No. 23-1117

IN THE
Supreme Court of the United States

JAMES A. CROWE, ET UX.,
Petitioners,

v.

SAVVY IN, LLC,
Respondent.

On Petition for Writ of Certiorari to the Indiana Supreme Court

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the tax sale of the petitioners' real estate complied with due process under this Court's precedent in *Jones v. Flowers*, 547 U.S. 220 (2006), where the petitioners concede the government provided adequate notice of the tax sale, respondent's multiple notices transmitted to the petitioners' correct address after the tax sale resulted in signature confirmation, none of respondent's certified or first-class mail notices were returned as undelivered, and the petitioners' recurrent tax delinquency predated the COVID-19 pandemic.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Respondent Savvy IN, LLC hereby states that it has no parent corporation and that no publicly held company owns 10% or more of Respondent's stock.

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INTRODUCTION

When petitioners James A. Crowe and Phyllis Lynn Crowe (the "Crowes") stopped paying property taxes on three parcels of real estate (the "Properties"), the county auditor and treasurer sold tax liens for the Properties to Savvy IN, LLC ("Savvy") in the annual tax sale auction, subject to a one year right of redemption. The Crowes conceded that the government transmitted to them constitutionally adequate notice of the tax sale proceedings. By the time Savvy finally acquired tax deeds to the Properties over a year later, it had mailed four separate notices to the Crowes at their correct mailing address informing them of the tax sale and how to redeem their Properties from the sale. None of these notices—two of which required signature confirmation—were returned to Savvy, which indicated to Savvy that all of the notices were successfully delivered to the Crowes. The Indiana Supreme Court held that Savvy's mailed notices satisfied due process because they were reasonably calculated to inform the Crowes of the tax sale under the standard established by this Court in *Jones v. Flowers*, 547 U.S. 220 (2006), and because Savvy's noticing efforts complied with Indiana's tax sale statutes, which codified *Jones*.

The Crowes seek review of that decision, but certiorari is not warranted for three reasons. First, the Indiana Supreme Court correctly applied *Jones* in concluding the Crowes were afforded due process. What the Crowes really seek is a change in the law requiring the property owner to admit to personally

receiving actual notice of the tax sale—a standard which this Court has consistently rejected for several decades. The Court should not be persuaded by the Crowes' blatant mischaracterizations of the record intended to downplay the adequacy of Savvy's mailings and the Crowes' knowledge of the tax sale.

Second, the petition does not present a genuine conflict among the circuits or state courts of last resort. The purportedly conflicting cases referenced in the petition were issued by state intermediate appellate courts. Regardless, these cases are legally inapposite because they do not analyze whether notice of a tax sale satisfied due process under the *Jones* framework or whether the United States Postal Service's ("USPS") temporary signature policies for certified mail during the COVID-19 pandemic (the "pandemic") were constitutional. Also, these other cases are factually distinguishable because the government and Savvy sent multiple rounds of notices to the Crowes and had no reason to believe the Crowes did not receive them.

Third, the petition fails to raise an important question of federal law that should be settled by this Court. Whether the USPS's modified signature policies satisfied due process is not a significant continuing issue of national importance because the pandemic is over and the agency rescinded these temporary policies more than two years ago. A ruling from the Court on this issue will have no prospective effect and would instead jeopardize the validity of innumerable tax sales, foreclosures, and default judgments issued nationwide during the pandemic.

STATEMENT OF THE CASE

A. Indiana's tax sale system

Indiana counties collect real estate taxes from property owners to fund vital public services such as law enforcement, education, and infrastructure. If the taxes due on a parcel[1] of real estate go unpaid, the county may sell the lien for delinquent taxes on the parcel (represented by a tax sale certificate) at a tax sale. Indiana's tax sale system is a hybrid administrative and judicial process, whereby tax liens are sold by county officials at public auction to the highest bidder, subject to a one-year right of redemption by the owner or other interested party. *See* Ind. Code §§ 6-1.1-24-1, -5.

Indiana's tax sale statutes afford property owners with three rounds of notice of the tax sale proceedings. First, the county auditor and treasurer send pre-sale notice of the impending tax sale to the owner at its current mailing address listed in the auditor's records by U.S. certified mail, return receipt requested, and U.S. first-class mail. Ind. Code § 6-1.1-24-4(b). The county auditor also provides pre-sale notice by publication in two local newspapers. Ind. Code 6-1.1-24-3(b); Ind. Code § 5-3-1-4(a). Thereafter, the county auditor and treasurer initiate a judicial proceeding to obtain an order of sale against each tax delinquent property. Ind. Code § 6-1.1-24-4.7. Property owners have the opportunity to be heard and file an objection

[1] Indiana's property tax system operates on a "parcel" basis, whereby separate tracts or items of real property are identified by unique tax parcel numbers.

in court prior to the tax sale. *Id.* The tax sale auction does not confer ownership of the parcel. Instead, the purchaser buys the county's lien for the delinquent taxes, subject to a one-year right of redemption. Ind. Code § 6-1.1-24-5; Ind. Code § 6-1.1-24-9. Second, after the tax sale, the purchaser sends notice of the right of redemption to the owner by certified mail, return receipt requested. Ind. Code § 6-1.1-25-4.5(d).[2] Third, if a parcel is not redeemed, the purchaser notifies the owner by certified mail, return receipt requested, that the purchaser will file a petition with the court to obtain a tax deed to the parcel. Ind. Code § 6-1.1-25-4.6(a). These notices inform owners of the tax sale and their rights to redeem the parcel and file objections with the court. In 2007, the Indiana legislature amended the tax sale noticing statutes in response to this Court's guidance on procedural due process in *Jones*. *See M & M Inv. Grp., LLC v. Ahlemeyer Farms, Inc.*, 994 N.E.2d 1108, 1117 (Ind. 2013) (citing *Jones*, 547 U.S. 220)).

