No. 17-1656

In the Supreme Court of the United States

VIOLET DOCK PORT, INC., L.L.C.,

Petitioner,

v.

ST. BERNARD PORT, HARBOR, & TERMINAL DISTRICT,

Respondent.

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

BRIEF IN OPPOSITION

JAMES M. GARNER
Counsel of Record
JOSHUA S. FORCE
ASHLEY COKER
Sher Garner Cahill Richter Klein & Hilbert, LLC
909 Poydras Street
28th Floor
New Orleans, LA 70112
(504) 299-2102
jgarner@shergarner.com

Counsel for Respondent

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Cases—continued

Cases—continued

Constitutions & Statutes

Constitutions & Statutes—continued

STATEMENT

Respondent St. Bernard Port, Harbor & Terminal District took the Property at issue for the stated purpose of expanding a public port. Based on an explicit, post-*Kelo* amendment to the state constitution, the Supreme Court of Louisiana held that this stated purpose qualifies, as a matter of law, as a "public use" in Louisiana. The state supreme court also concluded that respondent's stated purpose matched its actual intent, and thus there was no illicit pretext.

Three separate vehicle defects preclude further review. *First*, this case does not implicate the principal question presented because "public use" *was* decided as a legal issue. *Second*, petitioner waived its standard-of-review argument below. *Third*, the petition's interlocutory posture poses jurisdictional and prudential barriers to review.

Even on petitioner's terms, review is unwarranted. As to the first question presented, courts all agree. Whether a stated purpose for a taking qualifies as a "public use" is a legal question reviewed *de novo*. Subsidiary factual questions—including intent—are reviewed for manifest error.

Petitioner appears to assert that the federal Takings Clause *forbids* state appellate courts from reviewing findings of historical fact rendered by trial courts for manifest error. That is so, petitioner maintains, even when the factual question is one of intent, and even when the trial court heard live testimony from the critical decision-maker. Petitioner has no support for this counterintuitive conclusion.

The second question presented is a naked request for error correction. Petitioner repeats time and again that respondent's stated purpose for the

taking was pretextual. But petitioner had a full and fair opportunity to make that case. Four courts have considered and rejected petitioner's argument. This is not the forum for a fifth bite at the apple.

The petition is beset, moreover, with repeated misstatements regarding the record. The first sentence asserts that this case is one where "property is taken from one owner to turn it over to another previously-selected private owner." Pet. 2. That assertion is false. Respondent has not, will not, and cannot transfer ownership of the Property to a private owner.

Likewise, petitioner is wrong to assert that respondent intended to operate the Property "in a similar manner" to the preexisting use. Pet. i. As the state courts concluded, the record showed that "the businesses of [petitioner] and [respondent] were not comparable." Pet. App. 15a.

Finally, this is not a vehicle to resolve any question regarding the limits of *Kelo*. Louisiana has enacted extensive protections for property owners: Economic development is not a permissible basis for a taking; one-to-one transfers to private owners are prohibited; a taking cannot be for the predominant use of a private party; and the government may not take and operate a private business. The taking at issue does not—indeed, cannot—violate any of those protections.

Petitioner lost on the facts, not the law.

A. Legal background.

In *Kelo* v. *City of New London*, 545 U.S. 469 (2005), the Court held that eminent domain may be used to effect a transfer of land to a private party if

that transfer accomplishes a public purpose. In so holding, the Court recognized that a State may impose "further restrictions on its exercise of the takings power," including those that are "stricter than the federal baseline." *Id.* at 489.

In response to *Kelo*, Louisiana's citizens amended the state constitution to substantially restrict eminent-domain authority. See Pet. App. 11a-12a. As amended, the Louisiana Constitution has a number of protections.

First, the Louisiana Constitution restricts what qualifies as a "public purpose" to an enumerated list. La. Const. art. I, § 4(B)(2). One permissible "public purpose" is "[c]ontinuous public ownership of property dedicated to * * * [p]ublic ports * * * to facilitate the transport of goods or persons in domestic or international commerce." *Id.* § 4(B)(2)(b). See also La. Const. art. VI, § 21(A).

Second, expropriated property may not be leased or sold "except for *leases or operation agreements* for port facilities." La. Const. art. I, § 4(H) (emphasis added). According to the state supreme court, the state constitution "permits public ports to lease the expropriated property to another entity that physically handles the operations—a standard practice in the maritime industry." Pet. App. 12a n.9.

Third, the state may not take property "for predominant use by any private person or entity" or "for transfer of ownership to any private person or entity." La. Const. art. I, § 4(B)(1). The state constitution exempts from this limitation conduct "specifically authorized by" Article VI, Section 21. *Ibid.*

Fourth, the Louisiana Constitution bars consideration of "economic development * * * in determin-

ing whether the taking or damaging of property is for a public purpose." La. Const. art. I, § 4(B)(3).

Fifth, a government may not take a business to operate it or stifle competition: "No business enterprise or any of its assets shall be taken for the purpose of operating that enterprise or halting competition with a government enterprise." La. Const. art. I, § 4(B)(6).

The authority of the St. Bernard Port, Harbor & Terminal District is defined by statute. See La. Stat. Ann. §§ 34:1701 to 34:1715. In particular, respondent "is authorized to acquire by * * * expropriation" "any lands in the district" for operation of a port facility, but those lands must be owned by respondent. *Id.* § 34:1708.

B. Factual background.

"To Louisiana's maritime industry, public ports are critical." Pet. App. 2a. As the "maritime industry has expanded and modernized," "advancements" "have ushered in super tankers and mega ships." *Id.* at 3a. These "advancements have made public ports, like the St. Bernard Port, a virtual necessity." *Ibid.*

Respondent St. Bernard Port, a political subdivision of the State of Louisiana, is a deepwater port facility. Pet. App. 3a. The Port's jurisdiction is coterminous with the Parish of St. Bernard, and its access to the Mississippi River is limited to the parish's ten miles of riverfront. *Id.* at 34a.

"Export of goods and commodities through the port is one of the basic industries of St. Bernard Parish." Pet. App. 87a. Indeed, St. Bernard Port "has remained one of the busiest ports in the country." Pet. App. 4a. "[F]rom 2007-2009, the Port's cargo in-

cluded 37% of all the ferro alloys imported into the United States, 37% of the barite, 10% of the urea, and 3% of the potash." Pet. App. 4a. In accord with global trends, the Port's operations expanded rapidly: in 2002, the Port handled approximately 900 thousand tons of cargo; that number increased to more than four million tons in 2007. *Id.* at 100a. In 2012, it increased yet further to 10.5 million tons. R. 16-96, V.12 at 2836, 2864.

