No. _____

In the Supreme Court of the United States

NATURAL LANDS, LLC,

Petitioner,

v.

CITY OF BOCA RATON; GREATER BOCA RATON BEACH AND PARK DISTRICT,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Natural Lands, LLC, purchased an undeveloped beachfront lot in Palm Beach County, Florida, which was zoned for residential development and "grandfathered" with a vested right to build a single-family home, subject to certain variance requirements. During a lengthy process to secure building approval, three future City Council members campaigned on promises to deny all development on Natural Lands' property. When the Council finally scheduled a hearing on its application for a construction variance, Natural Lands requested recusal of these now-elected members. But the Council refused, held the hearing, and denied the application. After a bench trial, the district court held that "the explicit bias of the three Council Members against any development on the parcel tainted the vote on Plaintiff's variance application" and violated the Due Process Clause. The Eleventh Circuit reversed, holding, in conflict with other Circuits, that the existence of state court remedies barred Natural Lands' due process claim in federal court.

The question presented is:

Whether the availability of state remedies bars a property owner from seeking relief from a due process violation in federal court pursuant to 42 U.S.C. § 1983?

LIST OF ALL PARTIES

Petitioner Natural Lands, LLC, was the Plaintiff in the U.S. District Court for the Southern District of Florida and Plaintiff-Appellee at the U.S. Court of Appeals for the Eleventh Circuit.

Respondent City of Boca Raton and Greater Boca Raton Beach and Park District were the Defendants in the U.S. District Court for the Southern District of Florida. City of Boca Raton was Defendant-Appellant and Greater Boca Raton Beach and Park District was Defendant in the U.S. Court of Appeals for the Eleventh Circuit.

STATEMENT OF RELATED CASES

The proceedings identified below are directly related to the above-captioned case in this Court.

Natural Lands, LLC v. City of Boca Raton, No. 23-11323, 2025 WL 3202902 (11th Cir. Nov. 17, 2025).

Natural Lands, LLC v. City of Boca Raton, No. 19-81407-CIV-SMITH (S.D. Fla. Mar. 20, 2025).

CORPORATE DISCLOSURE STATEMENT

Petitioner Natural Lands, LLC, is a limited liability company and has no parent corporations and no publicly held company owns 10% or more of Petitioner's stock.

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PETITION FOR WRIT OF CERTIORARI

Natural Lands sought to build a single-family home on a residentially zoned parcel of beachfront land near other homes. App. 15a. Because the parcel lies seaward of the City's Coastal Construction Control Line (CCCL), Natural Lands had to apply for a CCCL variance as part of its building application. *Ibid.* As Natural Lands pursued the application process, three future members of the City Council who would ultimately decide whether to grant or deny Natural Lands' application campaigned on promises to prevent all development on the property. App. 19a-21a (campaign promises included: "I want to reassure you that I have no intention of granting any variances seaward of the Coastal Construction Control Line as defined by the State of Florida"; "[a]s an elected official, I can promise you I will do everything within my power to prevent building on these beachfront properties"; and "I will NOT support granting a variance that would be needed to allow the coastal construction for this lot and the proposed home there"). When the City scheduled a hearing on Natural Lands' application, Natural Lands requested recusal of the three now-elected Council members. App. 21a. The Council members refused, *ibid.*, and "without asking a single question of any of the witnesses who testified on behalf of Plaintiff in support of its application," the Council promptly denied Natural Lands' application, App. 23a.

Natural Lands sued the City in federal court in part to challenge the denial of its building application as a violation of its procedural due process rights. After a bench trial, the district court found that the "actions and conduct" of three Council members "were

so tainted with bias that . . . no variance would have been granted." App. 34a. The court also found that "the acts of institutional bias of the aforesaid City Council Members and employees of the City confirmed that there was an intentional violation of Plaintiff's constitutionally protected due process rights, both during the application process and at the quasi-judicial hearings before the [City]." App. 24a.

On appeal, the Eleventh Circuit reversed, concluding that the existence of state judicial remedies defeated Natural Lands' claim. The court explained that, under circuit precedent, a federal due process claim "arises only if a State lacks adequate remedial procedures." App. 5a (citing *Cotton v. Jackson*, 216 F.3d 1328, 1331-33 (11th Cir. 2000)). Concluding that Natural Lands could have filed "a writ of *certiorari* to a Florida state court," the court held that the availability and adequacy of this remedy barred Natural Lands' federal due process claim. App. 6a-7a.

However, this Court has repeatedly held that litigants do not need to pursue state remedies before asserting constitutional claims under 42 U.S.C. § 1983 in federal court. *Knick v. Twp. of Scott*, 588 U.S. 180, 194 (2019). Although the Court recognized a narrow exception to this principle for certain due process claims in *Parratt v. Taylor*, 451 U.S. 527 (1981), it has since made clear that *Parratt*'s state remedies requirement applies only to due process claims challenging rogue government employee actions. *Parratt* does not apply when a claimant challenges an official government action for which pre-deprivation process is possible. *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 426 (1982); *Gregory v. Town of Pittsfield*, 470 U.S. 1018, 1022 (1985) (O'Connor, J., joined by

Marshall, J., and Brennan, J., dissenting from denial of certiorari) (arguing that the *Parratt* rule should not apply where "the deprivation involved [ ] did not result from the unauthorized conduct of individual employees, but instead reflected the town's policy").

In this case, Natural Lands' due process claim does not challenge the unpredictable, rogue actions of a government employee. It challenges a deprivation of property arising from an official and authorized government action (a formal permit denial) that occurred after an eight-year application process and the provision of a (defective) hearing. In holding that the availability of state remedies bars Natural Lands' claim, the decision below conflicts with this Court's own refusal to interpose a state remedies barrier to Section 1983 claims seeking federal relief from a due process violation. *See Logan*, 455 U.S. at 426; *Zinermon v. Burch*, 494 U.S. 113, 132 (1990). Indeed, under the broad state remedies rule applied below (which accurately reflects Eleventh Circuit law), almost *all* property-based procedural due process claims are barred in federal court. *See McKinney v. Pate*, 20 F.3d 1550, 1562-63 (11th Cir. 1994) (en banc) ("[O]nly when the state refuses to provide a process sufficient to remedy the procedural deprivation does a constitutional violation actionable under section 1983 arise."). This preclusive jurisdictional regime conflicts with this Court's seminal precedent holding that 42 U.S.C. § 1983 provides a federal remedy for unconstitutional actions, and "the fact that it is also a violation of state law does not make it any the less a federal offense." *See Screws v. United States*, 325 U.S. 91, 108-13 (1945).