If the parcel is not timely redeemed, the trial court "shall" grant the purchaser's tax deed petition if the purchaser has notified all interested parties in accordance with Indiana's tax sale statutes and otherwise complied with "all the provisions of law entitling it to a tax deed." Ind. Code § 6-1.1-25-4.6(f). The county auditor then issues a tax deed to the purchaser, which ultimately divests the owner of its

[2] The Indiana legislature has delegated the responsibility for sending the post-sale notices for a given parcel to its respective tax sale purchaser, who is held to the same due process standard as the government. *Tax Certificate Invs., Inc.* v. *Smethers*, 714 N.E.2d 131, 134 (Ind. 1999).

interest in the parcel. Ind. Code §§ 6-1.1-25-4.6(f), (k).[3] In sum, there are multiple steps and forms of notice built into Indiana's tax sale process to provide owners with opportunities to pay the delinquent taxes or object in court.

B. Factual background

The Crowes have owned and resided on the Properties since the late 1990s. During this time, they elected to receive property tax statements and tax sale notices at the Properties' mailing address (the "Mailing Address"). In 2018, the Properties were sold in the annual Madison County tax sale (the "2018 Tax Sale"), after the Crowes stopped paying their property taxes in 2017 and 2018. The Crowes admittedly received notices of the sale mailed to their Mailing Address. Mrs. Crowe redeemed the Properties from the sale in April 2019 by paying the delinquent property taxes. Pet. App. 3; Appellee's C.A. App. Vol. II 2-8.

The Crowes again stopped paying their property taxes as they became due in 2019 and 2020. Due to the Properties' tax delinquency, in September 2020, the county auditor ("Auditor") and county treasurer ("Treasurer") (collectively, the "County") certified the Properties for inclusion in the 2020 tax sale (the "2020 Tax Sale"). Before the sale, the County sent the

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[3] In accordance with this Court's decision in *Tyler v. Hennepin Cnty., Minnesota*, 598 U.S. 631 (2023), the owner is entitled to receive the tax sale surplus (i.e., the amount of the purchaser's bid in excess of the tax debt and costs of the sale) upon issuance of the divesting tax deed. *See* Ind. Code § 6-1.1-24-7.

notices required by Ind. Code § 6-1.1-24-4 via certified mail, return receipt requested, and regular first-class mail to the Mailing Address. Pet. App. 3-4. The Crowes do not dispute that the County's pre-sale notices complied with due process and Indiana law. Tr. 11-12.

In response to the COVID-19 pandemic, in March 2020, the USPS temporarily modified its signature policies for certified mail to prevent the spread of the virus by limiting physical contact between the carrier and the recipient. Rather than have the recipient sign the return receipt to indicate successful delivery of the mail, the modified policies instructed the carrier to enter the carrier's initials on the return receipt after confirming the recipient's first and last name. Under the modified policies, the carriers "are not signing for customers, but instead indicating that they have identified the customer to whom the item is being delivered." Pet. App. 4-5, 49-51; Appellants' C.A. Br. at 18. The USPS later rescinded these temporary policies in May 2022 and reinstated its pre-pandemic signature policies requiring the recipient to sign for certified mail. *Id.* at 57.

At the 2020 Tax Sale, Savvy was the highest bidder for the Properties and obtained tax sale certificates for each parcel. Following the sale, Savvy mailed the notices required by Ind. Code § 6-1.1-25-4.5 to the Crowes at their Mailing Address by certified mail, return receipt requested (the "Certified 4.5 Notice"). *Id.* at 4-5. In an abundance of caution and to ensure its noticing efforts complied with *Jones*, Savvy took the additional reasonable step of sending the Crowes

a separate contemporaneous notice of the tax sale by regular first-class mail (the "First-Class 4.5 Notice"). *Id.* The Certified 4.5 Notice was signed for at the Mailing Address by the carrier in accordance with the USPS's modified signature policies. The receipt bears the handwritten notation "HVHR2C79" or "HVHR2C19" and the date of delivery. *Id.* at 48. The First-Class 4.5 Notice was not returned to Savvy, indicating it had been successfully delivered to the Mailing Address. *Id.* at 4-5, 61. The Crowes did not redeem the Properties from the 2020 Tax Sale. *Id.* at 4-5.

C. Procedural background

In December 2021, Savvy filed petitions in the trial court seeking orders directing the Auditor to issue tax deeds for the Properties to Savvy. *Id.* at 5, 59-64. Pursuant to Ind. Code § 6-1.1-25-4.6, Savvy mailed notice of the filing of its petitions to the Crowes at their Mailing Address by certified mail, return receipt requested (the "Certified 4.6 Notice"). *Id.* Again, out of an abundance of caution, Savvy took the additional reasonable step of sending the Crowes a separate contemporaneous notice of the filing of the tax deed petitions by regular first-class mail (the "First-Class 4.6 Notice"). *Id.* The Certified 4.6 Notice was signed for at the Mailing Address by an individual with an illegible signature. *Id.* at 46. The First-Class 4.6 Notice was not returned to Savvy, again indicating all notices were successfully delivered to the Mailing Address. *Id.* at 5, 65-66.

