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IN THE SUPREME COURT OF THE UNITED STATES

Gary Howard Kidgell,
Plaintiff-Appellant,

v.

County of Merced, et al.,
Defendants-Respondents.

Docket on Appeal No. 25-1763
Case No. 2:24-cv-01580-TLN-SCR
Eastern District of California
Sacramento

To the Honorable Elena Kagan, Associate Justice of the Supreme Court of the
United States and Circuit Justice for the Ninth Circuit

EMERGENCY APPLICATION FOR STAY OF MANDATE
PENDING PETITION FOR WRIT OF CERTIORARI

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Date: August 17, 2025

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SUPREME COURT, U.S.

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Constitutional Provisions

U.S. Const. art. IV, § 3, cl. 2 – The Property Clause

Federal Agencies

Bureau of Land Management (BLM), U.S. Department of the Interior

Cases

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Knick v. Township of Scott, Pennsylvania, 588 U.S., 139 S. Ct. 2162, 204 L. Ed. 2d 558 (2019)

Mathews v. Eldridge, 424 U.S. 319 (1976)

Lingle v. Chevron U.S.A., 544 U.S. 528 (2005)

Lucas v. South Carolina Coastal Council, 505 U.S. 1003 (1992)

I. INTRODUCTION

Applicant Gary Howard Kidgell, in Pro Per, respectfully requesting an emergency stay of the mandate issued by the United States Court of Appeals for the Ninth Circuit in *Kidgell v. County of Merced*, No. 25-1763. The Ninth Circuit dismissed the appeal as frivolous under 28 U.S.C. § 1915(e)(2), denied all pending motions, and barred further filings. This action forecloses federal review of substantial constitutional claims and violates procedural and substantive protections guaranteed under the Due Process Clause of the Fourteenth Amendment.

Mr. Kidgell is a pro se litigant asserting claims under 42 U.S.C. § 1983, including violations of due process, equal protection, and property rights arising from constructive fraud by County of Merced officials. The mandate's issuance would irreparably harm his ability to seek redress and undermine public confidence in the judiciary's treatment of unrepresented litigants. Although the Ninth Circuit issued an order dismissing the appeal as frivolous under 28 U.S.C. § 1915(e)(2), the mandate has not yet formally issued. The appellant respectfully submits that constitutional and procedural questions remain unresolved, including the denial of in forma pauperis status and the court's refusal to entertain further filings. The Motion to Stay Mandate, filed on August 15, 2025, was entered into the docket but marked "no action necessary," effectively foreclosing appellate remedies without review. This procedural closure raises substantial questions under the Due Process and Equal Protection Clauses of the Fourteenth Amendment, particularly for pro se litigants seeking access to justice. The emergency stay is sought to preserve jurisdiction and allow for Supreme Court review of these constitutional issues before the mandate strips the appellate court of authority and returns jurisdiction to the district court.

II. GROUNDS FOR RELIEF

A. Substantial Constitutional Questions

The forthcoming petition for writ of certiorari will present substantial constitutional questions arising from the Ninth Circuit's summary dismissal of Petitioner's appeal. First, the dismissal under 28 U.S.C. § 1915(e)(2) was issued without a meaningful opportunity to be heard and without any inquiry into the statutory prongs or underlying factual record. No findings were made, and no procedural safeguards were applied. This violates the foundational principle of procedural due process that courts must "hear before they condemn." Second, the summary dismissal disproportionately burdens pro se litigants and indigent appellants, raising serious concerns under the doctrines of substantive due process and equal protection. The Ninth Circuit failed to consider the constitutional implications of constructive fraud, financial harm, and the deprivation of federally protected property rights. These omissions warrant review to ensure that access to justice is not foreclosed by procedural shortcuts and that constitutional protections are applied equitably to all litigants. Federal Jurisdiction over Land Patents Plaintiff asserts rights under a federal land patent protected by the Property Clause (Art. IV, § 3, Cl. 2), recognized in *Knight v. United States Land Association*, 142 U.S. 161 (1891). The County's actions implicate federal jurisdiction and constitutional protections under the Takings Clause.

Supremacy Clause Conflict, The County's conduct and the Ninth Circuit's refusal to entertain further filings undermine federal supremacy in adjudicating constitutional claims.

III. TAKINGS CLAUSE AND STATE ACTION

Fraudulent recordings in county records hold no legal authority over Bureau of Land Management (BLM) records. These actions constitute state action in violation of the Takings Clause, as Plaintiff's property was unlawfully appropriated without just compensation or due process. Under *Knick v. Township of Scott*, property owners have an actionable takings claim when property is taken without compensation. Plaintiffs claim under 42 U.S.C. § 1983 is therefore valid and federally recognizable.

