No.

In the Supreme Court of the United States

JOHANNA MCGEE, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF JACQUELINE MCGEE,

Petitioner,

v.

ALGER COUNTY TREASURER,

Respondent,

AND

LILLIAN JOSEPH,

Petitioner,

v.

IRON 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

When government takes and sells private property to collect a tax debt, it must return the surplus proceeds from the sale to the former property owner as just compensation. *Tyler v. Hennepin Cnty.*, 598 U.S. 631 (2023). Michigan continues to evade that categorical duty. It established a complicated claims process purporting to offer owners an opportunity to claim their funds, Mich. Comp. Laws § 211.78t, yet in approximately 95% of cases, the tax debtors cannot successfully navigate it. When that happens, the government keeps the owner's equity as a windfall. Four other states have enacted similarly Byzantine claims processes. Federal and state courts allow this end-run around *Tyler* and due process mainly based on *Nelson v. City of New York*, 352 U.S. 103 (1956), which contains language that the existence of *any* procedure to recover surplus proceeds prevents the taking from occurring. The questions presented are:

1. Does Michigan's claims process violate the Takings and Due Process Clauses?
2. To the extent it authorizes Michigan's confiscatory claim statute, should the Court overrule *Nelson v. City of New York*?

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Petitioners Johanna McGee and Lillian Joseph were defendants-appellants in the proceedings below.

Respondents Alger County Treasurer and Iron County Treasurer were plaintiffs-appellees 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 Alger County Treasurer for Foreclosure, No. 167712 (Mich. Mar. 28, 2025).

In re Petition of Alger County Treasurer for Foreclosure, No. 363803 (Mich. Ct. App. Sept. 12, 2024).

In the Matter of the Petition of Alger County Treasurer for the Foreclosures of Certain Parcels of Property Due to Unpaid 2018 and Prior Years' Taxes, Interest, Penalties, and Fees, No. 2020-8018-CZ (Alger Cnty. Cir. Ct. Sept. 28, 2022).

In the Matter of the Petition of Iron County Treasurer for the Foreclosures of Certain Parcels of Property Due to Unpaid 2018 and Prior Years' Taxes, Interest, Penalties, and Fees, No. 20-6007-CZ (Iron Cnty. Cir. Ct. Apr. 26, 2022).

TABLE OF CONTENTS

APPENDIX

TABLE OF AUTHORITIES

Cases

United States Constitution

Statutes

Other Authorities

PETITION FOR A WRIT OF CERTIORARI

Tyler v. Hennepin County, 598 U.S. 631, 639 (2023), held that the government violates the Takings Clause when it confiscates more property than necessary to collect delinquent property taxes, penalties, interest, and fees. *Id.* at 647. But five states continue to regularly take more than what is owed by requiring owners to follow unusual and complicated procedures to collect the compensation due.[1] When owners do not strictly comply with these demanding claims statutes, the government confiscates the entire property, no matter how large the proceeds or small the tax debt. For most owners in these states, *Tyler*'s promise remains unfulfilled.

Here, the Alger County Treasurer foreclosed on Jacqueline McGee's home ten days after she unexpectedly died after a weeklong illness at age 53. Her children, mourning the loss of their mother and sorting out her affairs, did not begin probate until after the premature, pre-sale deadline to preserve the estate's right to surplus proceeds had passed. Thus, when the County sold the property, it kept $34,150 more than it was owed as a windfall, depriving the children of their inheritance. Michigan's claims process sets other traps even for those who strictly follow its unintuitive deadlines. Seventy-year-old Lillian Joseph was one of the few Michiganders who figured out the notice of claim deadline before it passed. She timely mailed Iron County the notarized notice that she (of course) wanted any surplus

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[1] *See* 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*, 259 N.J. 417, 434 (2025) (describing new process); N.Y. Real Prop. Tax Law §§ 1136(3), 1197(4).

proceeds from the sale of her foreclosed property. Because she mailed the claim form by trackable, express priority mail instead of certified mail, and the Treasurer did not retrieve it from the mailroom until after the deadline, the lower court held the County could keep a windfall of $21,755 that exceeded Joseph's debt. App. 11a-12a.

Joseph's and the McGee Estate's compliance with every other aspect of Michigan's claims statute was for nought. The lower court dismissed their judicial challenge to the confiscation based on *Nelson v. City of New York*, 352 U.S. 103, 110 (1956). In *Nelson*, this Court rejected a takings claim by a former owner of property seized to satisfy a tax debt because the owners missed a brief opportunity during the foreclosure action to request surplus proceeds from a future sale. *Ibid.* Lower courts, including the one in this case, have interpreted *Nelson* to mean that the existence of any claims process, no matter how poor, effectively precludes takings claims brought by former property owners aiming to recover their lost equity. App. 15a. *See also In re Muskegon Cnty. Treasurer for Foreclosure*, 348 Mich. App. 678 (2023), *petition for writ of certiorari pending sub nom. Beeman v. Muskegon Cnty. Treasurer*, No. 24-858; Petition for Writ of Certiorari, *Koetter v. Manistee Cnty. Treasurer*, No. 24-1095. This reasoning does not meet the mandate of *Tyler*.

To the extent that *Nelson*'s statements on the Takings Clause are not deemed *dicta*, Petitioners ask the Court to overturn it. *Nelson*'s takings language conflicts with this Court's takings and Section 1983 decisions that hold the government has an affirmative, "categorical duty" to pay owners just compensation, *Horne v. Dep't of Agriculture*, 576 U.S.

350, 358 (2015), with "reasonable, certain, and adequate" procedures for remittance. *Cherokee Nation v. S. Kan. Ry. Co.*, 135 U.S. 641, 659 (1890).[2]

Moreover, *Nelson* cannot be squared with this Court's rejection of exhaustion requirements for takings claims in *Knick v. Township of Scott*, 588 U.S. 180, 189 (2019), and the holding in *Felder v. Casey*, 487 U.S. 131, 142 (1988), that government cannot impose notice of claim requirements to deny constitutional claims raised via 42 U.S.C. § 1983 in state court. This Court should grant the Petition to clarify that *the government* bears the burden of remitting just compensation to a known owner. *See Joslin Mfg. Co. v. City of Providence*, 262 U.S. 668, 677 (1923) ("the requirement of just compensation is satisfied when the public faith and credit are pledged to a reasonably prompt ascertainment and payment, and there is adequate provision for enforcing the pledge"); *Chicago, B&Q Ry. Co. v. People of State of Illinois*, 200 U.S. 561, 593 (1906) (government that takes property "must obey the constitutional injunction to make or secure just compensation to the owner."). To pledge the faith of a government "means, of course, that payment shall be made. . . ." *Kankakee Cnty. v. Aetna Life Ins. Co.*, 106 U.S. 668, 670 (1883). "Shall" means "must." *Bufkin v. Collins*, 145 S. Ct. 728, 737 (2025). As such, the government's "categorical duty" to remit just compensation cannot be conditioned on an owner's successful completion of bureaucratic hurdles. *Fulton v. Fulton Cnty. Bd. of*

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[2] *See also Monongahela Nav. Co. v. United States*, 148 U.S. 312, 325 (1893) (the power to take private property is "inseparably connected" to the required payment of just compensation as to be "parts of one and the same principle.").