The Crowes did not object to Savvy's petitions. In January 2022, the trial court issued orders granting

Savvy's petitions for tax deeds (collectively, the "Orders for Tax Deed"). The Auditor subsequently issued tax deeds for the Properties to Savvy. *Id.* at 5

In February 2022, the Crowes filed motions to set aside the Orders for Tax Deed pursuant to Ind. Trial Rule 60(B). *Id.* at 5. The trial court held an evidentiary hearing on the Crowes' motions, at which the Crowes both testified. *Id.* at 5-6. The Crowes claimed they did not personally receive or sign for any of the nine (9) mailings sent by the County and Savvy between 2019 and 2021 regarding the Properties' tax statements and the 2020 Tax Sale. *Id.* at 5-6, 21-22; Tr. 31-33. Mrs. Crowe testified that they believed they did not need to pay property taxes in 2019 and 2020 because, when she redeemed the Properties from the 2018 Tax Sale, the Auditor told her that she "didn't owe anymore property taxes." Pet. App. 24; Tr. 30. Also during the hearing, the Crowes' counsel conceded that the County's pre-sale notices satisfied due process when counsel clarified that the adequacy of the County's notices "is not any of the basis for our motion for relief." Tr. 11-12. The trial court did not find the Crowes' explanations to be credible or supported by the evidence, and it denied their motions. Pet. App. 6, 32-33.

The Indiana Court of Appeals reversed. *Id.* at 19. The court reasoned that due process required the Crowes to receive actual notice of the 2020 Tax Sale in order for Savvy to obtain tax deeds for the Properties. *Id.* at 30-31. Based on the Crowes' claims that they did not receive or sign for Savvy's notices, the court held that "equity and due process require"

that the Crowes receive an additional 30 days to redeem the Properties. *Id.*

Savvy sought transfer to the Indiana Supreme Court. That court granted transfer, vacated the court of appeals' decision, and affirmed the trial court's orders issuing tax deeds to Savvy. *Id.* at 3. The Indiana Supreme Court held that Savvy "complied with federal due process and state statutory requirements" for notifying the Crowes of the 2020 Tax Sale. *Id.* at 8. The court noted that the court of appeals erroneously declined to engage in the due process analysis applicable to tax sale noticing as required under this Court's holding in *Jones*, 547 U.S. at 223. *Id.* at 6. Because none of Savvy's notices mailed to the Crowes were returned as undeliverable, the Indiana Supreme Court concluded that Savvy was not required to take even further "additional reasonable steps" to notify the Crowes of the 2020 Tax Sale, despite the Crowes' claims that they did not personally receive notice of the sale. *Id.* at 13-14.

REASONS TO DENY THE PETITION

I. The Indiana Supreme Court correctly applied *Jones*.

The Crowes' petition is largely a request for error correction because "the decision below is wrong." Pet. 38. As this Court's rules clarify, certiorari is "rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." Sup. Ct. R. 10. "[E]rror correction . . . is outside the mainstream of the Court's functions and . . . not among the 'compelling reasons' . . . that

govern the grant of certiorari." *Tolan v. Cotton*, 572 U.S. 650, 661 (2014) (Alito, J., concurring) (quoting Stephen M. Shapiro et al., *Supreme Court Practice* § 5.12(c)(3), p. 352 (10th ed. 2013)). Thus, even if the Indiana Supreme Court erred in applying the *Jones* due process framework to the facts of this case, that would not justify this Court's review.

Should this Court entertain the Crowes' request for error correction review, it should conclude that the Indiana Supreme Court correctly held that Savvy's efforts to notify the Crowes of the tax sale satisfied due process. Further, this Court should not be misled into granting the petition based on the Crowes' obfuscatory misrepresentations of the record.

A. Savvy's multiple notices to the Crowes' correct address satisfied due process.

The due process analysis in this case is squarely governed by this Court's decision in *Jones*, 547 U.S. 220. In *Jones*, the government attempted to notify the owner that his property had been sold at tax sale by sending two certified mailings to the property and publishing notice in a local newspaper. *Id.* at 223-24. Because the owner had moved to a different address, he did not receive either of the certified mailings, which were both returned to the government as "unclaimed." *Id.* When the owner discovered the property had been sold at tax sale, he sued the government and the tax sale purchaser claiming they failed to provide him constitutionally adequate notice of the sale. *Id.* at 224. The trial court entered judgment in favor of the government and purchaser, and the state appellate courts affirmed. *Id.* at 224-25.

This Court granted certiorari to address "whether the Due Process Clause requires the government to take additional reasonable steps to notify a property owner when notice of a tax sale is returned undelivered." *Id.* at 225.

