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ORIGINAL

No. _____

FILED

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SUPREME COURT, U.S.

IN THE
SUPREME COURT OF THE UNITED STATES

ADDISON HESSER,
Petitioner,

v.

DANON BLEA and AZTECA REAL ESTATE PARTNERS LLC,
Respondents.

On Petition for a Writ of Certiorari
to the Supreme Court of Nevada

PETITION FOR A WRIT OF CERTIORARI

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September 21, 2026

QUESTIONS PRESENTED

Nevada provides by statute that when a claim is asserted against a trust through its trustee, "[a] judgment may not be entered in favor of the plaintiff in the action unless the plaintiff proves" that it mailed notice of "the existence and nature of the action" to "each of the beneficiaries known to the trustee who then had a present interest," and that "[a]ny beneficiary . . . may intervene in the action and contest the right of the plaintiff to recover." Nev. Rev. Stat. sec. 163.120(2). Petitioner, a named beneficiary of an irrevocable family trust, was serving abroad in the United States Army when respondents obtained a judgment against the trust without giving him any notice. The Supreme Court of Nevada, assuming the statute applied and was violated, held that petitioner suffered no deprivation of property without due process because the trustee had litigated the case, and that he was therefore barred from relief for want of a meritorious defense to claims he never knew existed.

The questions presented are:

1. Whether a known beneficiary of a trust, holding a present interest that state law expressly entitles him to protect through pre-judgment notice and intervention, is deprived of property without due process of law when a judgment is entered against the trust corpus without any notice to him, solely because the trustee participated in the litigation.
2. Whether, consistent with *Peralta v. Heights Medical Center, Inc.*, 485 U.S. 80 (1988), and *Armstrong v. Manzo*, 380 U.S. 545 (1965), a State may deny relief from such a judgment because the person who received no notice has not shown a meritorious defense to the underlying claims.

PARTIES TO THE PROCEEDING

Petitioner is Addison Hesser, who was the plaintiff in the district court and the appellant in the Supreme Court of Nevada.

Respondents are Danon Blea and Azteca Real Estate Partners LLC, who were the defendants in the district court and the respondents in the Supreme Court of Nevada. The complaint also named fictitious defendants Does I through V, who were never identified or served and who did not participate in the proceedings below.

CORPORATE DISCLOSURE STATEMENT

Petitioner Addison Hesser is an individual. No corporate disclosure statement is required under Rule 29.6.

RELATED PROCEEDINGS

The following proceedings are directly related to this petition within the meaning of Rule 14.1(b)(iii):

Hesser v. Blea, No. A-24-890278-C, Eighth Judicial District Court, Clark County, Nevada. Order Granting Defendants' Motion to Dismiss entered July 1, 2024.

Hesser v. Blea, No. 89093, Supreme Court of Nevada. Order of Affirmance entered March 9, 2026; Order Denying Rehearing entered April 6, 2026; Order Denying En Banc Reconsideration entered June 22, 2026.

The judgment that petitioner sought to vacate was entered in a different trial court case, Royal Essex, LLC v. Azteca Real Estate Partners, LLC, No. A-21-829278-B, Eighth Judicial District Court, Clark County, Nevada (judgment entered August 28, 2023), affirmed, No. 87401, 2025 WL 2426710 (Nev. Aug. 21, 2025). Because that proceeding does not arise from the same trial court case as this one, it is not listed as directly related, but it is described in the Statement of the Case.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Addison Hesser respectfully petitions for a writ of certiorari to review the judgment of the Supreme Court of Nevada.

OPINIONS BELOW

The Order of Affirmance of the Supreme Court of Nevada (App. 3a) is unreported. The orders of that court denying rehearing (App. 10a) and denying en banc reconsideration (App. 11a) are unreported. The order of the Eighth Judicial District Court, Clark County, Nevada, granting respondents' motion to dismiss (App. 12a) is unreported.