Comm'rs, No. 22-12041, __ F.4th __, 2025 WL 2166416, at *10 (11th Cir. July 31, 2025) ("if a legislative substitute for 'just compensation' is not coextensive with the constitutionally prescribed remedy of 'just compensation,' then the constitutionally prescribed remedy remains directly available."). *Nelson*'s approval of just such hurdles is irreconcileable with takings jurisprudence.

Finally, lower courts' interpretation of *Nelson* to authorize *any* process as an "exclusive" means to recover just compensation, App. 8a, 15a-16a, cannot be reconciled with this Court's Due Process jurisprudence, which is fundamentally concerned with fairness. *See Collins v. City of Harker Heights*, 503 U.S. 115, 125 (1992) (the Due Process Clause "guarantee[s] *fair* procedure in connection with any deprivation of . . . property by a State.") (emphasis added). Due process requires procedures designed to return property to the rightful owner, not to enrich the government. *See Taylor v. Yee*, 136 S. Ct. 929, 930 (2016) (Alito, J., concurring on denial of cert.); *cf. Jones v. Flowers*, 547 U.S. 220, 229 (2006) (due process requires notice that would be used by one "who actually desired to inform a real property owner of an impending tax sale").

This Court should grant the Petition to hold that a state statute cannot immunize government from its unqualified obligation to pay just compensation for a taking.

OPINIONS BELOW

The decision of the Michigan Court of Appeals (App. 1a-25a) is unpublished but available at *In re Petition of Alger Cnty. Treasurer for Foreclosure*, No. 363803, 363804, 2024 WL 2981520 (Mich. Ct. App.

Sept. 12, 2024). The trial courts' opinions dismissing the claims raised here (App. 26a-30a) are unpublished. The Michigan Supreme Court's order denying review is at App. 31a-32a.

JURISDICTION

The Michigan Court of Appeals issued the judgment at issue here on September 12, 2024. App. 1a. On March 28, 2025, the Michigan Supreme Court denied a timely application seeking leave to appeal the decision. App. 32a. This Petition raises federal questions 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 . . . ."

Relevant portions of the Michigan statutes are reproduced at App. 33a-43a.

STATEMENT OF THE CASE

A. Michigan's claim statute

1. Three years before *Tyler*, the Michigan Supreme Court held in *Rafaeli, LLC v. Oakland Cnty.*, 505 Mich. 429 (2020), that the government violated the Michigan Constitution when it took property to collect a tax debt and kept more than the owed taxes, penalties, interest, and costs. In response, Michigan amended its tax foreclosure statute. App. 4a. As relevant here, tax foreclosures occur in February or March each year. MCL § 211.78t. If a tax debt is not paid by March 31, a foreclosing county obtains fee simple title. 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 notify the County that she wants to be paid any future surplus proceeds from the sale by submitting a notarized notice of claim using Form 5743 by personal service acknowledged by the County or by certified mail, return receipt requested. *See* MCL § 211.78t(2); App. 4a.

If the government declines the right of first refusal to purchase the property, the County sells it at a public auction several weeks after foreclosure. MCL § 211.78m(1), (2). The following January, up to six months after the sale, the government calculates the proceeds remaining after deducting all tax debts, expenses, interest, and penalties, and mails notice to those who properly filed Form 5743 that they must file a motion in the original judicial foreclosure action to recover the proceeds. MCL § 211.78t(3)(i), (k), (4).

The court holds a hearing on the motion to determine the relative priority of any claims, granting first priority to the government for payment of the

debt, interest, and sale costs, plus an additional five percent of the purchase price, MCL §§ 211.78t(12)(b), 211.78m(16)(c); then other liens; and finally the remainder to the former owner who timely submitted Form 5743 to the county and the motion to recover the surplus in the appropriate court. MCL § 211.78t(9). The foreclosing county pays the amounts ordered by the circuit court, MCL § 211.78t(10), but only after holding the money for approximately one year, accruing interest that the county keeps for itself. MCL § 211.78k(8).

The critical point is that if an owner fails to properly serve the notarized notice of claim (Form 5743) weeks before the foreclosure sale, the statute cuts off the owner's right to *any* future claim or constitutional challenge, and the County keeps the just compensation that it was otherwise constitutionally required to remit, as a windfall for the public coffers.

B. Michigan's strict claim statute operates to deprive the McGee Estate and Joseph of their just compensation

Petitioners here and in the *Beeman* and *Koetter* petitions, also pending before this Court, are representative of Michigan tax debtors whose claims for just compensation were defeated by Michigan's unusual and self-serving claims process, allowing the government to confiscate the debtors' surplus funds for its own use.

1. Jacqueline McGee owned and lived in a modest home in Shingleton in Alger County, Michigan. App. 5a. She died unexpectedly on February 21, 2021. *Ibid.* Ten days later, the Alger County Treasurer obtained a foreclosure judgment against McGee's

property for her delinquent 2018 taxes. When McGee's debt was not paid by March 31, 2021, the Alger Treasurer took title for the county. App. 5a.

The Alger Treasurer sent two notices to the deceased (Jacqueline McGee) of the procedure to claim surplus proceeds from any sale of her home. *See*, *e.g.*, Alger Response to Application for Leave to Appeal, Mich. Supreme Ct., No. 167712 (Nov. 21, 2024). The first notice, mailed shortly after her death, warned primarily of the imminent foreclosure if the debt was not paid by March 31. App. 49a. The second, mailed after the County took title to the property, was entitled "NOTICE OF FORECLOSURE" and stated near the top: "**Any interest that you possessed in this property prior to foreclosure, including any equity associated with your interest, has been lost.**" App. 52a. The paragraph after this hopeless declaration then states, "Any person that held an interest in this property at the time of foreclosure has a right to file a claim for **REMAINING PROCEEDS** pursuant to MCL 211.78t" and that "Form 5743" is due July 1, 2021. *Ibid.* Form 5743 was not enclosed.