This Court began its analysis by reiterating that the Due Process Clause of the Fourteenth Amendment "does not require that a property owner receive actual notice before the government may take his property" in a tax sale. *Id.* at 226 (citing *Dusenbery v. United States*, 534 U.S. 161, 170 (2002)). Instead, due process requires only that the government provide "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." *Id.* (citing *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950)). The adequacy of a given notice is measured by balancing the government's interest in collecting taxes against the owner's due process rights. *Id.* at 229 (citing *Mullane*, 339 U.S. at 314). Moreover, this Court acknowledged its "ample precedent condoning notice by mail." *Id.* at 226 (citing *Dusenbery*, 534 U.S. at 169; *Tulsa Pro. Collection Servs., Inc. v. Pope*, 485 U.S. 478, 490 (1988); *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 798 (1983); *Mullane*, 339 U.S. at 318-19).

Jones ultimately held that "when mailed notice of a tax sale is returned unclaimed, the State must take additional reasonable steps to attempt to provide notice to the property owner before selling his property, if it is practicable to do so." *Id.* at 225.

Because the government in *Jones* did "nothing" upon learning the owner had not received the certified mail notices, its effort to notify the owner of the tax sale was "insufficient to satisfy due process given the circumstances of this case." *Id.* at 234, 239. However, the Court explained that an additional reasonable step the government could have taken to notify the owner of the tax sale would have been to "resend the notice by regular mail, so that a signature was not required." *Id.* at 234. According to *Jones*, sending the notice by regular first-class mail is reasonable because it (a) allows the recipient to receive the notice if they are "not home when the postman called and did not retrieve the letter at the post office" and (b) could uncover a forwarding address for the owner, which "increase[s] the chances of actual notice to [the owner] if—as it turned out—he had moved." *Id.* at 234-35.

Here, the Indiana Supreme Court properly applied *Jones* in holding that Savvy's mailed notices satisfied due process. The court clarified that it would not "conduct an inquiry into whether the Crowes **actually received the notice** they claim not to have received." Pet. App. 13. Rather, it focused on whether Savvy acted "'as one desirous of actually informing' the Crowes that their property was sold at the tax sale and the tax deeds had issued." *Id.* (quoting *Marion Cnty. Auditor v. Sawmill Creek, LLC*, 964 N.E.2d 213, 219 (Ind. 2012) (quoting *Mullane*, 339 U.S. at 229)). The court observed that all of Savvy's certified and first-class mailed notices were sent to the Crowes' correct mailing address, and the Crowes failed to present evidence that any of these mailings were returned to Savvy as undelivered. *Id.* at 13-14. As a

result, the court reasoned that Savvy was "not constitutionally required to speculate whether notice was sufficient because the mailings indicate actual delivery at the Crowes' address." *Id.* at 14.[4]

The Crowes were afforded much greater notice of the tax sale than the owner in *Jones*. Whereas the owner in *Jones* received only two mailed notices of the tax sale, the Crowes were sent a total of six mailed notices of the tax sale throughout three separate rounds of noticing before and after the sale. Unlike the owner in *Jones*, the Crowes concede that the first round of notices sent by the County satisfied due process. Tr. 11-12. As for the second and third rounds of notices, unlike the government's notices in *Jones*, Savvy's certified mailings were not returned as "unclaimed," but instead received signature confirmation. *Jones*, 547 U.S. at 225; Pet. App. 46, 48. Even assuming the return receipts on these certified mailings gave Savvy cause to believe the Crowes had not received them, Savvy nonetheless took an "additional reasonable step" to notify the Crowes by mailing separate notices by regular first-class mail—which the government did not do in *Jones*—and these regular mailings were also not returned as unclaimed or undelivered. *See Jones*, 547 U.S. at 234-35. Because none of Savvy's mailed notices were returned or unclaimed, it had no reason to believe the Crowes had not received them. And crucially, unlike the taxpayer in *Jones*, the Crowes have not moved from the Properties and have never proposed an alternate

[4] The Crowes do not challenge the Indiana Supreme Court's separate conclusion that Savvy also satisfied its noticing obligations under Indiana law. *See* Pet. App. 14-16.

mailing address where the Crowes would have received Savvy's notices had it mailed them there instead of the Mailing Address. On this record, Savvy's noticing efforts went far and above what *Jones* requires and undoubtedly complied with due process.

B. The Crowes misrepresent the record in the effort to induce this Court to grant their petition.

Realizing they cannot prevail on the facts of this case, the Crowes misrepresent four key details in the record in an attempt to downplay the adequacy of Savvy's mailed notices and the Crowes' knowledge of the tax sale. The Crowes' efforts to mischaracterize the record are simply an unabashed plea for this Court to reweigh the evidence and credibility of witnesses. The Court should not be persuaded by this chicanery.

First, the Crowes repeatedly claim that Savvy's first-class mailed notices were returned to Savvy as undelivered. Pet. i, 2, 9, 22-25, 28, 38-39. This assertion is plainly contradicted by the verified statements from Savvy's attorney in Savvy's court filings. Pet. App. 59-66; Appellants' C.A. App. Vol. II 9-25.[5] In Savvy's tax deed petitions for each parcel, its attorney stated under oath that he mailed notice of the tax sale to the Crowes as required by Ind. Code § 6-1.1-25-4.5 by certified mail and "via regular mail."

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[5] Under Ind. Trial Rule 11(C), pleadings that are verified under oath "shall be accepted as a representation that the signer had personal knowledge thereof" and are admissible "as evidence of the facts or matters stated or alleged therein."

