No. 24-858

In the Supreme Court of the United States

KARI BEEMAN, LINDA HUGHES, STEPHANIE HULKA-BERTOIA, SHEDRICK MI, LLC, AND JOHNNY DORE, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF JOHNNY CHAPMAN,

Petitioners,

v.

MUSKEGON COUNTY TREASURER,

Respondent.

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

REPLY IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI

DEBORAH J. LA FETRA
Pacific Legal Foundation
3100 Clarendon Blvd.
Suite 1000
Arlington, VA 22201

CHRISTINA M. MARTIN
Counsel of Record
Pacific Legal Foundation
4440 PGA Blvd.
Suite 307
Palm Beach Gardens, FL 33410
Telephone: (916) 330-4059
CMartin@pacificlegal.org

Counsel for Petitioners

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

United States Constitution

Statutes

Other Authorities

INTRODUCTION

Despite this Court's holding in *Tyler v. Hennepin County*, 598 U.S. 631, 643 (2023), Muskegon County confiscated nearly $200,000 beyond what the Petitioners owed in taxes, penalties, interest, expenses, and fees. Five states and courts in multiple jurisdictions endorse similar confiscations based on a few sentences in *Nelson v. City of New York*, 352 U.S. 103, 110 (1956). Pet. 2.

The government cannot satisfy its "categorical duty to pay just compensation," *Horne v. Dep't of Agric.*, 576 U.S. 350, 358 (2015), by directing owners to a procedure for recovery that 95% of them will never successfully navigate—an appalling failure rate unchallenged in Muskegon County's Brief in Opposition (BIO).

The federal circuit courts recently split on one of the questions presented here. The Sixth Circuit sided with the Michigan court below in construing *Nelson* as holding that there is no taking if the government establishes a state procedure by which an owner might ask for some compensation. *Howard v. Macomb Cnty.*, 133 F.4th 566 (6th Cir. 2025). The Tenth and Eleventh Circuits, by contrast, held that owners need *not* comply with state procedures before suing for a taking, following *Knick v. Township of Scott*, 588 U.S. 180, 201 (2019) (a procedure for obtaining just compensation cannot "somehow prevent[] the violation from occurring in the first place."). *See Knellinger v. Young*, 134 F.4th 1034 (10th Cir. 2025); *Maron v. Chief Financial Officer of Florida*, No. 23-13178, __ F.4th __, 2025 WL 1416665 (11th Cir. May 16, 2025). *See also* Oral Argument Transcript, *Tyler*, No. 22-166, at 15-16 (U.S. Apr. 26, 2023) (Justice

Gorsuch noting that the takings question wasn't properly briefed in *Nelson* and asking how *Nelson* could "fit with this Court's subsequent decision in *Knick*, which seemed to suggest you don't have to exhaust state law proceedings to bring a takings claim").

This Court should grant review to end that confusion, settle the conflicts, and put an end to the continued predation on owners like the Petitioners.

ARGUMENT

I. The Court Should Resolve the Conflict Created by *Nelson*'s *Dicta*

The County claims that "*Tyler* wholeheartedly reaffirmed *Nelson*'s central [takings] holding." BIO 16. But *Tyler* "readily distinguished" *Nelson*. *Tyler*, 598 U.S. at 643. A case is distinguished "to minimize the case's precedential effect or to show that it is inapplicable." "Distinguish," Black's Law Dictionary (11th ed. 2019). *Tyler* avoided the takings question presented here: whether *Nelson* is binding and if so, whether it should be overturned.

Because of *Nelson,* the government avoids paying just compensation if owners fail to claim their own money *before the taking has occurred and before there is any money to claim*. Pet. 17-21. *See Rafaeli, LLC v. Oakland Cnty.*, 505 Mich. 429, 474-75 (2020) (taking without just compensation happens when the property sells for more than the debt and the government retains the surplus); *Sikorsky v. City of Newburgh*, 136 F.4th 56, 63 (2d Cir. 2025) (takings claim accrued once the property sold for more than the debt and government retained the excess); *Ramsey v. City of Newburgh*, No. 23-CV-8599, 2024 WL 4444374

(S.D.N.Y. Oct. 8, 2024) (dismissing owner's claims for taking under *Tyler* as unripe because the city hadn't yet sold the property (generating the surplus) or decided to keep it (generating a constructive surplus equivalent to the excess if it had been sold)).