IV. FEDERAL SUPREMACY AND THE TAKINGS CLAUSE

Petitioner asserts rights under a federal land patent issued pursuant to the Property Clause of the U.S. Constitution (Art. IV, § 3, Cl. 2). In *Knight v. United States Land Association*, 142 U.S. 161 (1891), the Supreme Court affirmed that federal land patents are conclusive evidence of title and that any defect in their issuance such as lack of authority or title must be challenged in a court of law, not by local administrative action. The County of Merced's recording of a fraudulent deed constitutes an unlawful interference with the federal patent, effectively nullifying sovereign title without due process. This action violates the Takings Clause of the Fifth Amendment and the Due Process Clause of the Fourteenth Amendment, as it deprives Petitioner of vested property rights without just compensation or lawful adjudication. The exclusive authority over public lands and land surveys resides with the political branches, particularly the Secretary of the Interior not county recorders or local officials. Accordingly, this Court must recognize the supremacy of federal land patents and enjoin any state action that undermines their validity.

V. BURDEN OF PROOF SHIFTING TO THE COUNTY

Given the County's financial interest in the disputed property, the burden of proof must shift to the government. Legal doctrines supporting this include:

- *Mathews v. Eldridge*, 424 U.S. 319 (1976)
- *Knick v. Township of Scott*, 588 U.S. ____ (2019)
- *Lingle v. Chevron U.S.A.*, 544 U.S. 528 (2005)

The County must affirmatively demonstrate the legality of its actions, especially where constructive fraud and financial gain are alleged.

A. Legal Argument under *Lingle v. Chevron*

1. The County's Conduct Constitutes a Per Se Taking in Violation of the Fifth Amendment

Petitioner respectfully asserts that the County of Merced's unlawful appropriation of federally patented land without compensation or due process violates the Takings Clause of the Fifth Amendment. In *Lingle v. Chevron U.S.A.*, 544 U.S. 528 (2005), this Court held that the proper inquiry in a takings claim is not whether the government action substantially advances a legitimate state interest, but whether it imposes a burden so severe that it effectively deprives the owner of the property's economic use. Applicant's property was rendered economically useless through the recording of a fraudulent deed an act that constitutes a *per se* regulatory taking under *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528 (2005), and *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992). The County's actions extinguished all beneficial use of the land, thereby triggering constitutional protections under the Fifth and Fourteenth Amendments.

Moreover, this deprivation permanently altered the rights of the patentee heirs and assigns, severing their lawful claim to the property and undermining the integrity of the patent itself. Such governmental interference with vested property rights demands meaningful judicial review, which the Ninth Circuit's summary dismissal failed to provide.

2. The County Cannot Claim Immunity for Unlawful Conduct

The County of Merced is not immune from liability for knowingly recording a fraudulent deed—an act that exceeds the bounds of lawful governmental discretion and constitutes constructive fraud. As a ministerial function, the act of recording does not confer immunity when performed with knowledge of illegality or malicious intent. Circumstantial evidence demonstrates that County officials were aware, or reasonably should have been aware, that the deed was fraudulent and that its recording would unlawfully deprive Petitioner of federally protected property rights. This conduct triggered a regulatory taking under *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528 (2005), and *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992), by extinguishing all economically beneficial use of the land. Under *Knick v. Township of Scott*, 139 S. Ct. 2162 (2019), such a taking is immediately actionable in federal court without the need to exhaust state remedies. Immunity does not shield officials from accountability for unconstitutional acts that result in the unlawful deprivation of property.

3. The Ninth Circuit's Summary Dismissal Conflicts with Controlling Precedent

The Ninth Circuit's refusal to review the merits of Petitioner's takings claim disregards the constitutional mandate articulated in *Lingle*. By failing to assess the burden imposed on property

rights and ignoring the fraudulent nature of the County's actions, the lower court applied an invalid standard and denied Petitioner a meaningful opportunity for redress.

4. Federal Jurisdiction Is Proper Under 42 U.S.C. § 1983

Petitioner brings this claim under 42 U.S.C. § 1983, asserting a violation of federally protected property rights. *Lingle* confirms that takings claims are federally cognizable when government action imposes a substantial burden on private property without just compensation. The fraudulent recording of a deed, knowingly executed by County officials by its recording, constitutes such a burden and demands constitutional review.

VI. PERSONAL AND CONSTITUTIONAL HARM

Plaintiff has suffered:

Financial Loss: 880 acres valued at \$27,000 per acre, totaling ~\$23.76 million.

Emotional Distress: Due to unlawful dispossession of land and heritage.

Legal Costs: Incurred while seeking redress and correcting fraudulent records.

These harms constitute concrete injuries under the Fifth and Fourteenth Amendments, establishing standing for federal review.

VII. GOOD CAUSE FOR STAY

Plaintiff intends to file a petition for writ of certiorari within the 90-day window under Supreme Court Rule 13. A stay is necessary to preserve the status quo and prevent irreparable harm from premature issuance of the mandate.

VIII. NO PREJUDICE TO RESPONDENT

The requested stay is limited in duration and imposes no undue burden on the County of Merced. It merely preserves Plaintiff's right to seek Supreme Court review.

IX. RELIEF REQUESTED

Plaintiff respectfully requests that this Court:

Stay the issuance of the mandate from the Ninth Circuit for a period of **90 days**, or until the Supreme Court disposes of the petition for writ of certiorari.

Grant the previously submitted fee waiver, as the financial burden restricts access to justice.

