No.

# In the Supreme Court of the United States

CHELSEA KOETTER,

*Petitioner*,

*v.*

MANISTEE COUNTY TREASURER,

*Respondent*.

*On Petition For A Writ Of Certiorari To The Michigan Court of Appeals*

## PETITION FOR A WRIT OF CERTIORARI

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## QUESTIONS PRESENTED

The Manistee County Treasurer foreclosed and sold Chelsea Koetter's home for $106,000 to collect $3,863.40 in taxes, interest, and fees. The Takings Clause requires the government to return the surplus proceeds—$102,636—from the sale to avoid an unconstitutional taking. *Tyler v. Hennepin Cnty.*, 598 U.S. 631 (2023). But the County kept it all pursuant to Mich. Comp. Laws § 211.78t, which gives the proceeds to the County if, weeks before the sale, the property owner fails to properly notify the government of her desire to be paid for her property. Federal and state courts in Michigan allow this end-run around *Tyler* based on *dicta* in *Nelson v. City of New York*, 352 U.S. 103 (1956). As a result, only about 5% of Michigan tax debtors successfully navigate the statute's procedures. The statute violates due process and flouts the government's "constitutional duty" to make "reasonable, certain, and adequate provision for obtaining compensation." *Cherokee Nation v. S. Kan. Ry. Co.*, 135 U.S. 641, 658 (1890). The questions presented are:

1. Does the government violate the Due Process or Takings Clause by denying just compensation to property owners who miss a narrow and premature window to preserve their right to just compensation?
2. To the extent it authorizes Michigan's confiscatory claim statute, should the Court overrule *Nelson v. City of New York*?

## PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Petitioner Chelsea Koetter was defendant-appellant in the proceedings below.

Respondent Manistee County Treasurer was plaintiff-appellee below.

Respondent Ann Culp was defendant-appellant in the proceeding below.

## STATEMENT OF RELATED CASES

These proceedings are directly related to the above-captioned case under Rule 14.1(b)(iii):

*In re Petition of Manistee County Treasurer for Foreclosure*, No. 167367 (Mich. Jan. 31, 2025)

*In re Petition of Manistee County Treasurer for Foreclosure*, No. 363723 (Mich. Ct. App. June 13, 2024)

*In the Matter of the Petition of Manistee County Treasurer for the Foreclosures of Certain Parcels of Property Due to Unpaid 2018 and Prior Years' Taxes, Interest, Penalties, and Fees*, No. 20-17073-CZ (Manistee County Circuit Court Aug. 10, 2021).

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## PETITION FOR A WRIT OF CERTIORARI

*Tyler v. Hennepin County*, 598 U.S. 631, 639 (2023), held that the government violates the Takings Clause when it confiscates more property than necessary to collect delinquent property taxes, penalties, interest, and fees. *Id.* at 647. But five states continue to regularly take more than what is owed by denying compensation to owners who do not successfully navigate the government's unreasonable procedures to recover the excess value of their property.[1] When owners do not strictly comply with those states' first step of the claim process—staking their claim to their own money *weeks before the property is even sold*—the government confiscates the whole property. For most owners in these states, *Tyler*'s promise remains unfulfilled as the government continues to withhold just compensation.

Here, Petitioner Chelsea Koetter mistakenly failed to pay part of the 2018 taxes on her home. Although she paid her 2019 and 2020 taxes in full, the Manistee County Treasurer (County) foreclosed to collect approximately $1,200 in overdue 2018 taxes. App. 42a, 58a. After rejecting Koetter's tardy attempt to redeem the property, it sold her home for $106,000. App. 5a. The County kept it all—$102,636 more than taxes, penalties, interest, and costs—because Koetter was eight days late filing an administrative claim form preserving her statutory right to be paid for her property. Koetter's compliance with every other

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[1] *See* Ala. Code § 40-10-197(i)(1)(b), (e)(1)(v); Ariz. Rev. Stat. §§ 42-18204(B), 42-18231-36; MCL § 211.78t; *257-261 20th Ave., Realty, LLC v. Roberto*, 259 N.J. 417, 434 (2025) (describing new process); N.Y. Real Prop. Tax Law §§ 1136(3), 1197(4).

aspect of the claims statute was for nought. The lower court upheld this injustice based on *dicta* in *Nelson v. City of New York*, 352 U.S. 103, 110 (1956). *Nelson* suggested that a brief opportunity during the foreclosure action to preserve a right to be paid for the excess value of foreclosed property defeats a takings claim. The court below upheld the taking of Koetter's surplus proceeds and rejected her claims under the Takings and Due Process Clauses, based on *Nelson*. App. 11a, 14a (relying on *In re Muskegon Cnty. Treasurer for Foreclosure*, No. 363764, __ N.W.3d __, 2023 WL 7093961 (Mich. Ct. App. Oct. 26, 2023) (construing *Nelson*)), *petition for writ of certiorari pending sub nom. Beeman v. Muskegon County Treasurer*, No. 24-858; *accord Hathon v. Michigan*, 17 N.W.3d 686, 686 n.1 (Mich. 2025) (following *Muskegon* in holding the claim statute is the exclusive remedy for recovering surplus proceeds).

This case asks the Court to reject *Nelson*'s takings analysis as *dicta* or to reconsider and overturn it. Debt collectors who seize property to collect a debt are bound by a fiduciary duty to fairly sell the property and make a good faith effort to return the money to the owner. The claim statute here strays from that traditional duty to give the government a windfall. Moreover, the Takings Clause promises owners "reasonable, certain, and adequate provision for obtaining compensation." *Cherokee Nation v. S. Kan. Ry. Co.*, 135 U.S. 641, 659 (1890). It imposes an affirmative duty on the government to pay owners. *First English Evangelical Lutheran Church of Glendale v. Los Angeles Cnty.*, 482 U.S. 304, 315 (1987).

In conflict with that traditional duty and decades of Takings Clause jurisprudence, the lower court—like

some other jurisdictions—allows the government to avoid its obligation, holding that *Nelson* authorizes *any* procedure to pay compensation, even those that are unreasonable. Very few owners successfully navigate Michgan's process. Those who do still collect less than the "full monetary equivalent" of the property taken, *United States v. Reynolds*, 397 U.S. 14, 16 (1970), because the government siphons an additional cut to the government that includes interest earned on owners' money held by the government for approximately one year after the sale. This Court should grant the Petition because *Tyler*'s protection is rendered illusory by *Nelson*'s poorly reasoned *dicta*. The Constitution's promise of just compensation requires more than procedural gimmicks that deprive virtually all owners of just compensation.

The Court should also grant the Petition because the Due Process Clause "guarantee[s] *fair* procedure in connection with any deprivation of . . . property by a State." *Collins v. City of Harker Heights*, 503 U.S. 115, 125 (1992) (emphasis added). Due process requires procedures designed to return property to the rightful owner, not to enrich the government. *See Taylor v. Yee*, 136 S. Ct. 929, 930 (2016) (Alito, J., concurring on denial of cert.); *cf. Jones v. Flowers*, 547 U.S. 220, 229 (2006) (due process requires notice that would be used by one "who actually desired to inform a real property owner of an impending tax sale"). Michigan's uniquely self-serving statute provides less notice and swifter deadlines than would be adopted if the government weren't seeking a windfall. Under the circumstances, the procedures violate due process.