JURISDICTION

The Supreme Court of Nevada entered its Order of Affirmance on March 9, 2026. App. 3a. Petitioner timely petitioned for rehearing under Nevada Rule of Appellate Procedure 40, and the panel denied rehearing on April 6, 2026. App. 10a. Petitioner then petitioned the full court for en banc reconsideration under Nevada Rule of Appellate Procedure 40A. The full court entertained that petition and denied it on the merits on June 22, 2026, citing the substantive standard of Rule 40A(a) rather than the rule's provision for rejecting untimely petitions. App. 11a. Under this Court's Rule 13.3, the time to seek certiorari runs from the date on which the court below denied the petition for rehearing that it entertained, and the denial of en banc reconsideration on June 22, 2026 was the final act of the Supreme Court of Nevada with respect to its judgment. This petition is filed within 90 days of that date. This Court has jurisdiction under 28 U.S.C. sec. 1257(a).

The federal question was raised in petitioner's complaint, in his opposition to the motion to dismiss, in his opening and reply briefs on appeal, and in his petitions

for rehearing and en banc reconsideration, and it was expressly decided by the Supreme Court of Nevada. App. 6a to 8a. As explained below (Part II.B), the state-law ground on which the court below rested its affirmance is not independent of its resolution of the federal question.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Section 1 of the Fourteenth Amendment to the Constitution of the United States provides in relevant part: "No State shall . . . deprive any person of life, liberty, or property, without due process of law."

Nevada Revised Statutes section 163.120 provides in relevant part:

1. A claim based on a contract entered into by a trustee in the capacity of representative, or on an obligation arising from ownership or control of trust property, may be asserted against the trust by proceeding against the trustee in the capacity of representative, whether or not the trustee is personally liable on the claim.
2. A judgment may not be entered in favor of the plaintiff in the action unless the plaintiff proves that within 30 days after filing the action, or within 30 days after the filing of a report of an early case conference if one is required, whichever is longer, or within such other time as the court may fix, and more than 30 days before obtaining the judgment, the plaintiff notified each of the beneficiaries known to the trustee who then had a present interest, or in the case of a charitable trust, the Attorney General and any corporation which is a beneficiary or agency in the performance of the charitable trust, of the existence and nature of the action. The notice must be given by mailing copies to the beneficiaries at their last known addresses. The trustee shall furnish the plaintiff a list of the beneficiaries to be notified, and their addresses, within 10 days after written demand therefor, and notification of the persons on the list constitutes compliance with the duty placed on the plaintiff by this section. Any beneficiary, or in the case of charitable trusts the Attorney General and any corporation which is a beneficiary or agency in the performance of the charitable trust, may intervene in the action and contest the right of the plaintiff to recover.

The full text of the section is reproduced at App. 16a.

Nevada Rule of Civil Procedure 60(d)(1) provides: "This rule does not limit a court's power to . . . entertain an independent action to relieve a party from a judgment, order, or proceeding."

STATEMENT OF THE CASE

A. Nevada's beneficiary-notice statute

Nevada permits a claim on a trustee's contract, or on an obligation arising from ownership or control of trust property, to be asserted "against the trust by proceeding against the trustee in the capacity of representative." Nev. Rev. Stat. sec. 163.120(1). But the Legislature did not leave the trust's beneficiaries to the trustee alone. The same section provides that "[a] judgment may not be entered in favor of the plaintiff in the action unless the plaintiff proves" that, within 30 days after filing and more than 30 days before judgment, "the plaintiff notified each of the beneficiaries known to the trustee who then had a present interest . . . of the existence and nature of the action," by mail to their last known addresses. Id. sec. 163.120(2). The trustee must furnish the list of beneficiaries and their addresses within ten days of written demand, and "[a]ny beneficiary . . . may intervene in the action and contest the right of the plaintiff to recover." Id. A parallel provision governs tort claims against a trust. Id. sec. 163.140(3).

These provisions have been part of Nevada law since 1941, when the State adopted them from the Uniform Trusts Act. See Nev. Rev. Stat. sec. 163.120 (history note citing 1941 Nev. Stat. ch. 136, sec. 11). South Dakota retains a materially identical provision. S.D. Codified Laws sec. 55-4-20. Texas and Louisiana likewise give trust beneficiaries a statutory right to intervene and contest the plaintiff's right to recover in actions brought against the trustee as representative of the trust. Tex. Prop. Code sec. 115.011(d); La. Rev. Stat. sec. 9:2125(B). The design of each scheme

is the same: the trustee is the proper defendant, but the beneficiaries whose equitable interests the judgment will diminish are identified in advance as persons entitled to know of the action and to be heard in it.

