25-6794

No. _____

IN THE

Supreme Court of the United States

October Term, 2025

ROBERT EMERT,
Petitioner,

v.

DAWN BALERIO and ANDREA SCHUCK,
Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a court of appeals may dismiss as "frivolous" a § 1983 plea-breach claim supported by recorded evidence and governed by *Santobello v. New York*, where:

(a) Petitioner presented recorded admissions from his own defense counsel confirming that the prosecutor knew the guilty plea was induced by custody promises, that those promises were never reduced to writing, and that the breach constituted grounds for a "viable motion to withdraw [the] plea" (see Appendix D at 4-5; Appendix E at 2-4);

(b) No respondent filed any responsive pleading at any stage of the proceedings—district court or appellate—yet both courts dismissed sua sponte without examining any evidence;

(c) The panel's three-sentence order cited no case law, addressed no argument from Petitioner's briefs, and did not mention *Santobello* or any other authority (see Appendix A); and

(d) The same panel then ordered that "no further filings will be entertained," effectively foreclosing Petitioner's right to seek rehearing under FRAP 40(a)(1) and en banc review under FRAP 35(a), and access to this Court under 28 U.S.C. § 1254(1).

Contents

TABLE OF AUTHORITIES

CASES

CONSTITUTIONAL PROVISIONS AND STATUTES

PARTIES TO THE PROCEEDING

Petitioner is Robert Emert, plaintiff below and appellant in the Ninth Circuit.

Respondents are Dawn Balerio (Deputy District Attorney, San Diego County) and Andrea Schuck, defendants below. No respondent entered an appearance or filed any pleading at any stage of this litigation.

No party is a corporation. There are no parent corporations or publicly held companies that own 10% or more of the stock of any party.

DIRECTLY RELATED PROCEEDINGS

Emert v. Schuck et al., No. 3:24-cv-00002-AGS-AHG (S.D. Cal.), Order Dismissing Complaint (Aug. 21, 2024).

Emert v. Schuck et al., No. 24-5856 (9th Cir.), Order Dismissing Appeal as Frivolous (Jan. 22, 2026); Panel Rehearing Refused (Feb. 3, 2026); En Banc Rehearing Refused (Feb. 6, 2026).

Emert v. Probation, No. 3:25-cv-00820-TWR-BLM (S.D. Cal.), Federal Habeas Corpus (pending).

BACKGROUND

Petitioner is also pursuing related proceedings arising from the same underlying misconduct that gave rise to the plea agreement at issue here. These include:

1. A federal habeas corpus petition, *Emert v. Probation*, No. 3:25-cv-00820-TWR-BLM (S.D. Cal.), challenging the constitutionality of the conviction based on suppressed evidence, coercive pretrial detention,

and violations of *Brady*, *Napue*, and *Banks v. Dretke*. Petitioner's traverse, filed January 16, 2026, presents the same recorded evidence that the Ninth Circuit dismissed as "frivolous" and is currently under active judicial review. See Appendix G.

2. A civil rights action under 42 U.S.C. § 1983, *Emert v. County of San Diego et al.*, No. 3:25-cv-03646-JAH-BJW (S.D. Cal.), alleging a pattern of coordinated misconduct by the same prosecutorial actors involved in the plea breach at issue here. The First Amended Complaint, filed December 22, 2025, documents the broader context of the conduct underlying this petition.

OPINIONS BELOW

The order of the United States Court of Appeals for the Ninth Circuit (Appendix A) is unpublished. The order refusing panel rehearing (Appendix B) is unpublished. The order refusing en banc rehearing (Appendix C) is unpublished. The order of the United States District Court for the Southern District of California (Appendix D) is unpublished.

Petitioner's Petition for Panel Rehearing, which contains the exact recorded quotes proving the plea breach, is attached as Appendix E. Petitioner's Petition for Rehearing En Banc is attached as Appendix F. Petitioner's Supplemental Brief, containing the complete evidentiary table with timestamps, is attached as Appendix G.