This Court should grant the Petition to hold that Michigan's statute violates the Fifth and Fourteenth

Amendments' guarantees of just compensation and due process.

## OPINIONS BELOW

The decision of the Michigan Court of Appeals (App. 1a-16a) is unpublished but available at *In re Petition of Manistee Cnty. Treasurer for Foreclosure*, No. 363723, 2024 WL 2981520 (Mich. Ct. App. June 13, 2024). The trial court's opinion dismissing the claims raised here (App. 17a-19a) is unpublished. The Michigan Supreme Court's order denying review is attached at App. 20a. The denial of reconsideration by the Michigan Supreme Court is attached at App. 22a.

## JURISDICTION

On June 13, 2024, the Michigan Court of Appeals issued the opinion at issue here. App. 1a. On November 22, 2024, the Michigan Supreme Court denied a timely application seeking leave to appeal the decision. App. 20a. On January 31, 2025, the Michigan Supreme Court denied a timely motion for reconsideration. App. 22a. This Petition raises federal questions under the Fifth and Fourteenth Amendments to the United States Constitution. This Court has jurisdiction under 28 U.S.C. § 1257.

28 U.S.C. § 2403(b), which allows a state to intervene to defend the constitutionality of a state statute, may apply.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the U.S. Constitution provides, "nor shall private property be taken for public use, without just compensation."

Section 1 of the Fourteenth Amendment to the U.S. Constitution provides in part, "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law . . . ."

Relevant portions of the Michigan statutes are reproduced at App. 24a-35a.

## STATEMENT OF THE CASE

### A. Michigan's claim statute

1. Three years before *Tyler*, the Michigan Supreme Court held in *Rafaeli LLC v. Cnty. of Oakland*, 505 Mich. 429 (2020), that the government violated the Michigan Constitution when it took property to collect a tax debt and kept more than the taxes, penalties, interest, and costs. In response, Michigan amended its tax foreclosure statute. App. 2a. As relevant here, tax foreclosures occur in February or March each year. MCL § 211.78t. If a tax debt is not paid by March 31, the foreclosing government unit (here, the County) obtains fee simple title and extinguishes the owner's rights in the property. MCL § 211.78k(5)(b). By July 1—while the owner usually retains possession of the property, and weeks before the sale—the owner must submit a notarized Form 5743 by personal service acknowledged by the County or by certified mail, return receipt requested, to notify the County that she wants to be paid any future surplus proceeds from the sale of her property. MCL § 211.78t(2); App. 3a.

If the government declines the right of first refusal to purchase the property, the County sells it at a public auction several months after foreclosure. MCL

§ 211.78m(1), (2). The following January, up to six months after the sale, the government calculates the proceeds remaining after deducting all tax debts, expenses, interest, and penalties, and mails notice to those who filed Form 5743 that they must file a motion in the original foreclosure action to recover the proceeds. MCL § 211.78t(3)(i), (k), (4).

Once owners file a motion, the government approves or disapproves the disbursement. MCL § 211.78t(5); App. 4a. The court hearing on the motion determines the relative priority of all claims (including any lienholders' claims). The statute grants first priority to the government's 5% cut of the purchase price in addition to the debt, interest, and sale costs, MCL §§ 211.78t(12)(b), 211.78m(16)(c); then other liens; and finally the remainder to the former owner who timely filed both Form 5743 and the motion to recover the surplus. MCL § 211.78t(9). The government pays the amounts ordered by the circuit court. MCL § 211.78t(10). Prior to disbursement, the county holds the tax debtors' money for approximately one year, accruing interest that the county keeps for itself. MCL § 211.78k(8).

It all turns on Form 5743. If an owner fails to submit a notarized Form 5743 by the proper delivery method, long before the foreclosure sale, the County cuts off the owner's right to *any* future claim or constitutional challenge and keeps the windfall of the owner's equity.

### B. Pursuant to Michigan's claim statute, Manistee County keeps $102,636 more than Chelsea Koetter owed

Chelsea Koetter owned a two-bedroom home in Bear Lake, Michigan, where she lived with her sons

since 2016. App. 49a.[2] She owned the home free of any mortgages or other liens. App. 53a. When she experienced personal and financial difficulties, her father paid her 2019 and 2020 taxes, but mistakenly did not pay one installment of her 2018 property taxes. App. 58a. Koetter did not realize the error or the consequences until it was too late. App. 56a.

The County foreclosed on her home on February 12, 2021, to collect $1,199.59 in 2018 property taxes, plus $831.93 in interest and fees. App. 42a. On March 3, 2021, the County mailed one notice entitled "PAYMENT DEADLINE," warning that the foreclosure judgment had been entered and that Koetter could redeem the property until March 31, 2021. The bottom of the notice mentioned a potential right to claim remaining proceeds by submitting Form 5743 by July 1, 2021. App. 43a-45a.

When Koetter did not pay her debt by March 31, 2021, the County took fee simple title and extinguished her rights in the property. MCL § 211.78k(5)(b). On April 23, 2021, the County mailed a notice that "**[a]ny interest**" Koetter had in the property "**has been lost**" and that she must file Form 5743 by July 1, 2021, to claim any remaining proceeds from sale of the property. App. 46a-47a. The County never sent this critical form.

On July 9, 2021—just 8 days after the deadline—Koetter obtained Form 5743 at the Treasurer's office,

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[2] *See* Public Land Auction Salebook for August 2, 2021 (hereinafter "2021 Salebook") at 22, https://www.tax-sale.info/forms/salebook/auction/663/print/salebook/2021-08-02_salebook_final.pdf (visited Apr. 14, 2025) (publicly available record on official website advertising her home for the 2021 auction).

filled it out, notarized, and submitted it by personal service at the clerk's office. App. 49a. The County rejected the form as tardy. App. 4a-5a.

The County sold the property at auction on August 2, 2021, to Koetter's father for $106,500 plus a $10,650 auction fee to the private company that conducts the County's auctions—a total of $117,150. App. 5a; *supra* n.2 at 9. The County kept $102,636 more than Koetter's total debt of $3,863.40 including all costs, interest, and fees. App. 5a, 53a.

Koetter again attempted to submit a notarized Form 5743 on August 18, 2021—still only 48 days after the July 1 deadline. App. 50a. The County refused it.

Undaunted, one year after foreclosure, on May 10, 2022, Koetter timely filed the required motion to disburse surplus proceeds in the original foreclosure action to claim the $97,311.60 remaining after the County took its 5% cut. *See* App. 54a. The County opposed her motion *solely* because she submitted Form 5743 eight days late. App. 14a. The trial court allowed supplemental briefing on the constitutional issues presented by the County's implementation of the claim statute. Koetter argued that denial of her claim would violate due process and result in an unconstitutional taking in violation of the United States Constitution. *See* App. 18a-19a.