A. The Sixth Circuit joins Michigan in conflict with the Tenth and Eleventh Circuits

The Fifth Amendment imposes a "categorical duty to pay just compensation" whenever the government takes property for a public use. *Horne*, 576 U.S. at 358; *Arkansas Game & Fish Comm'n v. United States*, 568 U.S. 23, 31 (2012). "Categorical" means "Being without exception or qualification; absolute." The American Heritage Dictionary of the English Language (5th ed. 2018). *Nelson*, however, appears to create just such an "exception or qualification," which Michigan courts and the Sixth Circuit rely on to hold that no taking occurs unless an owner exhausts a state claim process and is denied compensation, notwithstanding *Knick*'s holding that a takings claim may be brought "without regard to subsequent state court proceedings." 588 U.S. at 189; Pet. 20; BIO 15-17.

The Tenth and Eleventh Circuits follow *Knick*, not *Nelson*, holding that no exhaustion of state remedies is necessary to bring a federal takings claim under analogous circumstances—where an owner wants to recover her own property. In *Knellinger*, the Tenth Circuit considered whether owners of unclaimed property held in custody by the state must file a claim for the property prior to filing a lawsuit alleging a taking because the state keeps all interest that accrues on the property while in custody. The court

held that property owners "need not file administrative claims with Colorado before they may sue for just compensation. The moment a state takes private property for public use without just compensation, a property owner has an actionable claim under the Takings Clause." 134 F.4th at 1038, 1044 n.4 (analyzing *Knick*).

The Eleventh Circuit issued a similar holding in a case involving a property owner's challenge to the state's retention of accrued interest on unclaimed property. The court noted that, in *Knick*, "[i]t made no difference that state law provided a 'procedure that [could] subsequently result in just compensation,' because 'it is the existence of the Fifth Amendment right that allows the owner to proceed directly to federal court under § 1983.'" *Maron*, 2025 WL 1416665 at *4 (citing *Knick*, 588 U.S. at 191). Therefore, "[e]ven if a plaintiff later compensated by state law remedies would have no further claim, that would be 'because the taking has been *remedied* by compensation, not because there was *no taking* in the first place.'" *Ibid*. (citation omitted); *see also Sharritt v. Henry*, No. 23 C 15838, 2024 WL 4524501, *13 (N.D. Ill. Oct. 18, 2024) (a procedure "cannot both be the proper procedure that former owners can exercise to receive compensation . . . *and* a gatekeeping mechanism that prevents those who lost their land from receiving compensation.").

Like the unclaimed property statutes in *Knellenger* and *Maron*, MCL § 211.78t involves recovery of one's own property *and* the statute confiscates interest earned on the principle during the year that the government holds the surplus funds prior to even a successful motion to obtain the surplus. Pet. 8, 17.

Despite these similar features, the lower court, and now the Sixth Circuit, hold that failure to comply with Michigan's claims statute "prevent[s] a taking from happening in the first place." *See Howard*, 133 F.4th at 572 ("Had Howard followed the Act's procedures for claiming the surplus, only to be denied it, then she could immediately bring a takings claim under § 1983. That is all that *Knick* guarantees."); App. 20a.

The Michigan Supreme Court further transformed the government's "categorical duty" to a property owner's burden in *Hathon v. Michigan*, when it dismissed as unripe a takings claim based on government's retention of surplus proceeds that was filed *two years before the statute here was adopted*. 17 N.W.3d 686, 686-87 (Mich. 2025) (following *Nelson*).[1] Although the state has held the owners' private property for seven years—without compensation—the court ordered the owners to comply with MCL § 211.78t "for recovery of remaining post-foreclosure sale proceeds before" pursuing their constitutional claims seeking just compensation. The court gave owners only 11 days to submit Form 5743. *Ibid.* *Howard*, *Hathon*, and the court below thus mimic the exhaustion rationale that this Court rejected in *Knick*. Pet. 23-24; *see also Schafer v. Kent Cnty.*, No. 164975, __ Mich. __, 2024 WL 3573500, at *6, *16 n.94, *17 (July 29, 2024) (explaining *Hathon*'s procedural history, and holding claim statute in MCL § 211.78t is fully retroactive).

[1] Four out of seven of the court's justices left the bench after *Rafaeli* was decided in 2020.

B. Michigan's claim procedure departs dramatically from history and tradition

Contrary to the County's assertion that the Petitioners are asking the government to hold money "in perpetuity" for owners, BIO 20, what Petitioners seek—and what the Fifth Amendment requires—is far more modest. *See* Pet. 14-15. To conform to the requirements of the Takings Clause, just compensation and the process to provide it must be "reasonable, certain, and adequate." *Cherokee Nation v. Southern Kan. Ry. Co.*, 135 U.S. 641, 659 (1890). Courts historically forbid government from shifting the government's "categorical duty" to pay onto the person whose property was taken. In a takings case, "[i]t is not incumbent upon [the owner] to demand that the authorities shall respect his rights; the duty is [the government's] to work no unlawful invasion of them." *Bigelow v. Ballerino*, 111 Cal. 559, 564-65 (1896). *See also Kelly v. Okla. Tpk. Auth.*, 269 P.2d 359, 363 (Okla. 1954) ("[T]he owner has an absolute right to the condemnation money, and the condemnor has neither right nor authority to impose any condition or obligation upon the owner's right."), citing Nichols on Eminent Domain, Vol. 3, Sec. 8.3 (3d ed. 1964); *Haverhill Bridge Proprietors v. Essex Cnty. Comm'rs*, 103 Mass. 120, 124-25 (1869) (rejecting effort to make procedural opportunities a stand-in for reasonable compensation).

