No.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The Muskegon County Treasurer foreclosed and sold homes and land belonging to Petitioners to collect unpaid property taxes. The County sold each property for substantially more than each owner owed. Under both the Michigan and federal constitutions, the surplus proceeds must be returned to the owners to avoid an unconstitutional taking. *Rafaeli, LLC v. Oakland Cnty.*, 505 Mich. 429 (2020); *Tyler v. Hennepin Cnty.*, 598 U.S. 631 (2023). In 2020, Michigan enacted a confusing and draconian process to claim surplus proceeds after a tax foreclosure sale, Mich. Comp. Laws § 211.78t, which few entitled owners have successfully navigated. Relying on *Nelson v. City of New York*, 352 U.S. 103 (1956), for the proposition that a county evades liability for just compensation if a property owner fails to follow the state's claim process, foreclosing counties continue to keep the surplus proceeds much more often than not, even after this Court's *Tyler* decision.

The questions presented are:

1. Does Michigan's claims statute violate due process and the right to just compensation?

2. If it is not *dicta*, should the Court overrule the takings holding in *Nelson v. City of New York*, 352 U.S. 103 (1956)?

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Petitioners Kari Beeman, Linda Hughes, Stephanie Hulka-Bertoia, Shedrick MI, LLC, and Johnny Dore, as personal representative of the estate of Johnny Chapman, were defendants-appellants in all proceedings below. Shedrick MI, LLC, is not owned by a corporation and has no publicly held stock. All other Petitioners are individuals.

Respondent Muskegon County Treasurer is a government entity, plaintiff-appellee 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 Muskegon County Treasurer for Foreclosure, No. 166580 (Mich. Sept. 30, 2024)

In re Petition of Muskegon County Treasurer for Foreclosure, No. 363764 (Mich. Ct. App. Oct. 26, 2023)

In the Matter of the Petition of Muskegon County Treasurer for the Foreclosures of Certain Parcels of Property Due to Unpaid 2018 and Prior Years' Taxes, Interest, Penalties, and Fees, No. 2020-002044-CZ (14th Circuit Court Muskegon County Aug. 9, 2022)

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PETITION FOR A WRIT OF CERTIORARI

In *Tyler v. Hennepin County*, 598 U.S. 631, 639 (2023), this Court held that the Takings Clause protects tax-delinquent owners from being deprived of more than they owe in taxes, penalties, interest, and fees. *Id.* at 647. In Michigan today, counties are still confiscating more than what is owed from 95% of those owners because the state has enacted a self-serving and draconian process for owners to recover their own constitutionally protected money. Confusion and conflict among lower courts concerning this Court's decision in *Nelson v. City of New York*, 352 U.S. 103, 110 (1956), has facilitated transparent end runs around *Tyler* and the Takings Clause in half a dozen states.

Nelson is the cause of this mischief. Courts have interpreted it to mean that *any* opportunity to recover surplus proceeds—even if brief and before the taking of the property—defeats a claim for just compensation. *Infra* 20-21. *Tyler* distinguished *Nelson* because the New York City ordinance "defined [a] process through which the owner could claim the surplus," whereas the Minnesota law in *Tyler* offered no claim process whatsoever. *Tyler*, 598 U.S. at 644. Thus, *Tyler* did not need to decide whether *Nelson* is binding and satisfies modern takings or due process requirements expressed in cases like *Knick v. Twp. of Scott*, 588 U.S. 180, 189 (2019), and *Jones v. Flowers*, 547 U.S. 220, 234 (2006). This case presents that unanswered question.

Since *Tyler*, Minnesota and other states amended their tax foreclosure laws to ensure that property owners get a meaningful opportunity to collect surplus proceeds after a public sale and all taxes, penalties,

interest, and fees are paid.[1] Most states now have a simple process and give owners many years to make a claim. *See infra* at 26. But five states—Michigan, Alabama, Arizona, New Jersey, and New York—feign compliance with the principles in *Tyler* by giving owners only a fleeting opportunity to recover their own money.[2] All five states require owners to make a claim before the sale of their property occurs and before they know if there is even any money to collect.

Michigan enacted the claim statute at issue here in response to the Michigan Supreme Court's decision in *Rafaeli, LLC v. Cnty. of Oakland*, 505 Mich. 429 (2020), a precursor to *Tyler*. Under the claim statute, the former owner has 92 days after the government takes title to tax-foreclosed property to personally serve or send a notarized notice of claim by certified mail, return receipt requested, to preserve her future right to collect surplus proceeds. Mich. Comp. Laws (MCL) § 411.78t. Weeks after this deadline, the property is sold. Approximately one year after the foreclosure and many months after the sale, owners must file a motion in court to obtain their money. Failure to strictly comply with both parts of the administrative and judicial claims process absolutely precludes recovery of any money, resulting in frequent windfalls for the foreclosing county. *See, e.g.*, *In re*

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[1] *See, e.g.*, 2024 Colo. Legis. Serv. Ch. 165 (H.B. 24-1056); 36 Maine Rev. Stat. Ann. § 943-C; 2024 Mass. Legis. Serv. ch. 140, §§ 80, 93 (H.B. 4800); Minn. Stat. Ann. § 282.015; 2023 Neb. Laws L.B. 727; 2024 S.D. Laws Ch. 38 (HB 1090).