Beginning in 2007, the Port faced a dire lack of capacity, particularly due to insufficient ground space to store cargo. Pet. App. 4a. See also L-125.[1] At times, the Port had to turn away vessels due to a lack of space. 2/1/12 Tr. 92-93.

Because of jurisdictional and geographic limits (see Pet. App. 34a), the range of land suitable for respondent's growth was highly limited. As early as 1985, the Port identified petitioner's 75-acre tract of land as the most viable location for expansion. *Id.* at 4a. At the time, petitioner Violet operated this Property as a "parking lot for ships"; petitioner used one of its berths to "layberth" Navy ships. *Id.* at 5a.

After several earlier acquisition attempts, respondent offered petitioner a firm $10 million for the land in 2007. Pet. App. 5a. Petitioner countered with a demand of "14 million dollars," "nonnegotiable." *Id.* at 93a. Respondent accepted petitioner's counter and sent a purchase agreement. *Ibid.*

---

[1] Petitioner asserts that respondent took the Property to avoid the costs of expanding its own dock facilities. Pet. 7. That is incorrect. Respondent's lack of ground storage space at its preexisting facilities—the critical impairment to expansion—could not be solved via repairs or expansions to a dock. See Pet. App. 4a, 87a, 100a-101a.

To obtain funding for the Property, in 2008, respondent submitted an application to the Louisiana Department of Transportation and Development. Pet. App. 5a. Phase I described using the Property to satisfy the "immediate need for additional laydown area onshore for bulk commodities." L-125.[2] Phase II, which would be the subject of a future grant application, identified additional improvements for more extensive cargo operations for dry-bulk materials. *Ibid.*

A subsequent reappraisal valued the Property at $16 million. Pet. App. 5a. Respondent agreed to pay this new price. *Ibid.* Petitioner, reneging on its earlier offer, demanded $35 million. *Ibid.*

C. Proceedings below.

1. After several additional attempts at an amicable transfer of the property failed, respondent initiated an eminent-domain action in state court. Pet. App. 6a. The petition stated that the purpose of the taking was to "expand[] the Port's current port facilities." *Ibid.* This expansion would relieve its space problems and also "create jobs and benefits to the citizens of St. Bernard Parish." *Ibid.* Indeed, "[t]he contemplated construction and use of the property would bring needed revenues into the community which is still recovering from the effects of the 2005 hurricanes." *Id.* at 87a.

Petitioner removed the matter to federal court on the putative basis of its Navy contract. Pet. App. 6a-

---

[2] In describing Phase I, petitioner incorrectly suggests that respondent intended to operate the Property in the same manner as petitioner. See Pet. 8. Not so. Respondent contemplated immediate use of the Property for extensive cargo operations. See L-125; Pet. App. 101a.

7a. The federal court remanded, concluding that petitioner submitted nothing "other than its own characterization[] to suggest that acquisition of the [Navy] property was the primary motivating cause of this 70 acre expansion." *Id.* at 7a.

Following discovery, the trial court "held a hearing to consider the public purpose of the expropriation." Pet. App. 7a. "The trial court heard testimony, reviewed the evidence, and evaluated the credibility of the witnesses." *Ibid.* Respondent submitted evidence demonstrating its trending growth, lack of capacity, and need for space; for its part, petitioner offered no evidence to the contrary. See Pet. App. 3a-4a. See also 2/1/12 Tr. 175-185.

Based on the evidence, the trial court rejected each of petitioner's claims of pretext. For example, "the trial court rejected Violet's argument that the expropriation was for the purpose of taking the Navy lease." Pet. App. 8a. In so doing, the trial court credited the testimony of the port's executive director. See *ibid.* The executive director testified: "If the Navy goes away, if they sail away, that would not bother us. * * * [T]hat's certainly not one of our goals. Our goal is to provide a facility which can generate benefits, and keep the Port growing." 2/1/12 Tr. 177-178. See also Pet. App. 7a. Likewise, a representative from Associated Terminals (the marine terminal operator that respondent considered to operate the new facility) explained that Associated hoped the Navy would *not* continue to use the facility: "The best news for us is that the Navy would leave, because we want the use of the berth to handle cargo, and that's the best berth, the one that [the Navy is] presently tied to." 2/1/12 Tr. 88.

The trial court concluded that the Port's real intent matched its stated purpose: "[T]he Port took the Property to 'build and operate a terminal to accommodate transport of liquid and solid bulk commodities into national and international commerce to and from St. Bernard.'" Pet. App. 8a. Respondent would accomplish this through use of the "Mississippi River frontage," as well as the acreage of "presently undeveloped" land that "would be available for cargo storage." *Id*. at 87a. The court ruled that this was "a logical extension of port services in St. Bernard." *Ibid*.

In sum, the court concluded that the "predominant use for the property would be by the public, not for use by, or for transfer of ownership to any private person or entity." Pet. App. 87a.

As the state supreme court later observed, "[t]his judgment was based on the trial court's firsthand credibility determinations after hearing testimony from various witnesses," including the Port's executive director, "who testified about the Port's need for space." Pet. App. 8a.

The trial court subsequently conducted valuation proceedings. Pet. App. 92a-98a. Petitioner sought compensation ranging between $51 million and $67.4 million, notwithstanding that petitioner's own balance sheet valued the Property at "approximately $8,000,000.00 for the land and docks – minus depreciation of approximately $5,000,000.00." *Id.* at 95a-96a. The court also identified a larger property, which sold for $11.5 million. *Id.* at 95a. The trial court found that the market value of the property was $16 million. *Id*. at 98a.

2. The Louisiana Fourth Circuit Court of Appeal affirmed. Pet. App. 49a-68a. It did "not find that the

trial court was manifestly erroneous *or committed legal error* in determining that the Port's expropriation of the Property was for a public purpose." *Id.* at 59a (emphasis added).

The court rejected petitioner's claim of pretext: "The trial court was presented evidence of the Port's intention * * * to expand the facility to include a dry and liquid bulk cargo operation." Pet. App. 58a. The court independently "recognized that the health of the Port rest[s] with its ability to be competitive" and that "the maintenance and development of the Port provides 'a great public benefit to the people of Louisiana.'" *Id.* at 59a. The court also affirmed the valuation holding. *Id.* at 62a.