McGee's heirs sorted out her affairs after the July 1, 2021, claim deadline passed. Weeks after the July 1 deadline, Alger County auctioned the McGee home for $38,250 to collect $3,599.79 in taxes, penalties, interest, and fees, including attorney fees. *See* App. 5a. About six months later, on February 25, 2022, McGee's daughter, Johanna McGee, submitted Form 5743 on behalf of her late mother's estate to the County. *See ibid.* Johanna moved for disbursement to the estate of the remaining proceeds on May 20, 2022, in the court with jurisdiction over the original foreclosure action. *Ibid.* Alger County opposed her motion because she missed the 92-day deadline to

submit Form 5743. *Ibid.* McGee argued that MCL § 211.78t is unconstitutional if it is the exclusive mechanism for claiming surplus proceeds. App. 6a.

The trial court denied the motion for surplus proceeds but noted its "concerns about the constitutionality of MCL 211.78t as a sole remedy." App. 27a.

2. In 1981, Lillian Joseph inherited her parents' home in Crystal Falls, Michigan. For almost four decades, she paid her property taxes before falling behind. Iron County obtained a foreclosure judgment on February 19, 2021. Iron County took title when she failed to redeem the property by March 31, 2021. App. 6a.

On June 29, 2021, Joseph sent the notarized notice-of-claim Form 5743 by Priority Mail Express for $26, to the correct address that omitted only the suite number for the Treasurer's office. App. 7a. The Iron County mailroom received Joseph's form on July 1 at 8:17 a.m., and held it for the Treasurer's office, which retrieved it the following day. *Ibid.*

On August 4, 2021, Iron County sold Joseph's property at auction for $27,500, approximately $23,000 more than Joseph's debt. *See* App. 7a. On February 24, 2022, Joseph timely filed a motion in court with jurisdiction over the foreclosure action to claim the surplus proceeds from the sale of her property. App. 7a. The Iron County Treasurer opposed her motion because she sent Form 5743 via the wrong type of mail, and because the Treasurer actually received the notice a day late because it sat in the County mailroom all day on July 1. *Ibid.* Joseph argued that denial of her surplus proceeds

violates her right to due process and just compensation. App. 30a.

On April 26, 2022, the trial court denied Joseph's claims because she missed the July 1 deadline; thus, the government refused to remit the surplus proceeds/just compensation, and kept the windfall for itself. App. 30a.

C. Based primarily on *Nelson v. City of New York*, the Michigan Court of Appeals holds the County did not take property without just compensation or violate due process

On appeal, the McGee Estate and Joseph argued that the counties' confiscations of their surplus proceeds violated their federal constitutional rights to just compensation and procedural due process. App. 15a, 18a. After consolidating their cases, the Michigan Court of Appeals ruled against them based on *Nelson*, 352 U.S. at 100, and a prior decision by the Michigan Court of Appeals, *Muskegon County Treasurer*, 348 Mich. App. 678, which is pending on a petition for writ of certiorari before this Court. *See Beeman v. Muskegon County Treasurer*, No. 24-858. *Muskegon* construed *Nelson* to mean 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." *Id.* at 700, citing *Nelson*, 352 U.S. at 110. Thus because Joseph and the Estate failed to timely file the pre-sale claim notice (Form 5743), there was "no compensable taking." App. 17a.

As to due process, the Court relied on *Muskegon*'s holding that "[t]he statutory scheme for recovering remaining proceeds satisfied due process," and that

the court must defer entirely to the legislature: "whether such a scheme makes sense or not, or whether a 'better' scheme could be devised, are policy questions for the Legislature, not legal ones for the Judiciary." App. 18a-19a (quoting *Muskegon*, 348 Mich. App. at 697).

The Michigan Supreme Court denied review, App. 32a, but subsequently followed and cited *Muskegon* in *Hathon v. State*, 17 N.W.3d 686, 686-87 (2025), holding that owners "must first utilize the statutory process provided by MCL 211.78t for recovery of remaining post-foreclosure sale proceeds before" pursuing their constitutional claims seeking just compensation. *Ibid.* That is, without timely filing Form 5743, no takings claim can survive a motion to dismiss in Michigan courts.

REASONS FOR GRANTING THE PETITION

I. The Court Should Settle the Important Question of Whether the Government May Avoid Its Categorical Constitutional Duty to Pay Just Compensation by Burdening Owners with an "Exclusive" Claims Process

Under the Fifth Amendment's Takings Clause, the government has a "categorical duty" to pay just compensation when it takes private property for a public use. *Horne*, 576 U.S. at 358; *Arkansas Game & Fish Comm'n v. United States*, 568 U.S. 23, 31 (2012); *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Plan. Agency*, 535 U.S. 302, 323 (2002). The government satisfies its categorical duty to pay for taking private property only with a "reasonable, certain, and adequate provision for obtaining compensation." *Cherokee Nation*, 135 U.S. at 659.

The categorical duty to pay just compensation applies when the government seizes private property to pay a tax debt. *Tyler*, 598 U.S. at 639. While the government "ha[s] the power" to sell property to recover unpaid property taxes, it violates the Takings Clause if the government "confiscate[s] more property than was due." *Ibid.* The government must pay for any excess property taken. *Ibid.*

After *Tyler*, most states using confiscatory tax foreclosures revised their statutes to resemble other debt collection laws—giving owners a reasonable period after the sale of seized property to recover any proceeds remaining after the debts are paid.[3] Indeed, most states already *automatically* remitted surplus proceeds to owners[4] or gave them years after sale to recover their money.[5] But Alabama, Arizona, Michigan, New Jersey, and New York rely on *Nelson* to give owners an unusual and short claim window that occurs before the sale and long before the money is available to collect. *Supra* n.1. In other words, they require owners to claim just compensation *before* the taking. *See Jackson v. Southfield Neighborhood Revitalization Initiative*, No. 166320, __ Mich. __,

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[3] *See, e.g., See* 2024 Colo. Legis. Serv. Ch. 165 (H.B. 24-1056); 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 (H.B. 1090).

[4] *See, e.g.*, Idaho Code § 31-808(2)(c); Kan. Stat. Ann. § 79-2803; Me. Rev. Stat. Ann. tit. 36, § 943-C; Mont. Code Ann. § 15-18-221; S.D. Codified Laws § 10-25-39; Wis. Stat. § 75.36(2m)(b).

[5] *See, e.g.,* Ark. Code Ann. § 26-37-205(b); Fla. Stat. § 197.582; Ind. Code § 6-1.1-24-7(c), (e)(2); Mo. Rev. Stat. § 140.230(2); N.M. Stat. Ann. § 7-38-71(A)-(C); Tenn. Code Ann. § 67-5-2702; Tex. Tax Code § 34.03(a)(2); Va. Code Ann. §§ 58.1-3967, -3970; Wash. Rev. Code § 84.64.080.