Grant any further relief deemed just and proper.

X. CONCLUSION

This application seeks to preserve constitutional review and prevent irreparable harm. Mr. Kidgell's claims are not frivolous they are rooted in federal law, constitutional protections, and public interest. The Supreme Court's intervention is necessary to uphold the rule of law and ensure that justice is not denied by procedural shortcuts.

Respectfully submitted,

Dated: August 17, 2025

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Gary Howard Kidgell

Appendix to Emergency Application for Stay of Mandate

Appendix A – Ninth Circuit Order (July 22, 2025)

Appendix B –Petition for Panel Rehearing and Rehearing En Banc

Appendix C –Motion To Stay The Mandate Pending Petition For Writ of Certiorari

Appendix D–Court of Appeal of the State of California Fifth Appellate District, related case
Order of fee waiver.

Gary Howard Kidgell v. County of Merced, et al.
IN THE UNITED STATES SUPREME COURT

DOCKET NO: 25-1763, CASE NO.: 2:24-cv-01580-TLN-S CR

PROOF OF SERVICE

(Business Practice to Entrust Deposit to Others)

(C.C.P. Section 1013a(3))

All parties have been properly served, in accordance with **Rule 29**.

I, Ty Ryan, declare:

I live in the County of Santa Clara, California. I am over the age of 18 years, and not a party to the within action. My address is 1076 Jefferson Street., Santa Clara CA, 945050

On the date stated below, in Santa Clara, California, I caused to be served, in the manner indicated below, the within:

**MOTION TO STAY THE MANDATE PENDING PETITION FOR WRIT OF
CERTIORARI**

on the interested parties in said action by placing true copies thereof, enclosed in a sealed envelope, addressed as follows:

COUNTY OF MERCED
OFFICE OF THE COUNTY COUNSEL
2222 M Street 3rd Floor
Merced, California 95340
Telephone: (209) 385-7564
Facsimile: (209) 726-1337

 X (BY REGULAR MAIL) I caused such envelopes with postage thereon fully prepaid to be placed in the U.S. Mail at Santa Clara, California.

 (BY FACSIMILE) I served the foregoing documents by facsimile transmission to the number shown above for each interested party, pursuant to California Rules of Court Section 2003(3) and no notice of error was received.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on 8/18, 2025, in the City of Santa Clara, County of Santa Clara, California..


Ty Ryan

SERVICE LIST

SENT VIA US MAIL

**COUNTY OF MERCED
OFFICE OF THE COUNTY
COUNSEL
2222 M Street 3rd Floor
Merced, California 95340**

Telephone: (209) 385-7564

SENT VIA US ELECTRONIC FILEING

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT OF CALIFORNIA
James R. Browning U.S. Court of Appeals Building
95 Seventh Street San Francisco, CA 94103-1526
Telephone: (415) 355-8000**

UNITED STATES COURT OF APPEALS

FILED

FOR THE NINTH CIRCUIT

JUL 22 2025

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

GARY KIDGELL,

Plaintiff - Appellant,

v.

COUNTY OF MERCED,

Defendant - Appellee.

No. 25-1763

D.C. No.

2:24-cv-01580-TLN-SCR

Eastern District of California,
Sacramento

ORDER

Before: SILVERMAN, LEE, and VANDYKE, Circuit Judges.

After considering the responses to the court's April 9, 2025 order and the opening brief, we deny the motion to proceed in forma pauperis (Docket Entry No. 3) and dismiss this appeal as frivolous. *See* 28 U.S.C. § 1915(a), (e)(2).

All other pending motions are denied as moot.

No further filings will be entertained in this closed case.

DISMISSED.

Appendix B –Petition for Panel Rehearing and Rehearing En Banc

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CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
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Appellant: GARY HOWARD KIDGELL, IN PRO PER

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U.S. COURT OF APPEALS

AUG 11 2025

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT OF CALIFORNIA**

FILED
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DATE

INITIAL

GARY HOWARD KIDGELL,

Appellant,

v.

COUNTY OF MERCED,

Respondent

**DOCKET NO: 25-1763
CASE NO.: 2:24-cv-01580-TLN-S
CR**

**PETITION FOR PANEL
REHEARING AND REHEARING
EN BANC**

Pursuant to Federal Rule of Appellate
Procedure 40 and Ninth Circuit Rule 40-1

**On Appeal from the United States District Court for the Eastern District of California, No.
2:24-cv-01580-TLN-SCR; The Honorable Troy L. Nunley, District Judge**

INTRODUCTION

Petitioner Gary Howard Kidgell respectfully submits this Petition for Panel Rehearing and Rehearing En Banc from the Appellate Judge's decision affirming dismissal of his action against the County of Merced. This case presents questions of exceptional importance regarding federal jurisdiction over land patents and constitutional claims, the

1 scope of federal preemption and supremacy in land matters, due process rights under the
2 Fifth and Fourteenth Amendments, and the ongoing impact of generational harm and
3 reparative justice doctrines for heirs to property affected by historical governmental
4 action. The Appellate Judge overlooked or misapprehended significant points of federal
5 law, relevant controlling precedents, and failed to reconcile the conflicting authority that
6 compels different results. Rehearing is warranted to secure uniformity and preserve
7 crucial constitutional guarantees.
8
9