In denying petitioner's application for rehearing, the court addressed a unique state-law issue—the state constitutional prohibition on taking property for the purpose of operating a particular business. Pet. App. 80a. The court reiterated the finding that "the Port's primary motivation in expropriating [petitioner's] property" was not "the purpose of operating that enterprise or halting competition." *Ibid.*

3. The Supreme Court of Louisiana affirmed the constitutionality of the taking (Pet. App. 10a-16a), but it remanded for further proceedings as to valuation (*id.* at 16a-21a).

The court first addressed whether a public port qualifies as a "public purpose" within the meaning of the state and federal constitutions. Pet. App. 11a-13a. It held that the post-*Kelo* amendment to the state constitution resolved that question: "[T]he Louisiana Constitution expressly includes 'public ports' as an enumerated 'public purpose.'" *Id.* at 12a. The stated purpose in this case—expanding and operat-

ing a public port—thus "falls squarely within the constitutional definition of 'public purpose' for public ports." *Id*. at 13a.

The court next examined—and rejected—petitioner's argument that respondent's *actual* reason for the expropriation was "either to take [petitioner's] revenue stream from the Navy lease or to halt competition with [petitioner's] cargo operations." Pet. App. 14a. The court agreed with the "factual determination regarding the purpose for the expropriation" made by the court of appeal. *Id*. at 14a n.10.

The state supreme court canvassed the evidence supporting this conclusion: "[T]estimony at trial was that the Navy lease was 'an afterthought.'" Pet. App. 14a. Indeed, the testimony "indicated that the 'best news' for the Port's operation would be to use the Navy berth to further expand cargo operations." *Ibid*. Nor was the purpose to stifle competition: Petitioner's "cargo operations were 'negligible'" and "did not compete with the Port." *Id*. at 15a. Rather, the evidence showed that "the businesses" of petitioner and respondent "were not comparable": "Violet was in the layberthing business; the Port was in the cargo business." *Ibid*. In examining "the entire record," the court found that "[t]he record supports the trial court's conclusion that the Port experienced an increasing demand for maritime cargo operations, was at capacity, and sought to expand its cargo operations." *Ibid*.

The court noted that its conclusion was consistent with the findings of the trial court, the state court of appeal, and the federal district court. Pet. App. 14a-15a.

The state supreme court reversed and remanded, however, for renewed consideration of just compensation. Pet. App. 16a-21a. Those proceedings are ongoing in the Louisiana state courts.

REASONS FOR DENYING THE PETITION

The Court should deny the petition for certiorari. Three structural defects preclude review: This case does not implicate the principal question petitioner asks the Court to address; in the state courts, petitioner waived the argument that it now advances; and the interlocutory nature of this petition precludes further review.

The petition fails on its own terms, too. The holding below does not conflict with that of other courts; the state courts applied the correct legal framework; and petitioner's request for error correction lacks merit.

A. This is an inappropriate vehicle for review.

1. This case does not implicate the first question presented.

The petition principally asks the Court to address whether "the Fifth Amendment's 'public use' requirement is a question of fact to be resolved in the trial court, subject only to a manifest error review on appeal." Pet. i. This question rests on the mistaken premise that the court below addressed the "'public use' requirement" as an issue of fact.

The state supreme court addressed two distinct questions. The first was whether respondent's stated purpose for the taking—to expand public port facilities—qualifies as a "public purpose" within the meaning of the state and federal constitutions. Pet.

App. 11a-13a. The second question was whether respondent's stated purpose matched its actual intent. *Id.* at 13a-16a. While the petition attempts to conflate these two, separate inquiries, the state supreme court resolved the first as matter of law.

In considering whether taking land for use as a public port qualifies as a "public use," the state supreme court did not defer to any lower court holding. Pet. App. 11a-13a. Rather, it found the answer to that question resolved explicitly by the post-*Kelo* amendment to the Louisiana Constitution: "[T]he Louisiana Constitution expressly includes 'public ports' as an enumerated 'public purpose.'" *Id.* at 12a. "Specifically, a public purpose is defined as '[p]ublic ports * * * to facilitate the transport of goods or persons in domestic or international commerce.'" *Ibid.* (quoting La. Const. art. I, § 4(B)(2)(b)(vi)).

The state court's analysis of this question was brief because the answer was obvious. The Supreme Court of Louisiana recognized that the state constitution addresses this issue *expressly*. Pet. App. 12a. The constitution establishes that taking land to erect a port is, as a matter of law, a "public purpose" in Louisiana. *Ibid.* To respect such local prerogatives, the Court has a "longstanding policy of deference to legislative judgments in this field." *Kelo*, 545 U.S. at 480.

The lower court applied the "manifest error" standard to the different, subsequent question—whether, in this case, the facts demonstrated that respondent's stated purpose was mere pretext. Pet. App. 13a-16a. Petitioner does not identify this issue in the questions presented—perhaps because there is no conflict of authority over it. See pp. 15-20, *infra*.

Ultimately, the Supreme Court of Louisiana *did* resolve the question whether taking land for a public port is a "public purpose" as a matter of law.

2. Petitioner waived its argument below.

Review is also unwarranted because petitioner waived its argument below, which explains why the lower court did not discuss it.

In the state supreme court, petitioner made no argument about the standard of review applicable to its federal Fifth Amendment claim. See Original Br. of Applicant Violet Dock Port, Inc., L.L.C., No. 2017-C-0434, at 15-17 (S. Ct. La.) (Original Br.). Nor did it make any such argument as to its state constitutional claim. See *id*. at 9-15.

In fact, petitioner discussed the standard of review just once in its brief—with respect to the separate issue of valuing compensation. There, petitioner agreed that "the manifest error standard applies in many valuation cases." Original Br. 17. Petitioner argued that a *de novo* standard applies only in the event of a legal error. *Ibid*. In reversing and remanding the just compensation award, the state supreme court agreed. Pet. App. 19a-20a.

Because petitioner never argued the standard of review as it relates to the question of "public use," the state supreme court did not independently consider the issue. The court did not identify, much less evaluate, competing approaches.

This Court does not grant review in these circumstances. It reviews only issues that the parties preserved below. See *Zivotofsky ex rel. Zivotofsky* v. *Kerry*, 135 S. Ct. 2076, 2083 (2015) (waiver of argument below precludes consideration by this Court).