Rejecting these arguments, the court denied her motion for surplus proceeds, holding that the claim procedure was the sole mechanism to receive any of the proceeds and because she missed the July 1, 2021, deadline for Form 5743, the County could keep a $102,636 windfall at Koetter's expense. *Ibid.*

### C. The Michigan Court of Appeals holds the County did not violate due process or take property without just compensation

On appeal, Koetter again asserted that the County's confiscation of her surplus proceeds violated her federal right to procedural due process and took her property without just compensation. App. 8a, 12a.

The Court of Appeals ruled against Koetter's takings claim based on a prior panel's decision, *Muskegon County Treasurer*, 2023 WL 7093961. *Muskegon* construed *dicta* in *Nelson*, 352 U.S. 103, to mean that no compensable taking occurs "when there [i]s a statutory path for property owners to recover surplus proceeds, but the property owners failed to avail themselves of that procedure." 2023 WL 7093961, at *8. Thus, because Koetter failed to timely file the pre-sale claim notice (Form 5743), there was no "compensable taking." App. 13a-14a (citing *Muskegon*).

As to due process, the Court held in circular fashion that Koetter's right to due process was not violated because "[t]he statutory scheme satisfies due process, and [the County] followed the scheme." App. 9a. The court thus deferred entirely to the legislature: "whether such a scheme makes sense or not, or whether a 'better' scheme could be devised, are policy questions for the Legislature, not legal ones for the Judiciary." App. 10a (quoting *Muskegon*).

The Michigan Supreme Court denied review, App. 20a, but subsequently followed *Muskegon* when dismissing takings claims (challenging the confiscation of surplus proceeds) that were filed two years *before* the claim statute was even adopted by the Michigan Legislature. *Hathon*, 17 N.W.3d at 686-87.

The court held owners "must first utilize the statutory process provided by MCL 211.78t for recovery of remaining post-foreclosure sale proceeds before" pursuing their constitutional claims seeking just compensation. *Ibid.*

## REASONS FOR GRANTING THE PETITION

### I. This Case Presents an Important Takings Question Arising Directly from the Court's Own Conflicting Opinions

The Fifth Amendment imposes an affirmative duty on the government to pay just compensation when it takes private property for public use. *Cedar Point Nursery v. Hassid*, 594 U.S. 139, 152 (2021); *First English*, 482 U.S. at 315. Moreover, "the owner is entitled to reasonable, certain, and adequate provision for obtaining compensation." *Cherokee Nation*, 135 U.S. at 659. An "adequate" legal remedy "must be as complete, practical and efficient as that which equity could afford." *Terrace v. Thompson*, 263 U.S. 197, 214 (1923).

This constitutional duty applies with full force when the government seizes private property to pay a tax debt. While it "ha[s] the power" to sell property to recover unpaid property taxes, it cannot "use the toehold of the tax debt to confiscate more property than was due." *Tyler*, 598 U.S. at 639. When the government takes and keeps more than what is owed, it violates the Takings Clause, forcing the debtor "to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." *Id.* at 647 (quoting *Armstrong v. United States*, 364 U.S. 40, 49 (1960)).

Unfortunately, federal and state courts are authorizing an end-run around *Tyler* and the Constitution's requirement that compensation be reasonable, certain, and adequate. These courts construe *Nelson* to allow government to confiscate property without just compensation if it provides a uniquely narrow window for owners to preserve a future, inchoate right to recover their payment for the excess property taken. *See, e.g.*, *Howard v. Cnty. of Macomb*, No. 24-1665, __ F.4th __, 2025 WL 941511, at *3-4 (6th Cir. Mar. 28, 2025). Alabama, Arizona, Michigan, New Jersey, and New York rely on *Nelson* to continue confiscatory tax foreclosures after *Tyler*, *supra* n.1, devastating thousands of taxpayers each year. In Michigan, the claim statute bars up to 95% of owners from collecting the surplus proceeds from the sale of their foreclosed properties.[3] State records document a widespread problem as counties confiscate millions of dollars.[4] For example, in 2021, Genessee County returned only $56,171 in surplus proceeds to former owners while it confiscated $5,399,694.[5]

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[3] Oakland County took tax debtors' surplus proceeds from 187 out of 196 foreclosed properties in 2022. Pacific Legal Foundation, *Confusing Procedures Can Result in Shadow Equity Theft: Michigan*, homeequitytheft.org/shadow-equity-theft#michigan (visited Apr. 14, 2025).

[4] *See* Michigan Dep't of Treasury, *Foreclosure Report for 2021*, www.michigan.gov/taxes/-/media/Project/Websites/taxes/Auctions/2021-Foreclosure-Sales-State-Wide-Reports.pdf?rev=2dabee8d90ed4b488 (disclosing all counties' surplus proceeds windfalls in column xii and returned proceeds in column xi).

[5] *See supra* n.4, at 24. The Michigan Court of Appeals has denied dozens of claimants in at least eleven cases. *See, e.g.*, *In re State Treasurer for Foreclosure,* No. 365005, 2024 WL

The decision below violates the traditional duty imposed on debt collectors to return surplus proceeds to debtors—a duty that Michigan recognizes in all other debt collection contexts. It contradicts this Court's takings jurisprudence and allows the government to burden the Takings Clause with a preservation requirement that this Court rejects when applied to other constitutional rights. The Court should grant certiorari to correct the confusion caused by *Nelson*'s *dicta*. If *Nelson*'s takings discussion is not *dicta*, this Court should overrule it to ensure the right to just compensation is not relegated to second class status.

### A. Michigan's burdensome claim procedure violates the government's traditional duty to pay surplus proceeds and just compensation to rightful owners

1. Traditional Anglo-American law treated seized property to collect a debt as a bailment. 2 Blackstone, *Commentaries on the Laws of England* 453 (1768). The debt collector who seized the property was "bound by an implied contract in law to restore [it] on payment of the debt, duty, and expenses, before the time of sale; or, when sold, to render back the overplus." *Ibid.*; *Tyler*, 598 U.S. at 639-40. This includes tax debts. *Ibid.* Tax collectors must protect the financial interest of debtors whose properties they seize. *See, e.g.*, *Cocks v. Izard*, 74 U.S. 559, 562 (1868); *Slater v. Maxwell*, 73 U.S. 268, 276 (1867). Thus, the tax collector traditionally had an affirmative duty to pay the taxpayer any overage, or deposit the money for the

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3995365, at *1 (Mich. Ct. App. Aug. 29, 2024), *review denied*, 16 N.W.3d 729 (Mich. 2025).

taxpayer's benefit until the taxpayer claimed it. *See, e.g.*, *People ex rel. Seaman v. Hammond*, 1 Doug. 276, 280-81 (Mich. 1844) (treasurer "is to place the surplus to the credit of the owner, who shall at all times be entitled to receive it"); *McDuffee v. Collins*, 117 Ala. 487, 492 (1898) (tax collector bore the "duty of seeking the owner and paying him the balance" and if not found, holding it for him); *Bogie v. Town of Barnet*, 129 Vt. 46, 52 (1970) (for the privilege of wielding such tax collection power, the government "must suffer the restraints of fiduciary duty").