The decision below also exacerbates widespread confusion and conflict among the federal courts on the

issue of whether the existence of state remedies bars due process claims in federal court. *See Mudge v. Macomb County*, 458 Mich. 87, 133 (1998) (Boyle, J., concurring) ("there is confusion in the federal circuit courts"); Jose R. Juarez, Jr., *The Supreme Court as the Cheshire Cat: Escaping the Section 1983 Wonderland*, 25 St. Mary's L.J. 1, 30 tbl. 1 (1993) (describing circuit splits in the application of *Parratt/Zinermon* exhaustion doctrine). While the Eleventh Circuit's broad application of a state remedies bar to due process claims is consistent with the decisions of a few other circuit courts, it conflicts with decisions from the Fourth, Eighth, and Tenth Circuits. Further, a number of circuit courts demonstrate internal confusion on the issue. *Id.* at 6-7 ("[T]he lower courts find themselves in a Section 1983 Wonderland of conflicting directions about how to decide Section 1983 procedural due process cases . . . when state law provides a post-deprivation remedy." (footnote omitted)).

This Court should grant the Petition to hold that the existence of state remedies does not bar federal due process claims challenging official government acts, for which pre-deprivation process is possible, thereby resolving the conflict and confusion among the lower courts on this issue. *O'Neill v. Baker*, 210 F.3d 41, 51 (1st Cir. 2000) (Selya, J., concurring) (stating that "the status of the *Parratt-Hudson* line of cases . . . is at best uncertain," and advocating for restraint in application until "clarification by the Supreme Court").

OPINIONS BELOW

The decision of the Eleventh Circuit is not reported but is available at 2025 WL 3202902 and is

reproduced in the Appendix beginning at 1a. The Order on Bench Trial from the United States District Court for the Southern District of Florida is reproduced in the Appendix beginning at 9a.

JURISDICTION

The district court had jurisdiction over this case under 42 U.S.C. § 1983 and 28 U.S.C. § 1331. The Eleventh Circuit issued its decision reversing the district court on November 17, 2025. On January 14, 2026, Justice Thomas granted Natural Lands' request for an extension of time to file a petition for writ of certiorari, extending the filing deadline to March 17, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS AT ISSUE

The Fourteenth Amendment to the United States Constitution states, in relevant part: "nor shall any State deprive any person of life, liberty, or property, without due process of law[.]"

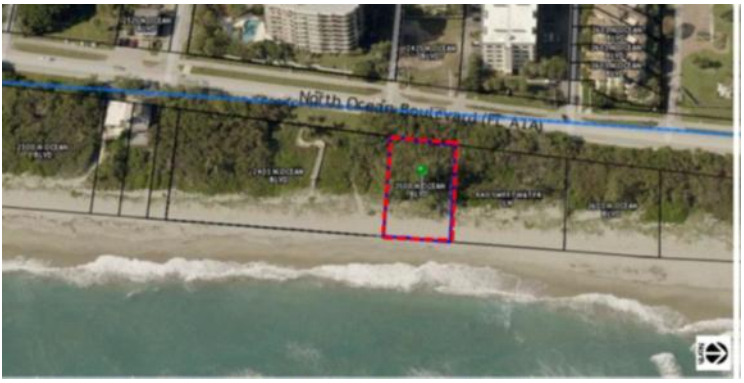
42 U.S.C. § 1983 provides, in relevant part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . . .

STATEMENT OF THE CASE

A. Factual background

1. In 2011, Natural Lands purchased an undeveloped beachfront lot located at 2500 N. Ocean Drive, Boca Raton, Florida, on the seaward side of State Road A1A. The parcel is zoned for residential use. App. 12a-13a. The parcel was originally created and recorded as a separate lot through a legal subdivision occurring in 1944. In 1955, the parcel was annexed into the City of Boca Raton, at which time the lot was "grandfathered" into the City's jurisdiction with a "vested right" to build a single-family residence. App. 12a-13a.



In 1979, the Florida Department of Environmental Protection adopted a Coastal Construction Control Line (CCCL), and in 1981, the City adopted the CCCL. App. 13a. In 2007, the City shifted the CCCL inland. Natural Lands' parcel is seaward of both the original and revised CCCL. *Ibid.*

The City code prohibits construction seaward of the CCCL without a variance. The criteria to obtain a CCCL variance include:

(a) Special and unique conditions exist which are peculiar to the applicant's case and which are not generally applicable to the property located in the zoning district;

(b) The special and unique conditions are not directly attributable to the actions of the applicant;

(c) The literal interpretation of this chapter, as applied to the applicant, would deprive the applicant of rights commonly enjoyed by the owners of other property in the zoning district;

(d) The variance granted is the minimum variance necessary for the applicant to make reasonable use of the property;

(e) Granting the variance is not detrimental to the public welfare, or injurious to the property or improvements in the zoning district or neighborhood involved; and

(f) Granting the variance is not contrary to the objectives of the comprehensive plan of the City.

App. 13a-14a (quoting Boca Raton Code of Ordinance § 28-127(3)).

2. In 2011, Natural Lands filed an application with the City to develop a single-family detached home on the parcel. The application initially sought two variances, a lot width variance and a setback variance. App. 15a. The City soon informed Natural Lands that because the parcel lies seaward of the CCCL, an additional application for a variance to build seaward of the CCCL was required. *Ibid.*

Natural Lands subsequently submitted a CCCL variance request.