Id. at 60-61, ¶¶ 6(a)-(b). Savvy's attorney then stated that the return receipts and returned envelopes for the certified mailings—not the first-class mailings—"are attached to this petition," and he attached the certified mail return receipts and envelopes to each petition. *Id.* at 60 ¶6(a). Each petition further states that Savvy's attorney mailed notice of the filing of the petition to the Crowes as required by Ind. Code § 6-1.1-25-4.6 by certified mail and "via regular mail" and that he would file supplemental pleadings with the court informing it of the results of these mailings for each parcel. *Id.* at 61, ¶¶ 6(c)-(d). Savvy's attorney filed these supplemental pleadings in January 2022 and attached copies of the notices, certified mail return receipts, and "all returned envelopes." *Id.* at 65-66. Savvy's attorney did not attach any returned first-class mail envelopes to any of its tax deed petitions or supplemental filings. Appellants' C.A. App. Vol. II 9-25; Appellees' C.A. App. Vo. II 13-46.

Contrary to the Crowes' bald assertions, none of Savvy's pleadings indicate that its first-class mailings were returned as undelivered. The photographs of the first-class envelopes contained in the appendix (Pet. App. 45, 47) depict the envelopes *before* they were mailed to show proof of transmission. Had these first-class mail envelopes been returned to Savvy, there would be a yellow NIXIE label and writing on the envelopes informing Savvy why the mailings were not delivered, such as "unclaimed," "return to sender," or "undeliverable." The fact that Savvy did not possess any returned first-class mailings that it could attach to its petition is itself evidence that the Crowes received them. The trial court accepted Savvy's

representations that its first-class mailings were not returned, and the Indiana Supreme Court did not disturb this factual finding on appeal. *Id.* at 5, 32-33. This Court should do the same.

Second, the Crowes claim that Savvy's certified mail notices were returned "with only notations by a mail carrier and/or a line through the signature block." Pet. i, 1, 7-8, 38-39. To the contrary, the return receipt for the Certified 4.6 Notice contains the signature of a person other than the postal carrier who received the mail at the Crowes' Mailing Address. Pet. App. 46. In the absence of any evidence that someone other than the Crowes lives at the Properties, this physical signature strongly suggests that the Crowes signed for and received the Certified 4.6 Mailing.

Third, the Crowes maintain they did not receive any notice of the 2020 Tax Sale until after the tax deeds had been issued to Savvy. Pet. 7, 12-13. Yet, they do not dispute that the County satisfied its noticing requirements under *Jones* and Ind. Code § 6-1.1-24-4 when it mailed pre-sale notice of the sale to the Mailing Address by certified mail and first-class mail. *See* Pet. App. 4; Appellee's C.A. App. Vol. II 9-12; Tr. 11-12. By failing to challenge the adequacy of the County's notices—which were sent to the same address and in the same manner as Savvy's notices—the Crowes tacitly concede they received them. The Crowes explanations for why they failed to personally receive or act on multiple rounds of property tax notices over several years are factually incoherent and bely common sense.

Fourth, the Crowes claim that the Properties were previously sold at a tax sale in 2019, when in fact they were previously sold at the 2018 Tax Sale. Pet. 11, 13-14; Appellee's C.A. App. Vol. II 2-8. The Crowes have repeatedly misstated this fact at every stage of this litigation to give the false impression that the Properties were sold again in the 2020 Tax Sale shortly after Mrs. Crowe redeemed them from the prior tax sale and believed she had paid all the taxes owed. *See* Tr. 9, 21-22, 25; Appellants' C.A. Br. 9; Appellants' C.A. App. Vol. II 40. This timeline is flatly contradicted by the records of the 2018 Tax Sale and the Crowes' own trial testimony, which reveal that Mrs. Crowe redeemed the Properties in April 2019—more than 16 months before the Properties were again sold in the September 2020 Tax Sale. Appellee's C.A. App. Vol. II 2-8; Tr. 21, 30. Indiana law does not permit a parcel to be sold in the annual fall tax sale, redeemed from the sale, and then sold again in the following year's tax sale. *See MJ Acquisitions, Inc. v. Tec Invs., LLC*, 863 N.E.2d 379, 384 (Ind. Ct. App. 2007) (citing Ind. Code § 6-1.1-24-1). The Crowes could not reasonably believe that redeeming their property from a tax sale on a single occasion would forever relieve them of their duty to pay property taxes. The trial court did not find the Crowes' explanations for their failure to pay property taxes to be credible, and this Court should not reassess their credibility and reweigh the evidence.

II. The Indiana Supreme Court's decision does not conflict with a decision of any court.

A. The petition does not present a conflict among the circuits or state courts of last resort.

Certiorari is generally warranted when a decision from a state court of last resort "has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals." *See* Sup. Ct. R. 10(b). Conversely, certiorari is rarely justified when the purported conflict stems solely from decisions of state intermediate appellate courts. *See Thomas v. Am. Home Prods., Inc.*, 519 U.S. 913, 916 (1996) (Rehnquist, C.J., dissenting) ("There is clearly no conflict between courts of appeals in this case, nor do petitioners claim that the Court of Appeals for the Eleventh Circuit has decided a federal question in a way which conflicts with a state court of last resort."). Before accepting review of a "wide-ranging issue" arising under federal law, this Court should, "at a minimum, have the benefit of the thinking of lower federal courts on [the] problem." *Triangle Improvement Council v. Ritchie*, 402 U.S. 497, 501 (1971) (Harlan, J., concurring).