2025 WL 1959046, at *14 (Welch, J., concurring) ("a taking [that] occurs only as to excess proceeds []would not be possible if the takings claim occurred as soon as a tax-foreclosure judgment becomes final. This is because the 'excess proceeds' are not determined until after the judgment of foreclosure is issued."); *Sikorsky v. City of Newburgh*, 136 F.4th 56, 63 (2d Cir. 2025) (takings claim accrued once the property sold for more than the debt and government retained the excess); *Ramsey v. City of Newburgh*, No. 23-CV-8599, 2024 WL 4444374 (S.D.N.Y. Oct. 8, 2024) (dismissing owner's claims for taking under *Tyler* as unripe because the city hadn't yet sold the property (generating the surplus) or decided to keep it (generating a constructive surplus equivalent to the excess if it had been sold)).

The result is predictable: all but the most sophisticated owners miss this counterintuitive deadline. State records document a widespread problem as counties confiscate millions of dollars. The most recent report of tax foreclosure sales reveals that in 2022 many Michigan counties remitted *not one penny* of surplus proceeds to former owners, while retaining enormous windfalls for themselves. Typical examples are Branch County, which confiscated $337,397.87; Clinton County, which kept $209,809.90; and Livingston County, which kept $290,453.13. Some counties confiscated much more, such as Barry County, which remitted nothing and kept $993,750.34, and Oakland County which remitted $991,021 and kept $2,592,366. Wayne County reported that it remitted $1.9 million to former owners and confiscated nearly *$24 million* for the public

coffers.[6] There is no recourse to the courts. The Michigan Court of Appeals uniformly denies claimants and the Michigan Supreme Court has denied every application for review. *See, e.g.*, *In Re Petition of Iron County Treasurer for Foreclosure*, No. 368382, 2025 WL 2147421 (Mich. Ct. App. July 29, 2025) (relying, as in this case, on *Muskegon* and *Nelson*); *Jackson*, 2025 WL 1959046, at *13 (Welch, J., concurring) (noting the "proliferation of takings claims based on tax foreclosures in Michigan and across the country."). And those who lose their property to tax foreclosure tend to be vulnerable and more likely to be elderly or ill. *Kidd v. Pappas*, No. 22 C 7061, 2025 WL 1865983 (N.D. Ill. July 7, 2025) (class members who lost property to tax foreclosure were overwhelmingly "not sophisticated parties" and can't afford to hire a lawyer).

This Court's decision in *Nelson* is the reason why state and federal courts have authorized these confiscations, even though they violate the government's categorical duty to pay for what it takes with a reasonable, certain, and adequate process, and the modern and traditional duty of debt collectors.

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[6] Mich. Dep't of Treasury, *Foreclosing Governmental Unit Report of Real Property Foreclosure Sales* (compilation of county reports of 2022 foreclosures), https://tinyurl.com/3hxkxtuy (visited Aug. 12, 2025). Counties submit these reports pursuant to MCL § 211.78m(8)(i). The amount remitted to former owners is recorded in column xi and the amount kept by the county in column xii.

A. *Nelson v. City of New York*

In *Nelson*, the property owners failed to pay their water bills on two properties because of a bookkeeper's misconduct. *Nelson*, 352 U.S. at 105, 108. To satisfy the debts, the City of New York foreclosed, kept one property, and sold the other, retaining a windfall for the public. *Id.* at 105-06. The bookkeeper "concealed" the debt and foreclosure action from the owners. *Id.* at 107. The owners later moved to vacate the judgment, arguing violations of procedural due process and equal protection. *Id.* at 106, 109. *Nelson* rejected these claims, holding "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.

The Court also addressed the argument that the City took property without just compensation.[7] *Id.* at 109. "New York City's ordinance . . . permitted the owner to recover the surplus but required that the owner have 'filed a timely answer in [the] foreclosure proceeding, asserting his property had a value substantially exceeding the tax due.'" *Tyler*, 598 U.S. at 644 (quoting *Nelson*, 352 U.S. at 110). Because the

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[7] These comments should be considered *dicta* because the takings claim was raised solely in a reply brief before this Court (*see Nelson*, 352 U.S. at 109); it was neither pressed nor passed upon in the lower court; and was unnecessary to resolution of the questions presented. *Magruder v. Drury*, 235 U.S. 106, 113 (1914); *United States v. Williams*, 504 U.S. 36, 41 (1992). The Court is also wary of "endow[ing] a fleeting statement with lasting significance," *Wilkins v. United States*, 498 U.S. 152, 161 (2023), particularly when that statement operates to bar litigants from court. *Id.* at 165.

owners "did not take advantage of this procedure," *Nelson* says, "they forfeited their right to the surplus." *Tyler*, 598 U.S. at 644; *see Nelson*, 352 U.S. at 110. To protect their property right in the excess value of the property, the owners would have had to stake their claim *before foreclosure and before there was any money to claim*. *Ibid.* Because the owners missed that narrow window, *Nelson* states there was no taking. *Ibid.*

Thus, *Nelson* apparently endorsed New York City's claim exhaustion requirement and established a principle that a valid takings claim can be extinguished if an owner fails to pursue even the narrowest state remedy. *Tyler* "readily distinguished" *Nelson*. *Tyler*, 598 U.S. at 643. A case is distinguished "to minimize the case's precedential effect or to show that it is inapplicable." *Distinguish*, Black's Law Dictionary (11th ed. 2019). *Tyler* avoided the takings question presented here: whether *Nelson* is binding and, if so, whether it should be overturned.

B. *Nelson* cannot be reconciled with the duty to pay just compensation

This Court has repeatedly expressed the principle that just compensation *must* be paid for a taking of property, stressing in different ways the *mandatory* nature of the constitutional obligation. *See, e.g.*, *Cedar Point Nursery v. Hassid*, 594 U.S. 139, 147 (2021) ("the Takings Clause imposes a clear and categorical obligation to provide the owner with just compensation."); *Horne*, 576 U.S. at 358 ("The Government has a categorical duty to pay just compensation when it takes your car, just as when it takes your home."); *Tahoe–Sierra*, 535 U.S. at 322 ("When the government physically takes possession of

an interest in property for some public purpose, it has a categorical duty to compensate the former owner); *Brown v. Legal Found. of Washington*, 538 U.S. 216, 233 (2003) (same); *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 613 (2013) (government "must pay just compensation" when it takes money); *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 538 (2005) ("where government requires an owner to suffer a permanent physical invasion of her property—however minor—it must provide just compensation"); *United States v. Carmack*, 329 U.S. 230, 242 (1946) (noting "obligation to pay just compensation").