[2] 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*, No. 088959, 2025 WL 52059, at *7 (N.J. Jan. 9, 2025) (describing process in N.J. Stat. Ann. § 54:5-87(b)); N.Y. Real Prop. Tax Law §§ 1136(3), 1197(4).

Alger Cnty. Treasurer for Foreclosure, No. 363803, 2024 WL 4174925, at *4-5 (Mich. Ct. App. Sept. 12, 2024) (owner denied surplus when county mailroom received timely notice on July 1, because the county treasurer's office did not retrieve the notice until July 2). And the few owners who do navigate the process receive less than constitutionally mandated just compensation: The county keeps 5% of the sale price *after* deducting penalties, interest, fees, and sale expenses, as well as the interest earned on the principal for the year it retains the money before remitting it to the rightful owner.

This perverse and complicated claim statute is unlike any other debt collection or claim process in Michigan. *See infra* at 14-16. And its consequences are devastating, depriving nearly all former owners of all their savings in tax-foreclosed homes, land, and businesses. *See infra* at 31-32.

In this case, in 2021, Muskegon County foreclosed and sold 40 properties for significantly more than what was owed.[3] Only four owners successfully navigated the statute's procedures and recovered any of the constitutionally protected value of their equity.[4] The County took a windfall of $770,000 from 36 owners, including the five Petitioners here, who missed the unreasonable notice of claim deadline and, despite filing timely motions to disburse after the actual sale of their property, were denied just compensation for the excess property taken to pay

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[3] *See* Application for Leave to Appeal at 3 (citing Tax-Sale.info, *Muskegon County*, Aug. 16, 2021 Auction, https://www.tax-sale.info/listings/catalog/1911).

[4] The trial court ordered disbursement to four owners on June 30, 2022, August 9, 2022, and August 12, 2022.

their debts.[5] For example, 70-year-old Linda Hughes tried to recover the surplus proceeds on her childhood home in Egelston, Michigan, that was taken to pay $5,647.27 in taxes, penalties, interest, and fees. The County sold her house for $60,750. App. 45a-47a. The court denied her timely filed motion to obtain the surplus proceeds because she missed the notice of claim deadline, which had run seven weeks before her home was sold. App. 5a. Relying on *Nelson*, the court upheld the County's confiscation of $55,102 more than she owed. App. 20a, 23a. In short, the court below—like other state and federal courts—interpreted *Nelson* as immunizing the claim statute from constitutional challenge, opining that Petitioners would have recovered their money if they had complied with the very statute they challenge. *Ibid*.

This Court should grant the Petition to resolve the confusion and conflict caused by *Nelson*. Rather than a good faith attempt to return money to the rightful owners, the statute burdens the right to just compensation by imposing on owners a tiny window to claim their money. The statute allows counties to regularly shirk their duty to pay just compensation.

The government has "an *obligation* to return property when its owner can be located," and a short period of time before the state confiscates the property, combined with minimal notice requirements, "raises important due process concerns." *Taylor v. Yee*, 136 S. Ct. 929, 930 (2016) (Alito., J., concurring on denial of cert.) (emphasis added). Most Justices in this Court have warned that confiscatory

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[5] This does not include the additional windfall to the government when it skips the auction and takes the property by paying only the tax debt, per MCL § 211.78m(1).

statutes that enrich the government raise unique due process problems and merit greater scrutiny than courts often give them. *Culley v. Marshall*, 601 U.S. 377, 396 (2024) (Gorsuch, J., concurring, joined by Thomas, J.); *id.* at 405 (Sotomayor, J., dissenting, joined by Kagan and Jackson, JJ.). A statute that gives owners only 92 days to preserve a future right to collect an unknown and unrealized sum of money raises these same due process concerns.

This Court should grant the Petition, hold that Michigan's statute violates the Fifth and Fourteenth Amendments' guarantees of just compensation and due process, and if necessary to do so, limit or overturn *Nelson*.

OPINIONS BELOW

The decision of the Michigan Court of Appeals (App. 1a-23a) is published at *In re Muskegon Cnty. Treasurer for Foreclosure*, No. 363764, __ N.W.3d __, 2023 WL 7093961 (Mich. Ct. App. Oct. 26, 2023). The trial court's opinion dismissing the claims raised here (App. 24a-26a) is unpublished. The denial of rehearing by the Michigan Court of Appeals is attached at App. 29a. The Michigan Supreme Court's order denying review is attached at App. 27a.

JURISDICTION

On October 26, 2023, the Michigan Court of Appeals issued the opinion at issue here. App. 1a. On December 8, 2023, the Court of Appeals denied a timely motion for rehearing. App. 29a. On September 30, 2024, the Michigan Supreme Court denied a timely application seeking leave to appeal the decision by the Michigan Court of Appeals. App. 27a. On November 18, 2024, this Court granted an

application for an extension of time of 39 days, to and including February 7, 2025. *See* Docket No. 24A499. This case arises 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 . . . ."

The relevant portions of the Michigan statutes at issue are reproduced in the Appendix at App. 30a-41a.

STATEMENT OF THE CASE

A. Legal Background

In *Rafaeli*, 505 Mich. 429, a county foreclosed on Uri Rafaeli's rental house because he accidentally underpaid his property taxes by $8. The County sold the property at auction for $24,500 and kept all the proceeds, consistent with the state law at the time. *Id.* at 437. The Michigan Supreme Court held that the government violates the Michigan Constitution's Takings Clause when it takes and sells property at

auction and retains more than was owed in taxes, penalties, interest, and fees. *Id*. at 484-85.

