

UNITED STATES SUPREME COURT
Case 25-1276

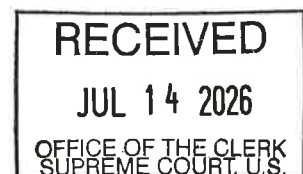
RICHARD E. WARNER & JOHN W. PARENTE,
Co-Personal Representatives of the
Estate of Joseph Ardolino II, and
JOSEPH E. ARDOLINO II,
Petitioners,
v.
CITY OF MARATHON,
a Florida political subdivision,
Respondent.

PETITION FOR A REHEARING OF ORDER
DENYING THE PETITION FOR WRIT OF
CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE ELEVENTH CIRCUIT

RICHARD E. WARNER, Pro Se
Counsel of Record
Law Offices of Richard E. Warner PA
PO Box 501317, Marathon FL 33050-1317
305-742-6022
richard@rewarner.com

John P. Fenner, Esq.
Petitioner's Trial Counsel
(Not Admitted to Supreme Court Bar)
FL Bar No. 0762938
302 Lakeside Court, Sunrise FL 33326
561-306-7711
ifennerlaw@att.net

Counsel for Petitioners Warner and Parente



I. QUESTIONS PRESENTED

Did the Estate wait too long to return to federal court, when Knick changed the procedure in 2019 for Fifth Amendment/Taking by Regulation cases? Did the Estate still have to exhaust its state appellate remedies, to comply with the 11th Circuit's 2017 Order?

Intervening Case: Recently-decided T.M. v. University of Maryland Medical System, No. 25-197, slip op. at 5 & 13 (U.S. June 18, 2026) confirms that this Court, the 11th Circuit, and four other Circuits require exhaustion of state appeals, for Rooker-Feldman treatment, citing Exxon-Mobil v. Saudi Basic Industries and Nicholson v. Shafe, 558 F.3d 1266, 1275-1277 & note 9 (CA 11 2009).

B. Significantly the T.M. Opinion does not mention the Full Faith and Credit Statute/28 USC §1738 ("§1738") cited by the Dissent at p.4. (The 11th Circuit ruled in 2024 that §1738 still applied.)

This suggests that the Court may see a conflict between §1738 and 28 USC §1441--which allows US District Courts to take jurisdiction over pending Civil Rights cases away from state courts, under 42 USC §1983 ("§1983"). **[Petitioners are suing entirely under the US Constitution's Fifth Amendment taking clause.]**

PARTIES TO THE PROCEEDINGS

Petitioners RICHARD E. WARNER and JOHN W. PARENTE are attorneys and Co-Personal Representatives of the Estate of Joseph Ardolino II (the "Estate") at all relevant times the owner of the Property taken.

Petitioner JOSEPH E. ARDOLINO II is a natural person and the sole surviving beneficiary of the Estate

Respondent CITY OF MARATHON, Florida is a Florida political subdivision

All §1983 Counts against former Parties Michael Cinque, Ralph Lucignano, The Stuffed Pig, Inc., and CSV Incorporated were dismissed, with prejudice.

Corporate Disclosure Statement:

Undersigned Counsel of Record certifies that:

No parties have stock or other ownership interests issued or provided for. Joseph Ardolino II is the sole remaining beneficiary of the Estate. The City of Marathon is a Florida political subdivision.

There are NO subsidiaries, conglomerates, affiliates, or parent corporation of any publicly-held corporation which have any interest in this case.

There are no other present parties to this matter except those listed on the front cover.

RELATED PROCEEDINGS:

[All Cases titled Warner and Parente, Personal Representatives of the Estate of Joseph Ardolino II, and Joseph E. Ardolino, Plaintiffs/Appellants vs. City of Marathon, Michael Cinque, Ralph Lucignano, The Stuffed Pig Inc. & CSV Incorporated, but all Defendants except the City were dismissed with prejudice, affirmed in Warner I.]