B. The Royal Union Trust and the Prior Action

The Royal Union Trust is an irrevocable trust created in Nevada on October 28, 2008 by petitioner's grandfather, Michael Hesser. Nev. App. 56. The trust indenture names two primary beneficiaries, petitioner Addison Hesser and his brother, and directs the trustee to "divide the trust estate into separate equal shares for the benefit of each of the named beneficiaries." Nev. App. 57 (Arts. II, III). The trust's assets included membership interests in Essex Real Estate Partners, LLC, a company whose real property was liberated from stale liens in a 2019 bankruptcy proceeding and whose members thereupon stood to receive substantial distributions. Nev. App. 5, 139, 150.

On March 5, 2021, Royal Essex, LLC and the Royal Union Trust, acting through its trustee, sued respondents Azteca Real Estate Partners LLC and its manager Danon Blea in the Eighth Judicial District Court, Clark County, Nevada, Case No. A-21-829278-B (the "Prior Action"), seeking a declaration that Azteca, as a common member of Essex, was not entitled to a distribution under the Essex operating agreement. Nev. App. 5. On November 23, 2021, respondents answered and asserted counterclaims and cross-claims against the trust and others for breach of contract, breach of fiduciary duty, fraud, and unjust enrichment, seeking damages, rescission of the trust's membership interest, and a constructive trust. Nev. App. 5, 25 to 53.

Respondents had the trust indenture, which identifies petitioner by name as a primary beneficiary. Nev. App. 56 to 65. They never demanded the beneficiary list, never mailed notice of the counterclaims to any beneficiary, and never attempted to

comply with section 163.120(2) until September 26, 2023, a month after judgment had been entered. Nev. App. 6 to 7, 76. Throughout the Prior Action petitioner was serving in the United States Army; he was stationed in Germany and was then deployed as a paratrooper with the 82nd Airborne Division to the Polish border with Ukraine, where he remained through much of 2023. App. 3a; Nev. App. 5 to 6. He received no notice, pleading, or communication of any kind concerning the litigation. Nev. App. 5 to 6.

The Prior Action was tried in July 2023. On August 28, 2023, the district court entered judgment against Royal Essex and the trust on their complaint, declared Royal Essex's membership interest void, entered judgment for Azteca on its counterclaims and cross-claims "in their entirety," and decreed that the counter-defendants and cross-defendants, including the trust, "are jointly and severally liable to Azteca in the amount of any and all distributions, if any, that are made from the Essex bankruptcy to or on account of any interest held by the counter-defendants and cross-defendants." App. 15a; Nev. App. 51 to 52. The Supreme Court of Nevada affirmed that judgment. *Royal Essex, LLC v. Azteca Real Estate Partners, LLC*, No. 87401, 2025 WL 2426710 (Nev. Aug. 21, 2025). In separate litigation over the same fund, the same court had earlier affirmed a distribution schedule allocating \$1,127,498 of Essex bankruptcy proceeds to the Royal Union Trust. See *Further South, LLC v. Royal Essex, LLC*, No. 84544 (Nev. Nov. 17, 2023); *Pet. for En Banc Reconsideration* 9 to 10.

C. Petitioner's independent action

On April 2, 2024, petitioner filed a complaint in the Eighth Judicial District Court, before a different judge, for vacatur of the Prior Action judgment and declaratory relief. Nev. App. 3 to 11. He proceeded by independent action under Nevada Rule of Civil Procedure 60(d)(1) because, as a non-party to the Prior Action,

he could not move for relief under Rule 60(b), which is limited to "a party or its legal representative." The complaint alleged that respondents had obtained judgment against the trust without giving petitioner the notice that section 163.120(2) makes a condition of any judgment, that petitioner was a known beneficiary with a present interest, that he was deployed abroad and wholly unaware of the proceedings, and that entry of the judgment without notice deprived him of property without due process of law in violation of the Fourteenth Amendment and Article 1, Section 8 of the Nevada Constitution. Nev. App. 3 to 11, 84.