10 11 **I. Points of Law or Fact Overlooked or Misapprehended**

12
13 The Appellate Judge's disposition overlooked or misapprehended multiple controlling
14 legal doctrines and factual predicates that directly affect federal jurisdiction and
15 substantive rights in this case:
16

17 **A. Federal Jurisdiction Over Land Patent and Constitutional Claims**

18
19 The Appellate Judge endorsed the district court's holding that federal land patents alone
20 cannot establish federal question jurisdiction. However, this conclusion is at odds with
21 the Supreme Court's jurisprudence, which recognizes that disputes involving federal land
22 patents, especially when presented in tandem with constitutional claims, are subject to
23 federal adjudication under Article IV, Section 3, Clause 2 of the U.S. Constitution—the
24 Property Clause—and its implementing statutes.
25
26
27
28

1 In *Knight v. United States Land Association*, the Supreme Court reiterated that "the
2 power to make and correct surveys of the public lands belongs exclusively to the political
3 department of the government, and the action of that department, within the scope of its
4 authority, is unassailable in courts except by direct proceeding." The Secretary of the
5 Interior acts as the supervising agent charged with doing justice to all claimants and
6 preserving the rights of the people of the United States. Notably, "absolute property in,
7 and dominion and sovereignty over, the soils under the tide-waters in the original states
8 were reserved to the several states, and that the new states since admitted have the same
9 rights," but only to the extent not precluded by valid federal patents and superseding
10 federal interests. Patent disputes of this stripe thus invoke the federal questions necessary
11 for jurisdiction.
12
13
14

15
16 The Appellate Judge's decision neglected the direct application of this doctrine where, as
17 here, the patent is challenged not on a state law basis alone but as to the foundational
18 authority and intent of the federal government. A private land patent, originally issued
19 under federal authority, implicates the exclusive powers given to Congress under Article
20 IV, Section 3, Clause 2 ("The Congress shall have Power to dispose of and make all
21 needful Rules and Regulations respecting the Territory or other Property belonging to the
22 United States"). The jurisdictional rules for such cases are not coextensive with routine
23 state property law disputes but are informed and often controlled by federal questions
24 regarding the administration, validity, or preemption of patent rights and federal statutory
25 or constitutional protections.
26
27
28

1 While the defendants cited *Shulthis v. McDougal* and *Oneida Indian Nation v. Oneida*
2 *County* to conclude that land patents do not always create federal jurisdiction, the federal
3 question arises in the instant case because Petitioner's claim is not based merely upon the
4 existence of a patent, but upon an alleged violation of federal rights vested in him as an
5 heir to the patentee by the actions (or constitutionally deficient inactions) of a county
6 recorder operating under color of state law. The court ignored the fundamental difference
7 between quiet title in state law and a federal claim that state or local action contravenes a
8 federally issued patent and federal constitutional rights attached thereto.

11
12 *Federal question jurisdiction in land patent disputes is triggered when specific criteria*
13 *elevate the claim beyond a state-law quiet title issue. If the dispute centers solely on*
14 *ownership under state law, it remains within state jurisdiction. However, when a conflict*
15 *arises between a federally issued land patent and a state statute or local action, federal*
16 *jurisdiction is implicated under Article IV of the U.S. Constitution. Moreover, when the*
17 *dispute involves allegations of constitutional violations—particularly those grounded in*
18 *the Fifth or Fourteenth Amendments—such as takings without just compensation or*
19 *denial of due process, federal oversight is warranted. Finally, if the alleged harm stems*
20 *from actions or omissions by government officials acting under color of law, the claim*
21 *falls squarely within the scope of 42 U.S.C. § 1983, reinforcing the applicability of*
22 *federal jurisdiction. This framework clarifies that while not every land patent dispute*
23 *belongs in federal court, those invoking constitutional rights, federal supremacy, or*
24 *government misconduct do.*

25 The paragraph clarifies that not all patent-based disputes invoke federal jurisdiction.
26 However, where the dispute implicates federal statutes, constitutional provisions, or a
27 challenge to the scope or effect of the federal patent itself—especially if linked to state
28 action taken under color of law—then a substantial federal question exists.

The Appellate court misapprehended this distinction, thereby disregarding foundational
Supreme Court precedent that reaffirms the primacy and preemptive effect—hence

1 federal jurisdiction—when federal land patents and their constitutional incidents are at
2 issue.
3

4 **B. Due Process Violations under the Fifth and Fourteenth Amendments**
5

6 The Appellate Judge failed to apprehend the full scope of the Supreme Court's holding in
7 *Knick v. Township of Scott*, 589 U.S. 289, which fundamentally altered the landscape of
8 Takings and due process litigation. In *Knick*, the Supreme Court held that "a government
9 violates the Takings Clause when it takes property without compensation, and a property
10 owner may bring a Fifth Amendment claim under § 1983 at that time," explicitly
11 overturning the so-called "state litigation" requirement imposed by *Williamson County*.
12