In response to *Rafaeli*, Michigan enacted a law (2020 PA 256) that created the novel claims procedure at issue here. MCL § 211.78t. Under this new law, tax foreclosures occur in February or March each year. If the tax debt is not paid by March 31, the government 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 formally notify the foreclosing government unit (here, the County) that she wants to be paid any future surplus proceeds from the sale of her property, by submitting a notarized Form 5743 by personal service acknowledged by the foreclosing government unit or by certified mail, return receipt requested. MCL § 211.78t(2); App. 3a-4a. At no point does the County send this critical form to owners.

If the state, local city, and county decline their rights of first refusal to purchase the property, the foreclosing government unit sells the property at a public auction between August and November—at least four months after foreclosure. MCL §§ 211.78m(1), (2). The following January, three to six months after the sale, the government calculates the proceeds remaining (if any) after deducting all tax debts, interest, and penalties, and mails notice to claimants that they must file a motion in court to recover these proceeds. MCL §§ 211.78t(3)(i), (k). Between February 1st and May 15th—roughly one year after foreclosure—the owner must file a motion in the original foreclosure action describing the owner's interest in the foreclosed property. MCL

§ 211.78t(4). But still the owner cannot collect the money constitutionally required.

The government responds to the motion either approving or disapproving the disbursement. MCL § 211.78t(5); App. 4a. The court then holds a hearing to determine the relative priority of all claims (including any lienholders' claims). The government grants first priority to itself, taking a 5% cut of the purchase price in addition to the tax debt, including interest and sale costs, 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 has 21 days to pay the amounts ordered by the circuit court, MCL § 211.78t(10), at most only 95% of the surplus proceeds otherwise owed to the debtor. MCL §§ 211.78t(12)(b), 211.78m(16)(c). Prior to disbursement, the county holds the tax debtors' money for approximately one year, during which time it accrues interest that the county retains. MCL § 211.78k(8).

To repeat the alarming fact that gives rise to this Petition: None of the claims process above matters if the owner failed to file a notice of claim Form 5743 in the proper form and by the proper method, long before the foreclosure sale of the property occurred. Failure to comply with that step cuts off the owner's right to *any* future claim or constitutional challenge and results in a windfall of the owner's equity to the foreclosing county.

B. The Muskegon County Treasurer confiscates $200,000 more than the Petitioners owed in taxes, penalties, interest, and fees

The Petitioners here each fell behind on the property taxes for homes they owned in Muskegon County. App. 5a. On February 24, 2021, the County obtained a judicial order of foreclosure against their properties. The County mailed a notice of the impending foreclosure that also noted the owners' right to claim any excess funds from a future sale and the July 1, 2021, deadline. When the owners failed to pay their debt by March 31, 2021, the County took fee simple title. *Ibid.* After taking title, the County sent a notice by first-class mail entitled "NOTICE OF FORECLOSURE" explaining the property was foreclosed on March 31, 2021, and, "**Any interest that you possessed in this property prior to foreclosure, including any equity associated with your interest, has been lost.**" App. 42a. The notice then states (in a seeming contradiction) that "Any person that held an interest in the property at the time of foreclosure has a right to file a claim for **REMAINING PROCEEDS** pursuant to MCL 211.78t" and that claims must be made by July 1, 2021. *Ibid.* Neither notice included a copy of the required form.

Petitioners missed the July 1, 2021, deadline. App. 5a. On August 16, 2021, the County auctioned their properties for more than what each owed in taxes, penalties, interest, and fees. App. 5a, 57a. Between December 2021 and April 2022, after Petitioners retained an attorney, they each filed tardy notice of claim forms.

The Petitioners each timely filed a motion in the trial court to collect the surplus proceeds remaining after all taxes, penalties, interest, and fees were paid. The County opposed their motions *solely* because the preliminary notices of claims were submitted after the July 1 deadline. App. 5a. The Petitioners argued, *inter alia*, that denial of their claims would violate the federal due process guarantee as well as "result in an unconstitutional taking under . . . the Fifth Amendment of the United States Constitution." App. 5a-6a, 52a-53a. The County opposed the constitutional claims. *See* App. 5a-6a.

On August 5, 2022, the trial court held a hearing on the motions, and Petitioners asked to submit evidence that they did not understand how to claim surplus proceeds until advised by counsel, which was too late. *See* Aug. 5, 2022, Hearing Transcript at 24. The court denied that request. The court acknowledged that "the legislative requirements of the filing of the [Form] 5743 by the July 1 deadline" were "difficult . . . to maneuver" for some people but nevertheless held that the claim procedure under Michigan's tax statute was "sufficient with regards to its due process and is constitutional." App. 63a. On August 9, 2022, the court entered an order denying the Petitioners' motions for the surplus proceeds. *See* App. 25a. Accordingly, the County took large windfalls beyond what each owner owed in taxes, penalties, interest, expenses, and fees: $42,145 from Kari Beeman, $55,102 from Linda Hughes, $30,555 from Stephanie Hulka-Bertoia, $32,691 from Shedrick MI, LLC, and $38,672 from Johnny Chapman.

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

On appeal, the Petitioners asserted that depriving them of the surplus proceeds from the tax sales violated their federal right to procedural due process because the procedure is unreasonable, and takes property without just compensation because the statutory procedures allow the government to evade its constitutional duty to pay just compensation. App. 14a, 18a, 22a.