Respondents moved to dismiss under Nevada Rule of Civil Procedure 12(b)(5), attaching excerpts from the Prior Action. Nev. App. 12 to 81. They argued that petitioner lacked standing and any protected property interest, that beneficiaries are not proper parties to litigation the trustee conducts, that the action was an impermissible collateral attack, and that section 163.120 confers no private right of action. *Id.* Respondents did not dispute that they gave petitioner no notice. At the hearing, the district judge remarked that if the statutory notice was not given the judgment would be void, but that the question was one "appropriate for the Nevada Supreme Court to decide." Nev. App. 120 to 128. On July 1, 2024, the court dismissed the complaint on the sole ground that "[c]ourts of co-equal jurisdiction lack authority to overturn the acts of one another," concluding that an independent action "is not the appropriate procedural mechanism" for relief. App. 12a.

D. The decision below

The Supreme Court of Nevada affirmed on a ground the district court had not reached. App. 3a. Treating the dismissal as a summary judgment because the district court had considered matters outside the pleadings, and reviewing *de novo*, the court held that petitioner could not maintain an independent action because he had not satisfied the "merits-defense requirement" of *Bonnell v. Lawrence*, 128 Nev. 394, 282

P.3d 712 (2012), which adopts for Nevada the elements of the federal independent action described in *United States v. Beggerly*, 524 U.S. 38 (1998), including "a good defense to the alleged cause of action on which the judgment is founded." App. 4a to 5a.

The court acknowledged that petitioner's position was that a merits defense cannot be demanded of one who received no notice, and it acknowledged this Court's holding in *Peralta* that "[w]here a person has been deprived of property in a manner contrary to the most basic tenets of due process, it is no answer to say that in his particular case due process of law would have led to the same result because he had no adequate defense upon the merits." App. 6a (quoting 485 U.S. at 86 to 87). It then held that *Peralta* did not apply because, "even assuming, without deciding, that NRS 163.120(2) applied and was not complied with," petitioner "mistakenly conflates such lack of statutory compliance with a procedural due process violation under the Fourteenth Amendment." App. 6a.

The court gave two reasons. First, "the trustee is the real party in interest entitled to bring suit and defend on the trust's behalf," and no recognized exception applied because "the RUT trustee initiated the underlying lawsuit and vigorously defended against Azteca and Blea's counterclaims." App. 6a to 7a. The court did not ask whether the trustee's representation of petitioner's interests had in fact been adequate. Second, the court held that petitioner had no cognizable property interest because the judgment held the trust liable only for "any and all distributions, if any, that are made from the Essex bankruptcy," so that "Hesser's alleged property interest affected by the judgment as an RUT beneficiary was speculative at best." App. 7a. The court added that the Prior Action court's findings that the Royal parties "engaged in extensive inequitable conduct and breaches of fiduciary duty further support[ed]" the conclusion that the trust's interest in the distributions was "contingent, remote, and insufficient to support a cognizable property interest." *Id.* It therefore concluded

that petitioner's "procedural due process rights were not violated, even assuming NRS 163.120(2) entitled him to notice," and that "[b]ecause Hesser failed to satisfy the merits-defense requirement from Bonnell, he cannot show that allowing the Royal Essex judgment to stand would work a 'grave miscarriage of justice.'" App. 8a.

Petitioner sought rehearing, arguing among other things that the court had extended Bonnell's merits-defense requirement, without analysis, to a stranger to the judgment who had no opportunity to raise any defense, and that Peralta forbade that result. The panel denied rehearing in a one-sentence order. App. 10a. Petitioner then sought en banc reconsideration, which the full court denied. App. 11a.

REASONS FOR GRANTING THE PETITION

The decision below holds that a State may identify by statute the persons whose property a judgment will reach, command that no judgment be entered until those persons have been notified and given the right to intervene, permit a judgment to be entered in defiance of that command against a person serving his country abroad, and then deny him any remedy because he cannot prove what he would have said in a proceeding he was never told existed. That holding cannot be reconciled with *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950), which arose from precisely this setting, notice to trust beneficiaries of a judicial proceeding binding their interests in the corpus, or with *Peralta and Armstrong*, which forbid conditioning relief from a no-notice judgment on a showing of a meritorious defense. The court below escaped those precedents only by declaring, as a matter of law, that a trustee's participation in litigation exhausts the beneficiary's constitutional entitlement to notice and that a beneficiary's equitable interest in a specifically adjudicated fund is too "speculative" to be property. Both propositions are wrong, and both were essential to the judgment.