13 Appellate Judge's endorsement of the district court's conclusion that mere recording of a
14 deed by a county recorder is not state action, and that the chain of title's purported
15 disruption is too remote to constitute an actionable injury under § 1983, directly conflicts
16 with *Knick*'s interpretation of immediacy and ripeness of federal claims.
17

18 Further, the district court and Appellate Judge dismissed petitioner's procedural due
19 process concerns under the Fourteenth Amendment, reasoning that recording private
20 deeds is not "state action" for constitutional purposes. However, "when governmental
21 actors are alleged to have violated established property rights conferred by a federal
22 patent, the procedural and substantive due process analysis shifts." This doctrine is
23 rooted in constitutional jurisprudence interpreting the Fifth and Fourteenth Amendments,
24 especially in cases involving land patents and takings claims. Both the Fifth and Fourteenth
25

26 Amendments protect against deprivation of property without due process of law—
27
28

1 whether by direct state action or by governmental inaction that disables enforcement of
2 federal rights.

3
4 The courts' approach impermissibly narrows the reach of § 1983 and constitutional due
5 process, especially in circumstances where the theory of injury is framed as generational
6 and cumulative. The Supreme Court in *Knick* recognized the Fifth Amendment's Takings
7 Clause is self-executing and "immediately" violated upon government action that
8 appropriates private property without just compensation.
9
10

11 The Appellate Judge also overlooked the standards developed through substantive and
12 procedural due process jurisprudence in property cases, such as the necessity for
13 meaningful notice and an opportunity to be heard when a deprivation is at stake. The
14 mere passage of time and the intervening recording acts do not insulate potential due
15 process violations from judicial scrutiny, especially if noncompliance with federally
16 conferred rights or disregard of procedural protections is alleged.
17
18

19 20 **C. Supremacy Clause and Federal–State Conflict**

21
22 Central to Petitioner's claim is the assertion that County of Merced's actions (recording
23 and accepting a deed allegedly in derogation of a federal patent) are in direct conflict
24 with the supremacy of federal law as articulated in the Constitution and the Supreme
25 Court's interpretation in *McCulloch v. Maryland*, 17 U.S. 316. The district court and
26 Appellate Court Judge dismissed the Supremacy Clause argument on the ground that no
27 specific federal statute or regulation was shown to have been violated.
28

1 However, this approach constricts the meaning and scope of the Supremacy Clause. In
2 *McCulloch*, the Court established that "the Government of the Union, though limited in
3 its powers, is supreme within its sphere of action, and its laws, when made in pursuance
4 of the Constitution, form the supreme law of the land," and critically, that States have no
5 power "by taxation or otherwise, to retard, impede, burthen, or in any manner control the
6 operations of the constitutional laws enacted by Congress to carry into effect the powers
7 vested in the national Government".
8

9
10
11 Supremacy is implicated here because the core claim is that the County's administrative
12 action, although perhaps facially neutral under state law, violated the rights and intentions
13 set by the federal government in its exercise of Article IV jurisdiction over public lands
14 and in issuing and protecting land patents as instruments of federal will. The Supreme
15 Court and subsequent courts have affirmed that states cannot impede the objectives or the
16 efficacy of federal actions, and where state actions collide with federal constitutional
17 guarantees or the intent of Congress, supremacy doctrine requires that federal law must
18 prevail—even if the state's actions are ostensibly ministerial.
19
20

21
22 The legal error arises from failing to perceive the implied preemptive effect of federal
23 law and the broad constitutional protection owed to holders and heirs of federal patent
24 rights. Even if County of Merced was acting within its authority under California law to
25 record deeds, it cannot take such action in a manner that nullifies or diminishes federal
26 interests or sacrifices the supremacy of land patents and constitutional protections in
27 favor of local expediency.
28

D. Generational Harm and Reparative Justice

The district court and Appellate court misapprehended or discounted the claim of generational harm and failed to draw on established and evolving doctrine related to reparative justice, as exemplified in the Russell City case in Hayward, California.

Jurisprudence and public policy increasingly recognize the legitimacy of claims for redress arising from government actions that resulted in the loss of property and opportunity not only for direct victims but for successive generations.

The experience of Russell City, where entire minority communities were uprooted and deprived of property through government action, has been formally acknowledged by local governments and has prompted official apologies and systematic exploration of reparative justice options, including restitution and restoration of lost community value.

This directly parallels the generational harm alleged by Petitioner, whose inherited claim to land is alleged to have been wrongfully extinguished by county action in contravention of the original federal patent.

Legal literature and international case law, including jurisprudence of the International Criminal Court, have increasingly accepted the legitimacy and necessity of reparative remedies for descendants of wrongfully dispossessed individuals and communities, emphasizing intergenerational justice and the cumulative, continuing nature of the harm experienced. This legal and moral trend warrants careful consideration by the federal courts, particularly as relates to property, civil rights, and remedial justice.

