No. 18-294

IN THE
Supreme Court of the United States

NICHOLAS HONCHARIW,

Petitioner,

v.

COUNTY OF STANISLAUS, CALIFORNIA, et al.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF IN OPPOSITION

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INTRODUCTION

Petitioner Nicholas Honchariw filed inverse condemnation and due process claims in California court, but the state courts unanimously held his claims were *years* too late. Undeterred, he filed this federal suit. The courts below then applied this Court's decision in *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985), to conclude that Honchariw had forfeited any federal takings claim by failing to comply with California's procedure for seeking just compensation. *Williamson County* requires not merely that a prospective takings plaintiff go through the motions of seeking compensation from the state; it requires that the plaintiff actually comply with the state procedures for seeking that compensation. Honchariw failed to do so.

Honchariw can point to no split of authority among the circuits and no important and unsettled question of federal law at issue here. His argument is simply that the courts below applied the law incorrectly. That, of course, is not one of the "compelling reasons" for granting certiorari under this Court's Rule 10.

Regardless, all four courts that have previously rejected Honchariw's claims were correct to do so. The California courts correctly concluded that Honchariw's claims were time-barred. And the federal courts below likewise correctly concluded that his takings claim was plainly barred by *Williamson County* and that his due process claim was untimely.

Because the decisions below were correct and unremarkable, this Court should deny the Petition.

STATEMENT OF THE CASE

I. Honchariw's state lawsuits

Honchariw is the trustee of the Honchariw Family Trust, which owns property in Stanislaus County, California. On June 16, 2006, Honchariw applied to the County to subdivide and develop that property. Pet. App. at 32. On March 24, 2009, the County denied Honchariw's application, but did not make findings that California's Housing Accountability Act, Cal. Gov't Code § 65589.5, requires to justify denial of some housing developments. App. at 35. Within the applicable 90-day statute of limitations for challenging the denial, on June 22, 2009, Honchariw filed a petition for writ of administrative mandamus in state court, asserting the single claim that the County violated section 65589.5(j) by denying the subdivision without making the required findings. Pet. at 5-6.

The superior court rejected Honchariw's claim and denied the writ. Pet. App. at 41. He appealed, and on November 14, 2011, the California Court of Appeal reversed, concluding that the County was required to make the findings before denying the subdivision. *Honchariw v. Cty. of Stanislaus*, 132 Cal. Rptr. 3d 874, 885 (Ct. App. 2011) (*"Honchariw I"*).

On remand, the County approved Honchariw's subdivision application on May 22, 2012. Pet. App. at 42. On December 12, 2012, Honchariw sued the County in state court again, seeking just compensation for a temporary taking of his property under the state and federal constitutions and damages for denial of substantive due process under 42 U.S.C. § 1983. Pet. App. at 6. He filed the complaint over three-

and-a-half years after the County originally denied the subdivision. *See* Pet. App. at 35, 46.

The trial court sustained the County's demurrer, holding that Honchariw's claims were untimely under the plain language of the California Subdivision Map Act's 90-day statute of limitations, Cal. Gov't Code § 66499.37, and the California Supreme Court's decision in *Hensler v. City of Glendale*, 876 P.2d 1043 (Cal. 1994). *See Honchariw v. Cty. of Stanislaus*, 189 Cal. Rptr. 3d 62, 64-65 (Ct. App. 2015) ("*Honchariw II*") (describing procedural posture). *Hensler* had held that *all* claims challenging a local government's subdivision decisions—including inverse condemnation claims—must be brought within the Map Act's 90-day statute of limitations. 876 P.2d at 1059-60.

Honchariw appealed, and the California Court of Appeal affirmed on the same basis. *See Honchariw II*, 189 Cal. Rptr. 3d at 71. The California Supreme Court denied Honchariw's petition for review on August 10, 2015. Pet. at 9.

II. Honchariw's federal lawsuit

A year later, on August 10, 2016, Honchariw filed the instant lawsuit—his third arising from the County's denial of his subdivision application more than seven years prior. He alleged federal temporary takings and substantive due process claims. Pet. at 9.

On the County's motion, the district court dismissed the case without leave to amend. It held that Honchariw's federal takings claim was barred by *Williamson County* because he failed to diligently follow California's procedure for seeking just compensation. Pet. App. at 17-19. Following the consistent lead of

the courts of appeals, the district court held that Honchariw's failure to bring a timely state law inverse condemnation claim was a complete bar to his federal claim. *Id.* The court also held that Honchariw's substantive due process claim was both untimely and meritless. Pet. App. at 19-21.