JURISDICTION

The Ninth Circuit entered its order dismissing the appeal on January 22, 2026 (Appendix A). Petitioner timely filed a Petition for Panel Rehearing under FRAP 40 on February 1, 2026 (Appendix E). The clerk refused to docket the petition, entering instead: "Document received in this closed case after court order stating that no

further filings will be entertained" (Appendix B). Petitioner then filed a Petition for Rehearing En Banc under FRAP 35 on February 5, 2026 (Appendix F). The clerk again refused to docket the petition, entering the identical notation on February 6, 2026 (Appendix C). This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution provides, in relevant part: "[N]or shall any State deprive any person of life, liberty, or property, without due process of law."

42 U.S.C. § 1983 provides, in relevant part: "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law."

28 U.S.C. § 1915(e)(2) provides, in relevant part: "[T]he court shall dismiss the case at any time if the court determines that . . . the action or appeal . . . is frivolous."

SUMMARY OF ARGUMENT

A guilty plea induced by a prosecutor's promise must be honored. *Santobello v. New York*, 404 U.S. 257, 262 (1971). This is black-letter constitutional law, essential to the integrity of a system where over ninety percent of convictions result from negotiated pleas. *Missouri v. Frye*, 566 U.S. 134, 143 (2012).

Petitioner has recordings—not allegations, not disputed testimony, but recordings—in which his own defense attorney confirms that the prosecutor knew the plea was induced by custody promises, that those promises were never reduced to writing, and that the breach constituted grounds for withdrawal of the plea. See Appendix E at 4-5 (exact quotes); Appendix G at 2-4 (complete evidence table with timestamps).

No respondent has ever appeared in this case. No motion to dismiss. No answer. No responsive brief. Nothing. Yet both courts below dismissed Petitioner's claims—the district court sua sponte, the Ninth Circuit with a three-sentence order calling recorded evidence "frivolous."

A case invoking *Santobello* with recorded party admissions cannot be frivolous under any standard. *Neitzke v. Williams*, 490 U.S. 319, 327 (1989). The courts below did not adjudicate this case—they abandoned it.

STATEMENT OF THE CASE

Petitioner Robert Emert is a father who was arrested on January 3, 2023, for alleged violation of California Penal Code § 278.5(a)—interference with custody rights. The charge arose from a family court dispute with his ex-wife, Andrea Schuck, regarding their son.

Petitioner was held without bail for ninety days based on an uncharged "threat" allegation that was never substantiated or charged. The day jury trial was to begin—April 3, 2023—while Petitioner was ill with COVID, he accepted a plea agreement. The consideration was explicit: his son Bryce age 15 at the time would return home if he wanted to.

Within weeks of his release, Petitioner discovered the promise was hollow. His ex-wife added new conditions that were never part of the original deal. DDA Dawn Balerio was copied on emails documenting the breach but took no remedial action.

A. The Plea and the Promise

The plea agreement at issue was not a standard negotiation between adversaries. DDA Balerio participated directly in discussions with Petitioner's defense counsel and his ex-wife Andrea Schuck regarding custody arrangements for their son. These discussions were the "inducement or consideration" for Petitioner's guilty plea. See Appendix E at 4-5 (recording quotes confirming DDA's involvement).

Under *Santobello*, when a prosecutor participates in negotiating terms that induce a guilty plea, those terms become binding constitutional obligations. 404 U.S. at 262.

B. The Recorded Proof

This case does not turn on competing testimony or credibility determinations. The evidence consists of recorded party admissions—"among the most reliable forms of proof." *United States v. Boulware*, 384 F.3d 794, 806 (9th Cir. 2004). Petitioner's own defense attorney, Jose Badillo, made the following recorded statements in April and May 2023. Andrea Schuck's emails, CC'ing DDA Balerio, document the breach in writing. The following table presents the recorded evidence by category. Read together, these admissions establish not an isolated misunderstanding but a systematic pattern: promises were made to induce a guilty plea, deliberately left unwritten, and then breached—while the prosecutor watched.