The Court of Appeals ruled against the Petitioners, holding that the statute's claim process was the "sole mechanism by which a former owner" could recover any surplus proceeds remaining after a sale, and the statute satisfied due process because, if the owners had strictly followed the statute, "the risk of an erroneous deprivation is nil." App. 7a, 15a. The July 1 deadline provided "a reasonable time period" for owners to preserve their right to recover their own money. *See* App. 15a-16a.

The court denied the takings claims relying on *Nelson*, 352 U.S. 103, which it construed to hold 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." App. 20a. Because the Petitioners failed to satisfy the pre-sale claim requirement and thus were ineligible under the statutory scheme to receive any compensation, the court held, "Following the reasoning of the *Nelson* Court, respondents did not suffer a compensable taking." App. 20a.

The Petitioners timely sought review by the Michigan Supreme Court, which was denied. App. 27a.

REASONS FOR GRANTING THE PETITION

I. The Court Should Grant Certiorari Because the Lower Court's Decision Defies This Court's Takings Precedents

The Just Compensation Clause of 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 Evangelical Lutheran Church of Glendale v. Los Angeles Cnty.*, 482 U.S. 304, 315 (1987). Once government takes property, "[t]he law will imply a promise to make the required compensation." *United States v. Great Falls Mfg. Co.*, 112 U.S. 645, 656-57 (1884). *See also Yearsley v. W.A. Ross Constr. Co.*, 309 U.S. 18, 21 (1940). Moreover, "the owner is entitled to reasonable, certain, and adequate provision for obtaining compensation." *Cherokee Nation v. S. Kan. Ry. Co.*, 135 U.S. 641, 659 (1890).

The government cannot evade this duty when it collects a 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. Taking and keeping more than what is owed violates the Just Compensation 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)).

The statute here violates the Just Compensation Clause, straying widely from the responsibility imposed on tax collectors at common law and still recognized in all other debt collection contexts in Michigan today. The lower court, like many other courts, construes *Nelson* to hold that the mere existence of a claim process means there is *no taking*, in direct conflict with *Knick*. The Court should grant review to limit or overturn *Nelson*.

A. Michigan's burdensome claim procedure violates the government's longstanding duty to act affirmatively to return the surplus to rightful owners

Traditionally, seizing property to collect a debt was treated as a bailment. 2 Blackstone, *Commentaries on the Laws of England* 453 (1771). The debt collector could seize the property but was "bound by an implied contract in law to restore [the property] 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. The tax collector had an affirmative duty to seek and pay the debtor or deposit the money for the owner's benefit. *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 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. However, since the statute did not specify the deadline for claims for surplus proceeds, the Court held the government had a duty to hold surplus proceeds "indefinite[ly]" as "trustee" for the taxpayer. *Id.* at 221-22.[6] Imposing a statutory "construction consistent with good faith on the part of the United States," the Court held that the claim was timely because the statute of limitations did not begin to run until the taxpayer actually demanded his money. *Id.* at 222 ("The general rule is that when a trustee unequivocally repudiates the trust, and claims to hold the estate as his own . . . the Statutes of Limitations will begin to run . . . from the time such knowledge is brought home to [the beneficiary.]").

Michigan's other debt collection statutes still follow this same tradition, imposing a duty on the debt collector to pay the former owner. MCL § 600.3252 (surplus money "shall be paid over . . . on demand, to the mortgagor, his legal representatives or assigns"); MCL § 600.6044 (when property is sold via execution on judgment, "the officer shall pay over such surplus to the judgment debtor or his legal representatives on demand"); MCL § 324.8905c (surplus "proceeds of the foreclosure sale shall be distributed . . . [t]o the owner of the vehicle"). When the debtor can't be found or

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[6] 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).

fails to demand the money, the State holds it "indefinitely" for their benefit. *See O'Connor v. Eubanks*, 83 F.4th 1018, 1021 (6th Cir. 2023); MCL §§ 567.233, 567.234.

But when it comes to debtors who lose real estate to pay property taxes, Michigan departs dramatically from this longstanding tradition. Rather than hold property or money in trust for the owner, counties demand that owners quickly navigate a complicated process to recover *their own money*. When 90-95% of the debtors fail to navigate these requirements, the counties take the money as a windfall. Government cannot "make[] an exception only for itself" to avoid paying just compensation. *Tyler*, 598 U.S. at 645.

Likewise, in the usual takings context (outside of tax collection), American courts have long understood the onus to be on the government to compensate the owner, "without imposing on the owner any bur[d]en of seeking or pursuing any remedy, or leaving him exposed to any risk or expense in obtaining it." *Bonaparte v. Camden & A.R. Co.*, 3 F. Cas. 821, 831 (D.N.J. 1830); *Avery v. Fox*, 1 Abb. U.S. 246, 248 (W.D. Mich. 1868) (same); *First English*, 482 U.S. at 315 (a government that takes property has an affirmative obligation to pay just compensation). 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. *See* 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 must act within 92 days of foreclosure to preserve their inchoate right to collect just compensation.

Michigan's statute also conflicts with this Court's oft-recognized principle 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. 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 the post office could withhold "communist political propaganda" unless the addressee affirmatively requested in writing that it be delivered to him).[7] 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);

[7] The circuit courts have applied this same rule in other contexts. *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).

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).