This policy prevents sandbagging; it bars a party from excluding arguments in its lower court briefing and raising them only after receiving an unfavorable result.[3] And, because this is "a court of review, not of first view" (*BNSF Ry. Co.* v. *Tyrrell*, 137 S. Ct. 1549, 1559 (2017)), it reviews issues only when it has the benefit of the lower court's reasoned analysis.

3. This proceeding is interlocutory.

Petitioner does not so much as acknowledge that it requests interlocutory review of a state-court proceeding. Because petitioner has not advanced a theory as to why the decision below is "[f]inal" for purposes of 28 U.S.C. § 1257, respondent has no opportunity to provide a meaningful response. Having failed to advance a theory of jurisdiction in the petition, petitioner has waived it.

The interlocutory posture is also a prudential reason to deny review. In the active remand proceedings, petitioner requests a substantially greater amount of compensation. If petitioner succeeds, it may elect to accept a modified judgment, ending this litigation. That would lead to dismissal of this petition, rendering all work by this Court a nullity.

Indeed, petitioner contemplates this possibility. Petitioner opposed respondent's request to stay the remand proceedings pending resolution of this petition. Petitioner's reason: "Violet Dock Port should be allowed to pursue its alternate paths for recovery,

---

[3] Petitioner raised its standard-of-review argument for the first time in its petition for rehearing. That is too late to preserve the issue. Otherwise, parties could use strategic rehearing petitions to overcome waiver. The Court has not endorsed such gamesmanship.

just as parties are often allowed to pursue alternative remedies in a case until there is a final resolution of the dispute." Violet Dock Port Inc., L.L.C.'s Opp'n to Mot. to Continue June 14, 2018 Oral Arg., No. 2016-CA-0096 (La. 4th Cir. Ct. App.) (June 12, 2018). The state court agreed with petitioner, and those remand proceedings are now ongoing.

Interlocutory review is not warranted given that this petition is merely an "alternate path[]" by which petitioner presently seeks relief. The Court should certainly not grant certiorari when the state-court landscape remains in flux. The remand proceedings are under submission in the state court of appeal, and the implications of whatever factual conclusions it may reach are unforeseeable.

Additionally, if the Court were to grant interlocutory review concurrent with these active proceedings, the parties might seek to inject new evidence or argument through strategic filings in the state courts. In fact, the petition relies on respondent's state court remand brief, filed *after* the decision at issue here. See Pet. 29 & n.2.

In sum, the interlocutory posture is both a jurisdictional and prudential bar to review.

B. There is no disagreement among the lower courts.

Once the issue is properly framed, petitioner's claim of a conflict disappears. Petitioner's cases establish two propositions: (1) whether a stated purpose for a taking qualifies as a "public use" is a question of law reviewed *de novo*, and (2) courts should permit a party to challenge whether the stated purpose is mere pretext. The Supreme Court of Louisiana agreed with both points: It addressed "public

use" *de novo*, and it allowed petitioner to make a pretext challenge.

Petitioner's authorities do not establish that appellate courts review a trial court's *factual* conclusions regarding pretext *de novo*. The Takings Clause does not usurp the typical operation of state judiciaries. Indeed, it would be extraordinary to conclude that an appellate court—a court that does not hear testimony and cannot judge demeanor—is precluded from reviewing, with deference, a trial court's *factual* findings.

1. The decision in *County of Hawaii* v. *C & J Coupe Family Limited Partnership*, 198 P.3d 615 (Haw. 2008) (*Coupe I*), does not establish a conflict.

The relevant portion of *Coupe I* concerned a condemnation (called "Condemnation 2") for the proposed construction of a bypass needed for a public highway. 198 P.3d at 356-358. In connection with this taking, the Hawaii County Council adopted Resolution No. 31-03, which stated that the bypass was "a regional benefit for the public purpose and use." *Id*. at 360. In holding that Condemnation 2 "was for a public purpose," the trial court rested principally on the municipal resolution. See *id*. at 361.

The state supreme court held that "a court can look behind the government's stated public purpose." *Coupe I*, 198 P.3d at 375. That is, "under appropriate circumstances, courts may consider whether a purported public purpose is pretextual." *Ibid*. The court underscored, however, that it accords "great weight" "to the legislative finding and the prima facie acceptance of its correctness," and it "will not overrule it unless it is manifestly wrong." *Ibid*. (quotation omitted). Because there was "no finding or conclu-

sion" by the trial court" regarding pretext, the court found that "remand [was] appropriate." *Id*. at 385.

Coupe I did not, however, hold that these findings regarding pretext must be reviewed *de novo* on appeal. Indeed, if it had, remand would have been unnecessary; the state supreme court would have simply resolved the case itself.

On remand, the property owner presented a variety of arguments regarding pretext; after making factual findings, the trial court concluded that the taking "was not pretextual." *County of Haw*. v. *C & J Coupe Family Ltd. P'ship*, 242 P.3d 1136, 1144 (Haw. 2010) (*Coupe II*). The Hawaii Supreme Court affirmed. The standard for showing pretext, the court underscored, is onerous: The property owner "must show that such a finding of public use 'is manifestly wrong.'" *Id*. at 1148. And it accorded the trial court the deference due a fact-finder. See, *e.g*., *id*. at 1155 ("Supplemental FOF 20 is not clearly erroneous."); *id*. at 1157 ("[T]he court's FOF 15 * * * was not clearly erroneous."); *id*. at 1158 ("Supplemental FOF 17 is not clearly erroneous.").[4]

In sum, both Hawaii and Louisiana courts hold that whether a stated purpose constitutes a "public use" is a legal question reviewed *de novo*. Both hold that a government's stated purpose is subject to a pretext analysis. And both cases review factual findings regarding pretext with deference to the fact-finder.

---

[4] In *Coupe I* and *Coupe II*, the Hawaii Supreme Court interwove analysis of state and federal law. It is unclear that the state court viewed any holding there as compelled by the federal constitution.

2. Nor is there a conflict with the pre-*Kelo* decision *Southwestern Illinois Development Authority* v. *National City Environmental, L.L.C.*, 768 N.E.2d 1 (Ill. 2002). That opinion merely establishes that whether a government's stated purpose qualifies as a "public use" is subject to judicial challenge. *Id.* at 8. The decision below, which exercised "judicial scrutiny" (*ibid.*) over the taking, is not in conflict.