Date	Speaker	Recorded Statement	Significance
Category 1: The Prosecutor Knew About the Side Agreement			
05/01/23	Badillo	*"The DA knows that you resolved the case based on the conversation she and I had with Andrea."*	DA knowledge admitted
04/25/23	Badillo	*"She told that directly to myself and to the DA."*	DA heard firsthand
05/03/23	Badillo	*"[DDA Balerio] would be willing to talk to Andrea again to make sure that she's on the same page and not backing out."*	DA offered to enforce
Category 2: The Agreement Was Never Finalized in Writing			
05/03/23	Badillo	*"They were going to propose something and provide that to you, which they haven't done so yet, right?"*	No document provided

05/03/23	Badillo	*"The other option is I can contact the DA and say we're going to be requesting a continuance of the sentencing so that that agreement can be finalized before you're sentenced."*	Deal unfinished at sentencing
04/13/23	Badillo	*"They're trying to include that in the... some type of stipulation."*	Side document existed
05/01/23	Appellant	*"I never even got to copy the plea deal and from what I can tell it's nothing even like what we've discussed."*	Never received paperwork; counsel did not deny
04/10/23	Appellant	*"The plea deal is not as was discussed and the ramifications are nothing like what was discussed... Please email me my entire file immediately." (email, 7 days post-plea)*	Written complaint within one week
Category 3: The Breach Was Documented in Real Time			
04/25/23	Badillo	*"Now she's trying to backtrack... that's a whole different ball game... It puts her in a tight spot."*	Attorney recognizes breach
05/01/23	Badillo	*"She's on the record talking to the DA and I. That's why I'm asking if you have those emails, because if she's backtracking on that, obviously that could be an assistance for you in regards to whether you have a viable motion to withdraw your plea."*	Remedy identified: plea withdrawal
05/04/23	A. Schuck	*"I will not send an offer for shared child custody change with Bryce until you*	Refuses to perform; DA copied

		drop the civil and appeal case. FULL STOP." (email, CC: DDA Balerio)	
05/18/23	A. Schuck	*"We are not in negotiations nor will we be until you do as I have requested." (email, CC: DDA Balerio)*	Flat refusal; DA witnessed
Category 4: The Inducement Was Admitted			
04/13/23	A. Schuck	*"I offered you, I offered you the moon."*	Admits making promises
04/13/23	A. Schuck	*"I agreed that I would... all I said in the agreement was I would entertain going back."*	Admits agreement existed
04/11/23	Appellant	*"On my Honor, I took that deal because they said that you wanted to work something out."*	Contemporaneous reliance statement
05/01/23	Appellant	*"That's the only reason I took the deal."*	Proves inducement

The pattern revealed by this evidence is unmistakable. Category 1 establishes that the prosecutor knew the plea was conditional on custody promises. Category 2 proves the agreement was deliberately left unwritten—destroying the Integration Clause defense before it can be raised. Category 3 documents the breach in real time, with defense counsel identifying plea withdrawal as the remedy. Category 4 captures the inducement in the parties' own words.

Eighteen recorded admissions from four different speakers, spanning three weeks, exposed a deliberate pattern of fraud. No court—district or appellate—has examined this evidence on the merits. No court has explained why these admissions do not state a claim under *Santobello*. The same evidence is currently under active judicial review in a pending federal habeas corpus proceeding. *Emert v. Probation*, No. 3:25-cv-00820-TWR-BLM (S.D. Cal.). Evidence that warrants

serious judicial engagement in one federal proceeding cannot be "frivolous" in another.

C. The Courts Below Refused to Look

No respondent filed any pleading at any stage of this case. No responsive brief. No motion to dismiss. No answer. Nothing.

The district court dismissed sua sponte on August 21, 2024. Petitioner appealed. Despite filing an opening brief, a 99-page supplemental brief with recorded evidence (see Appendix G), and a FRAP 28(j) letter regarding intervening Ninth Circuit authority (*Miroth v. County of Trinity*, 136 F.4th 1141 (9th Cir. 2025)), the panel issued the following order in its entirety on January 22, 2026:

> *"After considering the responses to the court's October 22, 2024 and December 4, 2024 orders and the opening brief, we dismiss this appeal as frivolous. See 28 U.S.C. § 1915(a), (e)(2). All pending motions are denied as moot. No further filings will be entertained in this closed case."*

That is the entirety of the Ninth Circuit's analysis. No case law cited. No evidence examined. No argument addressed. No mention of *Santobello*. Just the word "frivolous."