This Court followed that tradition in *United States v. Taylor*, 104 U.S. 216, 221-22 (1881). There, the federal government denied an Arkansas taxpayer's claim for surplus proceeds from a tax sale, arguing in part that a six-year catch-all statute of limitations barred the taxpayer's claim. *Id.* at 221. Since the statute did not specify the deadline for claims for surplus proceeds, the government had a duty to hold surplus proceeds "indefinite[ly]" as "trustee" for the taxpayer. *Id.* at 221-22. Imposing a statutory "construction consistent with good faith on the part of the United States," the government acts as "trustee" for the taxpayer and the claim was timely because the statute of limitations only began to run when the taxpayer demanded his money. *Id.* at 222.

Michigan's other debt collection statutes follow this same tradition, imposing a fiduciary duty on debt collectors to pay any surplus to the former owner. MCL § 600.3252 (surplus money "shall be paid over . . . on demand, to the mortgagor"); MCL § 600.6044 (when property is sold via execution on judgment, "the officer shall pay over such surplus to the judgment debtor . . . on demand"); MCL § 324.8905c (surplus "proceeds of the foreclosure sale shall be distributed

. . . [t]o the owner of the vehicle"). When former owners can't be found or fail to demand the money, the State holds it "indefinitely" for them. *See O'Connor v. Eubanks*, 83 F.4th 1018, 1021 (6th Cir. 2023); MCL §§ 567.233, 567.234.

Michigan departs dramatically from this tradition when it takes real estate to pay property taxes. Rather than hold surplus property or money in trust for the owner, the statute requires owners to quickly navigate a complicated process to recover *their own money*. When up to 95% of the owners fail to strictly comply with even one element[6] of the multiple requirements, the counties keep the money as a windfall and bar owners from pursuing their constitutional rights in court. Government cannot "make[] an exception only for itself" to avoid paying just compensation. *Tyler*, 598 U.S. at 645.

2. The government must provide a process for obtaining compensation that is "reasonable, certain, and adequate." *Cherokee Nation*, 135 U.S. at 659; *Sage v. Brooklyn*, 89 N.Y. 189, 194 (1882) (process must be "sure, sufficient and convenient"); *State Hwy. Comm'r v. Kreger*, 128 Va. 203, 212-13 (1920) (valid statute pays just compensation "with reasonable certainty and without unnecessary or unreasonable delay"). The Fifth Amendment imposes on the government an "implied" "promise to pay" whenever the government takes property for a public use. *First*

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[6] *See, e.g.*, *In re Alger Cnty. Treasurer for Foreclosure*, Nos. 363803, 363804, 2024 WL 4174925, at *4 (Mich. Ct. App. Sept. 12, 2024) (owner's claim denied for sending Form 5743 via trackable Priority Mail Express instead of return receipt requested), *rev. denied*, Nos. 167712, 167713, 2025 WL 945725 (Mar. 28, 2025).

*English*, 482 U.S. at 315. And when the government effects a taking, "no subsequent action by the government can relieve it of the duty to provide compensation." *Id*. at 321.

Michigan's process for paying just compensation in the usual eminent domain context complies with that traditional duty: the government deposits an estimated amount of just compensation in escrow, "held for the benefit of the owners," MCL § 213.55(5), until the court orders payment. MCL § 213.58. When government takes property without invoking eminent domain, property owners have six years to bring an inverse condemnation claim seeking just compensation under the Michigan Constitution's Takings Clause and three years under the federal Takings Clause. *Hart v. City of Detroit*, 416 Mich. 488, 503 (1982); *Grainger v. Ottawa Cnty.*, 90 F.4th 507, 510 (6th Cir. 2024). By contrast, tax debtors like Koetter must act within 92 days of foreclosure to preserve their inchoate, future right to collect any just compensation.

Moreover, the statute in *all cases* fails to provide an "adequate" remedy of just compensation, because it awards claimants less than they are constitutionally due. The statute gives counties interest earned on the principal for the year the county holds the money, plus 5% of the sale price, on top of all taxes, penalties, interest, fees, and expenses, even if the county purchased the property. MCL §§ 211.78t(12)(b), 211.78m(16)(c). The statute calls this 5% deduction a "commission," but the realtor's fee is already deducted pursuant to MCL § 211.78m(16)(c). Moreover, Manistee County, like most Michigan counties, contract with a private company to administer the statute; the company charges buyers a 10% commis-

sion. *See Garcia v. Title Check, LLC*, No. 22-1574, 2023 WL 2787298, at *1 (6th Cir. Apr. 5, 2023). Hence, owners who successfully navigate the statute recover at most only 95% of surplus proceeds and are deprived of the accrued interest. This cannot be squared with the constitutional requirements. "'[J]ust compensation' means the full monetary equivalent of the property taken." *Reynolds*, 397 U.S. at 16; *Phillips v. Washington Legal Found.*, 524 U.S. 156, 165 (1998) ("The rule that 'interest follows principal' has been established under English common law since at least the mid-1700's.").

3. Michigan's statute also conflicts with this Court's holdings that burdening a constitutional right with an opt-in process to preserve the right works the same harm as violating the right directly. *See, e.g.*, *Janus v. Am. Fed'n of State, Cnty., and Municipal Employees*, 585 U.S. 878, 939 (2018) (statute that requires workers to affirmatively reject garnishment of wages to subsidize union speech violates workers' free speech rights); *Lamont v. Postmaster General*, 381 U.S. 301, 305 (1965) (impermissible burden on First Amendment right where post office withheld "communist political propaganda" unless addressee affirmatively requested delivery). The same rule applies to notice in the due process context. *See, e.g.*, *Small Engine Shop, Inc. v. Cascio*, 878 F.2d 883, 884 (5th Cir. 1989) (government cannot "shift the entire burden of ensuring adequate notice" onto property owners); *Bourne Valley Court Trust v. Wells Fargo Bank, N.A.*, 832 F.3d 1154, 1158-59 (9th Cir. 2016) (statute violates due process by requiring lienholders to "opt-in" to notice). The right to just compensation similarly cannot be burdened. *Cf. Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 607 (2013)

("Extortionate demands for property in the land-use permitting context run afoul of the Takings Clause not because they take property but because they *impermissibly burden* the right not to have property taken without just compensation.") (emphasis added); *Felder v. Casey*, 487 U.S. 131, 141 (1988) (120-day notice of claim requirement would impermissibly "burden" rights protected by 42 U.S.C. § 1983).

