, 57 F.4th 895, 912-13 (11th Cir. 2023) exacerbates the split of authority on this issue.

The Eleventh Circuit properly opined several weeks ago that claims under "Rule 60(b)(4) . . . cannot be afforded a *res judicata* effect." App. 32. *Ergo*, when a judgment is void because a party is not joined to a suit, that party's subsequent action cannot be dismissed under Rule 12(b)(6) for lack of jurisdiction under a *res judicata* theory. The legal doctrine of *res judicata*, which was created for court efficiency, cannot

trump the constitutional right of due process to prevent a taking of citizens' property.

Contrastingly in this case, the Fifth Circuit has held that, despite a landowner never being joined in a suit, that suit's effect is binding upon him and can deprive him of established and provable constitutional rights. The consequence is that the judicial branch can eliminate a landowner's title unbeknownst to him, and the erstwhile landowner is afforded no remedy—not even a forum in which to be heard—concerning the taking of his property via procedural sleight of hand.

B. The Fourth Circuit District Court's *Blackwood v. Berry Dunn, LLC*, Civil Action No. 2:18-cv-1216, 2023 U.S. Dist. LEXIS 51614, at *7 (S.D. W. Va. 2023) intervening decision substantially deepens the lower courts' conflict.

The Fourth Circuit properly opined on March 27, 2023—and again, this is contrary to the Fifth Circuit—**“[t]he guiding principles the court must consider are those which concern finality of judgments under Rule 60(b) rather than under the doctrine of res judicata.”** App. 131 (emphasis added).

However, the Fifth Circuit holds the polar opposite and gives no consideration, much less priority, to a person's constitutional rights to prevent a taking of their property without due process. The Fifth Circuit focuses exclusively on the *res judicata* doctrine to rule:

The Texas state court was competent to hear and decide [Collins'] argument challenging the [federal] judgment as void for want of personal jurisdiction. However, rather than address this issue, the state [] court decided on [another] ground . . . Accordingly, [Collins'] Rule 60 claim[is] dismissed under *res judicata*.

Pet. App. 10.

Res judicata is a doctrine designed to prohibit parties from relitigating a claim that has already been decided, not one that has *never* been decided on the merits. See *Pueschel v. United States*, 369 F.3d 345, 354-55 (4th Cir. 2004). *Id.*, at *6. Contrary to the Fifth Circuit, the Fourth Circuit holds constitutional rights must be considered and take precedent to the administrative jurisdictional rule of *res judicata*. Again, the circuits are split.

C. The Eighth, Tenth and Second Circuit intervening decisions reinforce that a clear conflict exists necessitating resolution.

i. On March 16, 2023, the Eighth Circuit opined on this very point that a **“void judgment is a nullity . . . [and] cannot be defeated by res judicata.”** *State v. Levy*, 2023-Ohio-818, ¶ 14 (Ohio Ct. App., Cuyahoga County, March 16, 2023) (emphasis added); App. 111.

ii. On Jan. 17, 2023, the Tenth Circuit held “a judgment is void and must be set aside if there is no personal jurisdiction over the defendant . . . a judgment entered without notice or service is constitutionally infirm.” *Mohon v. Agentra, LLC*, No. 1:18-cv-00915-MIS-SCY, 2023 U.S. Dist. LEXIS 8098, at *11 (D.N.M. 2023); App. 49; *Peralta v. Heights Medical Center, Inc.*, 485 U.S. 80, 84 (1988).

iii. On March 2, 2023, the Second Circuit vividly illustrates a split from the Fifth Circuit’s holding by asserting “**a deed obtained by false pretenses is void *ab initio* . . . as it is legally impossible . . . to become . . . a purchaser at all, from one who never had any title.**” *Watson v. Lampkin*, 2023 NY Slip Op. 01154, ¶ 1 (App. Div.) (N.Y. Sup. Ct.) (emphasis added); App. 103. The federal judgment was obtained by false pretenses by Horton’s predecessor’s lying to the court that all landowners were joined then obtained a judgment of Collins’ land without his knowledge. The judgment is void *ab initio* so *res judicata* cannot apply. The circuits are split.

