No.

In the Supreme Court of the United States

FAYTIMA HOWARD,
Petitioner,
v.
MACOMB COUNTY,
Respondent.

On Petition For A Writ Of Certiorari To TheUnited States Court Of Appeals For The Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI

DEBORAH J. LA FETRA
Pacific Legal Foundation
3100 Clarendon Blvd.
Suite 1000
Arlington, VA 22201

MATTHEW E. GRONDA
4800 Fashion Sq. Blvd.
Ste. 200
Saginaw, MI 48604

CHRISTINA M. MARTIN
Counsel of Record
Pacific Legal Foundation
4440 PGA Blvd., Suite 307
Palm Beach Gardens, FL 33410
(916) 330-4059
CMartin@pacificlegal.org

PHILIP L. ELLISON
Outside Legal Counsel, PLC
530 West Saginaw St.
P.O. Box 107
Hemlock, MI 48626

Counsel for Petitioner

QUESTIONS PRESENTED

Macomb County foreclosed and auctioned Faytima Howard's home to collect a property tax debt, receiving substantially more than she owed. The Takings Clause requires the government to pay for the excess property taken. *Tyler v. Hennepin Cnty.*, 598 U.S. 631, 639 (2023). But the County kept all the proceeds because Howard did not comply with Michigan's unusual claims process that very few owners successfully navigate. *See* Mich. Comp. Laws § 211.78t. While *Knick v. Township of Scott*, 588 U.S. 180, 189 (2019), expressly permits takings claimants to pursue their cases in federal court without exhausting state procedures, the Sixth Circuit construed *Nelson v. City of New York*, 352 U.S. 103, 110 (1956), to mean that no taking occurred because Howard erred in complying with the state's administrative claims process.

1. Does the government violate the Takings Clause's "categorical duty" to pay just compensation for property taken in excess of the taxes, fees, and penalties, per *Tyler*, by enacting a procedure that leaves most former owners without their homes and without compensation?

2. To the extent that *Nelson v. City of New York* requires tax debtors to exhaust state remedies prior to bringing a constitutional takings challenge in federal court, should *Nelson* be overruled?

These questions also are presented in *Beeman v. Muskegon County Treasurer*, No. 24-858; *Koetter v. Manistee County Treasurer*, No. 24-1095; and *McGee v. Alger County Treasurer*, No. 25-203.

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Petitioner Faytima Howard was the plaintiff-appellant in the proceedings below.

Respondent Macomb County, Michigan, was the defendant-appellee in the proceedings below.

STATEMENT OF RELATED CASES

These proceedings are directly related to the above-captioned case under Rule 14.1(b)(iii):

Howard v. Macomb County, No. 24-1665 (6th Cir. Mar. 28, 2025)

Howard v. Macomb County, No. 1:23-cv-12595 (E.D. Mich. Aug. 6, 2024)

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PETITION FOR A WRIT OF CERTIORARI

The government violates the Takings Clause when it confiscates more property than necessary to collect delinquent property taxes, penalties, interest, and fees. *Tyler v. Hennepin Cnty.*, 598 U.S. 631, 639 (2023). Most states sell tax-delinquent property, collect what is owed, and then automatically remit surplus proceeds or provide a simple and lenient procedure for owners to recover the surplus. But five states feign compliance with *Tyler*, regularly taking more than what is owed by requiring owners to meet premature, pre-sale deadlines to claim surplus proceeds.[1] When owners do not strictly comply with these uniquely 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 five states, *Tyler*'s promise remains unfulfilled.

Michigan runs at the head of the pack. That state's courts uniformly refuse to hear takings lawsuits for just compensation if former tax debtors fail to strictly comply with its notice-of-claim statute. *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 (U.S.); *see also Koetter v. Manistee Cnty. Treasurer*, No. 24-1095 (U.S.); *McGee v. Alger Cnty. Treasurer*, No. 25-203 (U.S.). With the Sixth Circuit's decision below in this case, federal courts also refuse to consider former tax debtors' takings claims, leaving them homeless, without their 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, and without any possibility of judicial review in federal or state court.