In direct conflict with these precedents, Michigan courts and other courts construe *Nelson* to allow the government to burden constitutional rights with accidental waivers. *Muskegon*, 2023 WL 7093961; *Clement v. U.S. Att'y Gen.*, 75 F.4th 1193, 1202-03 (11th Cir. 2023) (immigration case construing *Tyler*'s citation of *Nelson* to mean that "a mere lack of diligence is sufficient to forfeit a constitutional or statutory right").

4. The procedure used here cannot be justified under any traditional government power. "[A] statute providing for the lapse, escheat, or abandonment of private property" must provide owners with a "reasonable opportunity" to avoid accidental loss. *Hodel v. Irving*, 481 U.S. 704, 728 n.11, 729-30 (1987) (Stevens, J., concurring in the judgment) (government ordinarily provides "a grace period and bears an affirmative responsibility to prevent escheat"). A statute that "bar[s] the existing rights of claimants without affording" a "reasonable time" to assert those rights amounts to an "unlawful attempt to extinguish" those rights. *Wilson v. Iseminger*, 185 U.S. 55, 62 (1902). In short, Michigan's claim process is unreasonable, uncertain, and inadequate, and thus violates the government's duty to provide just compensation for a taking. *Cherokee Nation*, 135 U.S. at 659.

### B. The Court should grant certiorari to resolve the confusion and widespread deprivations of property caused by *dicta* in *Nelson v. City of New York*

Michigan courts and some federal courts construe *Nelson* to mean that foreclosing governments comply with the constitutional duty to remit surplus proceeds if there is *any* process to recover the surplus—even an unreasonably short and complicated one. *See, e.g.*, App. 10a; *Howard*, 2025 WL 941511, at *3. And *Nelson* is now infecting broader takings jurisprudence. The D.C. Circuit recently held that a statutorily "known and costless option" to avoid an uncompensated taking is sufficient to avoid the Takings Clause. *Valancourt Books, LLC v. Garland*, 82 F.4th 1222, 1235 (D.C. Cir. 2023) (citing *Nelson* and *Tyler*).

*Tyler* did not address *Nelson*'s inconsistency with the Court's takings decisions because it was "readily distinguished." *Tyler*, 598 U.S. at 643. But *Nelson* is hopelessly out of step with modern takings precedent and immunizes confiscatory processes from constitutional challenge.

In *Nelson*, because of a bookkeeper's misconduct, the property owners failed to pay their water bills on two properties. *Nelson*, 352 U.S. at 105, 108. To satisfy the debts, the City of New York foreclosed, kept one property and sold the other, retaining a windfall for the public. *Id.* at 105-06. The bookkeeper "concealed" the debt and foreclosure action from the owners. *Id.* at 107. When the owners learned of their loss, they filed a motion to set aside the foreclosure judgment based on violations of procedural due process and equal protection. *Id.* at 106, 109. The

New York courts denied relief, *City of New York v. Nelson*, 309 N.Y. 801 (1955), and the owners petitioned this Court, again arguing denial of equal protection and violation of due process based on insufficient notice. *See Nelson*, 352 U.S. at 107; Brief for Appellants, *Nelson*, No. 30, 1956 WL 89027, at *3 (Sept. 14, 1956). *Nelson* held the lack of actual notice did not violate due process because "the City cannot be charged with responsibility for the misconduct of the bookkeeper in whom appellants misplaced their confidence nor for the carelessness of the managing trustee in over-looking notices of arrearages." 352 U.S. at 108.

In the reply brief on the merits in this Court, the owners suggested for the first time that the City took property without just compensation. *Id.* at 109. Although it was not raised, argued, or decided below, the Court stated that there was no taking because the owner missed the window to request payment for the excess. *Id.* at 110. This window closed *before foreclosure and before there was any money to claim*. *Ibid.*

Claims "not brought forward" in the lower court "cannot be made" in the Supreme Court. *Magruder v. Drury*, 235 U.S. 106, 113 (1914); *United States v. Williams*, 504 U.S. 36, 41 (1992) ("Our traditional rule, as the dissent correctly notes, precludes a grant of certiorari only when the question presented was not pressed or passed upon below.") (internal quote omitted); *Kirtsaeng v. John Wiley & Sons, Inc.*, 568 U.S. 519, 548 (2013) (court's "rebuttal to a counter-argument" that went outside the issue before the court was *dicta*). Courts cannot rely on judicial remarks that have "no bearing" on the questions actually before the Court. *Royal Canin U.S.A., Inc. v. Wullschleger*, 604 U.S. 22, 42 (2025). Resolution of the

takings argument in *Nelson* was unnecessary to the case and thus *dicta*.

Despite *Nelson*'s posture, nearly all courts assume *Nelson*'s rejection of the takings argument is binding and requires them to rubber stamp confiscatory tax foreclosures. "[D]icta, when repeatedly used as the point of departure for analysis, have a regrettable tendency to acquire the practical status of legal rules." *Tafflin v. Levitt*, 493 U.S. 455, 469 (1990) (Scalia, J., concurring). This "regrettable tendency" is evident here. Courts construe *Nelson* to mean there is no taking or due process violation so long as the government provides *any* opportunity to recover the surplus—no matter how fleeting or complicated. *See, e.g.*, *Howard*, 2025 WL 941511, at *3 ("The Supreme Court stood by *Nelson* in *Tyler*, explaining that the Takings Clause permits each State to 'define the process through which an owner can claim the surplus' and to keep the surplus if the owners do not comply.") (cleaned up); *Hathon*, 17 N.W.3d at 687 n.1; *Wright v. Rollyson*, No. 2:24-CV-00474, 2025 WL 835040, at *3 (S.D.W.V. Mar. 17, 2025) (*Tyler* and *Nelson* mean "[t]here is no Takings Clause violation when a sovereign's statutory scheme provides an opportunity for the taxpayer to recover the excess value.") (cleaned up); *In re Franco v. Real Portfolio 13, LLC*, No. 24-21084-ABA, 2025 WL 884067, at *7 (Bankr. D.N.J. Mar. 17, 2025) (statute "complies with both *Tyler* and *Nelson*" even though it gives tax-lienholders a windfall from the owner because she failed to request a judicial sale before the foreclosure judgment was final); *Biesemeyer v. Municipality of Anchorage*, No. 3:23-CV-00185, 2024 WL 1480564, at *7 (D. Alaska Mar. 13, 2024) (Alaska's six-month claim process "meets the low threshold implied by

*Tyler* and *Nelson*," and therefore takings and due process claims seeking $243,235 in excess proceeds must be dismissed).

*Nelson* results in confused takings decisions. For example, when deciding whether Michigan's claim statute violates the Takings Clause, the Sixth Circuit cited historical examples of claim processes in early America; yet all opportunities for debtors to claim the surplus proceeds *followed* the sale and most gave owners *years* to do so.[7] *Howard*, 2025 WL 941511, at *3-4. By contrast, Michigan's claim statute requires owners to make their first claim at least a month *before the sale* and then requires the owner to make the same claim again later in court. Yet because the Sixth Circuit construed *Nelson* as meaning simply "that States may require owners to follow a statutory process," it upheld Michigan's statute as compliant with the Takings Clause.