The Crowes' petition asks this Court to accept review because the Indiana Supreme Court's decision conflicts with the decisions of two state intermediate appellate courts in Ohio and Pennsylvania that, according to the Crowes, held that "COVID-19 return mail notices do not provide due process." Pet. 31 (citing *CUC Props. VI, LLC v. Smartlink Ventures,*

Inc., 178 N.E.3d 556 (Ohio Ct. App. 2021) and *Williams v. Cnty. of Monroe*, 303 A.3d 1098 (Pa. Commw. Ct. 2023)). The Court should reject this argument for the simple reason that neither of these cases were decided by a United States court of appeals or a state court of last resort.

B. The purportedly conflicting cases are legally and factually inapposite.

Should this Court consider these state intermediate appellate court decisions, it should conclude they do not genuinely conflict with the Indiana Supreme Court's decision. Moreover, this Court should consider decisions from other lower courts that comport with the Indiana Supreme Court's conclusion.

In *CUC*, the Ohio Court of Appeals vacated a default judgment entered against the defendant in landlord-tenant dispute where the complaint and summons were mailed to the defendant by certified mail but the carrier wrote "Covid 19" and "C19" on the return receipt instead of obtaining the recipient's physical signature. 178 N.E.3d at 558. But the court clarified that the sole issue presented on appeal was "a narrow one," namely whether the carrier's markings "constitute a valid signature under [Ohio] Civ.R. 4.1(A)(1)(a), thereby granting the trial court personal jurisdiction over the defendant." *Id.* at 559. The court concluded that the carrier's notation "does not constitute a valid signature under [Ohio] Civ.R. 4.1(A)," which requires that service by certified mail be "[e]videnced by return receipt signed by any person." *Id.* at 560-62.

CUC is readily distinguishable because it is not a tax sale due process case and, thus, is not governed by *Jones*. A tax sale proceeding in Ohio, like in Indiana, is an *in rem* action against the parcel of real estate sold in the tax sale. *See Hunter v. Grier*, 180 N.E.2d 603, 605 (Ohio 1962) ("[I]n this state and in other jurisdictions a proceeding to foreclose a tax lien is essentially one in rem and not in personam; it operates on the land itself and not on the title of the one in whose name the property is listed for taxation."). As a result, tax sale proceedings are governed by the tax sale statutes, not the rules of civil/trial procedure applicable to in personam actions. *See Badawi v. Orth*, 955 N.E.2d 849, 853 (Ind. Ct. App. 2011) ("The sending of tax sale notices is governed by statute, and the fact that the Indiana Supreme Court has set out a different procedure in the trial rules for service of process . . . is of no moment."). In this same vein, *Jones* recognized that in tax sale cases "[d]ue process does not require that a property owner receive actual notice before the government may take his property." *Jones*, 548 U.S. at 226. In contrast, the landlord-tenant action in *CUC* was squarely governed by Ohio's rules of civil procedure. *See CUC*, 178 N.E.3d at 559-62. Accordingly, the *CUC* court's analysis is not relevant to determining whether Savvy's tax sale notices satisfied this Court's standard in *Jones* and Indiana's tax sale statutes.

Additionally, the facts in *CUC* are not comparable to the instant case given the substantial noticing efforts undertaken by Savvy and the results of those notices. The plaintiff in *CUC* attempted to serve the pleadings on the defendant via a single certified

mailing. *Id.* at 558. As discussed in Section I.A *supra*, the Crowes were sent six separate mailings informing them of the 2020 Tax Sale. All of Savvy's certified mailings received signature confirmation, including the Certified 4.6 Notice which was signed by someone other than the postal carrier. And unlike the *CUC* plaintiff, Savvy sent multiple additional notices by regular first-class mail, none of which were returned to Savvy as undelivered. Savvy's efforts to comply with due process far exceed those undertaken by the plaintiff in *CUC*.

Williams is likewise distinguishable, despite being a tax sale case. In *Williams*, the county's tax claim bureau (the "Bureau") attempted to inform the property owner of the upcoming tax sale by sending her a single notice by certified mail. 303 A.3d at 1099-1100. The return receipt for the certified mailing had the owner's first initial and last name printed in the signature box and "Covid 19 RT 41" in the "Received by" box, but did not contain the owner's physical signature. *Id.* The owner failed to pay the delinquent taxes before the date of the tax sale, and the trial court denied her petition to set aside the tax sale. *Id.*

On appeal, the Commonwealth Court of Pennsylvania reversed because "the Bureau failed to comply with its statutory notice obligations" under Pennsylvania's Real Estate Tax Sale Law, 72 Pa. Stat. and Cons. Stat. §§ 5860.101-5860.803. *Id.* at 1103-04. One such Pennsylvania statute requires the Bureau to give notice of the tax sale to the owner by certified mail, return receipt requested, at least 30 days before the sale. *Id.* at 1100 (citing 72 Pa. Stat. and Cons. Stat.