Honchariw appealed. Pet. at 10. In an unpublished opinion, the Ninth Circuit affirmed. *See* Pet. App. at 1-4. The court agreed with the district court that *Williamson County* barred Honchariw's takings claim because he had failed to bring a timely state claim for compensation. Pet. App. at 3. The court also held his due process claim was time-barred. Pet. App. at 4. Honchariw sought rehearing en banc, which the court denied. Pet. App. at 22-23. The Petition followed.

REASONS TO DENY THE PETITION

I. The Petition ignores this Court's criteria for certiorari.

Honchariw does not argue that the Court of Appeals' decision conflicts with the decisions of another circuit or that it presents some unsettled and important question of law. Indeed, he identifies no issue of import beyond the facts of this case, and because the decision is unpublished, it can have no effect beyond the facts of this case. *See* Ninth Circuit Local Rule 36-3(a). Instead, he merely complains that the Court of Appeals misapplied settled law about claim accrual and the adequacy of California's inverse condemnation remedy.

This Court generally reserves its review for cases involving conflicts among the circuit courts, conflicts between state and federal courts on important federal

questions, lower court decisions holding federal statutes unconstitutional, or important but unsettled questions of federal law. Sup. Ct. Rule 10. In contrast, "[a] petition for a writ of certiorari is rarely granted when the asserted error consists of . . . the misapplication of a properly stated rule of law." *Id.* Here, Honchariw has presented only the latter. The Petition should thus be denied.

II. The courts below correctly rejected Honchariw's takings and due process claims.

A. Honchariw's takings claim was plainly barred by *Williamson County*.

1. The decisions below reflect a straightforward application of *Williamson County*'s state-compensation requirement and the consensus position of the courts of appeals.

Courts have uniformly held that if a plaintiff fails to bring a timely state inverse condemnation claim, it has "*forfeited* its federal claim." *Pascoag Reservoir & Dam, LLC v. Rhode Island*, 337 F.3d 87, 95 (1st Cir. 2003); *accord Vandor, Inc. v. Militello*, 301 F.3d 37, 39 (2d Cir. 2002); *Liberty Mut. Ins. Co. v. Brown*, 380 F.3d 793, 796 (5th Cir. 2004); *Gamble v. Eau Claire Cty.*, 5 F.3d 285 (7th Cir. 1993); *Harbours Pointe of Nashotah, LLC v. Vill. of Nashotah*, 278 F.3d 701, 705-06 (7th Cir. 2002); *Daniel v. Cty. of Santa Barbara*, 288 F.3d 375, 381 (9th Cir. 2002). As the Fifth Circuit has recognized, "[a]ny other rule would allow plaintiffs to circumvent state court by failing to comply with state procedural requirements for bringing

inverse condemnation claims, thereby nullifying *Williamson County*'s requirement that the plaintiff avail itself of the available state procedures for obtaining compensation." *Liberty Mut. Ins.*, 380 F.3d at 798.

Here, the California courts held that Honchariw waited more than *three years* too long after his development application was denied to file his state inverse condemnation claim. *Honchariw II*, 189 Cal. Rptr. 3d at 71. Because he ignored the plain language of the statute of limitations—and a California Supreme Court case applying that statute to his very claim, *see Hensler*, 876 P.2d at 1056-61—his federal takings claim is squarely precluded by *Williamson County*.

2. In an attempt to salvage his defaulted claim, Honchariw argues that *Williamson County*'s state-compensation requirement does not apply because the state remedy was supposedly either unavailable or inadequate on these facts. Pet. at 22-24. Not so. Federal courts have long recognized that California's inverse condemnation remedy is an adequate mechanism for seeking just compensation. *See, e.g.*, *Carson Harbor Vill., Ltd. v. City of Carson*, 353 F.3d 824, 828 (9th Cir. 2004). Honchariw simply did not diligently pursue that remedy.

The California Court of Appeal held that under settled California law, Honchariw's state inverse condemnation claim accrued when the County denied his subdivision application in 2009, and he could have joined that claim in his action alleging that the County violated the Housing Accountability Act. *Honchariw II*, 189 Cal. Rptr. 3d at 71; *see also, e.g.*, *Landgate, Inc. v. Cal. Coastal Comm'n*, 953 P.2d 1188, 1192 (Cal. 1998) (plaintiff joined inverse

condemnation claim with mandamus claim asserting state statutory violation). Honchariw simply chose not to follow this available procedure.[1]

Honchariw nevertheless theorizes that California's inverse condemnation remedy was inadequate because his takings claim supposedly could not accrue until the 2012 approval of his development. He thus argues the state inverse condemnation procedure is inadequate because it forced him to bring the claim before his federal claim was ripe. Pet. at 24.