The question is not a parochial one. Beneficiary-notice and intervention statutes of this kind exist in several States, and the principle the court below announced, that trustee representation categorically satisfies due process, would govern every action against a trust in which a beneficiary complains of exclusion. The case comes to the Court on a pleading-stage record in which the court below assumed the statutory violation and decided the federal question in terms. It is a clean vehicle for resolving a question that this Court's precedents already answer.

I. THE DECISION BELOW CONFLICTS WITH THIS COURT'S DUE PROCESS PRECEDENTS.

A. A known trust beneficiary's present interest in the corpus is property, and Mullane requires notice to him before a judicial proceeding binds it.

"An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane*, 339 U.S. at 314. *Mullane* announced that rule in a case about trust beneficiaries. The proceeding there was a judicial settlement of a trustee's accounts, the persons entitled to notice were the beneficiaries whose interests in the trust fund the decree would bind, and the Court held that as to known beneficiaries whose addresses were on file, notice by publication was constitutionally inadequate and notice by mail was required. *Id.* at 313 to 320. The Court did not pause over whether a beneficiary's equitable interest in a trust fund was "property" for due process purposes; it treated the beneficiaries' stake in the corpus as the paradigm of an interest that due process protects, and it permitted reliance on the vigilance of other beneficiaries only as to those whose

interests or whereabouts could not reasonably be ascertained; known beneficiaries at known addresses were entitled to individual notice. *Id.* at 316 to 320.

Petitioner stands where the Mullane beneficiaries stood. He is a named primary beneficiary of an irrevocable trust whose instrument directs that the estate be divided into "separate equal shares for the benefit of each of the named beneficiaries." Nev. App. 57. Nevada law recognizes such an interest as a present interest; section 163.120(2) itself identifies "beneficiaries known to the trustee who then had a present interest" as the class entitled to notice. Property interests "are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law," *Board of Regents v. Roth*, 408 U.S. 564, 577 (1972), and Nevada has defined this one with unusual precision. The judgment in the Prior Action did not merely touch that interest at the margins. It declared the trust jointly and severally liable "in the amount of any and all distributions" from the Essex bankruptcy on account of any interest the trust held, App. 15a, and the same court had previously affirmed a distribution schedule allocating more than a million dollars of those proceeds to the trust. *Pet. for En Banc Reconsideration* 9 to 10.

The court below nonetheless held that petitioner's interest was "speculative at best" because the distributions were themselves contingent on the course of a bankruptcy. App. 7a. That reasoning confuses the contingency of an asset with the existence of an interest in it. Due process does not protect only property whose value is fixed. It protects "any significant property interest," *Fuentes v. Shevin*, 407 U.S. 67, 86 (1972), including intangible and unliquidated ones. A cause of action is property, *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 428 to 431 (1982), as is an unsecured claim against a decedent's estate whose ultimate payment depends entirely on the estate's solvency, *Tulsa Professional Collection Services, Inc. v. Pope*, 485 U.S. 478, 485 (1988). A beneficiary's equitable share in a trust holding a court-

quantified claim to bankruptcy distributions is no more speculative than the unsecured claim in Tulsa, and the judgment here did not merely reduce that share; it transferred the entire distribution stream to respondents. Nor is it any answer that the judgment left the trust's other assets untouched, App. 7a; a deprivation need not be total to require process. *Fuentes*, 407 U.S. at 84 to 86.

The court below compounded the error by reasoning that the Prior Action court's findings of "extensive inequitable conduct and breaches of fiduciary duty" by the Royal parties "further support[ed]" the conclusion that petitioner had no cognizable interest. App. 7a. That is circular. Whether the trust's claim to the distributions was defeated by the conduct of the trustee and its affiliates was the very question the Prior Action decided against the trust in petitioner's absence. A judgment entered without notice cannot supply the finding that excuses the absence of notice. *Armstrong*, 380 U.S. at 552 ("Only [wiping the slate clean] would have restored the petitioner to the position he would have occupied had due process of law been accorded to him in the first place.").