Cert. Petition Appendix

THE CASES DIRECTLY APPEALED:	<u>Pages</u>
--US 11th Cir. Court, 24-10901(C11 May 27, 2025) [Appendix 1 to Cert. Petition ; Decision Appealed-“ <u>Warner III</u> ”]	<u>1-17</u>

--US Dist. Court, So. Dist. of Florida, No. 4:14-...18-25
cv-10071 JL King (So. Dist. Fla. Dec. 14, 2023)
[**Appendix 2 to Cert. Petition**—trial court decision which Warner III affirmed]

PRIOR RELEVANT PROCEEDINGS:

<u>Appendix No.</u>	<u>Pages:</u>
3. July 29, 2012 Order Granting Certiorari from 16 th Circuit Court, in & for Monroe Co., Fla. 2012-CA-10-M [Writ voided Zoning Amendment]	<u>26-9</u>
4. (1st) 2016 Appeal to US 11th Circuit Court of Appeals (“11 th Circuit”) No. 16-10086, 718 Fed.App’x. 834, 837 (C11 Dec. 8, 2017) (“ <u>Warner I</u> ”) (Excerpt.) [Taking Count remanded to State Court, but return to Federal Court, if unsuccessful—the	<u>30-43</u>

“Williamson Co. Detour” .]

5. 2022. On remand to FL 16th Circuit, **44-63**
Florida Court grants the City Summary Judgement.

5A. Same Judge denies fees on City’s Offer of **64-67**
Judgment, holding that the case involved “close
questions of law and fact”. Fla. 3rd DCA Affirms,
without opinion.

6. [Not in Appendix] Florida Court of Appeals affirms
Summary Judgment and Florida Supreme Court
denies review, Warner v. City of Marathon, 357 So.3d
188 (Fla. 3d DCA 2023) rev. den. 387 So.3d 1204 (Fla.
2024) (“Warner II”)

II. TABLE OF CONTENTS

I. QUESTIONS PRESENTED.....	-i-
PARTIES TO THE PROCEEDINGS.....	-ii-
Corporate Disclosure Statement.....	-ii-
RELATED PROCEEDINGS.....	-iii-
II. TABLE OF CONTENTS.....	-v-
III. TABLE OF AUTHORITIES.....	-vi-
IV. PETITION FOR REHEARING.....	1
V. OPINIONS BELOW.....	1
VI. JURISDICTION.....	3
VII. CONSTITUTIONAL PROVISIONS INVOLVED.....	3
VII. STATEMENT OF THE CASE ON APPEAL..	4
VIII. REASONS TO GRANT REHEARING.....	8
(Argument).....	8
A. The Law of the Case in 2019 was that the Estate had to go back to state court, but could return to federal court, if the state courts did not compensate the Estate.	8
B. <u>Knick</u> called forcing the Estate to return to state court and then binding it to the trial court's ruling under §1738, the " <u>San Remo</u> Preclusion Trap". Penalizing the Estate and denying the 11 th Circuit's promise, for taking so long to lose there, conflicts with with 28 USC §1441 et seq. and Due Process.....	10
X. CONCLUSION.....	10

III. TABLE OF AUTHORITIES: [*Trial Court Decisions are set forth in Related Proceedings.*]

Dist. of Columbia Court of Appeals v. Feldman
 (“Feldman”) 460 US 462, 483-5 (1983).....9

Exxon-Mobil v. Saudi Basic Industries, 544 US 280,
 286-7, 293 (2005) (“Exxon-Mobil”).....i-, 9

Knick v. Township of Scott, Pennsylvania, 588 US
 180, 184-5 (2019) (“Knick”).....i-, -v-, 7, 8, 10

Marathon v. Warner, 3D22-1509 (Fla. 3d DCA Sept.
 27, 2023) (Cert. Petition App’x 5A, p. 67.....7

Nicholson v. Shafe, 558 F.3d 1266, 1275-1277 & note 9
 (CA 11 2009).....8, 9

Penn Central Transportation Co. v. City of New York,
 438 US 104, 123-4, 133-4 (1978) reh. denied 439 US
 883 (1978) (“Penn Central”).....2, 7