The government's obligation to compensate within a reasonable time after it takes property is not an "empty formality, subject to modification at the government's pleasure." *Cedar Point*, 594 U.S. at 158; *Fulton*, 2025 WL 2166416, at *8 ("We don't think the Founders made an empty promise to Americans. A guaranteed remedy is a guaranteed remedy only if it's accessible."). As Justice Brennan explained, "the just compensation requirement in the Fifth Amendment is not precatory: once there is a 'taking,' compensation *must* be awarded." *San Diego Gas & Elec. Co. v. City of San Diego*, 450 U.S. 621, 654 (1981) (Brennan, J., dissenting). *Cf. Continental Oil Co. v. Bonanza Corp.*, 706 F.2d 1365, 1372 (5th Cir. 1983) (defining "categorical duty" as one that incurs criminal or civil penalties if not done). This has long been the rule and no state law can undermine it. "The just compensation clause may not be evaded or impaired by any form of legislation." *Baltimore & Ohio R.R. Co. v. United States*, 298 U.S. 349, 368 (1936). "It does not rest with the public, taking the property, through . . . the legislature, . . . to say . . . what shall be the rule of compensation. The constitution has declared that just

compensation *shall* be paid. . . ." *Monongahela*, 148 U.S. at 327 (emphasis added).[8] This Court explained in *Jacobs v. United States*, 290 U.S. 13, 16 (1933), that "the form of the [just compensation] remedy did not qualify the right. It rested upon the Fifth Amendment. Statutory recognition was not necessary. A promise to pay was not necessary. Such a promise was implied because of the duty to pay imposed by the amendment." The government's obligation to pay just compensation is "comprehensive," entitling owners to interest payments even when interest is not explicitly commanded by statute. *Seaboard Air Line Ry. Co. v. United States*, 261 U.S. 299, 306 (1923).

The government thus secures its obligation to pay just compensation by pledging its full faith and credit. *Chicago, B&Q Ry.*, 200 U.S. at 593 ("secure"); *Joslin*, 262 U.S. at 677 (pledge "public faith and credit"); *Sweet v. Rechel*, 159 U.S. 380, 401 (1895) (considering "[w]hether a particular provision be sufficient to *secure* the compensation to which, under the constitution, he is entitled") (emphasis added). "Secure" means "to assure of payment" and "make certain the payment of a debt or discharge of an obligation." *N.Y. and Presbyterian Hosp. v. United States*, 881 F.3d 877, 885 (Fed. Cir. 2018) (citations omitted); *Elzea v. Nat'l Bank of Georgia*, 570 F.2d 1248, 1250 n.6 (5th Cir. 1978) (same). To pledge the faith of a government "means, of course, that payment

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[8] The nature of a categorical duty is one that "shall" be done. *Lawson v. United States*, 124 F.3d 198, 1997 WL 530540, at *3 (6th Cir. 1997). Shall is a mandatory command. *Bufkin*, 145 S. Ct. at 737. And that command appears in the Fifth Amendment: "nor shall private property be taken for a public use, without just compensation."

shall be made. . . ." *Kankakee Cnty.*, 106 U.S. at 670. In short, a state's "full faith and credit" "*guarantees* [payment of legal] obligations." *Williams v. Dallas Area Rapid Transit*, 242 F.3d 315, 320 (5th Cir. 2001) (emphasis added); *see also Md. Indus. Dev. Fin. Auth. v. Meadow-Croft*, 243 Md. 515, 522 (1966) ("The generally accepted meaning of a pledge of the faith and credit of a political entity is that the governmental body is *unconditionally liable* for the payment of the debt, if sufficient money is not otherwise made available.") (emphasis added). As Justice Harlan phrased it, the constitutional obligation to pay just compensation is a "covenant between the government and every citizen whose property is appropriated by it for public use." *Schillinger v. United States*, 155 U.S. 163, 177 (1894) (Harlan, J., dissenting).

Consequently, once the amount of just compensation is known and due, courts consider the actual payment of just compensation to be a "ministerial, non-discretionary duty." *See, e.g., Watson Mem. Spiritual Temple of Christ v. Korban*, 387 So. 3d 499, 512 (La. 2024); *Burke v. City of River Rouge*, 215 N.W. 18, 18 (Mich. 1927); *Miller v. Port of N.Y. Auth.*, 15 A.2d 262, 268 (N.J. 1939).

There is no plausible debt collection exception to the government's categorical duty to pay just compensation. *See Tyler*, 598 U.S. at 639-40. Quite the opposite. As far back as Blackstone, the law has imposed on debt collectors a duty to fairly sell confiscated property and refund any surplus. 2 Blackstone, *Commentaries on the Laws of England* 453 (1768) ("bound by an implied contract in law . . . when sold, to render back the overplus."); *Cocks v. Izard*, 74 U.S. 559, 562 (1868); *United States v. Taylor*, 104 U.S. 216, 221-22 (1881) (the government had a

duty to hold surplus proceeds "indefinite[ly]" as "trustee" for the taxpayer); *Slater v. Maxwell*, 73 U.S. 268, 276 (1867) (duty to fairly sell property); *People ex rel. Seaman v. Hammond*, 1 Doug. 276, 280-81 (Mich. 1844) (owner is "at all times" entitled to receive surplus funds); *McDuffee v. Collins*, 117 Ala. 487, 492 (1898) (tax collector bore the "duty of seeking the owner and paying him the balance" or holding it in trust); *Bogie v. Town of Barnet*, 129 Vt. 46, 52 (1970) (government "must suffer the restraints of fiduciary duty" when selling property to collect taxes).

In none of these cases does the burden shift from the government to citizens defending their property rights. Instead, the unbroken line of cases from early in the nation's history until the current decade highlights the requirement that compensation be paid for a taking. *Nelson* is an aberration that unaccountably shifts the covenantal obligation from the government to pay just compensation to the former property owners to comply with any claims process that self-interested states may devise.

C. Michigan's statute cannot be reconciled with the duty to pay just compensation

To conform to the requirements of the Takings Clause, just compensation and the process to provide it must be "reasonable, certain, and adequate." *Cherokee Nation*, 135 U.S. at 659; *Sage v. Brooklyn*, 89 N.Y. 189, 195 (1882) (process must be "sure, sufficient and convenient"). Courts historically forbid government from shifting the government's "categorical duty" to pay onto the person whose property was taken. In a takings case, "[i]t is not incumbent upon [the owner] to demand that the authorities shall respect his rights; the duty is [the

government's] to work no unlawful invasion of them." *Bigelow v. Ballerino*, 111 Cal. 559, 564-65 (1896). *See also Kelly v. Okla. Tpk. Auth.*, 269 P.2d 359, 363 (Okla. 1954) ("[T]he owner has an absolute right to the condemnation money, and the condemnor has neither right nor authority to impose any condition or obligation upon the owner's right.") (citing Nichols on Eminent Domain, Vol. 3, Sec. 8.3 (3d ed. 1964)); *Haverhill Bridge Proprietors v. Essex Cnty. Comm'rs*, 103 Mass. 120, 124-25 (1869) (rejecting effort to make procedural opportunities a stand-in for reasonable compensation).