Between July 2013 and January 2015, Natural Lands engaged in "an extensive series of back-and-forth negotiations" and information sharing with the City. App. 15a. On April 27, 2015, Natural Lands filed a second application. *Ibid.* A few months later, Natural Lands altered its plans to remove the need for a set-back variance, and the City Council granted the lot-width variance. App. 16a. This left the CCCL variance as only remaining obstacle to building approval.

In 2016, while Natural Lands' application remained pending before the City, Natural Lands applied to the Florida Department of Environmental Protection for a permit to build a single-family home seaward of the CCCL. App. 18a. Eight months later, the Department issued the requested permit. *Ibid.* Natural Lands then continued to pursue the CCCL variance approval it needed from the City. In 2019, after submitting four applications for a CCCL variance, Natural Lands requested a final hearing on its CCCL Variance Application before the City Council. A hearing was set for July 23, 2019. App. 21a-22a.

3. Beginning in 2015, and throughout the lengthy application process, future members of the City Council publicly announced their intention to deny Natural Lands' CCCL variance application should they be in a position to do so. App. 19a.

Before she was a Council Member, Andrea O'Rourke signed a petition as a private City resident to oppose development of the parcel. App. 19a-20a. Later, as a Council Member campaigning for re-

election in 2018, she wrote: "As an elected official, I can promise you I will do everything within my power to prevent building on these beachfront properties." App. 19a.

On May 31, 2018, Council Member Monica Mayotte similarly responded to a citizen inquiry by writing, "I want to reassure you that I have no intention of granting any variances seaward of the Coastal Construction Control Line as defined by the State of Florida." App. 20a.

Mayor Scott Singer, who was running for reelection in 2018, issued a campaign video in front of Natural Lands' property. In the video, Mayor Singer declared that he would not vote to grant the CCCL variance. App. 19a. In August 2018, Mayor Singer also sent campaign letters to City residents stating that "I will NOT support granting a variance that would be needed to allow the coastal construction for this lot and the proposed home there." App. 20a.

Additional *ex parte* communications took place between Council Members O'Rourke and Mayotte regarding their plans to oppose Natural Lands' CCCL Variance when it came before the Council. These *ex parte* communications were not disclosed before, or at, Natural Lands' 2019 hearing. App. 20a-21a.

Immediately prior to the scheduled hearing, Natural Lands requested that Council Members Singer, O'Rourke, and Mayotte recuse themselves due to bias evident in their prior public statements opposing the CCCL variance application. The City denied Plaintiff's request. App. 21a.

Subsequently, after an application process spanning eight years, the Council Members voted 5-0 to deny Plaintiff's CCCL Variance Application on the

purported basis that its project did not meet all of the criteria for a CCCL variance. App. 23a. Yet, no Council Members questioned Natural Lands' witnesses, or made any findings of fact as to which of the six (6) criteria for a variance Natural Lands failed to satisfy. *Ibid.*

B. Legal procedure

1. Upon being denied the CCCL variance by City Council members who made good on their pre-election promises to block Natural Lands' building plans, Natural Lands sued the City in federal court in 2019. It asserted that the City took its property without just compensation and due process of law, in violation of the Fifth and Fourteenth Amendments to the United States Constitution and Article X, Section 6, of the Florida Constitution. Natural Lands' complaint sought damages and equitable relief.

Beginning on March 20, 2023, the Court held a five-day bench trial on Natural Lands' takings and due process claims. After the trial, the court issued findings of fact and conclusions of law. App.11a-37a.

The court found that the "bias" of Mayor Singer "was clear," that Council Member O'Rourke was "not a credible witness," and that Council Member Mayotte "demonstrated complete bias." App. 22a-23a. The court further found that:

> The actions and conduct of Mayor Singer, Council Member Mayotte and Council Member O'Rourke, as well as the conduct of the City Manage, Deputy City Manager, Development Services Director, and many other employees of the City who were involved with this CCCL Variance Application were so tainted with bias

> that there was no building that could have been built on the property [ ], regardless of whether the building met the "minimum requirements" for a CCCL variance.

App. 24a.

The court found it "evident" that Natural Lands "was never going to get a fair hearing based on the conduct" of the biased City Council Members. *Ibid.* It then concluded that "the acts of institutional bias of the aforesaid City Council Members and employees of the City confirmed that there was an intentional violation of Plaintiff's constitutionally protected due process rights, both during the application process and at the quasi-judicial hearings before the" City. *Ibid.*

While the court found that the City's actions did not effect a regulatory taking of Natural Lands' property, it concluded the City's "conduct during the July 23, 2019, hearing on the Plaintiff's CCCL Variance Application was not fair and impartial, . . . in violation of Plaintiff's due process rights under the Fifth And Fourteenth Amendments to the U.S. Constitution and 42 U.S.C. § 1983." App. 34a-35a. It therefore entered judgment in favor of Natural Lands on its due process claim seeking equitable relief and declared that "should Plaintiff choose to renew its application for a CCCL variance with respect to the Property, Council Members Mayor Scott Singer, Andrea O'Rourke and Monica Mayotte shall recuse themselves from the proceeding." App. 35a.

2. The City subsequently appealed to the Eleventh Circuit, which reversed, concluding that, "under our precedent, Natural Lands does not have a viable claim because it did not use the available and

adequate State remedy to address its alleged injury." App. 1a.