San Remo Hotel, L. P. v. City & County of San
 Francisco, 545 U.S. 323 (2005) (“San Remo”)
-v-, 6, 10

Warner v. City of Marathon, 2012-CA-10-M (Fla. 16th
 Cir. July 27, 2012).....i-, -iii-, 2; App’x. 3 p 26

Warner v. City of Marathon, 2018-CA-222-M (Fla.
 16th Cir. March 25, 2022)2 (App’x 5, p.44)

Warner v. City of Marathon, No. 16-10086, 718 Fed. App'x. 834, 837 (11th Cir. Dec. 8, 2017) ("Warner I"–App'x 4)..... -iv-, 3, 4, 5, 6

Warner v. City of Marathon, 357 So.3d 188 (Fla. 3d DCA 2023) rev. den. 387 So.3d 1204 (Fla. 2024) ("Warner II").....-iv-, 2, 4, 13

Warner v. City of Marathon, No. 24-10901 (11th Cir. May 27, 2025) ("Warner III", App'x 1)..-iii-, 2, 8

Williamson Co. Reg'l. Planning Comm'n v. Hamilton Bank of Johnson City, 473 US 172, 186 (1985) ("Williamson Co.")..-v-, 3, 8-11, 14, 22, 28, 30, 31, 32

UNITED STATES CONSTITUTION:

Fifth Amendment.....-I-, -ii-, -vii-, 8, 17, 23, 27
 Seventh Amendment.....6, 27
 Fourteenth Amendment...-I-, iii-, -vii-, -viii-, 6, 16, 29

FEDERAL STATUTES, United States Code ("USC"):

28 USC §1441.....4, 15
 28 USC §1738 ("§1738").....-i-, 1, 6, 7, 10
 42 USC §1983 ("§1983").....-i-, -ii, iii, 4, 6

IV. PETITION FOR WRIT OF CERTIORARI

Petitioners respectfully request rehearing of the Court's June 15, 2026 Order denying the Estate's Petition for a Writ of Certiorari to review the final judgment of the US 11th Circuit Court of Appeals the "11th Circuit") for the following reasons:

V. OPINIONS BELOW: (All titled "Warner v. Marathon", unless otherwise noted)

1. July 25, 2012 Writ of Certiorari from 16th Circuit Court, in & for Monroe County, Florida (the "16th Circuit") Judge David Audlin presiding; Writ voided Zoning Amendment for lack of Notices and for Targeting the Estate's property (the "Overseas") (Appendix 3).
2. 2014, 16th Circuit Civil Case 18-222-M; Judge Mark Jones presiding, alleging a temporary, partial taking. (The City removed this case to federal court.)

3. 2015, US District Court for the Southern District of Florida (“Southern District”) No. 14-cv-10071, Senior Judge James L. King presiding: Order granting the City’s Motion to Dismiss all Counts.
4. 2016 Appeal to US 11th Circuit Court of Appeals (“11th Circuit”) No. 16-10086, Dec.8, 2017, 718 Fed.App’x. 834, 837 (11th Cir. Dec. 8, 2017) (“Warner I”–Appendix 4) Judges Tjoflat, Wm. Pryor & Jordan.
5. On remand to the Florida 16th Circuit, Judge Jones granted Summary Judgment to the City (Appendix 5) under Penn Central Transportation Co. v. City of New York, 438 US 104, 123-4, 133-4 (1978) reh. denied 439 US 883 (1978) (“Penn Central”).
6. 2023, Fla. 3rd District Court of Appeals affirms Summary Judgement, 357 So.3d 188 (Fla. 3d DCA 2023) (Per Curiam, Judges Fernandez, Logue and Linsey); Review denied, 387 So.3d 1204 (Fla. 2023) (“”)
7. 2023, Return to 2014 So. Dist. No. 14-cv-10071 (SDFL Dec. 14 2023) as Warner I directed; Judge King denies Estate’s Motion to Reopen (Appendix 2)
8. Third Appeal. 11th Circuit affirms Judge King’s Decision, 11th Cir. Case No. 24-10901 (Per Curiam, Judges Rosenbaum, Branch & Kidd) Opinion Rendered May 27, 2025 (Appendix 1–“Warner III”).