This Court should grant the Petition to resolve this confusion and hold that *Nelson*'s takings discussion is nonbinding and unpersuasive.

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[7] The Sixth Circuit's citations of processes that supposedly comport with *Nelson* are inaccurate: An 1867 Minnesota statute that ostensibly gave owners only three months to claim their money, refers to a section of code that does not exist. The 1881 Washington statute did require owners to "file with the [state court] clerk a waiver of all objections' to the sale" in order to obtain the surplus proceeds, but the next sentence says that, even if the owner didn't file the waiver, once the court certifies the regularity of the sale, "such proceeds shall be paid to [the judgment debtor] *of course*." Code of Washington § 367.5 (1881) (emphasis added). The waiver only accelerated recovery of the surplus.

### C. If *Nelson*'s commentary on takings is not *dicta*, the Court should grant review to overturn it

*Nelson*'s discussion of the Takings Clause cannot be reconciled with this Court's takings jurisprudence; if it is binding, the Court should overrule it. *Stare decisis* is weakest in the realm of constitutional interpretation. *See Knick v. Twp. of Scott*, 588 U.S. 180, 202 (2019). The factors relevant to deciding whether to overturn precedent include "the quality of [its] reasoning, the workability of the rule it established, its consistency with other related decisions, developments since the decision was handed down, and reliance on the decision." *Janus*, 585 U.S. at 917-18. Every factor weighs in favor of rejecting the takings analysis in *Nelson*:

1. *Nelson*'s scant reasoning was inconsistent with this Court's takings decisions, *see supra* at 12-17, because the issue was scarcely briefed and there were no relevant holdings below. *Cf. FDA v. Wages and White Lion Inv., LLC*, 145 S. Ct. 898, 916 (2025) ("We did not grant certiorari on that question, and without adequate briefing, it would not be prudent to decide it here.").

2. Developments since *Nelson* support reconsideration. In 1985, mirroring the reasoning in *Nelson*, this Court held in *Williamson County Regional Planning Commission v. Hamilton Bank* that a plaintiff does not have a ripe federal takings claim if a claimant failed to "seek compensation through the procedures the State has provided for doing so." 473 U.S. 172, 194 (1985). Unless the claimant sought and was denied such compensation in a state court action, federal courts would not even consider a takings

claim. *Id.* at 194-96. That decision proved unworkable, closing the federal courthouse doors to most federal claims seeking just compensation, and led to injustice. *See Knick*, 588 U.S. at 185 (procedural "trap" foreclosed adjudication of takings claims in both federal and state courts).

*Knick* overruled *Williamson County*, holding that "a property owner has a [ripe federal] claim for a violation of the Takings Clause as soon as a government takes his property for public use without paying for it." *Id.* at 189. When "government takes private property without paying for it, that government has violated the Fifth Amendment—just as the Takings Clause says—without regard to subsequent state court proceedings." *Ibid.* *Knick* reopened the federal courthouse doors and restored the traditional understanding that offering a process is not the same thing as timely paying just compensation.

"[T]he availability of state-law compensation remedies cannot delay or undo the accrual of a takings claim." *Wilson v. Hawaii*, 145 S. Ct. 18, 20 (2024) (Thomas, J., statement on denial of cert.) (citing *Knick*, 588 U.S. at 193-94). Yet contrary to *Knick*, Michigan courts and the Sixth Circuit construe *Nelson* to mean that an owner's failure to strictly comply with the state administrative and court process described in MCL § 211.78t defeats a claim for just compensation. App. 15a; *Howard*, 2025 WL 941511, at *4. These courts do not hold that they lack jurisdiction to decide the question because claimants missed the deadline; they hold that missing the notice of claim deadline *means there was no taking*. *Ibid.* ("Michigan's procedures for collecting the surplus do not compensate the property owner for a taking. They

*prevent* a taking from happening in the first place."). Indeed, the Michigan Supreme Court's *Hathon* decision dismissed as *unripe* takings claims that concededly were ripe when filed seven years ago—before Michigan enacted its claim statute. *Hathon*, 17 N.W.3d at 686-87. The Court held that the owners have no takings claims unless they first comply with the claim statute, and gave owners 11 days to submit Form 5743. *Ibid.* Just like the overturned decision in *Williamson*, the court held that the owners' claim is *unripe* until they comply with the statute. *Ibid.* This holding mimics the rationale of *Williamson* that this Court rejected in *Knick*. *See also Schafer v. Kent Cnty.*, No. 164975, __ Mich. __, 2024 WL 3573500, at *6, *16 n.94, *17 (July 29, 2024) (explaining the background in *Hathon*, holding that the claim statute in MCL § 211.78t is fully retroactive, and noting that its holding might "*help* government entities in Michigan").

This Court similarly rejected the rationale underlying *Nelson* in *Felder*, 487 U.S. at 142.[8] There, a Wisconsin statute required plaintiffs to file an administrative notice of claim within 120 days of the government's violation of their rights. *Id.* at 136. The claim requirement was designed to protect the government and stood out "rather starkly, from rules uniformly applicable to all suits." *Id.* at 145. Thus the Court held failure to follow the claim statute could not bar relief in federal court. *Ibid.* Like *Felder*, the claim statute here requires a series of unnecessary proce-

[8] *Cf. Williams v. Reed*, 145 S. Ct. 465, 468-69 (2025) (states may not employ an "exclusive" statutory process requirement that effectively immunizes state officials from lawsuits brought under 42 U.S.C. § 1983).

dures that "minimize governmental liability" and burden the right to just compensation. *See id*. at 141. While victims of other uncompensated takings have three to six years to bring their constitutional claims in Michigan, owners of tax-foreclosed property have only 92 days to preserve their inchoate future right to collect surplus proceeds as just compensation, and still only get paid if they properly file a motion in court in another 104-day window.

These legal developments support overturning *Nelson*.

3. *Nelson*'s rule is not workable in practice. Here, the lower court construed *Nelson* to immunize claims procedures from the judicial scrutiny typically applied to constitutional challenges to state laws. App. 20a. As a result, the vast majority of owners cannot recover their own money, the government keeps the windfalls, and owners are barred from pursuing any constitutional challenge. *See supra* at 11.

4. The government has no legitimate reliance interest in obtaining tax debtors' property beyond the amount owed. *Tyler*, 598 U.S. at 639-40. Worse, that improper reliance exploits owners' ignorance, illness, and incapacity. *Cf. Covey v. Town of Somers*, 351 U.S. 141, 146 (1956) (government cannot take advantage of incompetent property owner's inability to comprehend notice of foreclosure). Most states comply with *Tyler* by automatically remitting surplus proceeds to owners[9] or giving them years after sale to recover

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[9] *See, e.g.*, Idaho Code § 31-808(2)(c); Kan. Stat. Ann. § 79-2803; Me. Stat. tit. 36, § 943-C; Mont. Code Ann. § 15-18-221; S.D. Codified Laws § 10-25-39; Wis. Stat. § 75.36(2m)(b).

their money.[10] Five states, however, amended their statutes to take advantage of the loophole left by *Nelson* to make it difficult, if not impossible, for tax debtors to recover their own money so that government (or other tax lienholders) would continue to enjoy the windfalls of others' misfortune.