The court below explained that the Eleventh Circuit's en banc decision in *McKinney v. Pate* established that a federal procedural due process violation does not exist "unless and until the State fails to provide due process." App. 5a (quoting *McKinney*, 20 F.3d at 1556-57 (quoting *Zinermon*, 494 U.S. at 126)). Further, "a State fails to provide due process only if it neglects to offer an adequate post-deprivation remedy to address the alleged procedural defect." App. 5a (citing *McKinney*, 20 F.3d at 1557, and *Zinermon*, 494 U.S. at 126). According to the court below, the circuit's post-deprivation state remedies rule meant that a "demonstration that the decisionmaker was biased . . . is not tantamount to a demonstration that there has been a denial of [federal] procedural due process." App. 5a. Instead, a "federal claim arises only if a State lacks adequate remedial procedures." *Ibid.* (citing *Cotton*, 216 F.3d at 1331-33). The court explained that the rationale is "that a State must have the opportunity to cure procedural defects caused by its subdivisions before federal intervention." *Ibid.*

Applying this framework to Natural Lands' case, the court below concluded that "a writ of *certiorari* to a Florida state court was a remedy available to Natural Lands." App. 6a. The court continued: "the *certiorari* process could have remedied the precise harm that Natural Lands alleges: a procedurally defective, biased hearing. Therefore, the writ of *certiorari* is an adequate remedy, and Natural Lands may not pursue its procedural due process violation in federal court." App. 7a. The court held that the "district court erred in granting declaratory and injunctive relief based on Natural Lands's procedural

due process claim because an adequate State remedy was available." App. 5a.

Natural Lands now petitions this Court for a writ of certiorari.

REASONS FOR GRANTING THE PETITION

I. The Decision Below Conflicts with This Court's Precedent and Improperly Denies Procedural Due Process Claimants a Federal Forum for Their Section 1983 Claims

At a minimum, the Due Process Clause requires a hearing before an impartial tribunal. *Ward v. Village of Monroeville*, 409 U.S. 57, 59-60 (1972). Indeed, this Court has "jealously guarded" the principle that proceedings implicating constitutionally protected interests must be fair and impartial. *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 241-42 (1980). The Court has applied this principle in a variety of settings, including in administrative proceedings, to protect the "constitutional interest in fair adjudicative procedure." *Id.* at 243 & n.2.

In *Knick*, this Court confirmed that "plaintiffs may bring constitutional claims under § 1983 without first bringing any sort of state lawsuit." 588 U.S. at 194 (internal quotation marks omitted); *see also*, *Zinermon*, 494 U.S. at 124 ("overlapping state remedies are generally irrelevant to the question of the existence of a cause of action under § 1983"); *Patsy v. Bd. of Regents of Florida*, 457 U.S. 496, 504 (1982).

In *Patsy*, the Court examined the legislative histories of both Section 1983 and its precursor, Section 1 of the Civil Rights Act of 1871. The Court determined that these statutes were enacted to

"'throw open the doors of the United States courts' to individuals who" have suffered a violation of their constitutional rights and "provide these individuals immediate access to the federal courts," "notwithstanding any provision of state law to the contrary." 457 U.S. at 504 (citation omitted). Requiring a plaintiff to exhaust state remedies frustrates the purposes of Section 1983. *Id.* at 511; *Mitchum v. Foster*, 407 U.S. 225, 239 (1972).

Generally speaking, due process claims are not different from other 42 U.S.C. § 1983 claims when it comes to the inapplicability of state remedies requirements. Indeed, because "due process requires a 'neutral and detached judge in the first instance,'" *Concrete Pipe & Prods. of Cal., Inc. v. Constr. Laborers Pension Tr. for S. Cal.*, 508 U.S. 602, 617 (1993) (quoting *Ward*, 409 U.S. at 62), one asserting a due process claim challenging biased or unfair hearing procedures may assert their claim in federal court without first pursuing state remedies. *Edwards v. Balisok*, 520 U.S. 641, 649 (1997) (rejecting an exhaustion requirement in a due process case premised on allegations of a biased administrative decision maker); *Gibson v. Berryhill*, 411 U.S. 564, 581 (1973) (Marshall & Brennan, JJ., concurring) (stating, in a due process case asserting that a state licensing board was unlawfully constituted, "the inapplicability of the exhaustion requirement to any suit brought under § 1983 has been firmly settled by this Court's prior decisions"); *see also*, *Ward*, 409 U.S. at 61-62 (a due process violation arising from a biased adjudication process was not negated by a subsequent, fairer hearing).

A. *Parratt* articulated a narrow exception to the "no exhaustion" rule in cases challenging "random" deprivations by state employees

In *Parratt*, this Court carved out a narrow exception to the general "no exhaustion" rule when due process claims challenge "random or unauthorized" actions by government employees. Laura Oren, *Signing into Heaven:* Zinermon v. Burch, *Federal Rights, and State Remedies Thirty Years After* Monroe v. Pape, 40 Emory L.J. 1, 8, 67 (1991) ("*Zinermon* establishes that *Parratt* is a narrow rule"). *Parratt* involved a prisoner's claim that prison officials had deprived him of property without due process by negligently losing his hobby kit. The Court initially observed that "the necessity of quick action by the State or the impracticality of providing any meaningful predeprivation process, when coupled with the availability of some meaningful means by which to assess the propriety of the State's action at some time after the initial taking, can satisfy the requirements of procedural due process." 451 U.S. at 539. Emphasizing that the deprivation in *Parratt* was "a tortious loss [resulting from] a random and unauthorized act by a state employee," the court concluded that "[i]t is difficult to conceive of how the State could provide a meaningful hearing before the deprivation." *Id.* at 541. Based on this reasoning, the Court held that the plaintiff in *Parratt* was required to use available post-deprivation remedies provided by Nebraska tort law before he could raise a federal due process claim.

In *Hudson v. Palmer*, 468 U.S. 517 (1984), another prisoner case, the Court extended *Parratt*'s reasoning beyond the context of negligent employee conduct to cases involving unauthorized, intentional deprivations of property by state employees. The Court emphasized that the "underlying rationale" behind *Parratt* is that a pre-deprivation process is "impracticable" in cases of unauthorized employee conduct. *Id.* at 533. Concluding that "the state can no more anticipate and control in advance the random and unauthorized intentional conduct of its employees than it can anticipate similar negligent conduct," the *Hudson* court held that "an unauthorized intentional deprivation of property by a state employee does not constitute a violation of the procedural requirements of the Due Process Clause . . . if a meaningful postdeprivation remedy for the loss is available." *Ibid.*

In *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, a decision issued between *Parratt* and *Hudson*, the Court explained that *Parratt*'s post-deprivation state remedies rule applies only in cases challenging a deprivation resulting from "a random and unauthorized act by a state employee" rather than from "some established state procedure." *Id.* at 435-36 (quoting *Parratt*, 451 U.S. at 541). The *Logan* Court held that the plaintiff did not need to exhaust state tort remedies because he was not challenging a government "error," but an "'established state procedure.'" *Id.* at 436.