Michigan'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. MCL § 213.58. When owners can't be found or fail to demand the money within one year, the State of Michigan holds it "indefinitely" for them. *See O'Connor v. Eubanks*, 83 F.4th 1018, 1021 (6th Cir. 2023) (describing how unclaimed money statute requires holding property for the owner indefintely); MCL §§ 567.224, 567.234 (money held for an owner by a court but not claimed within one year is administered pursuant to unclaimed money statute). 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 like Joseph and McGee must act within 92 days of foreclosure—weeks before the sale and before the taking—to preserve their inchoate, future right to collect any just compensation. This is long before most owners realize what is happening, as reflected in the 95% failure rate. And the government still confiscates just compensation owed to those few owners who—like Joseph—timely submit the notarized form but fail to perfectly comply with every requirement, like the type of mail used. MCL § 211.78t(4). Government cannot "make[] an exception only for itself" to avoid paying just compensation. *Tyler*, 598 U.S. at 645.

Moreover, the statute in *all cases* fails to provide an "adequate" remedy of just compensation, because it awards claimants less than they are constitutionally due. The statute gives counties interest earned on the principal for the year the county holds the money, plus five percent of the sale price, on top of all taxes, penalties, interest, fees, and expenses, even if the county purchased the property. MCL §§ 211.78t(12)(b), 211.78m(16)(c). The statute calls this five percent deduction a "commission," but the realtor's fee is already deducted under MCL § 211.78m(16)(c). Moreover, Alger and Iron counties, like most Michigan counties, contract with a private company to administer the statute; the company charges buyers a ten percent commission. *See Garcia v. Title Check, LLC*, No. 22-1574, 2023 WL 2787298, at *1 (6th Cir. Apr. 5, 2023). Hence, owners who successfully navigate the statute recover at most only ninety-five percent of surplus proceeds and are deprived of the accrued interest. This is not just compensation. "'[J]ust compensation' means the full monetary equivalent of the property taken." *United States v.*

Reynolds, 397 U.S. 14, 16 (1970); *United States v. Thayer-West Point Hotel Co.*, 329 U.S. 585, 588 (1947) (federal statute prohibiting recovery of interest on unpaid claims could not apply in condemnation actions because the Fifth Amendment entitles a property owner to receive, as part of just compensation, interest from the date of the taking to the date of payment).

II. The Court Should Resolve Whether *Nelson*-Inspired Procedures Impose Unconstitutional Exhaustion Requirements

An owner who is denied just compensation for a taking may bring a constitutional takings claim in federal or state court without first exhausting state administrative or judicial remedies. *Knick*, 588 U.S. at 189; *Felder*, 487 U.S. at 142. But several federal and state courts, including the court below, construe *Nelson* to mean that owners must exhaust a state claim process for compensation—even if the process itself *always* results in less than just compensation. These courts allow the government to use procedural hurdles to evade its duty to pay just compensation. Other jurisdictions hold fast to *Knick* and *Felder*, creating a split of authority. This Court should grant review to settle the conflict.

A. Takings decisions that rely on *Nelson* conflict with this Court's holdings in *Knick* and *Felder*

If *Nelson*'s reasoning is analogous to any of this Court's precedents, it is *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*, 473 U.S. 172, 194 (1985). The Court in *Williamson County* held 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." *Ibid.* Unless the claimant sought and was denied such compensation in a state court action, there was no ripened federal taking. *Id.* at 194-96. But *Williamson County* proved unworkable, often barring takings claims from both federal and state courts, a clearly unjust result. *See Knick*, 588 U.S. at 185.

That is largely why *Knick* overruled *Williamson County*, holding instead that as soon as "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." *Id.* at 189. *Knick* restored the traditional understanding that offering a process is not the same thing as timely paying just compensation. *See Wilson v. Hawaii*, 145 S. Ct. 18, 20 (2024) (Thomas, J., statement on denial of cert.) ("[T]he availability of state-law compensation remedies cannot delay or undo the accrual of a takings claim.") (citing *Knick*, 588 U.S. at 193-94); *Fulton*, 2025 WL 2166416, at *10, *25 (the "constitutionally prescribed remedy" of just compensation cannot be narrowed by legislation that purports to impose "an exclusive remedy that is more restrictive than the Takings Clause's guarantee").

Knick realigned this Court's takings jurisprudence with principles expressed in *Patsy v. Board of Regents of Florida*, 457 U. S. 496 (1982), and *Felder*, 487 U.S. at 142, which held that plaintiffs need not exhaust state administrative remedies before asserting civil rights claims under Section 1983. *Felder*—involving federal constitutional claims raised *in state court*—is especially apt. In that case, a Wisconsin statute

required arrestees 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 "minimize governmental liability" and stood out "rather starkly, from rules uniformly applicable to all suits." *Id.* at 141, 145. The notice-of-claim statute imposed an "exhaustion requirement on persons who choose to assert their federal right in state courts," *id.* at 146, and therefore Section 1983 preempted it. *Id.* at 149 (noting congressional intent to provide judicial fora for constitutional claims). Wisconsin's notice-of-claim statute did not involve lengthy or expensive administrative proceedings. Still, it forced claimants "to seek satisfaction from those alleged to have caused the injury in the first place." *Ibid.* The Court held that failure to follow the claim statute could not bar relief for the federal constitutional claim brought in Wisconsin state court. *Ibid.* That holding was consistent with this Court's precedents that "[p]eculiarities of local law may not gnaw at rights rooted in federal legislation." *S. Buffalo Ry. Co. v. Ahern*, 344 U.S. 367, 372 (1953). *See also Brown v. Western Ry. of Ala.*, 338 U.S. 294, 299 (1949) (this Court will "protect federally created rights from dismissal because of over-exacting local requirements for meticulous pleadings"); *Davis v. Wechsler*, 263 U.S. 22, 25 (1923) ("it is necessary to see that local practice shall not be allowed to put unreasonable obstacles in the way" of assertion of federal rights in state courts). *Felder*'s bottom line is that states "may no more condition the federal right to recover for violations of civil rights than bar that right altogether." *Felder*, 487 U.S. at 144.