Indeed, following *Southwestern Illinois Development*, Illinois appellate courts defer to trial courts' factual findings. In *Enbridge Energy (Illinois), L.L.C.* v. *Kuerth*, 99 N.E.3d 210 (Ill. App. Ct. 2018), the court described the presumption that a government's stated purpose for a taking is its actual purpose. *Id.* at 219. In reviewing the trial court's factual findings regarding pretext, the Illinois appellate court observed that the "trial court's finding that the evidence was insufficient to overcome a presumption will not be reversed on appeal unless the decision is contrary to the manifest weight of the evidence." *Id.* at 220. State courts in Illinois—bound by *Southwestern Illinois Development*—employ the same standard of review as that here.

3. The decision below is also consistent with *Middletown Township* v. *Lands of Stone*, 939 A.2d 331 (Pa. 2007). There, the court evaluated whether the government's "true purpose was recreation." *Id.* at 338. In doing so, it reviewed the trial court's factual findings for an "abuse of discretion." *Ibid.* See also *id.* at 335 n.3 (citing *Denes* v. *Pennsylvania Turnpike Comm'n*, 689 A.2d 219, 222 (1997)).

Lands of Stone incorporated—and is consistent with—the earlier decision in *Denes*:

> Appellate review in an eminent domain case is limited to a determination of whether the trial court abused its discretion or committed an error of law, and whether the findings of fact are supported by substantial evidence. Questions of credibility and conflicts in the evidence presented are for the trial court to resolve. If sufficient evidence supports the trial court's findings as factfinder, they should not be disturbed.

689 A.2d at 222 (citations omitted). This approach is well established in Pennsylvania. See, *e.g.*, *Reading Area Water Auth.* v. *Schuylkill River Greenway Ass'n*, 100 A.3d 572, 576-577 (Pa. 2014).

4. Finally, there is no conflict with *Economic Development Corp.* v. *Parking Co., L.P.*, 892 A.2d 87 (R.I. 2006). That court, like all others, agreed that courts may review a claim of pretext. *Id.* at 103. Yet the court acknowledged that it "accord[s] deference to the findings of the condemning authority." *Id.* at 104. The court did not hold that the federal Constitution somehow displaces the role of a trial court as fact-finder.

In fact, the Supreme Court of Rhode Island has repeatedly underscored the deference owed to a trial court's factual determinations:

> When reviewing the decision of a trial justice sitting without a jury in a land-condemnation proceeding, this Court accords great weight to the trial justice's findings. Consequently, we shall not disturb such findings on appeal unless it is demonstrated that the trial justice misconceived or overlooked material evidence or was otherwise clearly wrong.

Conti v. *Rhode Island Econ. Dev. Corp.*, 900 A.2d 1221, 1230 (R.I. 2006) (quoting *Mastrobuono* v. *Providence Redevelopment Agency,* 850 A.2d 944, 946 (R.I. 2004) (quoting *Serzen* v. *Director of the Dep't of Envtl. Mgmt.,* 692 A.2d 671, 675 (R.I. 1997))).

C. The decision below does not conflict with this Court's precedent.

Petitioner references this Court's precedents (Pet. 18-21) to make the same two points that underlie its allegedly conflicting cases—whether a state purpose qualifies as a "public use" is a question of law, and courts must examine claims of pretext. But, as we have shown, the court below agreed with both principles.

Petitioner has no support for its implicit suggestion that questions of historical fact—especially respondent's *intent* regarding the taking—are reviewed *de novo*. In a variety of settings, the Court routinely holds that questions of intent are factual and that appellate courts should defer to the fact-finder, who heard live testimony and judged demeanor. See, *e.g.*, *Snyder* v. *Louisiana*, 552 U.S. 472, 477 (2008) ("On appeal, a trial court's ruling on the issue of discriminatory intent must be sustained unless it is clearly erroneous."); *Pullman-Standard* v. *Swint*, 456 U.S. 273, 287-288 (1982) ("[W]hether the differential impact of the seniority system reflected an intent to discriminate on account of race * * * is a pure question of fact, subject to Rule 52(a)'s clearly-erroneous standard.").

Petitioner's apparent contention that the federal Constitution forbids state appellate courts from reviewing a trial court's resolution of factual issues, like intent, for manifest error is unfounded. It is also

bizarre: It would upend centuries of judicial practice, and it would displace the essential role of trial courts (and juries), who hear live testimony.

1. The question whether a government's stated purpose for a taking qualifies as a "public use" is no doubt "a judicial one." Pet. 18 (quoting *United States ex rel. Tennessee Valley Auth.* v. *Welch*, 327 U.S. 546, 552 (1946), and *City of Cincinatti* v. *Vester*, 281 U.S. 439, 446 (1930)).[5]

That is why the Supreme Court of Louisiana identified the express legal basis for concluding that, in Louisiana, using land for a public port constitutes a "public purpose" as a matter of law—the state constitution says so expressly. Pet. App. 11a-13a. See also p. 23, *infra*. Petitioner does not appear to seriously dispute that this use is a valid "public purpose." Nor could it as decisions by "state court[s]" regarding what qualifies as "public uses in conformity with its laws" are entitled to great deference. *Welch*, 327 U.S. at 552. See also *Hawaii Hous. Auth.* v. *Midkiff*, 467 U.S. 229, 244 (1984); *Berman* v. *Parker*, 348 U.S. 26, 32 (1954).

2. The decision below is consistent, moreover, with *Kelo*. The passages that petitioner quotes (Pet. 19) merely suggest that it is for a court to evaluate whether a government's stated purpose for a taking is pretextual. See *Kelo*, 545 U.S. at 478. The Supreme Court of Louisiana agreed: It evaluated the lower courts' pretext analyses, canvassed the evi-

---

[5] Petitioner misstates *Welch*. Petitioner says "the question whether a taking is *for* a permissible 'public use' is 'a judicial one.'" Pet. 18 (emphasis added). But *Welch* actually says: "[T]he question what is a public use is a judicial one." 327 U.S. at 552.

dence, and held that there was no pretext. Pet. App. 13a-16a. See also pp. 26-30, *infra*.