E. Failure to Adjudicate Constitutional Claims—Standards for Judicial Review

Perhaps most significantly, the Appellate Judge failed to engage in the requisite searching review of constitutional claims as mandated by *Boumediene v. Bush*, 553 U.S. 723, and other Supreme Court cases. As the Supreme Court stated, "the Suspension Clause protects the rights of the detained by affirming the duty and authority of the Judiciary to call the jailer to account. Separation-of-powers doctrine...must inform the reach and purpose of the Suspension Clause".

The function of the federal judiciary is to ensure that no constitutional injury goes unaddressed for lack of diligent judicial inquiry. The dissent in *Boumediene* warned against allowing procedural expediency or formalistic interpretations of standing or ripeness to frustrate the substantive remedies and protections guaranteed by the Constitution. The Supreme Court specifically rejected substitute procedures that failed to afford meaningful review, and warned against delays and untimely justice—observations directly relevant to the generational delay present in the Kidgell case.

Where, as here, a district court and appellate court dismiss a constitutional complaint without engaging in a substantive review of the legal merits—citing remoteness, standing, laches, or speculative injury—the federal judiciary abdicates its historic duty to safeguard rights enshrined in the Fifth and Fourteenth Amendments and implemented through 42 U.S.C. § 1983. Such failure stands in stark conflict with the oversight this circuit and the Supreme Court have insisted is essential for legitimate exercise of judicial power and for the integrity of the constitutional scheme.

II. Request for En Banc Consideration

This petition satisfies the standards for en banc review under Federal Rule of Appellate Procedure 40(b)(2) and Ninth Circuit Rule 40-1, as the panel decision:

1. Conflicts with controlling Supreme Court precedent on federal jurisdiction over land patents (*Knight*, *Oneida*, Article IV Property Clause), as well as settled rules permitting § 1983 Fifth and Fourteenth Amendment claims (*Knick*, *Boumediene*).
2. Presents questions of exceptional importance. The extent of federal jurisdiction over land patent claims, the scope of Supremacy Clause preemption in local property disputes, due process in generational property rights, and the proper recognition of reparative justice theories carry significant impact on the rights of heirs, communities, and governmental accountability.
3. Fails to secure uniformity with prior decisions. The courts holding that land patents and generational claims confer no basis for federal review, when combined with an alleged deprivation of due process rights and federal interests, is inconsistent with the uniform rule in other circuits and Supreme Court authority.

A. Appellate Court Conflict with Established Precedent

- **Federal Question Jurisdiction and Land Patents:** The appellate court's restrictive approach is in conflict with the reasoning of *Knight*, which reinforces the unique status of federal land patents and the continuous involvement of the federal government in disputes over their interpretation or alteration. Moreover, decisions such as *Oneida* and

1 *Yocum* make clear that while federal jurisdiction is not unlimited in all land disputes, it is
 2 both appropriate and necessary when federal interests or constitutional rights are directly
 3 implicated by state action.

- 4
- 5 • **42 U.S.C. § 1983 and Immediate Access to Federal Courts:** The courts view of
 6 exhaustion and procedural barriers ignores *Knick*'s explicit holding that Fifth
 7 Amendment takings resulting from local government actions without compensation can
 8 be asserted in federal court without prior state exhaustion, thus directly conflicting with
 9 current, controlling Supreme Court doctrine.
- 10
- 11 • **Supremacy Clause and Federal–State Conflicts:** The failure to credit the operation of
 12 Supremacy Clause doctrine, where a local agent is alleged to have undermined a federal
 13 instrumentality (the land patent), is irreconcilable with the rule in *McCulloch* and its
 14 progeny requiring federal law to displace contrary state action as a matter of
 15 constitutional supremacy.
- 16
- 17 • **Generational Harm and Reparative Justice:** The courts failure to engage with the legal
 18 and practical realities of generational harm ignores a fast-developing strand of reparative
 19 justice doctrine, recognized in both international law and American cities, such as the
 20 Russell City case in Hayward, California. Descendants' claims for restitution—be it
 21 reparative payments, restoration of community rights, or acknowledgment of
 22 governmental wrongdoing—are rapidly being recognized as not only justifiable but
 23 essential for equitable justice.
- 24
- 25 • **Failure to Adjudicate Constitutional Claims:** The refusal to reach the merits of
 26 constitutional deprivations or provide for meaningful remedies contradicts the ethos of
 27

28 ~~*Boumediene*, the principle of separation of powers, and the judiciary's obligation not to~~

1 permit arbitrariness in the disposition of rights where constitutional injury is alleged and
2 plausible.