In conflict with *Knick* and *Felder*, state and federal courts rely on *Nelson* to hold that the 92-day notice-of-

claim deadline in MCL § 211.78t is mandatory and failure to comply defeats any takings claim. *Compare* App. 15a *and Howard v. Macomb Cnty.*, 133 F.4th 566, 572-73 (6th Cir. 2025), *with Felder*, 487 U.S. at 140 (notice-of-claim statutes "are neither universally familiar *nor in any sense indispensable* prerequisites to litigation") (emphasis added). These courts do not hold that the claims are *nonjusticiable* because claimants missed the deadline; they hold that, per *Nelson*, missing the notice of claim deadline *means there was no taking*. App. 15a-16a; *Howard*, 133 F.4th at 572-73 ("Michigan's procedures for collecting the surplus do not compensate the property owner for a taking. They *prevent* a taking from happening in the first place."). *Nelson*'s approval of such procedures cannot be reconciled with *Knick* and *Felder*. The Court should grant review to hold it was unpersuasive *dicta* or to overrule it.

B. The lower courts conflict as a result of their application of *Nelson*

The Tenth and Eleventh Circuits follow *Knick*, not *Nelson*, in holding that no exhaustion of state remedies is necessary to bring a federal takings claim under analogous circumstances, where an owner wants to recover her own money. In *Knellinger v. Young*, the Tenth Circuit considered whether owners of unclaimed property held in custody by the state must file a claim for the property before filing a lawsuit alleging a taking of interest accrued on the money while in custody. The court held that property owners "need not file administrative claims with Colorado before they may sue for just compensation. The moment a state takes private property for public use without just compensation, a property owner has

an actionable claim under the Takings Clause." 134 F.4th 1034, 1038, 1044 n.4 (10th Cir. 2025) (analyzing *Knick*).

The Eleventh Circuit also followed *Knick* in a case involving a property owner's challenge to the state's retention of accrued interest on unclaimed property: "It made no difference that state law provided a 'procedure that [could] subsequently result in just compensation,' because 'it is the existence of the Fifth Amendment right that allows the owner to proceed directly to federal court under § 1983.'" *Maron v. Chief Fin. Officer of Fla.*, 136 F.4th 1322, 1330-31 (11th Cir. 2025) (citing *Knick*, 588 U.S. at 191). Therefore, "[e]ven if a plaintiff later compensated by state law remedies would have no further claim, that would be 'because the taking has been *remedied* by compensation, not because there was *no taking* in the first place.'" *Ibid.* (citation omitted); *see also Sharritt v. Henry*, No. 23-C-15838, 2024 WL 4524501, at *13 (N.D. Ill. Oct. 18, 2024) (a procedure "cannot both be the proper procedure that former owners can exercise to receive compensation . . . *and* a gatekeeping mechanism that prevents those who lost their land from receiving compensation.").

In conflict with the Tenth and Eleventh Circuits, the Sixth Circuit, Michigan courts, and several federal district courts construe *Nelson* to mean that an owner's failure to strictly comply with the state administrative and court process defeats a claim for just compensation. App. 15a; *Howard*, 133 F.4th at 572; *see also Wright v. Rollyson*, No. 2:24-CV-00474, 2025 WL 835040, at *3 (S.D.W.V. Mar. 17, 2025) (*Tyler* and *Nelson* mean "[t]here is no Takings Clause violation when a sovereign's statutory scheme

provides an opportunity for the taxpayer to recover the excess value.") (cleaned up); *In Re: Franco*, No. 24-21084-ABA, 2025 WL 884067, at *7 (Bankr. D.N.J. Mar. 17, 2025) (statute "complies with both *Tyler* and *Nelson*" even though it gives tax-lienholders a windfall from the owner who failed to request a judicial sale before the foreclosure judgment was final); *Biesemeyer v. Mun. of Anchorage*, No. 3:23-CV-00185, 2024 WL 1480564, at *7 (D. Alaska Mar. 13, 2024) (holding Alaska's six-month claim process "meets the low threshold implied by *Tyler* and *Nelson*," and dismissing takings and due process claims seeking $243,235 in excess proceeds).

The Sixth Circuit in *Howard*, 133 F.4th at 572, held that failure to comply with Michigan's claims statute "prevent[s] a taking from happening in the first place." The court construed *Knick* as "guarantee[ing]" only that a plaintiff can bring a takings claim if she first "follow[s] the . . . procedures for claiming the surplus, only to be denied it." *Ibid.* That decision has now infected takings law outside the tax foreclosure context, with the Sixth Circuit recently holding that an owner who did not exhaust administrative remedies before challenging an uncompensated taking "'forfeited' its takings claim when it chose not to follow that [state] procedure." *OPV Partners, LLC v. City of Lansing*, No. 24-2035, 2025 WL 1898235, at *3 (6th Cir. July 9, 2025) (relying on *Howard* to bar a takings challenge to rental property regulations).

Like the Michigan Court of Appeals below, the Michigan Supreme Court recently relied on *Nelson* to add exhaustion requirements to takings claims. In *Hathon*, the state's high court dismissed as unripe a takings claim based on government's retention of surplus proceeds that was filed *two years before the*

claims statute here was adopted. 17 N.W.3d at 686-87 (following *Nelson*).[9] Although the state has held the owners' private property for seven years—without compensation—the court ordered the owners to comply with MCL § 211.78t by filing Form 5743 within eleven days before pursuing their constitutional claims seeking just compensation. *Ibid.* *Howard*, *Hathon*, and the court below thus mimic the exhaustion rationale that this Court rejected in *Knick* and *Felder*. *Supra* 23-24; *see also Schafer v. Kent Cnty.*, No. 164975, __ Mich. __, 2024 WL 3573500, at *6, *16 n.94, *17 (July 29, 2024) (explaining *Hathon*'s procedural history, and holding that the claim provisions of MCL § 211.78t are fully retroactive). The Court should grant review to settle this conflict among the lower courts and resolve the conflict between *Nelson*, *Knick*, and *Felder*.

III. 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." *Harker Heights*, 503 U.S. at 125. "Fairness" is the watchword for due process. *Bolling v. Sharpe*, 347 U.S. 497, 499 (1954); *Breithaupt v. Abram*, 352 U.S. 432, 436 (1957) (due process reflects the "whole community sense of 'decency and fairness'"). Due process therefore requires procedures "appropriate to the case, and just to the parties to be affected . . . it must be adapted to the end to be attained." *Hagar v. Reclamation Dist. No. 108*, 111 U.S. 701, 708 (1884).

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[9] Four of the seven justices who decided *Rafaeli* have since left the bench.