Here, Faytima Howard suffered successive losses. First, the suburban home that she shared with her daughter and grandson was severely damaged by fire, displacing the family. When the insurance company balked at paying for necessary repairs, Howard's financial distress caused her to fall behind on her property taxes. Ultimately, Macomb County foreclosed on the home and auctioned it for $499,007 on September 6, 2023 (after this Court decided *Tyler*). App. 3a. Because Howard did not comply with the claims statute, the County kept hundreds of thousands of dollars in proceeds for itself, an amount that greatly exceeded Howard's tax debt and related costs.

Howard filed her takings complaint, a proposed class action under 42 U.S.C. § 1983 and other statutes, against the County in federal court. App. 52a.

Although takings claimants proceeding under Section 1983 are *not* required to exhaust state remedies, *Knick v. Township of Scott*, 588 U.S. 180, 189 (2019); *Felder v. Casey*, 487 U.S. 131, 142 (1988), the County argued that Howard "does not have a takings claim under the Fifth or Fourteenth Amendments because PA 256 [Michigan's claim statute] provides a procedure to recover surplus proceeds from a tax foreclosure sale." App. 22a. The district court, adopting the County's position, relied entirely on *Nelson v. City of New York,* 352 U.S. 103, 110 (1956), where 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. App. 26a (Under *Nelson*, "if the government provides a remedy—that is,

a process for that person to seek compensation—the government does not unconstitutionally take.").

The Sixth Circuit agreed, holding that *Nelson* controls the result. App. 6a, 11a ("unlike the state laws at issue in *Knick*, 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."). Thousands of Michiganders have thus far been deprived of their just compensation for failing to comply with the state's claim process and barred from seeking relief in both federal and state courts, solely because of this Court's decision in *Nelson*.

To the extent that *Nelson*'s statements on the Takings Clause are not deemed *dicta*, Howard asks the Court to overturn it. *Nelson*'s takings language conflicts with this Court's takings decisions holding that the government has an affirmative, "categorical duty" to pay owners just compensation, *Horne v. Department 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); *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."). *Nelson* also cannot be squared with this Court's rejection of exhaustion requirements for takings claims brought pursuant to 42 U.S.C. § 1983 in *Knick*, 588 U.S. at 189, or the holding in *Felder*, 487 U.S. at 142, that government cannot impose notice of claim requirements to deny constitutional claims raised via 42 U.S.C. § 1983.

This Court should grant the Petition to clarify that *the government* bears the burden of remitting just

compensation to a known owner. The Eleventh Circuit, in conflict with the Sixth Circuit below, recently explained that, unlike other types of citizen claims against the government, "[t]he Takings Clause guarantees a legal damages-type remedy, and it is 'self-executing'. These characteristics . . . make the Takings Clause a constitutional unicorn—no other constitutional guarantee expressly contains these two features." *Fulton v. Fulton Cnty. Bd. of Comm'rs*, 148 F.4th 1224, 1240 (11th Cir. 2025). *See also Chicago, B&Q Ry. Co. v. People of State of Ill.*, 200 U.S. 561, 593 (1906) (government that takes property "must obey the constitutional injunction to make or secure just compensation to the owner."). The government's "categorical duty" to remit just compensation cannot be conditioned on an owner's successful completion of bureaucratic hurdles. *See Fulton*, 148 F.4th at 1242 ("[I]f 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 such hurdles is irreconcileable with takings jurisprudence.

This Court should grant the Petition to hold that a state statute cannot impose burdens on property owners that effectively restrict or undermine government's unqualified obligation to pay just compensation for a taking.

OPINIONS BELOW

The decision below (App. 1a-17a) is published at 133 F.4th 566 (6th Cir. 2025). The district court's opinion dismissing the claims raised here (App. 18a-28a) is unpublished but available at 2024 WL 3680996 (E.D.

Mich. Aug. 6, 2024). The Sixth Circuit's order denying rehearing is at App. 29a.

