IN THE SUPREME COURT OF THE UNITED STATES

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No. 22-1074

GEORGE SHEETZ, PETITIONER

v.

COUNTY OF EL DORADO, CALIFORNIA

_____

ON WRIT OF CERTIORARI
TO THE COURT OF APPEAL OF CALIFORNIA,
THIRD APPELLATE DISTRICT

_____

MOTION OF THE UNITED STATES FOR LEAVE TO
PARTICIPATE IN ORAL ARGUMENT AS AMICUS CURIAE
AND FOR DIVIDED ARGUMENT

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Pursuant to Rule 28 of the Rules of this Court, the Solicitor General, on behalf of the United States, respectfully moves that the United States, as amicus curiae supporting respondent, be granted leave to participate in the oral argument in this case and for divided argument, and respectfully requests that the United States be allowed 10 minutes of argument time. Respondent has consented to this motion and agreed to cede ten minutes of its argument time to the United States. Accordingly, if this motion is granted, the argument time would be divided as follows: 30 minutes for petitioner, 20 minutes for respondent, and 10 minutes

for the United States.

This case presents the question whether the special application of the unconstitutional-conditions doctrine this Court recognized in Nollan v. California Coastal Commission, 483 U.S. 825 (1987), and Dolan v. City of Tigard, 512 U.S. 374 (1994), applies to a generally applicable legislative requirement that applicants for certain types of development permits pay a traffic impact mitigation fee as set forth in a non-discretionary schedule dividing El Dorado County into eight zones and calculating fees based on the type of development. The fee is not paid in lieu of any dedication of an interest in real property.

The United States has filed a brief as amicus curiae in support of respondent. The United States contends that the traffic impact mitigation fee at issue in this case is not subject to the nexus and rough-proportionality requirements this Court adopted in Nollan and Dolan, and applied in Koontz v. St. Johns River Water Management District, 570 U.S. 595 (2013). Specifically, the United States contends that a generally applicable, non-discretionary legislative fee that is not paid in lieu of the dedication of a real-property interest does not implicate the unconstitutional-conditions doctrine because -- unlike the easements (and fee in lieu of an easement) at issue in Nollan, Dolan, and Koontz -- the government could charge the fee at issue here outside of the permitting context without engaging in a taking requiring the payment of just compensation. In addition, the fee here is not assessed

in a discretionary, adjudicatory proceeding.

The United States has a substantial interest in this case. Although the United States does not administer traffic impact mitigation fees comparable to the one at issue here, federal agencies administer programs under federal statutes and regulations that contemplate monetary funding for mitigation activities as a condition of land-related permits. See, e.g., 16 U.S.C. 797(e). More generally, federal agencies impose taxes, assessments, and fees that generally are not considered takings. The United States therefore has a substantial interest in the standards that apply to the review of permitting fees.

The United States has previously presented oral argument in cases involving the Takings Clause. See, e.g., Tyler v. Hennepin County, 598 U.S. 631 (2023); Knick v. Township of Scott, 139 S. Ct. 2612 (2019); Horne v. Department of Agriculture, 576 U.S. 350 (2015); Koontz v. St. Johns River Water Mgmt. Dist., 570 U.S. 595 (2013); Dolan v. City of Tigard, 512 U.S. 374 (1994).

In light of the government's substantial interests in the question presented, we believe that the United States' participation at oral argument could materially assist the Court in its consideration of this case.

Respectfully submitted.

Elizabeth B. Prelogar
Solicitor General
Counsel of Record

DECEMBER 2023