3. Nor do petitioner's assorted cases (Pet. 20) regarding appellate review of constitutional rights generally suggest a different result. To be sure, when a constitutional "standard" is illuminated "through the process of case-by-case adjudication," the application of law to fact may be deemed a legal question so that one decision guides a future determination. *U.S. Bank Nat'l Ass'n* v. *Village at Lakeridge, LLC*, 138 S. Ct. 960, 967 n.4 (2018). At most, that principle supports the conclusion—accepted by all here—that deciding whether a stated purpose is a "public use" is a question of law. That is the "ultimate determination[]" at issue. *Ornelas* v. *United States*, 517 U.S. 690, 697 (1996). But that says nothing about the separate, case-specific question of pretext. Pretext turns on the determination of "historical fact," which this Court has repeatedly confirmed is reviewed "only for clear error." *Id*. at 699.

Additionally, the question of pretext often turns on "an inquiry into state of mind." *Miller* v. *Fenton*, 474 U.S. 104, 113 (1985). Such questions are "not at all inconsistent with treating it as a question of fact." *Ibid*. And, as this case shows (see pp. 7-8, *supra*), "the issue involves the credibility of witnesses and therefore turns largely on an evaluation of demeanor." *Miller*, 474 U.S. at 114. This consideration likewise indicates a factual determination, where the fact-finder deserves deference.

D. The petition's repeated request for error correction is meritless.

The petition—especially the second question presented—principally requests error correction. Not on-

ly does that mistake this Court's role, but there was no error below.

Petitioner tries to obfuscate the true nature of the petition by conflating the two issues decided below—whether a public port is a public use and whether respondent's stated purpose was pretext. The state supreme court was correct on the law as to the first and correct on the facts as to the second.

1. The Takings Clause does not forbid Louisiana citizens from deciding that a public port qualifies as a "public use."

a. Following *Kelo*, Louisiana citizens amended the state constitution to restrict eminent-domain authority. Pet. App. 11a-12a. In so doing, Louisiana citizens *expressly* identified public ports as a permissible "public use." *Id.* at 11a-13a. See also La. Const. art. I, § 4(B)(2)(b)(vi). That sovereign act of the people was well founded: "To Louisiana's maritime industry, public ports are critical," and, to Louisiana, that industry is critical. Pet. App. 2a.

This democratic judgment was consistent, moreover, with scores of judicial decisions confirming that public ports lie at the core of eminent-domain authority. See, *e.g.*, *Lake Charles Harbor & Terminal Dist.* v. *Henning*, 409 F.2d 932, 934 (5th Cir. 1969) ("[E]xpropriation of land for construction of a bulk handling facility is a taking for a public use and not open to constitutional attack."); *Griffen* v. *Bendick*, 463 A.2d 1340, 1347-1348 (R.I. 1983); *In re Port of Grays Harbor*, 638 P.2d 633, 639 (Wash. Ct. App. 1982); *In re Port of Seattle*, 495 P.2d 327, 330-331 (Wash. 1972); *Sublett* v. *City of Tulsa*, 405 P.2d 185, 194-195 (Okla. 1965); *Visina* v. *Freeman*, 89 N.W.2d 635, 643-644 (Minn. 1958) ("Historically, the estab-

lishment and maintenance of ports, at least on the sea, intended to provide terminal facilities for shipping open to all who wish to use them, has been considered universally to be a function of government."); *Marchant* v. *Mayor & City Council of Balt.*, 126 A. 884 (Md. 1924).

In evaluating a taking for the World Trade Center, the New York Court of Appeals observed that "the history of western civilization demonstrates the cause and effect relationship between a great port and a great city." *Courtesy Sandwich Shop, Inc.* v. *Port of N.Y. Auth.*, 190 N.E.2d 402, 405 (N.Y. 1963). The court thus concluded: "No further demonstration is required that improvement of the Port of New York by facilitating the flow of commerce and centralizing all activity incident thereto is a public purpose supporting the condemnation of property for any activity functionally related to that purpose." *Ibid.*

In drawing lines regarding what qualifies as "public use," this Court may well be suspect when a local government pushes the envelope beyond what state law has expressly identified as a valid public purpose—or when the stated purpose is not backed by centuries of support. This case is nothing of the sort. Louisiana's *citizens* have amended the state *constitution* to provide that a public port is a "public use." That democratic determination is consistent with decades—if not centuries—of unbroken judicial holdings. And it accords with common sense: A port open to the public is a quintessential example of putting land to a "public use."

Petitioner has proffered no theory by which the federal Constitution tramples the will of the people of Louisiana, nullifying a duly enacted constitutional

amendment. The Court should respect the sovereign judgment of Louisiana citizens.

b. Petitioner's two narrower arguments regarding public use confirm that petitioner seeks only error correction.

First, petitioner contends that the federal Constitution prohibits a one-to-one taking—that is, taking property from one private owner and delivering it to another owner. Pet. 21-22.

But this case does not implicate this issue. Respondent is not transferring ownership of the property to *anyone*; it has and will retain ownership over it. Pet. App. 13a. Indeed, respondent's statutory taking authority is *limited* to only that property which it will own. La. Stat. Ann. § 34:1708.

In other words, if petitioner were right as a matter of fact, state statutory and constitutional law would bar the taking, irrespective of federal law. State law has not barred the taking because the lower courts held that petitioner is wrong about the facts.

Second, petitioner suggests that the federal Constitution prohibits "taking and operating a private business." Pet. 23. This argument is deeply flawed for the same reason. This case *cannot* implicate that issue because the Louisiana Constitution expressly forbids such a taking: "No business enterprise or any of its assets shall be taken for the purpose of operating that enterprise or halting competition with a government enterprise." La. Const. art. I, § 4(B)(6). No federal rule is needed to establish this principle in Louisiana. That is why, in Louisiana, a government *cannot* "take a private business to operate it for the same or similar purposes." Pet. 25. Petitioner's

examples, including seizure of the Hilton Hotel (*id.* at 25-26), are barred by Louisiana's state constitution.

In the state courts, then, these legal principles were well established and binding. Petitioner lost on the facts—not the law. See Pet. App. 13a-16a & n.10. The state supreme court said so explicitly. *Id.* at 14a & n.10.

2. Petitioner's quarrel with the finding of no pretext does not warrant review.

Petitioner's request for review rests principally on its contention that respondent's stated reason for taking the Property was pretextual. Four courts have rejected this argument as a matter of fact. That case-specific factual finding does not warrant review. Additionally, all the lower courts were correct.

a. The Supreme Court of Louisiana found that the real intent of the taking matched the stated purpose of the taking—to expand and operate a public port. Pet. App. 13a-16a. The lower court, like three courts before it, rejected petitioner's argument that respondent's real reason "was to take over Violet's revenue stream from the Navy lease" or to "halt competition." *Id.* at 14a-15a.