On February 1, 2026, Petitioner filed a Petition for Panel Rehearing under FRAP 40 (see Appendix E). The clerk refused to docket it, entering: "Document received in this closed case after court order stating that no further filings will be entertained." On February 5, 2026, Petitioner filed a Petition for Rehearing En Banc under FRAP 35 (see Appendix F), raising the panel's conflict with *Santobello*, *Neitzke*, and *Miroth*, and presenting the complete recorded evidence table. The clerk again refused to docket it, entering the identical notation on February 6, 2026.

The Ninth Circuit's use of § 1915 screening to dispose of a plea-breach claim—and its subsequent refusal to accept either a panel rehearing petition or an en banc

petition—means that no court, state or federal, has ever held an evidentiary hearing or reviewed the recordings at issue.

REASONS FOR GRANTING THE WRIT

I. The Decision Below Conflicts with Santobello v. New York and Cannot Stand.

This Court's holding in *Santobello* is unambiguous:

> *"[W]hen a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled."* — *Santobello v. New York*, 404 U.S. 257, 262 (1971)

Petitioner presented recordings in which his own defense counsel confirms that DDA Balerio knew the plea was "resolved . . . based on the conversation she and I had with Andrea"—that the prosecutor knew custody promises were part of the inducement. Counsel confirmed the agreement was never finalized. Counsel identified the breach as grounds for "a viable motion to withdraw your plea." The prosecutor offered to enforce the deal post-plea—because it was her deal. See Appendix E at 4-5.

A case invoking *Santobello* with recorded party admissions is not "frivolous." Under *Neitzke v. Williams*, 490 U.S. 319, 327 (1989), a case is frivolous only when it is based on "an indisputably meritless legal theory" or "clearly baseless" factual contentions. Citing this Court's own binding precedent is the opposite of "indisputably meritless." Presenting recorded admissions is the opposite of "clearly baseless."

The Ninth Circuit's order does not explain how invoking *Santobello* is frivolous. It does not address the recordings. It does not distinguish the precedent. It says nothing at all. If this Court's own holding can be dismissed with a single word and no analysis, then *Santobello* is no longer law.

This Court has also held that "[a] guilty plea . . . simply is not relevant to the existence of the cause of action under § 1983 for the alleged violation." *Haring v. Prosise*, 462 U.S. 306, 320 (1983). The panel ignored this precedent as well.

II. This Case Presents an Issue of Exceptional National Importance.

Over ninety percent of criminal convictions in the United States result from guilty pleas. *Missouri v. Frye*, 566 U.S. 134, 143 (2012). Those pleas are routinely induced by prosecutorial promises. The integrity of the plea bargaining system depends entirely on the enforceability of those promises.

If prosecutors can break plea agreements and federal courts can dismiss the resulting challenges as "frivolous" without examining evidence—without even mentioning the controlling precedent—then *Santobello* is a dead letter, and every defendant who pleads guilty based on a prosecutor's word does so at their own peril.

This Court has recognized that the "prosecutor may hide, defendant must seek" framework is "not tenable in a system constitutionally bound to accord defendants due process." *Banks v. Dretke*, 540 U.S. 668, 696 (2004). Yet that is precisely the framework the courts below have applied. The State coerced a guilty plea through ninety days of pretrial detention and false promises, used the resulting plea form's standard "Integration Clause" as a shield, and the courts dismissed without ever examining the recordings that prove the fraud.

The absurdity can be stated in one sentence: The State's position is that prosecutors can imprison you, withhold exculpatory evidence, coerce a guilty plea under massive duress, and then use that coerced plea as a shield from accountability—while arguing you should have produced the evidence they were hiding from a jail cell.

This Court rejected that framework in *Banks*. It should reject it here.

III. The Courts Below Departed from Accepted Judicial Norms by Acting as Advocates for Non-Appearing Defendants.

This case proceeded from filing through final judgment without a single respondent ever entering an appearance. No motion to dismiss. No answer. No responsive brief at any level. The defendants accused of constitutional violations never submitted a single piece of paper defending their conduct.