Michigan provides far more time to recover one's own property in all other debt collection contexts, and in other eminent domain or inverse condemnation cases. Pet. 14-15. Certainly the government may require owners to prove they are the dispossessed

owners, and Petitioners did that here. Pet. 9; App. 45a-49a.

The County argues that history and tradition support the existence of *any* claim process. But the County's own citations demonstrate historic practices far more generous to owners. *See, e.g.*, BIO 20 (citing 1894 South Carolina statute giving owners *five years after the sale* to claim their money).

The County cites only two historic examples that allegedly gave owners little time *after the sale* to recover their money (the same examples cited in *Howard*, 133 F.4th at 571). BIO 20-21. Both are incorrect. The 1881 Washington statute required owners to "file with the [state court] clerk a waiver of all objections" to "the sale" to *accelerate* the return of surplus proceeds. The statute also provides that even if the owner didn't file the waiver, once the court certified 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 County claims an 1866 Minnesota mortgage foreclosure statute gave owners only three months *after the sale* to claim their money. BIO 21. Not so. The statute, which remained on the books for at least another decade, provided that even if no claim was made by the former owner *after three months*, "the district judge may direct the same to be put out at interest . . . for the benefit of the defendant, his representatives or assigns, to be paid to them." Minn. Gen. Stat. of 1866, ch. 81, tit. II, § 35 (1867); *see also* Minn. Gen. Stat. of 1878, ch. 81, tit. II, § 35 (same). Other Minnesota laws from that time—including tax sale laws—put *no deadline* on owners to recover their money. *See, e.g*, General Laws of Minn., Ch. XII, § 6

(1867); General Laws of Minn., Ch. IV, § 3 (1862); General Laws of Minn., Ch. VI (1864).

Every historic example cited by the County gave owners a long period of time *after the sale* to recover their money. That is what Petitioners here seek and what undersigned counsel's firm sought when supporting an earlier version of Senate Bill 1137, which gave owners two years after foreclosure to recover their money, contra BIO 8. *See* 2020 Michigan Senate Bill 1137 (introduced). But the deadline in the statute here runs weeks *before the sale*, MCL § 211.78t(2), before most owners realize what is happening, as reflected in the 95% failure rate.

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

"Due process requires notice that is reasonably calculated, under all the circumstances, to apprise interested parties and that affords a reasonable time to make an appearance." *A.A.R.P. v. Trump*, No. 24-1177, slip op. at 3-4 (U.S. May 16, 2025) (quoting *Mullane v. Central Hanover Bank & Trust Co*., 339 U.S. 306, 314 (1950)) (cleaned up).

The County argues that the process in this case is adequate because of pre-foreclosure notice warning of the growing debt and possibility of foreclosure. BIO 22-24. But this case is not about foreclosure; it is about a confiscation that arises months *after* the foreclosure. Notices and procedures that pertain solely to traditional, non-taking, tax foreclosures do nothing to assist owners in understanding the County's plan to confiscate their equity interest that survives foreclosure. "'[A] party's ability to take steps to safeguard its own interests does not relieve the State of its constitutional obligation.'" *Jones v. Flowers*,

547 U.S. 220, 232 (2006) (citations omitted); s*ee also Brody v. Village of Port Chester*, 434 F.3d 121, 132 (2d Cir. 2005) (inadequate notice where "the average landowner" would not know how to proceed).

Ultimately, the County concedes that only two notices—both letters about foreclosure—mentioned the claim process and neither provides the crucial Form 5743. Pet. 9; BIO 2. And the County concedes there is no post-sale (i.e., post-deprivation) opportunity to recover property that belongs to the Petitoners. BIO 30.

The County analogizes the process here to tax refunds, receivership and bankruptcy claims, and statutes of limitations. BIO 30-31. Those examples highlight the injustice of the deadline here. Taxpayers have three years to file and receive a federal refund and four years for a Michigan refund, *ibid*., deadlines that begin running only after the total tax and refund can be calculated. MCL § 205.27a(2); 26 U.S.C. § 6511. The owners here would have suffered no injury under a similar three-year deadline after the sale, when surplus proceeds could have been calculated.