Finally, in *Zinermon v. Burch*, 494 U.S. 113, the Court held that a plaintiff challenging a government-authorized deprivation of his liberty under the Due Process Clause did not have to pursue post-deprivation state remedies before suing in federal court. The Court held that the case was "not

controlled by *Parratt* and *Hudson*, for three basic reasons:" (1) the state could not "claim that the deprivation of Burch's liberty was unpredictable," (2) predeprivation process was not "impossible," and (3) the defendants could not "characterize their conduct as 'unauthorized'" in the sense the term is used in *Parratt* and *Hudson*. *Id.* at 136-38. "The State delegated to them the power and authority to effect the very deprivation complained of here." *Id.* at 138.

Thus, this Court has sought to cabin *Parratt*'s state remedies requirement to due process cases challenging unpredictable government employee actions, for which the provision of a pre-deprivation process is impossible. *Zinermon*, 494 U.S. at 138 n.20 (*Parratt* and *Hudson* "do not stand for the proposition that in every case where a deprivation is caused by an 'unauthorized . . . departure from established practices,' state officials can escape § 1983 liability simply because the State provides tort remedies."); *Williamson Cnty. Reg'l Plan. Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172, 195 n.14 (1985) ("*Parratt* does not extend to situations . . . in which the deprivation of property is effected pursuant to an established state policy or procedure, and the State could provide predeprivation process." (citation omitted)). In *Knick*, the court reaffirmed *Parratt*'s limited reach, grounding *Parratt* in the fact that it was not "possible for a State to provide pre-deprivation due process for the unauthorized act of a single employee." 588 U.S. at 196. The *Knick* Court contrasted the "unauthorized employee action" situation in *Parratt* to a "taking of property *by the government*," confirming that the latter situation is not subject to *Parratt*. *Ibid.* (emphasis in original).

B. The Eleventh Circuit's decision conflicts with this Court's precedent

The decision below flatly contradicts the Court's precedent in holding that a "federal due process claim arises only if a State lacks adequate remedial procedures." *Clements v. Airport Auth. of Washoe Cnty.*, 69 F.3d 321, 333 n.17 (9th Cir. 1995) (the idea that a due process claim fails when there is "an adequate state judicial review process for the correction of errors by administrative agencies" is "inconsistent with relevant Supreme Court authority"). Again, under this Court's jurisprudence, one may assert a federal due process claim challenging an official government action for which a pre-deprivation hearing could be (or was) provided, without respect to state remedies. *Logan*, 455 U.S. at 426; *Knick*, 588 U.S. at 196. In contrast, under the decision below, the existence of an "available and adequate State remedy" entirely bars a due process claim even when, as here, it challenges an official government action preceded by a (defective) pre-deprivation hearing.

In this case, Natural Lands challenged a deprivation of its property rights arising from a permit denial after an eight-year application process and a formal hearing. The actions challenged by Natural Lands' due process claim were not the actions of a rogue employee; they were the authorized actions of a duly constituted government body. The provision of pre-deprivation process to Natural Lands was not only possible, it actually occurred over an eight-year period, but in a constitutionally flawed manner. App. 15a-25a. Natural Lands asked Council Members who publicly promised to reject Natural Lands' variance request to recuse themselves from voting, but the City

refused. App. 21a. The City had the responsibility and opportunity to provide Natural Lands with an impartial hearing before denying its application, and there was no reason why it could not have done so. But instead, it held a hearing "so tainted with bias that there was no building that could have been built on th[e] property," and denied the application. App. 24a.

Under this Court's precedent, Natural Lands obtained an actionable claim for a due process violation under 42 U.S.C. § 1983 as soon as the City formally denied its application and deprived it of its real property rights without providing an impartial hearing, regardless of state remedies. *Gregory*, 470 U.S. at 1021-23 (O'Connor, J., joined by Marshall & Brennan, JJ., dissenting from denial of certiorari) (*Parratt*'s state remedies rule does not apply where the deprivation "reflected the town's policy"); *Mission Springs, Inc. v. City of Spokane*, 134 Wash. 2d 947, 964-65 (1998) ("A cause of action for deprivation of property without due process is ripe immediately because the harm occurs at the time of the violation as does the cause of action." (citing *Zinermon*, 494 U.S. at 125)). Yet, the Eleventh Circuit held, in conflict with this Court's precedent, that Natural Lands had no federal due process claim at all because it failed to pursue available state law remedies in Florida courts. *Ibid.*

The Court should grant the Petition to hold that due process claimants like Natural Lands may challenge official government actions in federal court without regard for state remedies, decisively limiting *Parratt*'s state remedies requirement to cases involving wholly unpredictable, rogue government employee behavior. *Mudge*, 458 Mich. at 120-22, 133,

137-40 (Boyle, J., concurring in part and dissenting in part) ("the only conclusion that can confidently be stated is that the relationship between *Parratt/ Hudson* and *Zinermon* requires further clarification"); *O'Neill v. Baker*, 210 F.3d at 51 (Selya, J., concurring) ("[T]he status of the *Parratt-Hudson* line of cases, in the albedo of *Zinermon*, is at best uncertain.").

3. The rationale of the decision below denies property owners a federal forum for their Section 1983 due process claims

Although the "state remedies" requirement applied below is incompatible with this Court's precedent, it is settled law in the Eleventh Circuit. "Again and again" that circuit has applied "the basic rule that a procedural due process claim can exist only if no adequate state remedies are available." *Flagship Lake Cnty. Dev. Number 5, LLC v. City of Mascotte*, 559 Fed. Appx. 811, 815 (11th Cir. 2014); *see also*, *McKinney*, 20 F.3d at 1563-64; *Foxy Lady, Inc. v. City of Atlanta*, 347 F.3d 1232, 1238 (11th Cir. 2003) ("[E]ven if a procedural deprivation exists . . . , such a claim will not be cognizable under § 1983 if the state provides a means by which to remedy the alleged deprivation."); *Bell v. City of Demopolis*, 86 F.3d 191, 192 (11th Cir. 1996) (affirming the dismissal of a procedural due process claim because "Alabama has available a satisfactory means by which [the plaintiff] can seek redress for any procedural due process deprivation").