Yet as the California Court of Appeal pointed out, even if Honchariw's state inverse condemnation claim accrued in 2012 upon approval of his development, he still failed to comply with the applicable 90-day statute of limitations by bringing his state lawsuit over seven months later. *Honchariw II*, 189 Cal. Rptr. 3d at 71; *see also* Pet. App. at 4.

Moreover, none of the cases Honchariw cites supports his contention that his claim accrued, counterintuitively, when the County *approved* the subdivision on remand. Neither *Williamson County* nor *MacDonald, Sommer & Frates v. County of Yolo*, 477 U.S. 340 (1986), implies that a takings claim can accrue upon a local government's approval of a proposed housing development. And *Norco Construction, Inc. v. King County,* 801 F.2d 1143 (9th Cir. 1986), held only that where an agency refuses to take any action at all on a development application, § 1983

[1] Honchariw has never argued that he inadvertently failed to file his inverse condemnation claim in time. Instead, he has consistently argued that the California courts were wrong about his obligation to do so. *See, e.g.,* Pet. at 25-27.

claims based on that delay may ripen when the agency finally does take action. Here, the County took action in 2009 when it denied Honchariw's proposed subdivision. That was the final action that allegedly harmed him.

B. Honchariw's due process claim was untimely because it accrued in 2009.

Honchariw similarly argues that his due process claim did not accrue until the 2012 approval of his subdivision. Pet. at 19-22. He seeks to evade the expired, two-year statute of limitations for § 1983 claims in California. *See Action Apartment Ass'n v. Santa Monica Rent Control Bd.*, 509 F.3d 1020, 1026 (9th Cir. 2007) (citing *Wilson v. Garcia*, 471 U.S. 261, 266-67 (1985)). The courts below were correct to reject his argument. *See* Pet. App. at 4, 20.

A substantive due process claim accrues when a plaintiff "kn[ew] or ha[d] reason to know of the *injury* which is the basis of the action." *TwoRivers v. Lewis*, 174 F.3d 987, 991 (9th Cir. 1999) (emphasis added). It is "complete as soon as the government action occurs." *Action Apartment*, 509 F.3d at 1027.

Honchariw's alleged injury arises from the County's denial of his subdivision application in March 2009, about which he was immediately aware. That is when his claim accrued. The County's *approval* in 2012 caused him no harm. A change in the duration of the harm may affect the amount of damages to which a plaintiff might be entitled, but it does not alter the accrual of her cause of action. *See De Anza Props. X, Ltd. v. Cty. of Santa Cruz*, 936 F.2d

1084, 1086-87 (9th Cir. 1991). As the Court of Appeals noted here, "if anything, [the 2012 approval] eliminated the violation." Pet. App. at 4.

Honchariw's due process claim accrued in March 2009 on denial of his subdivision application, and he was thus required to bring his § 1983 claim no later than March 2011. This lawsuit—filed more than seven years later in 2016—was far too late.[2]

III. Honchariw's claims are defective regardless of the Court's answers to the questions presented.

The Court should also deny the Petition because Honchariw's claims are defective in other respects that would require affirmance.

1. Even if Honchariw somehow could have stated a federal takings claim despite failing to timely avail himself of California's procedure for seeking compensation, his claim would nonetheless be barred because his federal suit asserts the same claims that he brought in his state lawsuit. *See San Remo Hotel, L.P. v. City & Cty. of S.F.*, 545 U.S. 323, 335-36 (2005) (holding that Full Faith and Credit Statute, 28 U.S.C. § 1738, can bar relitigation of federal takings claim after state inverse condemnation claim has been resolved in state court). His substantive due process claim is barred for the same reason.

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[2] And as the district court concluded, any equitable tolling available during the pendency of his state lawsuit, which was filed in December 2012, does not help him because the limitations period had long since elapsed when the state suit was filed. *See* Pet. App. at 20.