Even owners who successfully navigate the statute recover less than full just compensation, because 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 itself 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, the counties contract with a private company to administer the statute on their behalf; the company charges buyers a 10% commission. *See Garcia v. Title Check, LLC*, No. 22-1574, 2023 WL 2787298, at *1 (6th Cir. Apr. 5, 2023).

In short, Michigan's claim process imposed on the Petitioners is unreasonable, uncertain, and inadequate, and thus violates the government's duty to provide a "reasonable, certain, and adequate" process for obtaining compensation." *Cherokee Nation*, 135 U.S. at 659. This Court should grant the Petition to ensure the government cannot use a slippery process to shirk its constitutional obligation to pay just compensation.

B. The Court should grant review to resolve the conflict 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 duty to remit surplus proceeds so long as there is *any* process to recover the excess—even an

unreasonably short and complicated one that likely would fail to survive judicial scrutiny under the Due Process Clause. This view conflicts with federal district courts in New York and Illinois, and is in tension with the Sixth Circuit.

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 cases as this case demonstrates, and serves only to immunize unfair processes that bar property owners from recovering their just compensation.

Nelson "was about process, not substantive property rights." *Hall v. Meisner*, 51 F.4th 185, 195 (6th Cir. 2022). Because of a bookkeeper's misconduct, the property owners failed to pay their water bills. *Nelson*, 352 U.S. at 105, 108. To satisfy the debts, the City of New York foreclosed on two properties. *Id.* at 106. The City kept one property and sold the other, retaining a windfall for the public. *Id.* at 105-06. The bookkeeper knew about the debt and foreclosure action, but "concealed" it from the owners. *Id.* at 107. Later, the owners learned of their loss and filed a motion in the original foreclosure action seeking 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 and the owners petitioned this Court, again arguing denial of equal protection and violation of due process based on insufficient notice. *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 overlooking notices of arrearages." *Id.* 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. The questions presented in this Court and in the New York Court of Appeals were whether the City violated the plaintiffs' right to due process and equal protection under the Fourteenth Amendment. *See Nelson*, 352 U.S. at 107; *City of New York v. Nelson*, 130 N.E.2d 602, 603 (N.Y. 1955); *see also* Brief for Appellants, *Nelson*, No. 30, 1956 WL 89027, at *3 (Sept. 14, 1956).

Although it was not raised, argued, or decided below, the Court stated in *dicta* that there was no taking because the owner missed the window to request payment for the excess. *Nelson*, 352 U.S. at 110. In *Nelson*, this window closed *before foreclosure and before there was any money to claim*. The owner had to "file[] a timely answer in [the] foreclosure proceeding, asserting his property had a value substantially exceeding the tax due." *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 counterargument" 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. *See Royal Canin U.S.A.,*

Inc. v. Wullschleger, No. 23-677, 604 U.S. __, 2025 WL 96212, at *10 (Jan. 15, 2025). Resolution of the just compensation 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, including the Eighth Circuit decision reversed by this Court in *Tyler*. *See Tyler v. Hennepin Cnty.*, 26 F.4th 789, 793-94 (8th Cir. 2022) ("*Nelson*'s reasoning on the Takings Clause controls this case despite a modest factual difference.").[8] As Justice Scalia noted, "*dicta*, 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 plainly evident here. Even after *Tyler*, courts—including federal courts in Michigan—construe *Nelson* as meaning 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 how complicated. *See, e.g.*, App. 20a; *Howard v. Macomb County*, No. 1:23-cv-12595, 2024 WL 3680996, at *4 (E.D. Mich. Aug. 6, 2024) ("[U]nder *Nelson* and *Tyler*, if the government provides a remedy—that is, a

[8] Other than the Sixth Circuit in *Hall*, apparently all pre-*Tyler* cases interpreted *Nelson*'s takings commentary as binding. *See, e.g.*, *Continental Resources v. Fair*, 311 Neb. 184, 197 (2022); *City of Auburn v. Mandarelli*, 320 A.2d 22, 32 (Me. 1974); *Sheehan v. Suffolk Cnty.*, 67 N.Y.2d 52, 60 (1986); *Ritter v. Ross*, 207 Wis. 2d 476, 485 (Ct. App. 1996); *Automatic Art, LLC v. Maricopa County*, No. CV 08-1484-PHX, 2010 WL 11515708, at *5-6 (D. Ariz. Mar. 18, 2010); *Reinmiller v. Marion Cnty.*, No. CV-05-1926-PK, 2006 WL 2987707, at *3 (D. Or. Oct. 16, 2006).

process for that person to seek compensation—the government does not unconstitutionally take."); *Metro T. Properties, LLC v. Cnty. of Wayne*, No. 23-cv-11457, 2024 WL 644515, at *3 (E.D. Mich. Feb. 15, 2024) (same); *Biesemeyer v. Municipality of Anchorage*, No. 3:23-CV-00185, 2024 WL 1480564, at *7 (D. Alaska Mar. 13, 2024) (Alaska's 6-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).