The shorter deadlines cited by the County for receivership and bankruptcy claims apply to *creditors*—not owners of real property. Shorter claim periods for creditors designed to resolve debts of insolvent persons are deeply rooted in this nation's history and tradition, and relate to the higher standard long placed on creditors as well as the longstanding American view that the law should provide a fresh start to insolvent people. *See, e.g.*, *United States v. Sec. Indus. Bank*, 459 U.S. 70, 72 n.1 (1982) (bankruptcy give debtors a "fresh start"); *In re*

Morel, 983 F.2d 104, 105 (8th Cir. 1992) (bankruptcy reflects longstanding policy, expressly authorized by the Constitution, to settle and discharge debts); James Monroe Olmstead, *Bankruptcy a Commercial Regulation*, 15 Harv. L. Rev. 829, 834-35 (1902) (noting traditional American view of treating bankruptcy like the biblical "Jubilee" year of debt forgiveness). There is no similar tradition to divest fee simple owners of their right to just compensation through short deadlines that run before sale and while they are still in possession. *See* Pet. 13-14.

The County argues that Michigan's county treasurers are not "personally profiting" or receiving a "financial benefit" from the proceeds, BIO 25-26, to distinguish cases that hold 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. *United States v. James Daniel Good Real Property*, 510 U.S. 43, 55-56 (1993). Yet the windfall taken from former owners, including the Petitioners here, directly benefits the County and may be used to pay wages to the County Treasurer and the Treasurer's staff. MCL § 211.78m(8)(i) (proceeds may pay costs related to "the *administration of this act*") (emphasis added). The County also retains all interest held on the funds. MCL § 211.78m(8). This funding incentive supports more protective procedures. *James Daniel Good*, 510 U.S. at 55-56, n.2 (forfeitures funded confiscating agency's budget, not general federal budget); *cf. Woodbridge v. City of Greenfield*, No. 23-30093, 2024 WL 2785052, *2 n.1 (D. Mass. May 29, 2024) ("tak[ing] advantage" of confiscatory tax foreclosure law "to line [government] coffers to this extent serves as a stark

example why this statutory scheme is subject to constitutional challenge").

The County finally argues that confiscations are justified to encourage timely payment of taxes; to resolve conflicting claims; and for the opportunity to purchase Petitioners' homes for less than fair market value. BIO 27-30. Nowhere else does Michigan resolve conflicting claims by confiscating the *res* for *itself*. *See* Pet. 14-16. The government's desire to purchase property at a steep discount merely highlights the core of the constitutional injury: a taking without just compensation and without due process.

III. This Case Presents an Issue of Great Public Importance

The County disputes the pressing national problems identified by the Petition by simply averring that the outcome is correct. The Michigan courts and Sixth Circuit agree with the County, meaning further percolation is unnecessary. Under current law in Michigan state and federal courts, the state and counties confiscate just compensation owed to the 95% of Michigan tax debtors who cannot comprehend or navigate the claims statute. "Confiscatory statutes should be plainly understood by common folks." *Conner v. Alltin, LLC*, 571 F. Supp. 3d 544, 552 (N.D. Miss. 2021).

Cases like the recently filed Petition for a Writ of Certiorari in *Koetter v. Manistee County Treasurer*, No. 24-1095, highlight how government relies on *Nelson* to authorize devastating and abusive confiscations. Chelsea Koetter missed a single tax payment and was only eight days late (during the COVID-19 pandemic) in filing Form 5743. *See*

Petition at 7-8, *Koetter*, No. 24-1095 (U.S. Apr. 17, 2025). The county confiscated more than $100,000 from Koetter alone. *Ibid.*

Laws with confusing claim procedures or premature deadlines especially harm society's weakest members. *See, e.g*, Brief of Amici Curiae Legal Services of The Hudson Valley, et al., at 13 ("our clients who face foreclosures are overwhelmingly seniors"). Whether *Nelson* authorizes claim procedures like MCL § 211.78t affects hundreds or perhaps thousands of owners in Michigan, New York, New Jersey, Alabama, and Arizona who lose real property to tax foreclosures. *See ibid.*; Brief of Amici Curiae Alabama Ass'n of Realtors, et al., at 3-4; Pet. 2 n.2.

CONCLUSION

This Court should grant the Petition.

Respectfully submitted,

DEBORAH J. LA FETRA
Pacific Legal Foundation
3100 Clarendon Blvd.
Suite 1000
Arlington, VA 22201

CHRISTINA M. MARTIN
Counsel of Record
Pacific Legal Foundation
4440 PGA Blvd.
Suite 307
Palm Beach Gardens, FL 33410
Telephone: (916) 330-4059
CMartin@pacificlegal.org

Counsel for Petitioners

JUNE 2025