VI. JURISDICTION:

Under Supreme Court Rule 44, this Petition asks for rehearing of this Court's June 15, 2025 Order denying the Estate's Petition for Certiorari

Warner I ruled that the Estate had met the Williamson County Reg'l. Planning Comm'n v. Hamilton Bank of Johnson City, 473 US 172, 186 (1985) ("Williamson Co.") Ripeness-Exhaustion of Administrative Remedies-requirement.

However, Warner I imposed Williamson Co.'s other, Exhaustion of state court Remedies/Ripeness requirement, on the Estate.

(The Estate would only have to come back to federal court, though, if it lost in state court.)

VII. CONSTITUTIONAL PROVISIONS INVOLVED:

US Constitution:

Fifth Amendment: "nor shall any person...be deprived of...property without due process of law nor shall private property be taken for public use without just compensation."

Seventh Amendment: "In suits at common law... the right of trial by jury shall be preserved."

14th Amendment: "nor shall any State deprive any person of...property, without due process of law"

VIII. STATEMENT OF THE CASE ON APPEAL

The Estate spent 11 years of actions and appeals, to patiently exhaust its State Court remedy:

1. 2014 State Case. Because the 2012 Writ— voiding the Zoning Amendment—did not allow damages and as required by Williamson Co., the Estate sued the City in Florida’s 16th Circuit Court. The Estate pled a taking under the US Constitution and under 42 USC §1983 (hereinafter “§1983”).

The Complaint also sued the City and influential individuals—a competitor and a neighbor—in civil rights claims under §1983.

(The 11th Circuit affirmed striking all Counts, except for the Estate’s Taking Count.)

The Estate demanded a jury trial.

2. 2014 Federal Case—Removal to Federal District Court. Because the Complaint included Federal and State law claims, the City removed the case to the US District Court for the Southern District of Florida, Senior Judge the late James L. King presiding.

Judge King dismissed the §1983 Counts against individuals, generally on privilege grounds. He dismissed the Taking Count on the ground that the Estate’s claim was not “ripe”.

3. 2016 Federal Appeal (“Warner I”)

The Estate appealed to the US 11th Circuit, which affirmed dismissing the purely §1983 Counts,

but reversed dismissing the Taking Count, 718 Fed. App'x 834, 837 (11 Cir. Dec. 8, 2017). (Appendix 4—excerpt)

The 11th Circuit ruled the Estate had exhausted its local government, administrative remedies, but had not yet exhausted its State **Court** remedies, as Williamson Co. required.

The 11th Circuit remanded the case to the So. Fla. District Court, with instructions to dismiss the case without prejudice, while the Estate pursued its taking remedies in Florida State Courts (the “Williamson Co. Detour”).

Significantly, the 11th Circuit promised the Estate that it could return to Federal Court, if Florida Courts denied relief.

Warner I stated:

A federal court has jurisdiction to review a federal takings claim for money damages stemming from a regulatory taking of property when the plaintiff can establish that...there is no adequate state remedy to obtain just compensation, **or an adequate remedy exists but the plaintiff has been denied relief.**

Notwithstanding the possibility that [appellants] were attempting to assert an inverse condemnation claim in Florida state court before the case was removed to federal court, **we cannot review the claim until the plaintiffs have been denied relief by a Florida court...**

The City did not appeal this ruling.

(No party or Court mentioned San Remo Hotel, L P v. City & County of San Francisco, 545 U.S. 323 (2005) ("San Remo") or preclusion by 28 USC §1738.)

As ordered, the District Court dismissed the Federal case, but **without prejudice**.

4. 2018 State Case—(Revived 2014 16th Cir. State Case on remand, where the Estate loses in State Court, on Summary Judgment.)