Other courts have limited or distinguished *Nelson*. Notably, the Sixth Circuit in *Hall v. Meisner* rejected a Michigan county's argument, based on *Nelson*, that it was entitled to take surplus equity "simply because the Michigan General Property Tax Act said it could." 51 F.4th at 194. Presciently anticipating this Court's ruling in *Tyler*, the court held that "[*Nelson*] hardly disavowed more than two centuries of Anglo-American property law; the case was about process, not substantive property rights." *Id*. at 195. Ultimately, *Hall* distinguished *Nelson* for the same reason this Court distinguished it in *Tyler*: Michigan, like Minnesota, at the time offered no process whatsoever. Some other post-*Tyler* cases in federal court also distinguished *Nelson*. For example, *Sharritt v. Henry*, No. 23 C 15838, 2024 WL 4524501 (N.D. Ill. Oct. 18, 2024), distinguished *Nelson* because, once the notice was filed in *Nelson*, the disbursement was automatic whereas in Illinois, after the notice, the government chose whether and how much to remit. *Polizzi v. Cnty. of Schoharie*, 720 F. Supp. 3d 141, 150 (N.D.N.Y. 2024), rejected the government's claim that pre-foreclosure process sufficed under *Nelson* to deprive owners of surplus funds. And *Lynch v.*

Multnomah Cnty., Nos. 3:23-cv-01502; 3:23-cv-01971; 1:23-cv-01434, 2024 WL 5238284 (D. Or. Dec. 27, 2024), held that Oregon's procedure more closely resembled the "no process" procedure in *Tyler*. But even as some courts distinguish *Nelson*, no lower court has declared that this Court's language in *Nelson* was wrong or *dicta*.

C. If *Nelson*'s commentary on takings is binding precedent, this Court should reconsider and overrule *Nelson* because it conflicts with this Court's other precedents

Tax debtors' constitutional challenges to procedural statutes are stopped before they start because *Nelson* apparently approves *any* process to recover surplus proceeds. In the 70 years since *Nelson*, procedural due process and takings doctrines developed to better protect individual rights, yet lower courts will continue to follow *Nelson* until this Court acts to cabin or overrule it.

Stare decisis presents no bar to reconsidering *Nelson*. It is weakest in the realm of constitutional interpretation, *Knick*, 588 U.S. at 202, and, as shown below, *Nelson* is ripe for reconsideration. 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 poor—because it was scarcely briefed and there were no relevant holdings below—and as explained above, it was

inconsistent with this Court's takings and property decisions.

The confiscation wrought by MCL § 211.78t is unique to tax foreclosures. Michigan offers fair procedures to property owners in all other claims contexts. *See supra* at 14-16 (detailing Michigan statutes that remit property as a matter of course).

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).

After 34 years, *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* did not just reopen the federal courthouse doors; it 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*, No. 23-7517, __ S. Ct. __, 2024 WL 5036306, at *2 (Dec. 9, 2024) (Thomas, J., statement on denial of cert.) (citing *Knick*, 588 U.S. at 193-94). Yet contrary to *Knick*, state and federal courts in Michigan have construed *Nelson* as meaning that failure to strictly comply with the state administrative and court process described in MCL § 211.78t defeats a claim for just compensation. *See* App. 9a, 23a; *Howard*, 2024 WL 3680996.[9] They have not held that they lack jurisdiction to decide the question because claimants missed the deadline; rather they hold that missing the notice of claim deadline means there was no taking. *See ibid.* Here, the court below construed *Nelson* as defeating any just compensation claim "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." App. 20a. Because the Petitioners failed to timely file the notice of claim, the lower court held that there was no taking. App. 23a. This holding mimics the rationale of *Williamson* that this Court expressly rejected in *Knick*.

[9] *Howard* is pending in the Sixth Circuit. The Sixth Circuit has recognized that under *Knick*, Michigan's claim statute cannot preclude federal court jurisdiction over takings claims arising from tax foreclosures. *Bowles v. Sabree*, 121 F.4th 539, 555 (6th Cir. 2024). But the questions at issue here and in *Howard* about *Nelson* and the merits of the taking claim were not presented in *Bowles*.

This Court similarly rejected the rationale underlying *Nelson* in *Felder*, 487 U.S. at 142.[10] 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. Like *Felder*, the claim statute here requires a series of unnecessary procedures that "minimize governmental liability" and burden the right to just compensation. *See id*. at 141. While victims of other types of 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 later 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 as this case demonstrates. The lower court construed *Nelson* as mandating approval of the statute here without engaging in the judicial scrutiny typically applied to constitutional challenges to state laws. App. 20a. As a result, the vast majority of owners are unable to recover their own money such that governments keep the windfalls. *See infra* at Section III.

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[10] Additionally, *Williams v. Washington*, No. 23-191, 144 S. Ct. 679 (2024) (pending), asks whether state courts may deny Section 1983 claims based on failure to exhaust administrative remedies.

4. The government has no legitimate reliance interest in obtaining tax debtors' property beyond the amount owed. *Tyler*, 598 U.S. at 639-40 (noting long historical practice of returning surplus proceeds). Worse, that improper reliance exploits owners' ignorance, illness, and incapacity. *Cf. Covey v. Town of Somers*, 351 U.S. 141, 146 (1956) (government may not take advantage of incompetent property owner's inability to comprehend notice of foreclosure). As evident in *Tyler*, most Americans had no idea that the government could or would take more than what was owed when seizing homes to pay a tax debt. *See, e.g.*, Brief Amici Curiae of States of Utah, et al., at 9, *Tyler v. Hennepin County*, No. 22-166 (describing such laws as "shockingly unfair"). Most states now comply with *Tyler*, automatically remitting surplus proceeds to owners[11] or giving them years after sale to recover their money.[12] Five states, however, amended their

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[11] Del. Code Ann. tit. 9, § 8779; Ga. Code Ann. §§ 48-4-5, -81(f); Idaho Code § 31-808(2)(c); Kan. Stat. Ann. § 79-2803; Ky. Rev. Stat. Ann. §§ 426.500, 91.517; Me. Stat. tit. 36, § 943-C; Md. Code Ann., Tax-Prop. § 14-818; Mont. Code Ann. § 15-18-221; Neb. Stat. §§ 77-1838; 77-1902; N.H. Rev. Stat. Ann. § 80:88; N.C. Gen. Stat. §§ 105-374(q)(6), 105-375(i), 1-339.70; S.D. Codified Laws § 10-25-39; Vt. Stat. Ann. tit. 32, § 5061(b); Wis. Stat. § 75.36(2m)(b).