B. A trustee's participation cannot categorically substitute for notice to the beneficiary; representation binds a non-party only if it is adequate, and the court below never asked.

The principal ground of decision below was that "the trustee is the real party in interest entitled to bring suit and defend on the trust's behalf," so that petitioner's due process rights were satisfied by the trustee's participation and no notice to him was required. App. 6a to 7a. That holding treats a rule of party joinder as a rule of constitutional preclusion. It is true that a trustee ordinarily litigates on behalf of the trust, and it is true that this Court has recognized "suits brought by trustees, guardians, and other fiduciaries" as suits that may bind non-parties. *Taylor v. Sturgell*, 553 U.S. 880, 894 to 895 (2008). But *Taylor* placed trustee litigation in the

category of non-party preclusion that rests on adequate representation, not on status, and it was emphatic that non-party preclusion of any kind is the exception to the "deep-rooted historic tradition that everyone should have his own day in court," *id.* at 892 to 893 (quoting *Richards v. Jefferson County*, 517 U.S. 793, 798 (1996)). Where a non-party is bound because someone else represented him, due process requires that the representation actually have been adequate: at a minimum, the interests of the representative and the non-party must have been aligned, and either the representative must have understood itself to be acting in a representative capacity or the court must have taken care to protect the non-party's interests. *Id.* at 900 to 901; *Richards*, 517 U.S. at 801 to 802; *Hansberry v. Lee*, 311 U.S. 32, 42 to 43 (1940). The Restatement (Second) of Judgments, from which Taylor drew, likewise treats the trustee as a representative of the beneficiary, sec. 41(1)(a), and provides that a person represented by a fiduciary is not bound where the representative "failed to prosecute or defend the action with due diligence and reasonable prudence" and the adversary was on notice of that failure, or where the representative's conduct of the litigation was tainted by conflict. Restatement (Second) of Judgments secs. 41(1)(a), 42(1)(d), (e) (1982).

The court below asked none of these questions. It did not find that the trustee's interests were aligned with petitioner's, that the trustee had defended the counterclaims with diligence, or that the Prior Action court had taken any step to protect the absent beneficiaries. It held, as a matter of law, that the trustee's status as real party in interest ended the inquiry. App. 6a to 7a. And it did so on a record that affirmatively undercuts any presumption of adequacy: the court relied on the Prior Action's findings that the Royal parties, including the trustee litigating for the trust, had engaged in "extensive inequitable conduct and breaches of fiduciary duty." App. 7a. A fiduciary adjudged to have breached fiduciary duties in the very transactions at issue is not one whose participation can be presumed, without

examination, to have adequately represented an absent beneficiary. *Hansberry*, 311 U.S. at 45 (representation inadequate where representative's interests may conflict with those of the absent party).

What makes the categorical rule adopted below untenable, however, is Nevada's own statute. Nevada does not treat the trustee's participation as sufficient in actions against a trust. It has determined, as a matter of state policy, that beneficiaries with a present interest must be notified before judgment and must be permitted to "intervene in the action and contest the right of the plaintiff to recover." Nev. Rev. Stat. sec. 163.120(2). The State has thus identified the beneficiaries as "interested parties" in *Mullane's* sense, has made their identification and notification not merely practicable but mandatory, and has declared that no judgment may be entered until it is done. Petitioner does not contend that every state procedural misstep is a constitutional violation; the point is that due process asks what notice was "reasonably calculated, under all the circumstances," *Mullane*, 339 U.S. at 314, and a State that has already determined that mailed notice to identified beneficiaries is required before judgment, and that has provided a mechanism for obtaining their addresses, cannot be heard to say that no notice at all was reasonable. See *Jones v. Flowers*, 547 U.S. 220, 229 to 230 (2006) (reasonableness of notice judged in light of what the State knew and what additional steps were practicable); *Mennonite Board of Missions v. Adams*, 462 U.S. 791, 798 to 800 (1983) (known and reasonably identifiable interest holders are entitled to individual notice). Respondents had the trust indenture naming petitioner. Nev. App. 56 to 65. They did nothing.