Under the Full Faith and Credit Statute, federal courts apply the preclusion law of the state that entered the judgment. *Id.* Honchariw's claims satisfy California's test for claim preclusion because they involve the same parties and same claims, which were litigated to a final judgment in his state action. *See Adam Bros. Farming, Inc. v. Cty. of Santa Barbara*, 604 F.3d 1142, 1148-49 (9th Cir. 2010) (barring federal takings claim based on prior California judgment on equal protection and due process); *Palomar Mobilehome Park Ass'n v. San Marcos*, 989 F.2d 362, 364-65 (9th Cir. 1993) (federal takings claim barred by prior California judgment rejecting inverse condemnation claim).

Although Honchariw purported to reserve his federal takings claim under *England v. Louisiana State Board of Medical Examiners*, 375 U.S. 411 (1964), this Court has held that an *England* reservation does not apply to takings claims where the plaintiff was in state court due to *Williamson County*'s state-compensation requirement. *San Remo Hotel*, 545 U.S. at 340-41. Moreover, *England* does not apply here because Honchariw asserted *federal* takings and due process claims along with his state claim in his state court complaints. *See id.* (*England* reservation inapplicable where plaintiff voluntarily asserted federal claims in state proceeding).

2. The district court also correctly held that Honchariw failed to state a claim for denial of substantive due process. *See* Pet. App. at 21. Outside the realm of fundamental rights, the bar for establishing that official conduct violates due process is "exceedingly high." *Matsuda v. City & Cty. of Honolulu*, 512 F.3d 1148,

1156 (9th Cir. 2008). "[O]nly the most egregious official conduct can be said to be 'arbitrary in the constitutional sense'": it must amount to an "abuse of power" lacking any "reasonable justification in the service of a legitimate governmental objective." *Cty. of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998). The circuit courts have applied this standard in the land-use context. *See, e.g.*, *UA Theatre Cir. v. Twp. of Warrington*, 316 F.3d 392, 401 (3d Cir. 2003) (Alito, J.); *Shanks v. Dressel*, 540 F.3d 1082, 1088 (9th Cir. 2008).

As the district court correctly held, Honchariw cannot carry this burden. His claim is based entirely on the County's violation of state law, which is insufficient to allege a violation of due process. Pet. App. at 53. In particular, he alleges that the County's denial of his development application was motivated by opposition from local residents. Pet. App. at 34-35. But even if so, "[t]he fact that 'town officials are motivated by parochial views of local interests which work against [a developer's] plan and which may contravene state subdivision laws' . . . does not state a claim of denial of substantive due process." *Corn v. City of Lauderdale Lakes*, 997 F.2d 1369, 1389 (11th Cir. 1993) (quoting *Greenbriar, Ltd. v. City of Alabaster*, 881 F.2d 1570, 1579 (11th Cir. 1989) (quoting *Coniston Corp. v. Vill. of Hoffman Estates*, 844 F.2d 461, 467 (7th Cir. 1988) (quoting *Creative Env'ts, Inc. v. Estabrook*, 680 F.2d 822, 832 (1st Cir. 1982)))).

IV. This is one of the run-of-the-mill land use disputes that *Williamson County* sensibly diverts from the federal courts.

Contrary to Honchariw's contention (Pet. at 4), this case is not "a useful sister case" to *Knick v. Township of Scott,* No. 17-647 (cert. granted Mar. 5, 2018). The question presented in *Knick*—whether to overrule *Williamson County*'s state-compensation requirement—is not presented here. Honchariw has never argued for that, either below or in the Petition. He argues instead merely that the Court of Appeals improperly applied *Williamson County*. This case is "useful" for *Knick* only in that it shows why the Court should retain the state-compensation requirement in that case.

This case originally arose from a dispute over the application of California's Housing Accountability Act, Cal. Gov't Code § 65589.5, to Honchariw's development. *See Honchariw I*, 132 Cal. Rptr. 3d at 875. That dispute presented the question whether Honchariw's subdivision qualified as a "housing development project" subject to the statute, and whether the County was obligated to approve it given the County's local standards for demonstrating an available water supply to serve the development. *Id.* at 876, 884-85.

If the state-compensation requirement were overruled, that sort of ordinary state-law litigation—which is omnipresent in land use regulation—would be invited to federal court. Federal courts would be routinely called on to decide those questions of state law or else abstain and send the case to state court.

By contrast, *Williamson County* offers a simple rule with predictable application. Honchariw violated that rule.

CONCLUSION

For the foregoing reasons, the Court should deny the petition for certiorari.

Respectfully submitted,

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