[12] Ark. Code Ann. § 26-37-205(b); Colo. Rev. Stat. Ann. §§ 39-11.5-109, 38-13-201; Conn. Gen. Stat. § 12-157(f); Fla. Stat. § 197.582; Haw. County Code § 19-45; Ind. Code § 6-1.1-24-7(c), (e)(2); Mass. Gen. Laws ch. 60, §§ 64, 64A, 200A; Miss. Code Ann. § 27-41-77; Mo. Rev. Stat. § 140.230(2); Nev. Rev. Stat. §§ 361.610(4), 361.604(3); N.M. Stat. Ann. § 7-38-71(A)-(C); Ohio Rev. Code Ann. § 5721.20; Okla. Stat. tit. 68, § 3131(D); 72 Pa. Cons. Stat. § 5860.205(f); S.C. Code Ann. § 12-51-130; Tenn. Code Ann. § 67-5-2702; Tex. Tax Code § 34.03(a)(2); Utah Code Ann. § 67-4a-201(14); Va. Code Ann. §§ 58.1-3967, -3970; Wash. Rev.

statutes after *Tyler* to take advantage of the loophole left by *Nelson* to make it difficult for tax debtors to recover their own money and make it far more likely that government (or other tax lienholders) would continue to enjoy the windfalls of others' misfortune.

Because *Nelson* is incompatible with modern takings law and results in widespread injustice, this Court should grant the Petition to clarify or overrule *Nelson*.

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). When the government seizes private property, it must adopt procedures that would be used by one who actually wanted to return that property to its rightful owner, rather than to give the government a windfall. *Cf. Jones*, 547 U.S. at 229 (due process requires the sort of notice that would be used by one "who actually desired to inform a real property owner of an impending tax sale"). Similarly, a state's procedures to pay tax debtors' just compensation must be designed to actually remit payment without needlessly and excessively burdening an owner's right to collect that money.

The Constitution requires not just notice of the procedures an owner must follow to protect her property, but "a reasonable opportunity" to comply with those requirements. *Texaco, Inc. v. Short*, 454

Code § 84.64.080; W. Va. Code § 11A-3-65; Wyo. Stat. Ann. § 39-13-108(d)(iv)(C).

U.S. 516, 532 (1982). A 92-day pre-sale demand that owners preserve an inchoate future right to collect surplus proceeds 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; pre-deprivation process not sufficient); *Felder*, 487 U.S. at 141-42 (120-day statutory notice of claim requirement violates purpose of 42 U.S.C. § 1983 to encourage vindication of constitutional and civil rights); *Garcia-Rubiera v. Fortuno*, 727 F.3d 102, 110-11 (1st Cir. 2013) (120-day claim period wouldn't give owners a "reasonable opportunity" to avoid escheat of their money).

Michigan's statute fails to provide a reasonable opportunity to recover money that rightfully belongs to former titleholders by improperly truncating the otherwise applicable statute of limitations for constitutional claims. And as noted above, Michigan's statute disregards historical protection for debtors and the underlying fairness principles that animate due process. Michigan's claims process results, far more often than not, in the erroneous deprivation of a weighty property interest that cannot be justified by any legitimate governmental interest. It fails the test of constitutional due process. *See, e.g.*, *Mathews v. Eldridge*, 424 U.S. 319, 332, 335 (1976).

1. A debtor's right to be paid the surplus proceeds left over from the sale of foreclosed property is no mere statutory interest—it is deeply rooted in history and required by the Constitution. *Tyler*, 598 U.S. at 647; *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. Only 5-10 percent of Michiganders successfully navigate the complicated process to recover their own money. *See infra*, at 31-32; *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 the administrative notice deadline were extended significantly or waived. The risk would shrink even more if unclaimed money were treated like all other unclaimed money and disbursed via Michigan's unclaimed money statute. *See* MCL §§ 567.241, 567.245 (money held indefinitely and owner makes a claim by filing a single form, no notarization or special service required). But the lower court refused to consider substitute safeguards because, "[i]f the [statutory] procedures are followed, the risk of an erroneous deprivation is nil." App. 15a.

Petitioners' proposed solutions would not increase the government's administrative burden because both alternative procedures are already in place. *See, e.g.*, MCL § 567.245 (state administrator holds unclaimed property in trust for the rightful owner indefinitely until owner files required form). The only burden on the government would be that it could not confiscate as much just compensation for the public purse. But that cannot outweigh property owners' interest in a fair process. *See Felder*, 487 U.S. at 141-42 (short notice of claim requirement "to minimize governmental liability" could not bar constitutional claims under 42 U.S.C. § 1983).