JURISDICTION

On March 28, 2025, the Sixth Circuit Court of Appeals issued the decision at issue here. App. 1a. On May 19, 2025, the court denied a timely petition for rehearing and rehearing en banc. App. 29a. Justice Kavanaugh granted a motion extending the time to file this Petition to October 16, 2025. 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. § 1254.

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. 30a-51a.

STATEMENT OF THE CASE

A. Michigan's claim statute

Three years before *Tyler*, the Michigan Supreme Court held in *Rafaeli LLC v. Cnty. of Oakland*, 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 taxes, penalties, interest, and costs. In response, Michigan amended its tax foreclosure statute. App. 6a. As relevant here, tax foreclosures occur in February or March each year. MCL § 211.78t.[2] If a tax debt is not paid and the County does not agree to a payment plan with the owner by March 31, the foreclosing government unit (here, the County) obtains fee simple title. MCL §§ 211.78k(5)(b), 211.78g(1). By July 1—while the owner usually retains possession of the property, and weeks before the sale—the owner must submit a notarized Form 5743 by personal service acknowledged by the County or by certified mail, return receipt requested, to notify the County that she wants to be paid any future surplus proceeds from the sale of her property. MCL § 211.78t(2); App. 10a.

If the government declines the right of first refusal to purchase the property, the County sells it at a public auction several months after foreclosure. MCL § 211.78m(1), (2). The following January, up to six

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[2] The Sixth Circuit described this process as "forfeiture." App. 3a. Under MCL § 211.78, "forfeited" or "forfeiture" means a foreclosing governmental unit may seek a judgment of foreclosure if the property is not redeemed, but the government "does not acquire a right to possession or any other interest in the property." That is, "'[f]orfeiture' simply permits defendants to seek a judgment of foreclosure." *Rafaeli, LLC*, 505 Mich. at 448.

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 filed Form 5743 that they must file a motion in the original foreclosure action to recover the proceeds. MCL § 211.78t(3)(i), (k), (4); App. 10a.

Once owners file a motion, the government approves or disapproves the disbursement. MCL § 211.78t(5). The court hearing on the motion determines the relative priority of all claims, including any lienholders' claims. The statute grants first priority to the government's 5% cut of the purchase price in addition to the debt, interest, and sale costs, MCL §§ 211.78t(12)(b), 211.78m(16)(c); then other liens; and finally the remainder to former owners who timely filed both Form 5743 and the motion to recover the surplus. MCL § 211.78t(9). The government pays the amounts ordered by the circuit court. MCL § 211.78t(10). Prior to disbursement, the county holds the tax debtors' money for approximately one year, accruing interest (MCL § 211.78m(8)) that the statute authorizes the county to keep. *See* MCL § 211.78t(12)(b).

It all turns on Form 5743. If an owner fails to submit a notarized Form 5743 by the proper delivery method, long before the foreclosure sale, the statute cuts off the owner's right to any future claim or constitutional challenge and the government keeps the windfall of the owner's equity.

B. Macomb County's confiscation of Howard's property

Faytima Howard (f/k/a Faytima Leak) owned a suburban home where she, her daughter, and her grandson resided at 19790 Westchester Drive in Clinton Township, Michigan. App. 19a. After a fire significantly

damaged ther home, and she encountered subsequent difficulties obtaining money for repairs from her insurance company,[3] Howard fell behind on her property taxes of approximately $10,000. App. 64a, 84a. Macomb County obtained a foreclosure judgment against the property on February 4, 2022. App. 78a, 84a. Howard maintained title for another year, however, by entering into a payment plan with the County. *See* MCL 211.78q(1). On February 3, 2023, the County obtained another foreclosure judgment, at which point Howard owed $16,719 in property taxes for 2019 and 2020 (totalling $25,256, including interest and fees).[4] App. 77a. The County extended the redemption period pursuant to a payment plan.[5] App. 68a. When Howard missed payments, the County cancelled the plan. *Ibid.* On June 16, 2023, the County mailed a notice to Howard that the County cancelled the payment plan and that she must file Form 5743 by July 1, 2023, to claim any remaining proceeds from sale of

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[3] The repairs have yet to be completed. https://tinyurl.com/33mpumtp (visited Oct. 1, 2025) (describing unfinished interior, with photographs).