The Estate sued again in the 16th Circuit Court. It amended its original Complaint, to drop its §1983 claims against individuals, and to sue only on the Florida Constitution's taking clause, Fla. Const., Art. X, §6(a), to avoid another Removal. It included Count I's §1983 claim.

All the Estate's Complaints ask for a jury trial.

On remand from Warner I, on December 31, 2018, the 16th Circuit denied the City's Motion to Dismiss, ruling "**the Complaint sets forth a legally sufficient cause of action for 'As Applied' Inverse, Temporary Regulatory Taking.**"

However, without a trial, the 16th Circuit gave the City Summary Judgment, based on Penn Central's "residual value" analysis, Appendix 5.

4A Except the City got no fees from its Offer of Judgment. Ironically, when it later denied the City's Fee Motion on its Offer of Judgment, the 16th Circuit Court ruled "The case raised close questions of law and

fact.” Affirmed by Marathon v. Warner, 3D22- 1509 (Fla. 3rd DCA Sept. 27, 2023) (Appendix 5A)

5. 2021-2023 State Appeal—(The Estate’s unsuccessful Florida Appeal.)

Citing Penn Central, Florida’s Third District Court of Appeal affirmed the trial court, in Warner v. Marathon, 357 So.3d 188 (Fla. 3rd DCA 2023) rev. denied 387 So.3d 1204 (Fla. 2023) (“Warner II”).

6. 2023 Federal Case (Revived 2014 US So. Fla. Dist. Case; The “*San Remo* Preclusion Trap” Lives.)

The Estate moved to reopen the Federal Case, based on the 11th Circuit’s above promise of ultimate access to Federal Courts.

The District Court denied the Motion to Reopen, however, based on 28 USC §1738 and San Remo, because the Estate lost in State Court and that loss precluded the Estate from trying again in Federal Court. (Appendix 2)

Over-Ripeness? The District Court also ruled that the Estate had waited too long to reopen the Federal case, after Knick closed the lid to the “San Remo Preclusion Trap” [San Remo at 341-2, so described in Knick at 139 S.Ct. 2167] in 2019. (The Estate was exhausting its state court appellate remedies, as the 11th Circuit had directed.)

7. 2023 Second Appeal to 11th Circuit–Warner III.
(The Order appealed–Appendix 1.)

The 11th Circuit ruled that, in 2019 Knick had triggered the “change in law” exception to the Law of the Case rule, during the Estate’s Williamson Co. Detour.

8. September 24, 2025 Federal (3rd) Appeal--this
Petition for Certiorari.

IX. REASONS TO GRANT REHEARING:

A. The Law of the Case in 2019 was that the Estate had to go back to state court, but could return to federal court, if the state court did not compensate the Estate.

Remand to the state court included exhausting all state appeals, T.M. v. University of Maryland Medical System, No. 25-197, slip op. at 5 & 13 (U.S. June 18, 2026) (“T.M.”). Nonetheless, in 2025, the 11th Circuit ruled that the Estate waited too long to return to federal court.

Intervening Case: Recently-decided T.M. confirms that this Court, the 11th Circuit, and four other Circuits require exhaustion of state appeals, for Rooker-Feldman treatment, citing Exxon-Mobil v. Saudi Basic Industries and Nicholson v. Shafe, 558 F.3d 1266, 1275-1277 & note 9 (CA 11 2009).

In 2019, Knick presented the Estate with a dilemma:

(a) it could continue with the state case (which had a

fair chance of success, given the 16th Circuit's 2018 ruling) and a federal jury trial de novo, if the state court denied relief; OR

(b) it could have the state case stayed and try to reopen the federal case, appealing to the 11th Circuit.

In addition to its complexity, (b) was not free from risk. (In Nicholson v. Shafe the federal trial judge sanctioned a lawyer for trying to go to federal while a state appeal was pending.)

Moreover, the Estate was concerned that the 11th Circuit could invoke another form of abstention. (T.M.'s Dissent lists four additional abstention doctrines.)