3 4 **B. Exceptional Importance and Circuit Uniformity**

5 This appeal involves issues of exceptional importance for several reasons:
6

- 7
- 8 • **Precedential Impact:** The legal principles at stake implicate not only the rights of
9 individuals holding interests in federal land patents, but also the broader fabric of the
10 federal-state balance in the administration of property, redress of historical wrongs, and
11 the enforceability of constitutional rights against state and local actors.
 - 12 • **Changing Doctrinal Boundaries:** The Supreme Court has recently and repeatedly
13 signaled a more robust role for the federal courts in the vindication of property rights and
14 the recognition of claims challenging governmental wrongdoing in the context of
15 physical and regulatory takings, due process, and preemption. The continued vitality and
16 development of these doctrines demand vigilant appellate oversight.
 - 17 • **Uniformity and Equity:** Inconsistent rulings concerning the availability of federal relief
18 in foundational property cases undermine the unity and predictability of the law, and risk
19 perpetuating systemic inequities—especially for heirs suffering from generational land
20 loss rooted in public or government-enabled acts.
21
22

23 24 **C. Application of Ninth Circuit Rehearing Standards**

25 Under FRAP 40(b) and Circuit Rule 40-1:
26

- 27 • The petition identifies with particularity the points of law and fact that the appellate judge
28 misapprehended or overlooked.

- The appellate judge's decision directly conflicts with Supreme Court holdings and, if allowed to stand, will yield non-uniform and legally unsound precedent within this Circuit and beyond.
- The matter involves issues of exceptional importance, including but not limited to federal judicial power, property law, constitutional rights, and evolving standards of reparative justice.

III. Relief Requested

Petitioner respectfully requests that the Court:

1. **Grant panel rehearing.** Permit the original court to reconsider its decision in light of the controlling authority and expanded analysis of the points summarized above.
2. **In the alternative, grant rehearing en banc.** The full Court should proceed to review and opine upon the following questions:
 - Whether federal land patents, when implicated in constitutional claims involving governmental action under color of state law, furnish a basis for federal jurisdiction.
 - Whether the combined effect of Article IV, the Fifth and Fourteenth Amendments, and the Supremacy Clause preclude local acts that nullify or compromise federally vested property and due process rights.
 - Whether the developing law of reparative and generational justice requires courts to reconsider strict standing, laches, and procedural requirements that have historically prevented redress of enduring, systemic, intergenerational harms.

- Whether the refusal to adjudicate such claims is compatible with the judiciary's obligation under *Boumediene* and related cases to provide meaningful review of substantial constitutional injury.

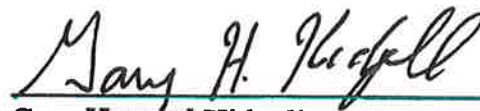
3. **Vacate the Appellate Judge's decision** and remand for substantive merits adjudication, or in the alternative, direct the district court to permit leave to amend the complaint as justice and constitutional fairness may require.

Conclusion

The appellate judge summary denial of Petitioner Kidgell's action disregards established federal jurisdiction, suppresses critical constitutional claims, and contravenes both the letter and spirit of controlling Supreme Court precedent on the proper reach and function of the federal judiciary in enforcing property and due process rights. Given the central issues of federal supremacy, constitutional protection of property and the duty to adjudicate both contemporary and generational injuries, this petition presents questions vital to the integrity of federal law and justice. This Court should grant rehearing and reexamine its prior ruling in light of these compelling considerations.

Respectfully Submitted,

Dated: July 27, 2025



Gary Howard Kidgell

Gary Howard Kidgell v. County of Merced, et al.
IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH
DISTRICT OF CALIFORNIA
DOCKET NO: 25-1763, CASE NO.: 2:24-cv-01580-TLN-S CR

PROOF OF SERVICE
(Business Practice to Entrust Deposit to Others)
(C.C.P. Section 1013a(3))

I, Ty Ryan, declare:

I live in the County of Santa Clara, California. I am over the age of 18 years, and not a party to the within action. My address is 1076 Jefferson Street., Santa Clara CA, 945050

On the date stated below, in Santa Clara, California, I caused to be served, in the manner indicated below, the within:

PETITION FOR PANEL REHEARING AND REHEARING EN BANC

on the interested parties in said action by placing true copies thereof, enclosed in a sealed envelope, addressed as follows:

COUNTY OF MERCED
OFFICE OF THE COUNTY
COUNSEL
2222 M Street 3rd Floor
Merced, California 95340
Telephone: (209) 385-7564
Facsimile: (209) 726-1337

X (BY REGULAR MAIL) I caused such envelopes with postage thereon fully prepaid to be placed in the U.S. Mail at Santa Clara, California.

(BY FACSIMILE) I served the foregoing documents by facsimile transmission to the number shown above for each interested party, pursuant to California Rules of Court Section 2003(3) and no notice of error was received.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on 7/28, 2025, in the City of Santa Clara, County of Santa Clara, California..


Ty Ryan

SERVICE LIST

SENT VIA US MAIL

**COUNTY OF MERCED
OFFICE OF THE COUNTY
COUNSEL
2222 M Street 3rd Floor
Merced, California 95340**

Telephone: (209) 385-7564

Certificate of Compliance

Pursuant to FRAP 32(g)(1) and Form 11, I certify that this petition contains no more than 4,200 words (or 15 pages, if in typewritten form), excluding parts of the document exempted by FRAP 32(f).