[4] The February 3, 2023, foreclosure judgment against Howard (then called Faytima Leak) is available at the Macomb County website, Tax Foreclosure Pleadings at 224 (filed Feb. 3, 2023), https://tinyurl.com/4256xb2a.

[5] This information was presented by Macomb County during oral argument at the Sixth Circuit and is consistent with Petitioner's understanding of events. Relevant excerpts of that argument are presented in the appendix, and may be considered by this Court. *See United States v. Zolin*, 491 U.S. 554, 567 n.10 (1989) (noting transcript of hearing as part of the record); *Konigsberg v. State Bar of Cal.*, 366 U.S. 36, 45 & 45 n.8 (1961) (transcript is part of the "entire record"); *Hughes v. United States*, 72 S. Ct. 163 (1951) (mem.) (refusing to strike transcripts of oral argument from the proffered record).

the property. App. 68a. One week later, on June 23, 2023, the County took title to Howard's home. One week after that came the July 1, 2023 deadline to serve Form 5743, the notice of intent to claim the surplus proceeds. App. 10a. Howard did not submit the form. On September 6, 2023, the County sold Howard's home at a public auction[6] for $499,007, an amount that greatly exceeded the tax debt and related costs.[7] App. 4a.

The County kept the entire amount.

C. The Sixth Circuit permits confiscation of Howard's property based on *Nelson v. City of New York*

Shortly after the foreclosure sale, Howard filed a civil rights complaint in the District Court for the Eastern District of Michigan. App. 52a. She alleged a takings claim under the Fifth and Fourteenth Amendments, brought via 42 U.S.C. § 1983, asserting that the County violated her right to just compensation by confiscating her surplus proceeds pursuant to the state claim statute, MCL § 211.78t. App. 59a. She made a similar "inverse condemnation" claim under state law. App.

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[6] Macomb County outsources its auction proceedings to Zeus Auction, an online platform. *See* Macomb County Treasurer, *Auction Rules and Regulations* (Sep. 16, 2024), https://tinyurl.com/4czcrvfs.

[7] The County disputes the final sale amount but concedes that it sold for significantly more than the tax debt. *See* App. 68a (guessing Howard lost around $60,000 more than her total debts on the property); App. 65a (County's attorney states the property sold for "275," which Petitioner construes as $275,000 based on context and the city tax assessor's publicly available records that list the sale price as $275,001); *see* Clinton Township Tax Assessment Records, https://tinyurl.com/wtxpjsdh.

60a.[8] The district court dismissed her case, holding that there was no taking because she failed to comply with the state claim statute. App. 26a.

The Sixth Circuit affirmed based largely on language in *Nelson v. City of New York*, 352 U.S. 103 (1956). App. 10a-11a. *Nelson* suggested that an owner loses the right to be paid for the surplus value of property taken to pay a debt if he misses a brief opportunity during a foreclosure action to preserve that right. Although *Tyler* distinguished *Nelson* ("Unlike in *Nelson*, Minnesota's scheme provides no opportunity for the taxpayer to recover the excess value"), 598 U.S. at 644, the Sixth Circuit construed *Nelson* as affirmed by *Tyler* and binding: "The Supreme Court stood by *Nelson* in *Tyler*, explaining that the Takings Clause permits each State to 'define the process through which an owner can claim the surplus' and to keep the surplus if the owners do not comply." App. 7a (quoting *Tyler*).

The Sixth Circuit also examined historical procedures for returning surplus proceeds. Those examples gave owners years after the sale to recover the surplus proceeds.[9] App. 8a-9a. Yet Michigan's statute

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[8] Unlike *Beeman v. Muskegon County Treasurer*, No. 24-858, *Koetter v. Manistee County Treasurer*, No. 24-1095, and *McGee v. Alger County Treasurer*, No. 25-203, Howard did not raise a due process challenge to the statute. App. 13a (Sixth Circuit noting that she "should have" done so).