§ 5860.602(e)(1)). The statute further provides that "[i]f return receipt is not received" from the owner, then the Bureau must send "similar notice of the sale . . . by United States first class mail . . . at [the owner's] last known post office address by virtue of the knowledge and information possessed by" the Bureau and various other government offices. *Id.* at 1100-01 (citing 72 Pa. Stat. and Cons. Stat. § 5860.602(e)(2)). Another state statute provides that where mailed notification of the tax sale "is either returned without the required receipted personal signature of the addressee or under other circumstances raising a significant doubt as to the actual receipt of such notification by the named addressee," then the Bureau "must exercise reasonable efforts to discover the whereabouts of [the owner] and notify him" before the tax sale. *Id.* (citing 72 Pa. Stat. and Cons. Stat. § 5860.607a) (emphasis omitted). Such efforts "shall include, but not necessarily be restricted to," searching telephone directories and the records of the Bureau, county tax assessor, and county recorder. *Id.* (citing 72 Pa. Stat. and Cons. Stat. § 5860.607a) (emphasis omitted). The *Williams* court ultimately held in favor of the property owner because the Bureau fell short of its statutory obligations by not making "reasonable efforts to locate Williams and serve her with advance notice of the tax sale" after its sole certified mailing was returned without the owner's signature. *Id.* at 1103-04.

Williams is inapposite because unlike the government in that case, Savvy satisfied its statutory noticing obligations under Indiana's tax sale statutes. The Crowes do not dispute the Indiana Supreme

Court's holding that Savvy served them with notice of the tax sale proceedings in compliance with Ind. Code §§ 6-1.1-25-4.5 and -4.6. *See* Pet. App. 14-16. Like the *CUC* court, the *Williams* court decided the case on an independent state law ground instead of the constitutional due process principles set forth in *Jones*. But even if Pennsylvania's statutes applied here, Savvy would have satisfied them because it also mailed two separate notices to the Crowes by regular first-class mail. Because Savvy's first-class notices, like its certified notices, were sent to the correct mailing address and were not returned as undeliverable, there were no "circumstances raising a significant doubt as to [their] actual receipt." *See* 72 Pa. Stat. and Cons. Stat. § 5860.607a. Under these facts, Savvy's noticing efforts were much more reasonably calculated to inform the Crowes of the tax sale than the Bureau's efforts in *Williams*.

Further, federal district courts from around the country have analyzed this issue in a manner consistent with the Indiana Supreme Court. For example, in *Batler v. Mellinger*, the United States District Court for the Southern District of Indiana has held that the USPS's modified signature policies for certified mail during the pandemic satisfied due process and complied with Rule 4 of the Indiana Rules of Trial Procedure, which permits a plaintiff to serve a defendant with a complaint and summons by certified mail. No. 1:21-cv-28, 2021 WL 3029729 (S.D. Ind. July 16, 2021). The court reasoned that the USPS's requirement that its carriers request the first initial and last name from the recipient "strongly indicates that it continued the process of certification,

and temporarily suspended only the requirement to obtain a customer signature." *Id.* The court rejected the defendants' arguments that they did not sign for certified mail notice, which had return receipts containing the carrier's handwritten notation "TM 1613," because the defendants failed to establish that the USPS "abandoned the certification process altogether." *Id.* at *4. Even if the mailings were "technically deficient in some regard," the court concluded that they were nevertheless reasonably calculated under the circumstances of the pandemic to apprise the defendants of the action. *Id.* at *5.

Other lower courts have likewise upheld service of process obtained using the USPS's pandemic-era signature policies. In *Killing v. Craft Automotive Repair, LLC*, the United States District Court for the Northern District of Ohio recognized that while "some courts in Ohio have held that a postal carrier's notation of 'COVID-19' or 'C-19' does not satisfy" the signature requirement of Ohio Civ.R. 4.1(A)(1), "[o]ther courts in Ohio, however, have held that a 'C-19' designation in lieu of a signature on the receipt does not automatically deem service improper." No. 4:21-cv-507, 2023 WL 5487053, at *8 (N.D. Ohio Aug. 23, 2023) (citing in part *Lloyd v. Cannon*, No. 4:21-cv-1476, 2022 WL 5161424, at *4 (N.D. Ohio Oct. 5, 2022) and *Progressive Direct Ins. Co. v. Williams*, 186 N.E.3d 337, 342 (Ohio Ct. App. 2022)). The *Killing* court found sufficient evidence that the plaintiff had obtained service on an individual defendant, who was the registered agent for a corporate defendant, because the certified mail receipt stated "Covid-19" and the envelope was left with an individual at the

corporate defendant's address. *Id.* Additionally, in *Macias v. Grange Insurance Co.*, the United States District Court for the Western District of Louisiana denied a defendant's motion to dismiss plaintiff's complaint for lack of service where the certified mail return receipt stated "ST 102 C19" and plaintiff provided other evidence that the mailing had been delivered to the defendant at the listed address. 2:20-cv-170, 2020 WL 4913215, at *2 (W.D. La. Aug. 20, 2020).

Crucially, the Crowes fail to cite to a decision from any court stating that the USPS's pandemic-era signature policies for certified mail are unconstitutional. Nor do the Crowes cite any case in which a court conducted a *Jones* due process analysis or in which the sender successfully mailed a first-class notice to the other party's correct mailing address. Instead, the lower court decisions discussed above indicate that the adequacy of service obtained under the USPS's pandemic-era signature polices is highly dependent on the applicable statutes or court rules and the facts of a given case. In the absence of another relevant opinion from a United States court of appeals or state court of last resort, this Court should exercise restraint in weighing in on the constitutional questions posed in the petition.