3. The government's direct "pecuniary interest in the outcome" of a seizure increases the risk of

erroneous deprivation, and therefore weighs in favor of a more protective process. *James Daniel Good*, 510 U.S. at 55-56; *see also Tumey v. Ohio*, 273 U.S. 510, 535 (1927) (mayor serving as a judge violated due process "both because of his direct pecuniary interest in the outcome, and because of his official motive to convict and to graduate the fine to help the financial needs of the village"). The government's pecuniary interest in creating a difficult process for owners to claim their money suggests improper procedures. *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.").

Members of this Court recently noted that troubling "financial incentives to pursue forfeitures" raise serious due process concerns. *Culley*, 601 U.S. at 396 (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.). Indeed, government has "an obligation to return property when its owner can be located." *Taylor*, 136 S. Ct. at 930 (Alito., J., concurring on denial of cert., joined by Thomas, J.). A state law that gives owners only a short time before property is confiscated by the state after only minimal notice, "raises important due process concerns." *Ibid.* And states' shortening of deadlines for owners to recover their own money raise due process questions that merit consideration by this Court. *Ibid. See also Gates v. City of Chicago*, 623 F.3d 389, 412 (7th Cir. 2010) (due process inquiry includes how many

arrestees were unable to reclaim their money before the government confiscated it).

Rather than follow this Court's precedent and consider the heightened risk caused by the government's pecuniary interest, or the practical consequences of the claim statute, the lower court joins the Nebraska Supreme Court and New York Court of Appeals in refusing to do so. *HBI, LLC v. Barnette*, 305 Neb. 457, 474, 479 (2020) (faulting the owner for failing 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).

The Court should grant review to settle confusion about the process due before confiscating private property without just compensation.

III. This Case Presents an Issue of Great Public Importance

The continued viability of *Nelson* and lower courts' failure to scrutinize procedures that grossly enrich the government present matters of great public importance. Owners of tax foreclosed property in Alabama, Arizona, Michigan, New Jersey, and New York risk deprivation of their just compensation without due process. Muskegon County alone took tax debtors' surplus proceeds in 36 of 40 properties foreclosed in 2021. *See supra* at 3 (trial court orders disbursed proceeds to four former owners). Oakland County took tax debtors' surplus proceeds in 187 out of 196

foreclosed properties in 2022.[13] State records document a widespread problem, with counties unconstitutionally keeping millions of tax debtors' dollars.[14] For example, in 2021, Genessee County returned only $56,171 in surplus proceeds while it confiscated $5,399,694 for its own benefit.[15] Indeed, the lower court's opinion in this case is frequently cited as the basis for denying dozens of taking and due process claims.[16]

Many of our nation's most vulnerable owners—the elderly, sick, and poor—continue to suffer predation by the government that *Tyler* intended to end. These owners particularly need a fair process to have any chance to recover their money because all the struggles that led to foreclosure in the first place are typically still present after foreclosure: poverty, age, disability, and physical and mental medical conditions

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[13] Pacific Legal Foundation, Confusing Procedures Can Result in Shadow Equity Theft: Michigan, homeequitytheft.org/shadow-equity-theft#michigan (last visited Jan. 29, 2025).

[14] *See* Michigan Dept. 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).

[15] *See supra* n.14, Dept. of Treasury Report at 24.

[16] Thus far, the Michigan Court of Appeals has issued eleven decisions refusing disbursement of surplus proceeds to dozens of claimants and estates based on the the decision below in this case. *See, e.g., In re Berrien Cnty. Treasurer for Foreclosure*, No. 366509, 2024 WL 4468770, at *4 (Mich. Ct. App. Oct. 10, 2024) (15 claimants, including four estates and five trusts); *In re Montcalm Cnty. Treasurer for Foreclosure*, No. 366025, 2024 WL 5049108, at *1 (Mich. Ct. App. Dec. 9, 2024); *In re Calhoun Cnty. Treasurer for Foreclosure*, No. 367801, 2024 WL 4958277, at *3 (Mich. Ct. App. Dec. 3, 2024).

are especially common.[17] *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."); *Coleman through Bunn v. D.C.*, 70 F. Supp. 3d 58, 64 (D.D.C. 2014) (owner had dementia). As Justice Thomas wrote about other types of forfeitures, "[t]hese forfeiture operations frequently target the poor and other groups least able to defend their interests in forfeiture proceedings. Perversely, these same groups are often the most burdened by forfeiture." *Leonard v. Texas*, 137 S. Ct. 847, 848 (2017) (Thomas, J.) (concurring in denial of certiorari) (citations omitted).

Yet, the time for such vulnerable owners to make a claim under laws like the statute here runs while the owners typically still possess the property and months before the property is sold. It is counterintuitive that they would lose the right to compensation for their home equity before they've even lost possession of their home. This case identifies pressing national problems left unresolved by *Tyler* and an excellent vehicle to address them.

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[17] Elderly property owners, like Hughes, are especially susceptible to losing their property in this way because they are struggling with their own health or with caring for the health of a loved one. *See* Jennifer C.H. Francis, Comment, *Redeeming What is Lost: The Need to Improve Notice for Elderly Homeowners Before and After Tax Sales*, 25 Geo. Mason U. Civ. Rts. L.J. 85 (2014). Indeed, one of the owners here, Johnny Chapman, died from health problems less than two years after the foreclosure.

CONCLUSION

This Court should grant the Petition.

Respectfully submitted,

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