[9] The court inaccurately described two statutes as giving a short claim opportunity. The 1866 Minnesota mortgage foreclosure law provided that even if the former owner failed to claim within 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

requires owners to navigate the process and make the initial claim with the County *before the sale* and then make a second claim in court after the sale. Nonetheless, the court held there was no taking because Howard failed to comply with Michigan's statutory claim process.

The court denied Howard's petition seeking rehearing or rehearing en banc on May 19, 2025.

REASONS FOR GRANTING THE PETITION

I. The Court Should Settle Whether the Government May Avoid Its Categorical Duty to Pay Just Compensation by Burdening Owners with an Unreasonable and "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; *Ark. 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

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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 cited 1881 Washington statute only required owners to "file with the [state court] clerk a waiver of all objections" to "the sale" in order to *accelerate* the return of surplus proceeds. The same statute provides that even if the owner didn't file the waiver, once the court certifies the regularity of the sale, "such proceeds shall be paid [to the judgment debtor] of course." Code of Wash. § 367.5 (1881) (emphasis added).

with a "reasonable, certain, and adequate provision for obtaining compensation." *Cherokee Nation*, 135 U.S. at 659. An "adequate" legal remedy "must be as complete, practical and efficient as that which equity could afford." *Terrace v. Thompson*, 263 U.S. 197, 214 (1923).

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.[10] Indeed, most states already *automatically* remitted surplus proceeds to owners[11] or gave them years after sale to recover their

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[10] *See, e.g.*, 2024 Colo. Legis. Serv. Ch. 165 (H.B. 24-1056); 36 Me. Rev. Stat. Ann. § 943-C; 2024 Mass. Legis. Serv. Ch. 140 §§ 80, 93 (H.B. 4800); 2023 Neb. Laws L.B. 727; 2024 Ohio Laws File 81 (Am. Sub. H.B. 315); 2025 Or. House Bill No. 2089 § 9; 2024 S.D. Laws Ch. 38 (HB 1090).

[11] *See, e.g.*, Del. Code Ann. tit. 9, § 8779; Ga. Code Ann. §§ 48-4-5, -81(f) (court "shall" distribute funds if a judicial foreclosure; if administrative foreclosure, then at least five years to claim surplus); Idaho Code § 31-808(2)(c); Kan. Stat. Ann. § 79-2803; Ky. Rev. Stat. Ann. §§ 426.500, 91.517 (depending on local entity, either the money "shall" be paid to owner, or owners have two years to apply); Md. Code Ann., Tax-Prop. § 14-818; Mont. Code Ann. § 15-18-221; N.C. Gen. Stat. §§ 105-374(q)(6), 105-375(i), 1-339.70; Vt. Stat. Ann. tit. 32, § 5061(b); Wis. Stat. § 75.36(2m)(b).

money.[12] 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. *Cf. Jackson v. Southfield Neighborhood Revitalization Initiative*, No. 166320, __ Mich. ___, 2025 WL 1959046, at *5 (Mich. July 16, 2025) ("Where a public foreclosure sale occurs, the government commits a taking only if it retains any surplus proceeds received from the sale of the property."); *id.* 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.").