## II. The Lower Court's Decision Conflicts with This Court's Due Process Decisions

The Due Process Clause "provide[s] a guarantee of fair procedure in connection with any deprivation of life, liberty, or property by a State." *Collins v. City of Harker Heights*, 503 U.S. 115, 125 (1992). "Fairness" is the watchword for due process. *Bolling v. Sharpe*, 347 U.S. 497, 499 (1954); *see also Lassiter v. Dep't of Social Servs. of Durham Cnty.*, 452 U.S. 18, 24 (1981) (due process requires "fundamental fairness"); *Breithaupt v. Abram*, 352 U.S. 432, 436 (1957) (due process reflects the "whole community sense of 'decency and fairness'"). Due process therefore requires procedures "appropriate to the case, and just to the parties to be affected . . . it must be adapted to the end to be attained." *Hagar v. Reclamation Dist. No. 108*, 111 U.S. 701, 708 (1884).

The government's function is to protect private property, not confiscate it. When the government has a legitimate reason to deprive someone of real property, such as tax foreclosure or to manage abandoned or nuisance property that burdens the

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[10] Ark. Code Ann. § 26-37-205(b); Fla. Stat. § 197.582; Ind. Code § 6-1.1-24-7(c), (e)(2); Mo. Rev. Stat. § 140.230(2); N.M. Stat. Ann. § 7-38-71(A)-(C); Ohio Rev. Code Ann. § 5721.20; 72 Pa. Cons. Stat. § 5860.205(f); Tenn. Code Ann. § 67-5-2702; Tex. Tax Code § 34.03(a)(2); Va. Code Ann. §§ 58.1-3967, -3970; Wash. Rev. Code § 84.64.080.

community, the government must notify the owner of procedures available to protect her property and provide "a reasonable opportunity" to comply with those requirements. *Texaco, Inc. v. Short*, 454 U.S. 516, 532 (1982). Moreover, the government must use reasonable procedures that would be used by one who actually wanted to return seized property to its rightful owner. *See Jones*, 547 U.S. at 229.

Michigan's process is unreasonable, depriving up to 95% of owners of their surplus proceeds. Its unduly complicated procedures are designed to give the government a windfall, not to remit payment to rightful owners. As the 95% failure rate attests, the claim statute fails to provide owners adequate notice or time to protect their interests. *Cf. Minnesota v. Barber*, 136 U.S. 313, 323 (1890) (noting this Court's "duty to maintain the constitution will not permit us to shut our eyes to these obvious and necessary results of the Minnesota statute"); *Ross v. Blake*, 578 U.S. 632, 643 (2016) ("an administrative scheme might be so opaque that it becomes, practically speaking, incapable of use"); *Nelson v. Colorado*, 581 U.S. 128, 137 (2017); *id.* at 143 (Alito, J., concurring in the judgment) ("harsh, inflexible" procedure that "prevents most defendants whose convictions are reversed from demonstrating entitlement to a refund" violates due process).

### A. The Court should grant certiorari to hold that Michigan's notice is inadequate under the circumstances

"[W]hen notice is a person's due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it." *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S.

306, 314-15 (1950). Notice must be reasonable under the circumstances. *Id.*; *Brody v. Village of Port Chester*, 434 F.3d 121, 132 (2d Cir. 2005) (inadequate notice where "[un]likely that the average landowner would have appreciated that [the] notice . . . began the exclusive period in which to initiate a challenge to the condemnor's determination."). Here, Michigan's procedures are apparently designed to fail at high rates.

Although the government may often satisfy its duty to provide notice through simply mailing a letter, under some circumstances this Court requires more. *See, e.g.*, *Covey*, 351 U.S. at 146-47 (foreclosure by mailing, posting, and publication was inadequate when town officials knew the owner was incompetent and without a guardian's protection); *Robinson v. Hanrahan*, 409 U.S. 38, 40 (1972) (forfeiture notice sent to a vehicle owner's home was inadequate when government knew the property owner was in prison). A permanent deprivation requires more notice. *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 433 (1982). Moreover, "a party's ability to take steps to safeguard its interests does not relieve the State of its constitutional obligation." *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 799 (1983).

Ordinarily, owners of "tangible property" are notified about potential loss of their property with conventional notice *and* through physical seizure of movable property or entry onto real estate. *See Mullane*, 339 U.S. at 316. Indeed, traditionally a former owner would face eviction before being subjected to time limits on her ability to dispute her rights relating to the property. *Cf. Groesbeck v. Seeley*, 13 Mich. 329, 343 (1865) ("A person who has a lawful right, and is actually or constructively in possession,

can never be required to take active steps against opposing claims."). An owner whose property is seized and sold to pay a tax debt is "generally ignorant" of his peril "until it is too late to prevent it." *Slater v. Maxwell*, 73 U.S. 268, 276 (1867). All the struggles that led to tax foreclosure in the first place are typically still present after foreclosure: poverty, age, disability, and physical and mental medical conditions are especially common. *See, e.g.*, *Cherokee Equities, L.L.C. v. Garaventa*, 382 N.J. Super. 201, 211 (Ch. Div. 2005) (Tax foreclosure defendants are often "among society's most unfortunate."); *Vargas v. Trainor*, 508 F.2d 485, 489 (7th Cir. 1974) (due process requires additional notice when addressed to people who may be suffering physical or mental handicaps, particularly the elderly). When a statute confiscates the savings built up in a person's home, due process requires clear and weighty notice.

Here, the County's two notices obfuscated the critical point that Koetter must protect her right to just compensation before losing possession of her home by filing an unenclosed form. The first notice, titled "**PAYMENT DEADLINE**" warns of impending foreclosure, then states that foreclosed property "may be sold" and the former owner "has a right to file a claim for remaining excess money, if any" by "SUBMIT[TING] A NOTICE OF INTENTION FORM . . . **NO LATER THAN July 1, 2021**." App. 44a-45a (emphasis in original). The second notice, also prior to any sale, is labeled "**NOTICE OF FORECLOSURE**" and states the property is "now owned by the **Manistee County Treasurer**. **Any interest that you possessed in this property prior to foreclosure, including any equity associated with your interest, has been lost.**" App. 46a. Only after

this hopeless and emphatic message does the notice state—in seeming contradiction—that the owner may claim "remaining proceeds" by submitting "FORM 5743 TO THE MANISTEE COUNTY TREASURER **NO LATER THAN JULY 1, 2021**." App. 47a. Both notices omit a copy of Form 5743.[11]

The County's notices also necessarily omit the amount of surplus proceeds, since this notice is sent before the property is sold and while owners still enjoy possession of the property. There's no neon sticker attached to the owner's door or sheriff's visit warning that property worth tens of thousands of dollars will soon be forfeited. Without properly submitting the notarized Form 5743, the statute provides *no* post-sale opportunity for owners to recover their money. With such grave consequences, the government must provide a simple process for remittance. *See Niz-Chavez v. Garland*, 593 U.S. 155, 172 (2021) ("If men must turn square corners when they deal with the government, it cannot be too much to expect the government to turn square corners when it deals with them."); *Gates v. City of Chicago*, 623 F.3d 389, 404 (7th Cir. 2010) (owners are not "willingly abandoning millions of dollars" where government "has made the process obtuse and unreasonably difficult").