Nor does the trustee's duty to account to beneficiaries, on which respondents relied below, relieve respondents or the State of the constitutional obligation. "[A] party's ability to take steps to safeguard its interests does not relieve the State of its constitutional obligation" to provide notice. *Mennonite*, 462 U.S. at 799. *Mullane* held that the possibility that a beneficiary might learn of a proceeding through other

channels did not excuse the failure to mail notice to a known beneficiary at a known address. 339 U.S. at 318 to 320. And petitioner was a soldier stationed on the Ukrainian border, not a person positioned to monitor a Clark County docket.

C. Having assumed the statutory violation, the court could not condition relief on a merits defense.

The court below resolved the case by assuming that section 163.120(2) applied and was violated, App. 6a, and then holding that petitioner's independent action failed because he "presents no argument that he had a valid defense on the merits in the Royal Essex case." App. 5a, 8a. If the first question presented is answered as this Court's precedents require, the second follows directly from Peralta.

Peralta is on all fours. There, as here, the challenger sought equitable relief from a judgment through the State's independent-action vehicle, the Texas bill of review; there, as here, the state courts assumed the notice defect but held that relief required a showing of a meritorious defense, which the challenger had not made; and there, as here, the state courts viewed the merits-defense requirement as "not onerous." 485 U.S. at 83 to 84. This Court unanimously reversed. "[A] judgment entered without notice or service is constitutionally infirm," *id.* at 84, and it is "no answer to say that in his particular case due process of law would have led to the same result because he had no adequate defense upon the merits." *Id.* at 86 to 87. The Court explained why: a person with notice "might have impleaded" others, "worked out a settlement," paid the debt, or otherwise protected himself in ways that do not depend on prevailing on the merits. *Id.* at 85. A trust beneficiary given the notice Nevada requires might have intervened to contest recovery, retained independent counsel for the trust, sought the trustee's removal, negotiated, or built the record that the court below faulted him for not having built.

Armstrong applies the same principle to the precise remedial question here. When a person has been excluded from a proceeding by lack of notice, a later hearing at which the excluded person bore the burden of undoing the result does not cure the violation; only setting aside the decree and considering the case anew "would have wiped the slate clean." 380 U.S. at 551 to 552. See also *Nelson v. Adams USA, Inc.*, 529 U.S. 460, 465 to 468 (2000) (due process violated by judgment entered against a person not afforded his own opportunity to respond, notwithstanding his close relationship with, and involvement in the litigation of, the party that had defended the claim). The Bonnell requirement, as applied below, does exactly what Armstrong forbids: it imposes on the unnoticed party the burden of proving, after the fact and from outside the proceeding, that he would have won.

The court below did not dispute any of this. It distinguished Peralta only by holding that there was no constitutional violation to begin with. App. 6a. That is why the two questions presented travel together. If the exclusion of a statutorily identified, known beneficiary from an adjudication that took the trust's entire interest in a quantified fund is a deprivation of property without due process, then Peralta and Armstrong squarely foreclose the merits-defense condition on which the affirmance rests.

II. THE QUESTION IS IMPORTANT, RECURRING, AND SQUARELY PRESENTED.

A. The decision nullifies a legislative notice scheme and governs every action against a trust.

The rule announced below is categorical. Because "the trustee is the real party in interest," the beneficiary has no constitutional entitlement to notice, and because he has no entitlement to notice, the statute's command that judgment "may not be

entered" without it carries no consequence that a beneficiary can enforce. App. 6a to 8a. The Supreme Court of Nevada, which has now twice declined to say whether section 163.120(2) has any independent operative effect, has left the statute in a curious posture: it binds plaintiffs and courts in terms, yet its violation, even when assumed, injures no one. That result cannot be squared with the Legislature's evident purpose in requiring notice and conferring a right of intervention, and it will govern every future action against a trust in Nevada. Petitioner's en banc petition identified other appeals pending in the same court in which the same statutory violation is at issue, Pet. for En Banc Reconsideration 12; the full court denied reconsideration without addressing them.