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[12] *See, e.g.*, Ark. Code Ann. § 26-37-205(b) (two years to claim); Conn. Gen. Stat. § 12-157(f) (ninety days before being treated as unclaimed property, which is held indefinitely for the owner); Fla. Stat. § 197.582 (120 days to make claim before money is treated as unclaimed property, held for the owner); Haw. Cnty. Code § 19-45 (two years to claim); Ind. Code § 6-1.1-24-7(c), (e)(2) (three years); Miss. Code Ann. § 27-41-77 (two years); Mo. Rev. Stat. § 140.230(2) (ordinarily one to three years); N.M. Stat. Ann. § 7-38-71(A)-(C) (two years and then treated as unclaimed property, held for the owner); Ohio Rev. Code Ann. § 5721.20 (three years); 72 Pa. Cons. Stat. § 5860.205(f) (three years); S.C. Code Ann. § 12-51-130 (five years); Tenn. Code Ann. § 67-5-2702 (court orders payment to former owner and unclaimed money is held by state unclaimed property fund for benefit of owner); Tex. Tax Code § 34.03(a)(2) (two years); Utah Code Ann. § 59-2-1351.1(7) (held indefinitely for owner as unclaimed property for owner); Va. Code Ann. §§ 58.1-3967, -3970 (two years, but local government may allow longer); Wash. Rev. Code § 84.64.080(10) (three years); W. Va. Code § 11A-3-65 (two years); Wyo. Stat. Ann. § 39-13-108(d)(iv)(C) (two years or longer).

The result is predictable: all but the most sophisticated owners miss this counterintuitive deadline. In Michigan, the claim statute has stopped around 95% of owners—100% in some counties—from collecting the surplus proceeds from the sale of their foreclosed properties.[13] State records document a widespread problem as counties confiscate millions of dollars. The most recent report of tax foreclosure sales (2022) reveals that thirty Michigan counties remitted *not one penny* of surplus proceeds to former owners, while retaining 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.[14] Respondent Macomb County remitted $39,855 and kept $1,067,130, according to the report. *Supra* n.14 at 47. Compounding the injustice, 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

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[13] Oakland County took tax debtors' surplus proceeds from 187 out of 196 foreclosed properties in 2022. Pacific Legal Foundation, *Confusing Procedures Can Result in Shadow Equity Theft: Michigan*, https://tinyurl.com/yhfuhkdm (visited Oct. 8, 2025).

[14] 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 Oct. 8, 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.

foreclosure were overwhelmingly "not sophisticated parties" and can't afford to hire a lawyer); *Wayside Church v. Van Buren Cnty.*, Nos. 24-1598, 24-1676, 2025 WL 2829601, at *12 (6th Cir. Oct. 6, 2025) (Kethledge, J., concurring) (Michigan counties, with "complete lack of remorse," "exploited" legal traps to "prey upon" many "lower-income or elderly" former homeowners, with "catastrophic" results).

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

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 over-looking notices of arrearages." *Id.* at 108.

The Court also addressed the petitioners' belated argument that the City took property without just

compensation.[15] *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 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

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[15] 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 110 (noting "belated" takings argument)); 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*, 598 U.S. 152, 161 (2023), particularly when that statement operates to bar litigants from court. *Id.* at 165. As Justice Scalia noted, "*dicta*, when repeatedly used as the point of departure for analysis, have a regrettable tendency to acquire the practical status of legal rules." *Tafflin v. Levitt*, 493 U.S. 455, 469 (1990) (Scalia, J., concurring). This "regrettable tendency" is plainly evident here.

the case's precedential effect or to show that it is inapplicable." *Distinguish*, Black's Law Dictionary (11th ed. 2019). *Tyler* avoided the 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 323 ("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 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. 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. Cont'l 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 Nav. Co.*, 148 U.S. at 327 (emphasis added).[16] 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).

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[16] The nature of a categorical duty is one that "shall" be done. *Lawson v. United States*, 124 F.3d 198, 1997 WL 530540, *3 (6th Cir. 1997). "Shall" is a mandatory command. *Bufkin v. Collins*, 604 U.S. 369, 379 (2025). And that command appears in the Fifth Amendment itself: "nor shall private property be taken for a public use, without just compensation."