The government's function is to protect private property, not confiscate it. "[I]n the condemnation field, government has an overriding obligation to deal forthrightly and fairly with property owners." *F.M.C. Stores Co. v. Borough of Morris Plains*, 100 N.J. 418, 426 (1985). And when the taking occurs in the context of tax foreclosure, the government's procedures must recognize that owners facing foreclosure are "generally ignorant" of their peril "until [it is] too late." *Slater*, 73 U.S. at 276. The government must use reasonable procedures that would be used by one who actually wanted to return seized property to its rightful owner. *See Jones*, 547 U.S. at 229.

Michigan's process is an unreasonable trap for the unwary, depriving up to 95% of owners of their surplus proceeds. The statute authorizes inadequate notice and insufficient time for owners to protect their interests, resulting in huge windfalls for the government. *Cf. Minnesota v. Barber*, 136 U.S. 313, 323 (1890) (noting this Court's "duty to maintain the constitution will not permit us to shut our eyes to these obvious and necessary results of the [state] statute"); *Ross v. Blake*, 578 U.S. 632, 643 (2016) ("an administrative scheme might be so opaque that it becomes, practically speaking, incapable of use"); *Nelson v. Colorado*, 581 U.S. 128, 137 (2017); *id.* at 143 (Alito, J., concurring in the judgment) ("harsh, inflexible" procedure that "prevents most defendants whose convictions are reversed from demonstrating entitlement to a refund" violates due process).

The procedure departs dramatically from modern and historical procedures for paying just compensation and returning surplus proceeds. In all other contexts, Michigan gives owners many years to recover their own money. *See supra* at 21 (owners

have 3-6 years *after* the taking to file a takings claim); MCL § 600.6044 (property sold by officials via execution on judgment paid "on demand" to judgment debtor); MCL § 600.3252 (surplus money paid "on demand, to the mortgagor"); MCL §§ 567.224, 567.234 (any unclaimed money held by public officials are handed over to state unclaimed money fund after one year, to be held for owner); *O'Connor*, 83 F.4th at 1021 (state holds unclaimed money "indefinitely" for benefit of rightful owner); *Taylor*, 104 U.S. at 221-22 (holding no statute of limitations could apply until the government affirmatively disavowed its duty to pay); *Hammond*, 1 Doug. at 280-81 (owner is "at all times" entitled to receive surplus funds); *Howard*, 133 F.4th at 571 (citing historic examples in other states that gave owners many years to claim their money).[10]

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[10] *Howard* incorrectly characterizes two statutes as giving owners only a brief claim window. 133 F.4th at 571 (stating 1866 Minnesota statute gave three months and 1881 Washington statute required action before conclusion of court proceedings). The Washington statute required owners to affirmatively file a notice only to *accelerate* the return of surplus proceeds. If the owner didn't file, then after the court certified the regularity of the sale, "such proceeds shall be paid [to the judgment debtor] *of course*." Code of Washington § 367.5 (1881) (emphasis added). The Minnesota mortgage foreclosure law provided that even if no claim was made by the former owner after three months, "the district judge may direct the same to be put out at interest . . . for the benefit of the defendant, his representatives or assigns, to be paid to them." Minn. Gen. Stat. of 1866, Ch. 81, tit. II, § 35 (1867); *see also* Minn. Gen. Stat. of 1878, Ch. 81, tit. II, § 35 (same). Other Minnesota laws from that time—including tax sale laws—put *no deadline* on owners to recover their money. *See, e.g*, General Laws of Minn., Ch. XII, § 6 (1867); General Laws of Minn., Ch. IV, § 3 (1862); General Laws of Minn., Ch. VI (1864).

The court below did not analyze whether the claims statute's procedures comport with due process, instead deferring entirely to the legislature's "exclusive" procedure for tax debtors to recover their just compensation. App. 18a-19a (relying on *Muskegon*, 348 Mich. App. at 696-97, which shortcircuited the due process analysis because courts should not consider whether the process "makes sense" because that is a question for the legislature). This abdication of judicial responsibility should not stand. If this Court believes that the categorical duty to pay just compensation can be fulfilled by creation of a statutory process to claim recovery, then this petition should be granted and remanded for the lower courts to analyze whether the procedures at issue violate due process. Even a cursory analysis reveals significant due process concerns.

"Due process requires notice that is reasonably calculated, under all the circumstances, to apprise interested parties and that affords a reasonable time to make an appearance." *A.A.R.P. v. Trump*, 145 S. Ct. 1364, 1367-68 (2025) (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)) (cleaned up). "[A] mere gesture" is not adequate; "[t]he means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it." *Mullane*, 339 U.S. at 314-15. Notice must be reasonable under the circumstances. *Id.*; *Brody v. Vill. of Port Chester*, 434 F.3d 121, 132 (2d Cir. 2005) (inadequate notice where "[un]likely that the average landowner would have appreciated that [the] notice . . . began the exclusive period in which to initiate a challenge to the condemnor's determination."). Moreover, "a party's ability to take steps to safeguard its interests does not relieve the State of

its constitutional obligation." *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 799 (1983).

Among other things, a remand should instruct lower courts that laws that bar civil rights lawsuits based on the passage of time must give "a reasonable time" for the claimant to enforce her rights before eliminating her ability to do so. *Terry v. Anderson*, 95 U.S. 628, 632-33 ("[S]tatutes of limitation affecting existing rights are" constitutional only "if a reasonable time is given for the commencement of an action before the bar takes effect."); *Wilson v. Iseminger*, 185 U.S. 55, 63 (1902) (same).

The deadline here is a mere 92 days, while owners still possess their property and often don't realize they've lost title. *Cf. Felder*, 487 U.S. at 152 ("Civil rights victims often do not appreciate the constitutional nature of their injuries, and thus will fail to file a notice of injury or claim within the requisite time period, which in Wisconsin is a mere four months.") (citations omitted). With such grave consequences at stake under Michigan's statute, the government must provide a simple process for remittance. *See Niz-Chavez v. Garland*, 593 U.S. 155, 172 (2021) ("If men must turn square corners when they deal with the government, it cannot be too much to expect the government to turn square corners when it deals with them."); *Gates v. City of Chicago*, 623 F.3d 389, 404 (7th Cir. 2010) (owners are not "willingly abandoning millions of dollars" where government "has made the process obtuse and unreasonably difficult").

Moreover, the Michigan statute must be viewed in light of the government's direct "pecuniary interest in the outcome," which weighs in favor of a more

protective process. *United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 55-56 (1993). *Cf. 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."). The state's self-serving statute does not comport with the "fundamental fairness" demanded by the Due Process Clause.

This case identifies pressing national problems left unresolved by *Tyler* and an excellent vehicle to address them.

CONCLUSION

This Court should grant the Petition.

Respectfully submitted,

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