As a consequence of the Eleventh Circuit's long and rigid adherence to a categorical state remedies requirement in due process cases, property owners in that circuit have been entirely stripped of the right to seek relief for a due process violation in federal court

under 42 U.S.C. § 1983. Decades of Eleventh Circuit cases illustrate the demise of federal review of due process claims under the rationale of the decision below. *See Horton v. Bd. of Cnty. Comm'rs of Flagler Cnty.*, 202 F.3d 1297, 1300 (11th Cir. 2000) ("after a federal district court determines that an adequate state remedy does exist," it should "hold that there has been no federal due process violation"); *Flagship Lake County*, 559 Fed. Appx. at 815 (circuit precedent "bars" a due process claim challenging a defective hearing "as a matter of law" because the property owner "failed to allege that adequate state remedies were unavailable" or that it "attempted to avail itself of the remedies provided in the Florida Administrative Procedure Act"); *Boatman v. Town of Oakland*, 76 F.3d 341, 346 (11th Cir. 1996) (reversing a district court's judgment that a Town's official refusal to conduct a final building inspection needed for a certificate of occupancy violated due process "because the state provided the Boatmans all the process they were due"; "[t]he state gave them the right to repair to the Orange County circuit court"); *Pacesetter Apparel, Inc. v. Cobb Cnty.*, 374 Fed. Appx. 910, 912 (11th Cir. 2010) (dismissing a due process claim asserted by the owner of a perfected security interest in property seized pursuant to a warrant, and then destroyed without notice, because "Georgia law provides an adequate postdeprivation remedy for a wrongful deprivation of property. Georgia law provides a cause of action for conversion of property").

In short, the state remedies rule applied below has eviscerated the ability of property owners in the Eleventh Circuit to assert due process claims in federal court under 42 U.S.C. § 1983, effectively relegating the claims to state courts. *Boatman*, 76

F.3d at 342 (applying the state remedies rule and concluding that a due process claim "is not grist for the mill of a United States district court; rather, it belongs in state court"); *Tavarez v. O'Malley*, 826 F.2d 671, 675 (7th Cir. 1987) ("If due process is satisfied by the ordinary state judicial remedies for torts," then "virtually no interference with property [would] be actionable under section 1983[.]"). The stripping of federal jurisdiction over federal due process claims arising from the lower court's "state remedies" rule contradicts this Court's foundational Section 1983 precedent, which affirms that 42 U.S.C. § 1983 provides a remedy for constitutional violations in federal court that is supplementary to, and independent from, state law remedies. *See Monroe v. Pape*, 365 U.S. 167, 183 (1961).

In *Knick*, this Court considered and overruled a similar "state procedures" barrier to federal judicial review of takings claims. 588 U.S. at 185. Grounded in *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*, 473 U.S. 172, this rule required federal takings claimants to file state court suits before asserting a Takings Clause violation in federal court under 42 U.S.C. § 1983. *Knick*, 588 U.S. at 184. During the almost thirty-five years in which *Williamson County*'s "state procedures" requirement was in force, countless federal takings claims were extinguished by the state procedures requirement, rather than on the merits. The same "death by exhaustion" process is now occurring in the due process context in the Eleventh Circuit under the "state remedies" rule applied below.

The Court should grant the Petition to hold that property owners alleging that official government actions violate due process have the same right as

other constitutional litigants to assert a claim in federal court under 42 U.S.C. § 1983 without respect to state court remedies.

II. The Decision Below Adds to Conflict and Confusion in Lower Courts as to Whether a Property Owner May Assert a Due Process Claim in Federal Court Without Respect to State Remedies

The decision below deepens a long-standing split among lower courts[1] on the issue of whether a property owner may assert a due process claim in federal court without utilizing state remedies. *Mudge*, 458 Mich. at 137 (Boyle, J., concurring) ("Confusion has also developed within the circuits over how to approach" due process claims under 42 U.S.C. § 1983 after *Zinermon*.); *Bogart v. Chapell*, 396 F.3d 548, 564 (4th Cir. 2005) (Williams, J., dissenting) (the *Parratt/Zinermon* line of cases "have created confusion in the lower federal courts"); Larry Alexander, *Constitutional Torts, the Supreme Court, and the Law of Noncontradiction: An Essay on*

[1] While this Petition primarily focuses on conflicts among Circuit courts, state courts also conflict as to whether to apply *Parratt* to reject procedural due process claims under Section 1983. *Compare Rivkin v. Dover Twp. Rent Leveling Bd.*, 143 N.J. 352, 358 (1996) ("so long as the State provides a plain, adequate and timely remedy to redress irregularities in the proceedings, a party aggrieved by the determinations of a municipal rent leveling board does not have a claim for relief under 42 U.S.C. § 1983"), *and Thorp v. Town of Lebanon*, 235 Wis. 2d 610, 643 (2000) (rejecting procedural due process claim for failure to exhaust post-deprivation remedies), *with Mission Springs, Inc. v. City of Spokane*, 134 Wash. 2d at 964-65 ("A cause of action for deprivation of property without due process is ripe immediately because the harm occurs at the time of the violation as does the cause of action." (citing *Zinermon*, 494 U.S. at 125)).

Zinermon v. Burch, 87 Nw. U. L. Rev. 576, 596 (1993) ("It is not an overstatement to describe the Supreme Court's constitutional torts jurisprudence as a welter of confusion, leaving litigants and lower courts completely at sea.").