Yet virtually every aspect of the petition rests on an implicit or explicit challenge to these findings. See, *e.g.*, Pet. i (respondent intended "to lease it to another private port operator to operate in a similar manner"); Pet. 4-5 (decision below authorizes "the power to take and operate a fully-functioning private business"); Pet. 17-18 (taking was done "with the intent of transferring possession and use of it to a private actor"); Pet. 23 ("taking and operating a private business to use its revenues to fund government ex-

pansion"); Pet. 24 (suggesting that taking below was done "for the purpose[] of usurping business opportunities, raising revenues, and saving expenses"); Pet. 25 (taking was "to operate it for the same or similar purposes"); Pet. 29 (arguing that "building a large-scale cargo operation" "was implausible").

These factual quarrels are how, for example, petitioner asserts that, in the state courts, there was no "substantive, judicial scrutiny" of petitioner's claim of pretext. Pet. 17. It is the basis on which petitioner suggests there was a one-to-one taking. Pet. 22-23. It is the premise underlying the claim of a conflict with *Rhode Island Economic Development Corporation* (Pet. 24-25) and *Southwestern Illinois Development Authority* (Pet. 25). It is the foundation of petitioner's parade of horribles. Pet. 25-26. And it is the essence of petitioner's assertion that the decision below expands on *Kelo* by, in petitioner's telling, approving a pretextual property transfer. Pet. 26-30.

This fact-bound inquiry into whether there was pretext is not the sort of issue that warrants this Court's review. There is no disputed question of law; petitioner merely quarrels with what the factual record shows. This Court does not grant certiorari so that a petitioner may reargue facts lost repeatedly in the lower courts.

b. In any event, the record overwhelmingly confirms the lower courts' uniform holdings that there was no pretext. Respondent is a major public port in Louisiana. Pet. App. 3a-4a. Since acquiring the Property, respondent has used it as a public port. From the end of 2015 to May 2017, the Port handled more than 400 thousand tons of cargo at the Property, and vessel calls there were up 200 percent. See Opp'n to Violet's Appl. for Reh'g perma.cc/4WXS-ZLUV. Peti-

tioner's factual contentions regarding pretext are unfounded.

First, petitioner's argument that respondent's taking was a pretext to obtain the Navy contract—that is, petitioner's business—is factually wrong. See, *e.g.*, Pet. 4-5, 25.

By examining the testimony and other evidence presented at trial, the lower courts have repeatedly rejected petitioner's contention. Pet. App. 14a-15a. The state supreme court expressly credited testimony (*id*. at 14a) that, "[a]ccording to the Executive Director of the Port," "'[a]s far as the lease with the Navy * * * it's an afterthought.'" *Id*. at 7a. He explained: "If the Navy goes away, if they sail away, that would not bother us. * * * [T]hat's certainly not one of our goals. Our goal is to provide a facility which can generate benefits, and keep the Port growing." 2/1/12 Tr. 177-178. The state supreme court also credited testimony from the private contractor that "[t]he best news for [us] is that the Navy would leave, because we want the use of the berth to handle cargo, and that's the best berth, the one that they're [the Navy] presently tied to." Pet. App. 7a.

Indeed, respondent did not take petitioner's business at all. Petitioner continued to service the Navy ships on the Property for two and a half years after the taking. P-179. Moreover, the Navy specifically told petitioner that it would continue its contract with petitioner at a different location. Ex. L-9 at 6. Respondent identified at least 12 other locations where petitioner could have serviced the Navy ships and maintained its contract, but petitioner chose not to do so. P-170 at 15/73; R.16-96, V.10 at 2476-66; P-408 at 44-48.

Below, petitioner repeatedly stated that this is *not* a case about lost business. As petitioner told the district court: "We've never made a claim for loss of business. That's been made clear throughout the case. * * * It's never been an issue in the case. We're not seeking the value of our business. We're just seeking compensation for our property." R.16-96, V.14 at 3321.

Evaluating this evidence, "based on the trial court's firsthand credibility determinations after hearing testimony from various witnesses" (Pet. App. 6a-8a), the trial court rejected petitioner's theory of pretext. *Id.* at 87a. The state court of appeal did so as well. *Id.* at 55a-56a. So too did the state supreme court. *Id.* at 13a-16a. A federal district court, in remand proceedings, agreed. *Id.* at 6a-7a. Petitioner has lost this factual argument at every stage.

Second, petitioner's argument that the actual purpose of the taking was to eliminate competition is also factually wrong. Pet. 8.

The parties did not compete for cargo business. The state supreme court trained on the fact that petitioner's "representative stated that in the decade before the expropriation it had handled 'probably no cargo. * * * There may have been some negligible cargo.'" Pet. App. 7a-8a. See also *id.* at 5a. Nor did Violet present any evidence that it would have competed with respondent.

The state supreme court thus rejected petitioner's argument: "Though Violet argues its cargo operations were growing, the record shows that Violet's cargo operations were 'negligible' and that it did not compete with the Port." Pet. App. 15a. "Instead, generally speaking, the businesses of Violet and the Port

were not comparable. Violet was in the layberthing business; the Port was in the cargo business." *Ibid.*[6]

Petitioner's option to lease ten acres to Vulcan Materials (see Pet. 6, 8)—a fact considered by the state courts (see, *e.g.*, Pet. App. 35a-36a)—did nothing to change that conclusion. Vulcan contemplated proprietary cargo operations, *not* a public port available for calls by any ship, and petitioner declined the option before the expropriation. See Pet. 6.

Even assuming, contrary to fact, petitioner had identified evidence that it was a competitor for cargo business, that alone would not render respondent's stated reason pretextual. Petitioner also would have to show that respondent took the Property to snuff out competition, not to expand its own operation to meet demand. The lower courts found that no evidence supported such a conclusion. See Pet. 13a-16a.

Third, in seeking error correction, petitioner contends that there is some tension between the finding of no pretext and the trial court's decision on valuation. Pet. 29-30. In holding that there was no pretext, the Supreme Court of Louisiana did not make or endorse any findings as to the value of the Property, rendering petitioner's argument a nonstarter. Pet. App. 17a-21a.