D. Two Intervening Cases from This Court Support Remand of this Case to the United States Court of Appeals for the Fifth Circuit.

i. This Court’s Position

This Court’s jurisprudence expresses a general principle that, if threshold facts are not established, then a jurisdictional dismissal is improper. On March

28, 2023, this Court posits in *Wilkins v. United States*, 143 S. Ct. 870, whether a statutory provision operates as a limit on a court’s subject-matter jurisdiction—and whether anything in the decision turned on that characterization. *Wilkins* reasoned that “**if a decision simply states that the court is dismissing for lack of jurisdiction when some threshold fact has not been established, it is understood as a drive-by jurisdictional ruling . . .**”. *Id.*; App. 177. This question requires the same analytical elements for the instant case under Rule 12(b)(6) and Rule 60 wherein Horton raised the affirmative defense of lack of jurisdiction under *res judicata* to retain Collins’ land via judicial trickery, not constitutional principle.

On April 12, 2023, this Court expressed that a claim must be tried on the merits or else a jurisdictional dismissal is improper in *Axon Enter. v. FTC*, Nos. 21-86, 21-1239, 2023 U.S. LEXIS 1500 (2023). “For courts, jurisdictional rules ‘mark the bounds’ of their ‘adjudicatory authority.’” “Years and fortunes are lost just figuring out where a case belongs . . . [Collins] like Ms. Cochran and Axon [] endured multi-year odysseys through the entire [] judicial system—**and no judge yet has breathed a word about the merits of [Collins’] claims.**” *Id.*, *60. So, like in *Axon*, this Court should rehear, then reverse the jurisdictional dismissal.

ii. The Fifth Circuit's Position

Contrary to this Court's recent reasoning in *Wilkins* and *Axon*, the Fifth Circuit dismissed Collins' Rule 60 case for lack of jurisdiction without any judge ever breathing a word about Collins' proof of title claims. App. 21, Pet. App. 10. Collins asserted a claim that the *McComb* judgment obliterating his property rights is void for lack of personal jurisdiction and even the barest notice and that he was deprived of property without due process. Horton moved to dismiss the complaint under Fed. R. Civ. P. 12(b)(6) for lack of jurisdiction as barred by *res judicata* in light of the Texas state court litigation. The Fifth Circuit held the Texas court had jurisdiction to hear and decide Collins' claim challenging a federal judgment as void for want of personal jurisdiction, so summarily dismissed his claim under jurisdictional *res judicata* despite no trial on the merits having occurred in *any* court; and, added that the state simply elected not to permit a trial on the merits for a Rule 60(b) claim and that was sufficient for *res judicata*. Pet. App. 10.

The Fifth Circuit effectively held that a procedural rule trumps the constitutional principle that a person's property cannot be taken without due process. *Id.* This Court in *Wilkins* and *Axon* addresses this problematic policy by requiring a trial on the merits to ensure due process and not just a "jurisdictional drive-by" edict.

iii. The Ninth and Fourth Circuit split from the Fifth Circuit

On March 28, 2023, the Ninth Circuit district court opined, contrary to the Fifth Circuit, that a Rule 60(b)(4) claim is a means to obtain an equitable remedy when a mandatory party is not joined to the underlying suit and *if proved on the merits he was not joined*—that the judgment is void for lack of notice and must be vacated. *Innerline Eng’g v. Operating Health & Welfare Tr. Fund for N. Cal.*, No. 22-cv-03663-JSC, 2023 U.S. Dist. LEXIS 53357, at *15 (N.D. Cal. 2023); App. 161. On March 1, 2023, the Fourth Circuit court opined, contrary to the Fifth Circuit, that “all doubts . . . should be resolved in favor of the parties seeking relief . . . *in order that cases may be decided on the merits.*” *Badger v. Novins*, No. A-1000-21, 2023 N.J. Super. Unpub. LEXIS 289, at *6 n.4 (Super. Ct. App. Div. 2023) App. 95.

Without a trial on the merits availed to the injured party, no threshold facts are established. *Res judicata*, in the absence of a merits-based proceeding, cannot defeat the constitutional mandate that a person’s property cannot be taken without due process.

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 Collins or his predecessors in title the opportunity to present the merits of *his* claim. That is, Collins was never afforded 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.

Our founding fathers wanted to ensure by the Constitution, not to be usurped by an administrative judicial doctrine, that a person’s property would not be taken without due process.¹ In sum, the Eleventh, Fourth, Eighth, Tenth and Second Circuits squarely conflict with the Fifth Circuit’s decision below and support this Court’s review.