A. Decisions of the First and Seventh Circuits align with the Eleventh Circuit's state remedies rule

The First Circuit's decisions broadly apply a state remedies rule to bar procedural due process claims, consistent with the decision below. *See Cloutier v. Town of Epping*, 714 F.2d 1184, 1192 (1st Cir. 1983) ("[t]he prompt, informal proceedings offered by the town coupled with the judicial review provided by the state courts satisfied the requirements of the due process clause" in a case involving the revocation of permits by Town officials); *Amsden v. Moran*, 904 F.2d 748, 755 (1st Cir. 1990) ("When a complainant alleges violations of procedural due process," "the existence of state remedies becomes highly relevant . . . . The availability of judicial review is an especially salient consideration in situations where permits and licenses have been denied or revoked[.]" (citation omitted)); *Rumford Pharmacy, Inc. v. City of E. Providence*, 970 F.2d 996, 999 (1st Cir. 1992) (holding that a due process claim based on the denial of a hearing failed because the "complaint fails to allege that constitutionally adequate remedies were unavailable under Rhode Island law").

The Seventh Circuit's decisions also broadly apply a state remedies barrier in procedural due process cases. *See Easter House v. Felder*, 910 F.2d 1387 (7th Cir. 1990) (en banc); *Doherty v. City of Chicago*, 75 F.3d 318, 321-23 (7th Cir. 1996) (holding that state

remedies barred a due process claim alleging that city officials denied a bingo hall permit and imposed unusual zoning processes because city officials had a long history of politically motivated bias towards the owner).

In *Easter House*, the Seventh Circuit considered an adoption agency's due process claim alleging that state and local officials conspired with Easter House's former Executive Director to subject Easter House to unusually onerous licensing procedures and to ultimately deprive it of its license. 910 F.2d at 1390-92. The court adopted a broad view of this Court's decision in *Parratt*, holding that available avenues for relief in state courts "preclude" a federal due process action by Easter House pursuant to Section 1983. *Id.* at 1392-1405. Three judges dissented. The dissenters construed this Court's precedent to hold that "if the deprivation was *predictable* and predeprivation process was *possible*"—which the dissenting judges considered to be true in the case at hand—"the state should be held liable for failure to provide pre-deprivation process," regardless of state remedies. *Id.* at 1410-12 (Cudahy, J., dissenting).

B. The decision below conflicts with the decisions of the Fourth, Eighth, and Tenth Circuits

In contrast, the Fourth, Eighth, and Tenth Circuits adopt a narrow view of the role of state remedies barriers in federal procedural due process cases, in conflict with the decision below.

In *Plumer v. Maryland*, 915 F.2d 927 (4th Cir. 1990), the Fourth Circuit agreed that "the *Parratt/Hudson* doctrine is restricted to cases where it truly is impossible for the state to provide predeprivation

procedural due process before a person unpredictably is deprived of his liberty or property through the unauthorized conduct of a state actor." *Id.* at 930 (quoting *Caine v. Hardy*, 905 F.2d 858, 862 (5th Cir. 1990)). The *Plumer* court then held that "when a state government can and does provide a predeprivation hearing and charges its employees with effecting the deprivation complained of, the availability of an adequate state postdeprivation remedy does not, standing alone, satisfy the Due Process Clause." *Id.* at 931; *see also*, *Fields v. Durham*, 909 F.2d 94, 97 (4th Cir. 1990) (the *Parratt/Hudson* state remedies rule applies only in a "narrow class of cases" where "the state cannot foresee, and thus cannot avert through implementation of prescriptive procedures, the deprivation in issue").

Like the Fourth Circuit, the Eighth Circuit has adopted a narrow view of the role of state remedies in federal due process litigation. In *Keating v. Nebraska Public Power District*, 562 F.3d 923 (8th Cir. 2009), the Eighth Circuit considered a due process claim alleging that state officials failed to provide notice or hearing before ordering agricultural landowners to cease drawing water. The court explained that "it is not necessary for a litigant to have exhausted available *postdeprivation* remedies when the litigant contends that he was entitled to *predeprivation* process." *Id.* at 929 (citing *Zinermon*, 494 U.S. at 132). "[A]ppellants' failure to exhaust postdeprivation remedies does not affect their entitlement to predeprivation process[.]" *Ibid.*; *see also*, *Christiansen v. W. Branch Cmty. Sch. Dist.*, 674 F.3d 927, 936 (8th Cir. 2012) ("Christiansen's complaint also alleges the denial of *pre-termination* process and, under *Keating*, the district court should not have dismissed such

claims on the basis of Christiansen's failure to pursue post-termination remedies.").

The Tenth Circuit's decisions also limit the state remedies requirement in due process cases. For instance, in *Lavicky v. Burnett*, 758 F.2d 468 (10th Cir. 1985), the Tenth Circuit considered a due process claim asserting that a local prosecutor instructed law enforcement officials to allow a third party to take parts from a seized pickup truck without a hearing. The court held that "[t]hese actions constitute an intentional deprivation that may not be characterized as random. . . . This action, planned and authorized, is not the sort of action for which postdeprivation process will suffice." *Id.* at 473 (citing *Logan*, 455 U.S. at 436-37); *see also*, *Wolfenbarger v. Williams*, 774 F.2d 358, 365 (10th Cir. 1985) (a seizure of stereo equipment "planned and authorized" by a local official "cannot be characterized as random or unauthorized. . . . *Parratt* and *Hudson* do not apply"); *Winters v. Bd. of Cnty. Comm'rs*, 4 F.3d 848, 857 (10th Cir. 1993) ("Available postdeprivation procedures are insufficient to neutralize a due process violation when the action is planned and authorized.").

The Eleventh Circuit's decision conflicts with the approach taken by the Fourth, Eighth, and Tenth Circuits. These latter circuit courts limit *Parratt*'s post-deprivation state remedies requirement to due process cases challenging "random" deprivations, and decline to extend it to cases challenging the pre-deprivation process for "authorized" government actions, for which the "government can [or] does provide a predeprivation hearing." *Plumer*, 915 F.2d at 930-31; *Keating*, 562 F.3d at 929; *Lavicky*, 758 F.2d at 473. Conversely, the decision below imposes no such limits. Instead, the Eleventh Circuit applies a

categorical state remedies bar to all federal procedural due process claims, regardless of the circumstances of the government action and deprivation. App. 5a. A "federal claim arises" under the decision below, "only if a State lacks adequate remedial procedures." *Ibid.* ("A State fails to provide due process only if it neglects to offer an adequate post-deprivation remedy[.]").