III. This petition does not present an issue of significant continuing national importance.

The petition alleges this case "is of national importance" because it concerns "the effect of the [USPS's] altered signature policy during COVID-19 as it affects property rights of landowners in tax sales." Pet. 2. Certiorari is not warranted to address this issue because, as the Crowes acknowledge, the pandemic is over. Pet. 1, n.1. Thus, a ruling from this Court on the constitutionality of the USPS's pandemic-era signature policies will have no prospective impact. Instead, such an unnecessary ruling would endanger the validity of innumerable default judgments issued throughout the country in reliance on certified mail service during the pandemic.

In deciding whether certiorari is warranted to address a novel issue, this Court focuses on whether the lower court "has decided an important question of federal law that has not been, but should be, settled by this Court." Sup. Ct. R. 10(c). Consistent with this principle, this Court should decline to exercise its powers of review when doing so "would be of no significant continuing national import." *Ritchie*, 402 U.S. at 499 (1971) (Harlan, J., concurring). It is a "long-established rule that this Court will not 'formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied.'" *Kremens v. Bartley*, 431 U.S. 119, 136 (1977) (quoting *Liverpool, N.Y. & Phila. Steam-Ship Co. v. Comm'rs of Emigration*, 113 U.S. 33, 39 (1885)). Moreover, fundamental principles of judicial restraint and separation of powers caution against granting

certiorari to adjudicate the constitutionality of an executive agency's internal policy that has since been rescinded. *See Diffenderfer v. Cent. Baptist Church of Miami, Fla., Inc.*, 404 U.S. 412, 414-15 (1972) (per curiam) (repeal of statute during pendency of appeal rendered case moot).

The instant dispute presents no such question of significant continuing national importance because the USPS rescinded the policies at issue over two years ago. This "temporary modification" to the agency's signature policies for certified mail was implemented by an "Industry Alert" issued on March 20, 2020 in response to the health risks associated with the pandemic. Pet. App. 49-50. The purpose of requiring carriers to sign the return receipt instead of the customer was to "maintain social distancing" and "reduce health risks" associated with the virus. *Id.* But on May 6, 2022, the USPS issued another "Industry Alert" that "supersede[d] the March 20, 2020, Industry Alert on the customer signature capture process." *Id.* at 57. The new alert stated that the agency's prior, temporary modification to its signature policies was "rescinded" effective March 31, 2022, and that "all USPS delivery personnel must capture customers' signatures for special services mail requiring a signature." *Id.* The alert clarified, "Customers must sign and accept all special services mail if a signature is required. . . . USPS employees can no longer perform the customer signature capture function for the recipient." *Id.*

Because the USPS's pandemic-era signature policies for certified mail are no longer in effect, this

Court need not, and should not, address whether they were constitutional. The Crowes have not supplied any evidence that the USPS will reinstitute its pandemic-era signature policies in the future. *See The Wilderness Soc'y v. Kane Cnty., Utah*, 632 F.3d 1162, 1176 (10th Cir. 2011) (Gorsuch, J., concurring) (declining to address the constitutionality of a defunct ordinance just to "decide the fate of a new and different ordinance raising new and different legal and factual questions in a different lawsuit at some later date"). Instead, granting the petition would result in "a ruling that would have no effect in the world we now inhabit but would serve only to satisfy the curiosity of the litigants about a world that once was and is no more." *Wyoming v. United States Dep't of Interior*, 587 F.3d 1245, 1253 (10th Cir. 2009) (Gorsuch, J.).

This Court has good reason not to reopen a debate on the constitutionality of the USPS's old signature policies. A holding contrary to the Indiana Supreme Court's decision below could prove catastrophic for the property tax collection efforts of local governments in Indiana and throughout the country. The Indiana legislature, like many state legislatures, mandated the use of certified mail to notify property owners of the tax sale during the pandemic. *See* Ind. Code §§ 6-1.1-24-4(b), -25-4.5(d), and -25-4.6(a). If the Crowes are permitted to set aside the tax deeds issued to Savvy, any other owner whose property was sold at a tax sale during the pandemic could likewise set aside a tax deed by claiming, as the Crowes have, that they never actually signed for the certified mailings informing them of the tax sale. More broadly, a ruling

in the Crowes' favor would jeopardize any default judgment issued in any case (not just in the tax sale context) where the defaulted defendant was served by certified mail during the pandemic. *See Siebert Oxidermo, Inc. v. Shields*, 446 N.E.2d 332, 334, 339-40 (Ind. 1983) (default judgment may be entered against a party who was served by certified mail in accordance with Ind. Trial Rule 4). This Court should avoid unnecessarily opening a Pandora's box of constitutional challenges to innumerable tax deeds and default judgments.

At bottom, whether Savvy's noticing efforts satisfied due process does not depend on the constitutionality of, or whether Savvy complied with, the USPS's pandemic-era signature policies for certified mail. Under *Jones*, it makes no difference whether the Crowes actually received Savvy's certified mailings because Savvy's first-class mailings sent to the same, correct mailing address *were not returned as undelivered*. Thus, even if Savvy stipulated that its certified mailings were not successfully delivered, it's noticing efforts would still have been reasonably calculated under the circumstances to inform the Crowes of the tax sale proceedings. Because *Jones* provided an adequate framework to protect property owners' due process rights in tax sales that were held during the pandemic, this Court should rest on its precedent and deny the petition.

CONCLUSION

The petition should be denied.

Respectfully submitted,

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June 12, 2024