

FOR PUBLICATION

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

CEDAR POINT NURSERY; FOWLER
PACKING COMPANY, INC.,
Plaintiffs-Appellants,

v.

VICTORIA HASSID; ISADORE HALL
III; SANTIAGO AVILA-GOMEZ,
ESQUIRE; JULIA L. MONTGOMERY;
BARRY BROAD; RALPH LIGHTSTONE;
CINTHIA N. FLORES;*
Defendants-Appellees.

No. 16-16321

D.C. No.
1:16-cv-00185-
LJO-BAM

ORDER

On Remand from the United States Supreme Court

Filed August 4, 2021

Before: Edward Leavy, William A. Fletcher, and
Richard A. Paez, Circuit Judges.

Order

* Pursuant to Fed. R. App. P. 43(c)(2), Julia L. Montgomery, Barry Broad, Ralph Lightstone, and Cinthia N. Flores are substituted for their predecessors.

SUMMARY**

Civil Rights

On remand from the United States Supreme Court, the panel reversed the district court’s judgment dismissing plaintiffs’ Fifth Amendment claim for failure to state a claim; affirmed the district court’s judgment dismissing plaintiffs’ Fourth Amendment claim; and remanded for further proceedings.

The Supreme Court held that the access regulation, California Code of Regulations, Title 8, § 20900(e), “appropriates a right to invade the growers’ property and therefore constitutes a *per se* physical taking,” and that plaintiffs’ complaint thus “states a claim for an uncompensated taking in violation of the Fifth and Fourteenth Amendments. *Cedar Point Nursery v. Hassid*, 594 U.S. ___, 141 S.Ct. 2063, 2072 (2021).”

COUNSEL

Wencong Fa, Jeremy Talcott, Joshua P. Thompson, Damien M. Schiff, and Christopher M. Kieser, Pacific Legal Foundation, Sacramento, California; Ian B. Wieland and Howard A. Sagaser, Sagaser Watkins & Wieland PC; Fresno, California; for Plaintiffs-Appellants.

** This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

Douglass J. Woods and Thomas S. Patterson, Senior Assistant Attorneys General; Mark R. Beckington, Supervising Deputy Attorney General; R. Matthew Wise, Deputy Attorney General; Office of the Attorney General, Sacramento, California; for Defendants-Appellees.

Frank Garrison and Ilya Shapiro, Cato Institute, Washington, D.C., for Amicus Curiae Cato Institute.

Steven J. Lechner, Mountain States Legal Foundation, Lakewood, Colorado, for Amicus Curiae Mountain States Legal Foundation.

Nancy N. McDonough and Carl G. Borden, California Farm Bureau Federation, Sacramento, California, for Amicus Curiae California Farm Bureau Federation.

Mario Martínez, Martínez Aguila-socho & Lynch APLC, Bakersfield, California; Jacob C. Goldberg and Henry M. Willis, Schwartz Steinsapir Dohrmann & Sommers LLP, Los Angeles, California; for Amici Curiae United Farm Workers of America and United Food and Commercial Workers Union, Local 770.

ORDER

The Supreme Court recently reversed the judgment in this case, and remanded it to this court for further proceedings. *Cedar Point Nursery v. Hassid*, 594 U.S. ___, 141 S.Ct. 2063 (2021).

We previously affirmed the district court's dismissal of Plaintiffs' claim for failure to state a claim under either the Fifth or Fourth Amendments. *Cedar Point Nursery v.*

Shiroma, 923 F.3d 524, 526–27 (9th Cir. 2019). Plaintiffs petitioned for certiorari on the Fifth Amendment claim. The Supreme Court held that the access regulation, California Code of Regulations, Title 8, § 20900(e), “appropriates a right to invade the growers’ property and therefore constitutes a *per se* physical taking,” 141 S.Ct. at 2072, and that Plaintiffs’ complaint thus “states a claim for an uncompensated taking in violation of the Fifth and Fourteenth Amendments,” *id.* at 2074. In light of the Supreme Court’s decision, the judgment of the district court relating to the Fifth Amendment claim is reversed. For the reasons stated in *Cedar Point Nursery v. Shiroma*, 923 F.3d at 534–36, the judgment of the district court dismissing the Fourth Amendment claim under Federal Rule of Civil Procedure 12(b)(6) is affirmed. This matter is remanded to the district court for further proceedings consistent with the Supreme Court’s opinion.

The copy of this order shall act as and for the mandate of this court.

IT IS SO ORDERED.