In any event, petitioner is wrong for multiple reasons. It disregards that the trial court's factual findings turned principally on obvious flaws with the valuation methodologies used by petitioner's experts. See Pet. App. 93a-97a. Moreover, the trial court *did*

---

[6] Petitioner is wrong to say that "there is no factual dispute" as to its contrary assertion. Pet. 8. The state supreme court squarely rejected petitioner's claim.

find that the property *could* be used for cargo operations, which matches precisely respondent's stated use. *Id.* at 98a.[7]

Fourth, petitioner focuses on respondent's intention to operate the port with a private marine terminal operator. See Pet. 3, 8-9, 11, 27-28.

As the state supreme court recognized, a marine terminal operator is "a standard practice" in this industry. Pet. App. 12a n.9. Indeed, it is so standard that the Louisiana Constitution *expressly* authorizes property acquired via eminent domain to be leased to a marine terminal operator. Article I, Section 4(H)(1) permits "leases or operation agreements for port facilities."

The same is true throughout the country. Roughly 90 percent of ports in the United States are managed by private marine terminal operators. R.16-331, V.5 at 1165-1169. Courts have recognized that there is nothing constitutionally significant about a private contractor providing these services for public ports. See, *e.g.*, *Courtesy Sandwich Shop*, 190 N.E.2d 402

---

[7] The supposed tension implicates the proposed liquid cargo operation contemplated as Phase III. Ex. 143A; 2/1/12 Tr. 179. See also Pet. 29. Phase III creates no such tension, however, because the Louisiana Department of Transportation and Development required respondent to remove it and the revenue it might generate from the funding application because it was too speculative. Phase III is also irrelevant to the pretext analysis. Respondent's stated purpose was the broader goal of expanding its cargo capacity, a goal it achieved without a liquid operation.

Thus, when petitioner argued that respondent's valuation case conflicted with the public-purpose analysis, the district court disagreed: "[T]here's been enough testimony in evidence regarding bulk and cargo imports, exports * * * not only liquid tank-type use." R.16-96, V.16 at 3807.

(centralizing port business is not objectionable even though private entities will be the lessees); *Frum* v. *Little Calumet River Basin Dev. Comm'n*, 518 N.E.2d 809, 811 (Ind. Ct. App. 1988) ("[A]uthority to subsequently lease or sell property acquired by eminent domain for port, harbor or marina construction does not convert the nature of the use from a public one to a private one."); *Visina*, 89 N.W.2d at 643-644 (A public port is universally considered a government function, and the "mere fact that some private interest may derive an incidental benefit from the activity does not deprive the activity of its public nature if its primary purpose is public.").

In *Griffin* v. *Bendick*, 463 A.2d 1340 (R.I. 1983), the Rhode Island Supreme Court upheld a condemnation for the purpose of developing a state port facility, stating:

> Griffin's charge that her land was not taken for a public purpose because some of it has been leased to private concerns is unwarranted. It cannot be seriously contended that the development and operation of the port as described above is not a public facility serving a public use or purpose. The trial justice found that any benefits [accruing] to private businesses were incidental to the benefits derived by the public. We concur with this assessment. The public nature of a project is not eradicated because private enterprise becomes involved.

Id. at 1346.

c. Petitioner is also incorrect to suggest any conflict of authority.

Petitioner cites *Rhode Island Economic Development Corp.*, 892 A.2d 87, in support of its argument that respondent's stated motive was pretext. This authority, petitioner argues, shows that a government may not make "similar use" of a taken property. Pet. 24. But this argument rests on petitioner's mistaken quarrel with the fact-finding rendered below. Moreover, that court focused on the "bad faith and retaliatory" motive attributable to the government agency (892 A.2d at 106); nothing remotely comparable occurred here.

Southwestern Illinois Development Authority, 768 N.E.2d at 10, likewise provides no support for petitioner's argument. That case involved a blatantly pretextual scheme where the government "for a fee" would "condemn land at the request of 'private developers' for the 'private use' of developers." *Ibid.* As we have shown, the taking here—to be owned by the government to operate a public port—is nothing of the sort.

This case is also not like *99 Cents Only Stores* v. *Lancaster Redevelopment Agency*, 237 F. Supp. 2d 1123 (C.D. Cal. 2001). There, the taking authority intended to transfer the expropriated property from one private entity to another private entity to develop a store for Costco's own private benefit. The operation of the Costco was not intended to further any government purpose, such as the operation of a public port facility. Unlike here, the taking authority admitted that its sole purpose for the condemnation was to "satisfy the private expansion demands of Costco." *Id*. at 1129.

3. This is not a vehicle to resolve any issue relating to Kelo.

Petitioner closes with complaints about post-*Kelo* law. Pet. 31-33. Whatever the merits of those claims may or may not be, this case decidedly does not involve them.

Louisiana state law provides protections that far exceed *Kelo*: "[E]conomic development" may not be considered in the public-purpose analysis (La. Const. art. I, § 4(B)(3)),[8] property taken via expropriation may not be conveyed to a private entity (*id.* § 4(H)), property may not be taken "for predominant use by any private person or entity" (*id.* § 4(B)(1)), and property may not be taken "for the purpose of operating that enterprise or halting competition with a government enterprise" (*id.* § 4(B)(6)). Moreover, by state statute, respondent may take only that property which it will own. La. Stat. Ann. § 34:1708.

The issues that have caused debate after *Kelo*—such as whether property may be taken and then transferred to private ownership or whether assertions of "economic development" alone constitute "public use"—are not and *cannot* be implicated by this case. In Louisiana, those issues are settled in the property owner's favor. Petitioner lost on the facts, not the law.

Setting all that aside, petitioner has not asked this Court to reconsider *Kelo*. The Court does not consider issues that are not advanced by the party.

---

[8] Suggestions by *amici* that this case presents an opportunity to cabin the scope of "economic development" as a rationale for a taking are thus wrong. Because of the state constitution and the facts of this case, this petition *cannot* present that question.

See, *e.g.*, *Bank of Am., N.A.* v. *Caulkett*, 135 S. Ct. 1995, 1999-2000 & n.* (2015).

CONCLUSION

The Court should deny the petition for a writ of certiorari.

Respectfully submitted.

JAMES M. GARNER
Counsel of Record
JOSHUA S. FORCE
ASHLEY COKER
Sher Garner Cahill Richter Klein & Hilbert, LLC
909 Poydras Street
28th Floor
New Orleans, LA 70112
(504) 299-2102
jgarner@shergarner.com

Counsel for Respondent

SEPTEMBER 2018