The problem is not confined to Nevada. South Dakota's statute is materially identical, S.D. Codified Laws sec. 55-4-20; Texas and Louisiana confer the same right of intervention, Tex. Prop. Code sec. 115.011(d); La. Rev. Stat. sec. 9:2125(B); and every State recognizes, through the Restatement and its own decisions, that a beneficiary may be bound by the trustee's litigation only when the trustee adequately represents him. The reasoning below, that trustee participation categorically satisfies due process and that a beneficiary's interest in a contingent trust asset is not property, is transferable to all of those jurisdictions and to the far larger universe of ordinary trust litigation in which no statute speaks. Trusts hold trillions of dollars of American wealth. Whether the persons for whose benefit that wealth is held have any constitutional stake in proceedings that take it is a question of general importance.

The case also implicates a distinct federal interest. Petitioner was a servicemember deployed abroad for the duration of the proceeding that took his interest. Congress has long recognized that persons in that position cannot protect themselves in civil litigation. See 50 U.S.C. sec. 3901 et seq. The court below did not hold that the Servicemembers Civil Relief Act applies to petitioner, and petitioner

does not ask this Court to so hold. But the constitutional question presented here, whether a known, identifiable person may be bound by a judgment of which he was given no notice at all, arises with particular force when the person is one whom the State knew, or could readily have learned, was overseas in uniform.

B. This case is a suitable vehicle.

The federal question was pressed at every stage and was passed upon expressly. The complaint invoked the Fourteenth Amendment; the opposition to dismissal, the opening and reply briefs, and both post-decision petitions argued that the absence of notice deprived petitioner of property without due process and that Peralta forbade the merits-defense condition; and the Supreme Court of Nevada devoted the core of its opinion to holding that petitioner's "procedural due process rights were not violated." App. 6a to 8a.

The state-law ground of the affirmance is not independent of that federal holding. The court affirmed because petitioner failed Bonnell's merits-defense requirement. But the court reached that requirement only by rejecting petitioner's argument that, under Peralta, no merits defense may be demanded of one deprived of notice in violation of the Fourteenth Amendment; the court acknowledged Peralta, agreed that it would control if there were a due process violation, and held only that there was none. App. 6a. "[W]hen resolution of the state procedural law question depends on a federal constitutional ruling, the state-law prong of the court's holding is not independent of federal law, and our jurisdiction is not precluded." *Ake v. Oklahoma*, 470 U.S. 68, 75 (1985). See *Michigan v. Long*, 463 U.S. 1032, 1040 to 1041 (1983); *Three Affiliated Tribes of Fort Berthold Reservation v. Wold Engineering, P.C.*, 467 U.S. 138, 152 (1984). Bonnell itself, moreover, adopts the federal independent-action standard of *Beggerly*, App. 4a to 5a, so that the content of the state rule is itself drawn from federal law.

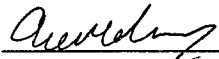
The record is clean. The case was decided on the pleadings, treated as a summary judgment record, and the court below assumed the statutory violation. The dispositive facts, that petitioner is a named beneficiary, that respondents possessed the instrument naming him, that no notice was given, that he was deployed abroad, and that the judgment took the trust's entire interest in the Essex distributions, are undisputed. Respondents argued below that petitioner's father was a cross-defendant in the Prior Action and served as the trust's corporate designee; the court below did not rest on that circumstance, and a co-defendant with his own exposure to the same claims is not a representative of the absent beneficiary. The questions presented are pure questions of federal constitutional law, and the Court can decide them on the reasoning of the opinion below.

Finally, the interest in finality that ordinarily counsels against disturbing judgments does not weigh against review here. This Court has never treated finality as a reason to enforce a judgment entered without notice; *Peralta* itself set aside a judgment that had been final for years and under which the property had already been sold, 485 U.S. at 81 to 82, 87, and the party seeking to preserve the judgment is the party that chose not to comply with a notice statute whose text it does not dispute. The Court should not permit a State's highest court to convert that choice into a permanent forfeiture of a servicemember's property.

CONCLUSION

The petition for a writ of certiorari should be granted. In the alternative, the Court should grant the petition, vacate the judgment below, and remand for further consideration in light of *Peralta v. Heights Medical Center, Inc.*, 485 U.S. 80 (1988), and *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950).

Respectfully submitted,



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