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[11] The notices include a url for the Form. But many elderly and indigent tax debtors do not have internet and printer access. *See* U.S. Census Bureau, *Computer and Internet Use in the United States: 2021* (June 18, 2024), https://www.census.gov/newsroom/press-releases/2024/computer-internet-use-2021.html.

### B. The lower court's opinion conflicts with this Court's decisions rejecting unreasonably short deadlines to protect constitutional rights

Laws that bar civil rights lawsuits based on the passage of time must give "a reasonable time" for the claimant to enforce her rights before eliminating her ability to do so. *Terry v. Anderson*, 95 U.S. 628, 632-33 (1877) ("[S]tatutes of limitation affecting existing rights are" constitutional only "if a reasonable time is given for the commencement of an action before the bar takes effect."); *Wilson*, 185 U.S. at 63.

In *Burnett v. Grattan*, 468 U.S. 42, 55 (1984), a six-month statute of limitations for raising constitutional claims from administrative proceedings was too short and violated the intent of 42 U.S.C. § 1983, which was enacted to allow individuals to enforce their federal constitutional rights. *See also Taylor*, 104 U.S. at 221-22 (refusing to interpret federal statute of limitations to bar former owner's right to claim surplus proceeds, because "[a] construction consistent with good faith on the part of the United States should be given to these statutes").

The deadline here is a mere 92 days, while owners still possess their property and often don't realize they've lost title. Contrast this short window with the six-year deadline for a state inverse condemnnation action or three-year deadline for a federal takings claim under 42 U.S.C. § 1983. *Hart*, 416 Mich. at 503; *Grainger*, 90 F.4th at 510. Michigan's Uniform Unclaimed Property Act requires the government to hold unclaimed money in trust *indefinitely* until the owners file a single (unnotarized) document to claim their property. MCL § 567.245(1). The claim statute

here overrides otherwise standard deadlines by requiring owners to stake their claim within 92 days of foreclosure—long before the sale generates surplus proceeds—or be forever barred from recovering their constitutionally-protected money. This is not reasonable. *See Todman v. Mayor & City Council of Baltimore*, 104 F.4th 479, 484-86, 490 (4th Cir. 2024) (failure to provide post-deprivation opportunity to recover personal property violates due process); *Felder*, 487 U.S. at 141-42; *Garcia-Rubiera v. Fortuno*, 727 F.3d 102, 110-11 (1st Cir. 2013) (120-day claim period is not a "reasonable opportunity" to avoid escheat).

### C. The Court should grant certiorari to determine whether the pre-claim notice form meets the standards of fairness required by the Due Process Clause

When determining whether procedures satisfy due process, courts consider the private interest affected by the official action; the risk of erroneous deprivation under the challenged procedures and the probable value of additional or substitute safeguards; and the government's interest, including the fiscal and administrative burdens that additional or substitute procedures would entail. *Mathews v. Eldridge*, 424 U.S. 319, 332, 335 (1976); *Smith v. Berryhill*, 587 U.S. 471, 478 n.7 (2019) (confirming *Mathews* as the appropriate test for constitutional claims). The court below refused to apply *any* judicial scrutiny to the statute, instead deferring to Michigan's Legislature. App. 9a.

1. A debtor's right to be paid the surplus proceeds left over from the sale of foreclosed property is deeply rooted in history and required by the Constitution. *Tyler*, 598 U.S. at 647; *see also United States v. James*

*Daniel Good Real Prop.*, 510 U.S. 43, 54-55 (1993) (the "economic value" of a home "weigh[s] heavily").

2. The risk of erroneous deprivation is demonstrably high. As few as 5% of Michiganders successfully navigate the complicated process to recover their own money. *See supra* at 11; *cf. Howard v. City of Detroit*, 40 F.4th 417, 424 (6th Cir. 2022) ("The fact that around one percent of homeowners navigated the murky modified appeal process does not demonstrate the adequacy of the process or cure the uncertainty of the remedy.").

This risk would be substantially mitigated if proceeds were disbursed via Michigan's unclaimed property statute. *See* MCL §§ 567.241, 567.245 (state administrator holds unclaimed property in trust for the rightful owner indefinitely until owner files required form). The lower court refused to consider such alternative procedures otherwise available in Michigan. App. 10a. Although the government would not be able to confiscate as much just compensation for the public purse, that cannot outweigh property owners' interest in a fair process. *See Felder*, 487 U.S. at 141-42 (rejecting short notice of claim requirement "to minimize governmental liability").

3. The government's direct "pecuniary interest in the outcome" of a seizure increases the risk of erroneous deprivation, and weighs in favor of a more protective process. *James Daniel Good*, 510 U.S. at 55-56. *Cf. Marshall v. Jerrico, Inc.*, 446 U.S. 238, 250 (1980); *Harmelin v. Michigan*, 501 U.S. 957, 978 n.9 (1991) (opinion of Scalia, J.) ("[I]t makes sense to scrutinize governmental action more closely when the State stands to benefit."). As several members of this Court acknowledge, "financial incentives to pursue

forfeitures" raise serious due process concerns. *Culley v. Marshall*, 601 U.S. 377, 396 (2024) (Gorsuch, J., concurring, joined by Thomas, J.). Due process requires heightened protection in cases where "cash incentives . . . encourage counties to create labyrinthine processes for retrieving property." *Id.* at 405 (Sotomayor, J., dissenting, joined by Kagan and Jackson, JJ.).

Rather than consider the heightened risk caused by the government's pecuniary interest, or the practical consequences of the claim statute, the Michigan court joins the Nebraska Supreme Court and New York Court of Appeals in refusing to do so. *See HBI, LLC v. Barnette*, 305 Neb. 457, 474, 479 (2020) (faulting owner's failure to pick up unclaimed certified mail rather than scrutinizing the tax collector's pecuniary interest in taking the owner's property); *Hetelekides v. Cnty. of Ontario*, 39 N.Y.3d 222, 240 (2023) (rather than weighing government's pecuniary interest in confiscating the windfall from a foreclosure, the court faulted a recent widow for not acting faster than three days after receiving notice and for not setting up probate sooner). This cannot comport with the "fundamental fairness" demanded by the Due Process Clause. This case identifies pressing national problems left unresolved by *Tyler* and an excellent vehicle to address them.

## CONCLUSION

This Court should grant the Petition.

Respectfully submitted,

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