II) Circuit Courts Hopeless Split And Statute Silent On Whether State Court Is Competent To Vacate Federal Judgment Under Federal Rule 60(b)(4).

Federal Rule 60, created in 1946, is silent on jurisdiction, creating uncertainty in the circuits:

¹ *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.

Nothing . . . in Rule 60 addresses the particular court in which a party should file a Rule 60(b) motion for relief from a judgment . . . Because a Rule 60(b) motion presupposes the existence of a prior federal court judgment . . . it is clear that the drafters of the rule contemplated that the motion . . . would always be brought in the court . . . in which the judgment was rendered.

12 Moore’s Federal Practice—Civil §60.60 (2023).

It is well settled law that the “action of nullity must be brought in the same court which rendered the judgment.” *Barrow v. Hunton*, 99 U.S. 80, 84 (1878). The Ninth Circuit and intervening Tenth and First Circuits hold a state court is not competent to vacate a void federal judgment. However, the conflicting Fifth Circuit holds a state court is competent to vacate an undisputedly void federal judgment.

A. Intervening Tenth and First Circuit Court Positions

On Feb. 6, 2023, the Tenth Circuit held that “a Rule 60(b) motion ordinarily must be made in the same court that rendered the judgment.” *Ogden v. Granite Sch. Dist.*, No. 2:22-cv-00331, 2023 U.S. Dist. LEXIS 20838, at *12 (D. Utah 2023); App. 87. On Jan. 23, 2023, the First Circuit held that “. . . a state judgment will not have claim preclusive effect on a cause of action within the exclusive jurisdiction of the federal courts,” so is not barred by *res judicata*. *Gupte v. Davis*, No. 3:21-cv-880 (AWT), 2023 U.S. Dist. LEXIS 10795, at

*14-15 (D. Conn. 2023); App. 69. The Ninth Circuit holds “in our judgment sound reasons of policy support the proposition that relief should be sought from the issuing court [under Rule 60(b)].” *Lapin v. Shulton, Inc.*, 333 F.2d 169, 172 (9th Cir. 1964).

B. Fifth Circuit’s Opposite Position

Yet, the Fifth Circuit holds the opposite. This issue goes to the very heart of Fifth Circuit’s exclusive explanation for dismissing Collins’ vacatur claim “the Texas state court was competent to hear and decide his argument challenging the [federal] judgment as void for want of personal jurisdiction . . . [a]ccordingly, plaintiff’s Rule 60 . . . claim[] is dismissed under *res judicata*.” Pet. App. 10-11. The circuit courts are hopelessly split.

III) This Is An Appropriate Case For Rehearing

The intervening decisions demonstrate that the circuits are hopelessly split on whether a judgment void for want of personal jurisdiction is an exception to *res judicata*. Here landowner Collins was stripped of his land title via a judicially sanctioned taking of his property without due process in favor of a \$27 billion developer Horton, who had no chain of title to the sovereign but presented only a flimsy, self-prepared and entirely self-serving deed based on a known void judgment. At no time did any tribunal provide the current record title landowner, James K. Collins, or his

predecessor-in-title, James M. Collins from 1879, the opportunity to present the merits of his claim to defend his land title from the sovereign, resulting in land theft by Horton sanctioned by the government. How is it even remotely just for someone to get a judicial order to your property without your knowledge, joinder or notice by simply telling a court his land description includes your land, then that rendering court subsequently prevents your redress claiming lack of jurisdiction so you have been denied your day in court? 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. A void judgment cannot serve as the basis to justify such a taking.



CONCLUSION

Petitioner, James K. Collins, M.D. prays that the Supreme Court grant this motion for rehearing of the order denying his petition for writ of certiorari in this case, vacate the Court's March 27, 2023 order denying certiorari, and grant the petition for a writ of certiorari, vacate the judgment and remand to the Fifth Circuit for further consideration in light of the reasoned principles in the intervening cases, so that the Fifth Circuit can apply this Court's precedent, make the necessary modifications to align with this Court's recent

ruling, and to uphold the Constitution that undisputedly void judgments cannot transfer land title.

Respectfully submitted,

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April 20, 2023

CERTIFICATE OF COUNSEL

As counsel for the Petitioner, I hereby certify that this petition for rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 44.2.

TONI L. SHARRETT COLLINS