Remand to the state court included exhausting all state appeals, T.M. v. University of Maryland Medical System, No. 25-197, slip op. at 5 & 13 (U.S. June 18, 2026) ("T.M."). Nonetheless, in 2024, the 11th Circuit ruled that the Estate waited too long to return to federal court.

Intervening Case: Recently-decided T.M. confirms that this Court, the 11th Circuit, and four other Circuits require exhaustion of state appeals, for Rooker-Feldman treatment, citing Exxon-Mobil v. Saudi Basic Industries and Nicholson v. Shafe, 558 F.3d 1266, 1275-1277 & note 9 (CA 11 2009).

(In Nicholson v. Shafe the federal trial judge sanctioned a lawyer for trying to go to federal while a state appeal was pending.)

B. Pushing Back on §1738—Keeping State
Courts from Finally Deciding Purely Constitutional
Questions:

Knick called forcing the Estate to return to state court and then binding it to the trial court's ruling under §1738, the "San Remo Preclusion Trap". Knick heavily criticized extending §1738 to Taking by Zoning cases, but did not say that it does not apply.

As the Dissent in T.M. points out, the Opinion does not mention §1738. This leads to the possibility that this Court wishes to clarify that there are limits to §1738 preclusion, in purely Constitutional cases. (If this Court is considering this, this case would be a good opportunity to do so.)

Denying the 11th Circuit's promise, for taking so long to lose in State Court, conflicts with 28 USC §1441 et seq. and Due Process.

CONCLUSION:

A timeless 1791 insight by America's Founding Fathers was that a government was far-less likely to confiscate people's property, if it had to pay for it. And that a government was less likely to use the police power for private gain, if it had to do it in the open, with due process.

The Estate has received neither payment nor due process, though it has followed all of "the rules". So it comes to this Court, in the hope that it will give more consistency in this complicated area of the law.

DATED: July 10, 2026
Respectfully submitted,

/s/ Richard E. Warner, Esq.

Richard E. Warner, Esq., Pro Se
Counsel for Petitioner
FL Bar No. 0283134

Certificate of Counsel, Per Supreme Court Rule 44.2

Undersigned Counsel HEREBY CERTIFIES on July 10, 2026. as follows:

1. The foregoing Petition for Rehearing (the "Petition") is restricted to a substantial or controlling effect—this Court's June 18, 2026 Opinion in T.M. v. University of Maryland Medical System, No. 25-197, slip op. at 5 & 13 (U.S. June 18, 2026).
2. The Petition is restricted to the grounds specified in Rule 44.2 of this Court's Rules.
3. The Petition is presented in good faith and not for delay.

A handwritten signature in black ink, appearing to read "R.E. Warner", written over a horizontal line.

Richard E. Warner, Esq., Pro Se

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITS:

UNITED STATES SUPREME COURT

(US 11 Circuit Court Case No. 24-10901, Opinion on May 27, 2025 D.C. So. District of Florida, Docket No. 4:14-cv-10071-JL King)

RICHARD E. WARNER & JOHN W. PARENTE, Co-Personal Representatives of the Estate of Joseph Ardolino II, Petitioners, and JOSEPH ARDOLINO

v.

CITY OF MARATHON, a Florida political subdivision, Respondent.

REHEARING PETITION OF DENIAL OF A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

John P. Fenner, Esq.
Trial Counsel for Petitioner
(Not Admitted to Supreme Court Bar)
302 Lakeside Court
Sunrise FL 33326
561-306-7711
jfennerlaw@att.net
FL Bar No. 0762938

1. As required by Supreme Court rule 33.1(h), I certify that the Petition for Rehearing contains 1,820 words (excluding the parts of the document exempted by Supreme Court Rule 33.1(d)) and 255 words in Related Proceedings, for a total of 2,075 words.

2. The typeface used is 12-point Century.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Sworn to on July 10, 2026



John P. Fenner, Esq.
Trial Counsel for Petitioners
(not admitted to the Supreme Court Bar)

On this I served Hudson Gill, Esq. by email.



John P. Fenner, Esq.