C. The decisions of the Second Circuit, Sixth Circuit, and Ninth Circuit are inconsistent on the issue

The decisions of the Second Circuit, Sixth Circuit, and Ninth Circuit have fluctuated on the issue of whether state remedies bar federal due process claims. While the decision below is consistent with some of these circuits' decisions, it is in tension with others, reflecting the overall confusion in lower courts. *See* Frederic S. Schwartz, *The Postdeprivation Remedy Doctrine of* Parratt v. Taylor *and Its Application to Cases of Land Use Regulation*, 21 Ga. L. Rev. 601, 602 (1987) ("[T]he application of *Parratt* to cases of land-use regulation—when the defendant is almost always a local government—has been marked with confusion and inconsistency.").

In *Burtnieks v. City of New York*, 716 F.2d 982 (2d Cir. 1983), the Second Circuit refused to adopt a broad state remedies barrier. The case involved a property owner's claim that she was denied due process when the city demolished her building without a predeprivation hearing. The district court had concluded that "[t]he tort remedy available to plaintiff under state law can fully compensate her for the property loss she allegedly suffered and is sufficient to satisfy due process," but the Second Circuit rejected this reasoning. *Id.* at 988. The appellate court explained

that state remedies are only relevant after a court first finds that there was a "necessity of quick action" or an "impracticality of providing any predeprivation process." *Ibid.* Since no such showing had been made, the Second Circuit reversed the district court's grant of summary judgment to the city.

However, in *Brady v. Town of Colchester*, 863 F.2d 205 (2d Cir. 1988), the Second Circuit applied a more preclusive state remedies requirement, one similar to that applied by the Eleventh Circuit in this case. In *Brady*, the owner of a building asserted that "the Republican-controlled Town of Colchester and interested town officials" violated the owner's due process rights by "deny[ing] them a building permit, a zoning permit, and the necessary certificates of occupancy . . . to prevent them from renting the first floor of the subject property to the Democratically-controlled Borough of Colchester." *Id.* at 209. The Second Circuit agreed with the district court that the "Bradys could have sought meaningful review of the [Town's] decisions within the state judicial system," and "[t]he availability of such recourse, as a matter of law, precludes finding that the defendants' conduct violated plaintiffs' rights to procedural due process." *Id.* at 211.

The Sixth Circuit's decisions are also inconsistent. In *Vicory v. Walton*, 721 F.2d 1062 (6th Cir. 1983), the court adopted a broad understanding of the effect of state remedies in barring due process claims, similar to the decision below. *Vicory* involved a claim that county officials deprived a mobile homeowner of property without due process when it seized the home. Reversing a district court judgment in favor of the owner, the Sixth Circuit "conclud[ed] under the authority of *Parratt v. Taylor*, 451 U.S. 527 (1981),

that in section 1983 damage suits for deprivation of property without procedural due process the plaintiff has the burden of pleading and proving the inadequacy of state processes, including state damage remedies to redress the claimed wrong." *Vicory*, 721 F.2d at 1063. The court then dismissed the owner's due process claim because he "has neither alleged nor shown any significant deficiency in the state's remedies." *Id.* at 1066.

However, since *Vicory*, the Sixth Circuit's decisions have adopted a narrower view of state remedies requirements. In *Watts v. Burkhart*, 854 F.2d 839 (6th Cir. 1988), the court held that "[t]he rule of *Parratt* and *Vicory* is clearly inapplicable 'where a deprivation of property is caused by conduct pursuant to established state procedure, rather than random and unauthorized conduct.'" *Id.* at 843 (quoting *Hudson*, 468 U.S. at 532). Applying this principle in *Macene v. MJW, Inc.*, 951 F.2d 700 (6th Cir. 1991), the Sixth Circuit rejected the argument that state remedies precluded a due process claim, challenging the denial of a land use license after an allegedly biased hearing, because the deprivation was not "random and unauthorized" but pursuant to "established state procedure." *Id.* at 706.

The Ninth Circuit's decisions are also inconsistent on the issue of whether and when the existence of state remedies bars federal review of due process claims. In *Lake Nacimiento Ranch Co. v. San Luis Obispo Cnty.*, 841 F.2d 872 (9th Cir. 1987), a property owner asserted that a county's denial of a development permit violated its due process rights because one of the officials voting against the permit had undisclosed conflicts of interest. Construing the allegation as "claiming that this process was tainted

by a voting supervisor's conflict of interest," the Ninth Circuit held that "[t]his type of procedural claim is governed by *Parratt*," and that the "claim is barred because there is an available state remedy." *Id.* at 879-80.

Other Ninth Circuit decisions adopt a narrower approach to *Parratt* and its state remedies requirement. *See Zimmerman v. City of Oakland*, 255 F.3d 734, 739 (9th Cir. 2001) (declining to apply *Parratt* to a claim challenging the seizure of vehicle without a pre-deprivation hearing); *Clements v. Airport Auth. of Washoe Cnty.*, 69 F.3d at 333 (holding that the existence of state remedies was not a bar to the viability of a due process claim alleging bias in an employment termination hearing process).

The reality is that many lower federal courts are "completely at sea" on the issue of whether and when state remedies preclude a procedural due process claim. Alexander, 87 Nw. U. L. Rev. at 596; *Bogart*, 396 F.3d at 564 (Williams, J., dissenting) (The *Parratt*/*Zinermon* "lines of cases have created confusion in the lower federal courts."). Consequently, the cry of courts, scholars, and property owners is this: "Will the Supreme Court tell us, please, which way we ought to go from here?" Juarez, 25 St. Mary's L.J. at 66.

CONCLUSION

The Court should grant the Petition for Writ of Certiorari.

Respectfully submitted,

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