Dated: July 27, 2025


Gary Howard Kidgell

Appendix C –Motion To Stay The Mandate Pending Petition For Writ of Certiorari

1 GARY HOWARD KIDGELL, IN PRO PER
2 843 Jackson Street
3 Santa Clara, California 95050
4 (415) 471-6699
5 Gxamerica@gmail.com

6 Appellant: GARY HOWARD KIDGELL, IN PRO PER

7
8 **IN THE UNITED STATES COURT OF APPEALS**
9 **FOR THE NINTH CIRCUIT OF CALIFORNIA**
10

11 GARY HOWARD KIDGELL,
12 Appellant,

13 v.

14 COUNTY OF MERCED,
15 Appellee.
16

DOCKET NO: 25-1763
CASE NO.: 2:24-cv-01580-TLN-S
CR

MOTION TO STAY THE MANDATE
PENDING PETITION FOR WRIT
OF CERTIORARI

Pursuant to Rule 41(d)(2)(A) of the
Federal Rules of Appellate Procedure

17
18
19 **MOTION TO STAY THE MANDATE PENDING PETITION FOR WRIT OF**
20 **CERTIORARI**
21

22 Pursuant to Rule 41(d)(2)(A) of the Federal Rules of Appellate Procedure,
23 Appellant Gary Kidgell respectfully moves this Court to stay the mandate issued August
24 13, 2025 by the Honorable Barry G. SILVERMAN, Kenneth K. LEE, Lawrence
25 VANDYKE pending the filing of a petition for writ of certiorari in the United States
26 Supreme Court.
27
28

1 **GROUND FOR RELIEF:**

2
3 **I. Substantial question for review:**

4
5 This appeal presents critical constitutional questions arising from alleged civil rights
6 violations under 42 U.S.C. § 1983, including violations of due process and equal
7 protection. The Ninth Circuit's summary dismissal of the appeal as "frivolous" under 28
8 U.S.C. § 1915(e)(2) warrants further review.

9
10 While § 1915(e)(2) authorizes dismissal of in forma pauperis cases under four specific
11 conditions: (A) false allegation of poverty; (B) frivolous or malicious action; (C) failure
12 to state a claim; or (D) seeking relief from immune defendants, the appellant can
13 substantively demonstrate that none of these conditions apply. However, the appellate
14 court failed to provide a meaningful opportunity to present evidence or legal argument
15 addressing each prong. This lack of procedural fairness raises serious concerns under the
16 Due Process Clause of the Fourteenth Amendment, particularly when the dismissal
17 forecloses access to justice for indigent litigants. Moreover, the disparate treatment of in
18 forma pauperis appellants compared to those with financial means implicates Equal
19 Protection principles. The Court should clarify the standards governing § 1915(e)(2)
20 dismissals and ensure that constitutional safeguards are not bypassed in the name of
21 judicial efficiency.

22
23
24
25
26
27
28

1 **2. Good Cause for Stay:**

2 Appellant intends to file a petition for certiorari within the 90-day period allowed
3
4 under Supreme Court Rule 13. A stay is necessary to preserve the status quo and prevent
5 irreparable harm from premature enforcement of the mandate.

6
7 **3. No Prejudice to Appellee:**

8
9 The requested stay is limited in duration and will not unduly burden the County of
10 Merced. It merely preserves Appellant's right to seek Supreme Court review.

11 **RELIEF REQUESTED**

12
13
14 Appellant respectfully requests that the Court stay the mandate for a period of 90
15 days from the date of this motion, or until the Supreme Court disposes of the petition for
16 certiorari, whichever occurs first.

17
18 **Respectfully Submitted,**

19
20 Dated: August 15, 2025

21 
22 Gary Howard Kidgell

Gary Howard Kidgell v. County of Merced, et al.

**IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH
DISTRICT OF CALIFORNIA**

DOCKET NO: 25-1763, CASE NO.: 2:24-cv-01580-TLN-S CR

**PROOF OF SERVICE
(Business Practice to Entrust Deposit to Others)
(C.C.P. Section 1013a(3))**

I, Ty Ryan, declare:

I live in the County of Santa Clara, California. I am over the age of 18 years, and not a party to the within action. My address is 1076 Jefferson Street., Santa Clara CA, 945050

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**MOTION TO STAY THE MANDATE PENDING PETITION FOR WRIT OF
CERTIORARI**

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on 8/15, 2025, in the City of Santa Clara, County of Santa Clara, California..



Ty Ryan

SERVICE LIST

SENT VIA US MAIL

**COUNTY OF MERCED
OFFICE OF THE COUNTY
COUNSEL
2222 M Street 3rd Floor
Merced, California 95340**

Telephone: (209) 385-7564

IN THE

Court of Appeal of the State of California

IN AND FOR THE

Fifth Appellate District

GARY HOWARD KIDGELL,
Plaintiff and Appellant,
v.
COUNTY OF MERCED,
Defendant and Respondent.

Case No. F089053
Merced County Super. Ct. No. 23CV-04276

BY THE COURT:

Pursuant to the filing of a Request to Waive Court Fees, and with good cause appearing therefor, IT IS ORDERED that appellants court fees and costs for the above-entitled action are waived pursuant to California Rules of Court, rule 8.26(b)(1)(A).



Presiding Justice

Appendix D—Court of Appeal of the State of California Fifth Appellate District, related case
Order of fee waiver.