Yet both courts below dismissed Petitioner's claims with prejudice and finality. The district court screened and dismissed the complaint sua sponte. The Ninth Circuit affirmed as "frivolous" without adversarial briefing. Each court independently identified and applied legal defenses that no defendant ever raised.

This is not adjudication. This is advocacy for the defense from the bench. When an indigent plaintiff alleges constitutional violations supported by recorded evidence and binding Supreme Court authority, and the accused government officials do not even bother to respond, the proper judicial function is to engage with the evidence—not to construct defenses on the defendants' behalf and dismiss the case as "frivolous." At minimum, the evidence warranted an evidentiary hearing. No court at any level has ever pressed play on the recordings. No court has addressed a single timestamp. The entire adjudicatory process took place without any court examining the proof.

IV. The "No Further Filings" Order Violated Petitioner's Right of Access to This Court.

The panel's January 22, 2026 order concluded: "No further filings will be entertained in this closed case." This language purported to extinguish Petitioner's statutory right to seek panel rehearing under FRAP 40(a)(1), en banc rehearing under FRAP 35(a), and his right to petition this Court under 28 U.S.C. § 1254(1).

A panel of the court of appeals cannot prospectively nullify a party's statutory right to petition for rehearing or en banc review. Yet that is precisely what occurred. When Petitioner filed his Petition for Panel Rehearing on February 1, 2026, the clerk responded: "Document received in this closed case after court order stating that no further filings will be entertained." When Petitioner filed his Petition for Rehearing En Banc on February 5, 2026—raising the panel's conflict with *Santobello*, *Neitzke*, and *Miroth*—the clerk entered the identical notation on February 6, 2026.

The en banc petition specifically invoked FRAP 35(a)(2), presenting the question of exceptional importance that warranted full-court consideration. It included the complete recorded evidence table—eighteen admissions from four speakers spanning three weeks—that the panel never examined. The clerk's refusal to docket the en banc petition meant that no active judge of the Ninth Circuit ever had the opportunity to consider whether full-court review was warranted.

A litigant's access to the Supreme Court of the United States cannot be foreclosed by boilerplate language in an unreasoned order. The panel's "no further filings" directive, enforced identically against both a panel rehearing petition and an en banc petition, effectively sealed the Ninth Circuit against any form of post-judgment review—leaving this Court as the only remaining avenue for relief.

V. This Case Is an Ideal Vehicle for Addressing These Issues.

This case presents the questions squarely and without procedural complication. The underlying facts are established by recordings—not competing testimony. Petitioner's own defense counsel confirmed on tape that the prosecutor knew the plea was induced by custody promises, that the agreement was never finalized, and that the breach constituted grounds for withdrawal of the plea. There are no disputed facts to resolve; there is only recorded proof that no court has examined. See Appendix E (rehearing petition with quotes); Appendix F (en banc petition with evidence table); Appendix G (supplemental brief with evidence table); Appendix H (federal habeas traverse).

No respondent has ever appeared to contest Petitioner's factual allegations or legal theories. The record is clean. The question of law is dispositive. And the same recorded evidence that the Ninth Circuit dismissed as "frivolous" is currently under active judicial review in a pending federal habeas proceeding in the same district. See *Emert v. Robinson*, No. 3:25-cv-00820-TWR-BLM (S.D. Cal.). Evidence that warrants serious judicial engagement in one federal proceeding cannot be "frivolous" in another.

CONCLUSION

A prosecutor made promises to secure a guilty plea. Those promises were broken. The defendant has recordings proving it—recordings no court has ever listened to. His own attorney confirmed the agreement, the breach, and the remedy on tape. The prosecutor offered to enforce the deal after the plea because it was her deal. Then the courts dismissed it all as "frivolous" without a word of explanation.

If this outcome is correct, then *Santobello v. New York* is no longer law, prosecutors' promises mean nothing, and indigent litigants have no meaningful access to federal courts.

Petitioner respectfully requests that the petition for a writ of certiorari be granted.

Respectfully submitted,

/s/ ROBERT EMERT

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Dated: 02/07/26