The government thus secures its obligation to pay just compensation by pledging its full faith and credit. *Chicago, B&Q Ry. Co.*, 200 U.S. at 593 ("secure"); *Joslin Mfg. Co. v. City of Providence*, 262 U.S. 668, 677 (1923) (pledge "public faith and credit"); *Sweet v. Rechel*, 159 U.S. 380, 401 (1895) (same).[17] "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 Ga.*, 570 F.2d 1248, 1250 n.6 (5th Cir. 1978) ("secure" means "to guarantee or make certain the payment of a debt or discharge of an obligation."). 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). 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

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[17] *See State v. City of Lakeland*, 154 Fla. 137, 139 (1944) (pledge of faith "express[es] an undertaking by the city to be irrevocably obligated, in good faith, to use such of its resources and taxing power as may be authorized or required by law for the full and prompt payment of the principal and interest of the obligation as it becomes due"). The purpose of pledging full faith and credit is to minimize the intended recipient's risk of loss. *Rockford Life Ins. Co. v. Ill. Dep't of Revenue*, 482 U.S. 182, 184-85 (1987).

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); *see also State v. Beackmo*, 8 Blackf. 246, 250 (Ind. 1846) (payment of just compensation is a "sacred obligation" to be "carefully guarded and most scrupulously observed"). For this reason, some courts describe the actual payment of just compensation as a "ministerial, non-discretionary duty." *Watson Mem. Spiritual Temple of Christ v. Korban*, 387 So.3d 499, 512 (La. 2024).

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. For centuries, the law has imposed on debt collectors a duty to fairly sell confiscated property and refund any surplus. *See, e.g.*, 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 of 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"); *State Hwy. Comm'r v. Kreger*, 128 Va. 203, 212-13 (1920) (valid statute ensures an owner will "receive with reasonable certainty and without unnecessary or unreasonable delay the just compensation to which he is entitled"). 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 government's 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 indefinitely); 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). And 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 Howard must act within ninety-two days of foreclosure—weeks before the sale and before the taking is complete under *Rafaeli*, 505 Mich. at 474—to preserve their inchoate, future right to collect any just compensation.[18] This is long before most owners realize what is happening, as reflected in the overwhelming failure rate. And the government still confiscates just compensation owed to those few owners who timely submit the notarized form but fail to perfectly comply with every requirement, like the type

[18] Howard herself was given a grand total of two weeks to submit the notarized form after the County cancelled her payment plan. App. 10a, 68a.

of mail used. *See In re Alger Cnty. Treasurer for Foreclosure*, Nos. 363803, 363804, 2024 WL 4174925, at *4 (Mich. Ct. App. Sep. 12, 2024) (owner's claim denied for sending Form 5743 via trackable Priority Mail Express instead of return receipt requested), *petition pending sub nom. McGee v. Alger Cnty. Treasurer*, No. 25-203 (U.S.); MCL § 211.78t(4); Billy Binion, *She Underpaid a Property Tax Bill. So the Government Seized Her Home, Sold It—and Kept the $102,636 Profit*, Reason Magazine (July 26, 2024) (describing MCL § 211.78t as a "byzantine debt collection statute that sends homeowners on a wild goose chase should they want to get their equity back").[19] 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 allows counties to retain interest earned on the principal for the year the county holds the money, MCL § 211.78t(12)(b), instead of remitting it to owners, contrary to the Just Compensation Clause. *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).[20] Additionally, the counties take five

[19] https://tinyurl.com/ytnxwa7z.

[20] Despite statutory authority to keep interest on foreclosure proceeds, MCL § 211.78t(12)(b), Macomb County states that it voluntarily allows those few individuals who successfully claim surplus proceeds to recover the interest on their principal. App.

percent of the sale price, on top of all taxes, penalties, interest, fees, and expenses, even if the county purchased the property. MCL § 211.78m(16)(c). The statute calls this five percent deduction a "commission," but the real estate agent's fee is already deducted under MCL § 211.78m(16)(c). Moreover, Macomb County, like most Michigan counties, contracts with a private company to administer the statute.[21] Hence, owners who successfully navigate the statute recover at most only ninety-five percent of surplus proceeds and may be deprived of the accrued interest. *Cf. Phillips v. Washington Legal Found.*, 524 U.S. 156, 170 (1998) ("The government may not seize rents received by the owner of a building simply because it can prove that the costs incurred in collecting the rents exceed the amount collected."). 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).

65a-66a (Macomb County counsel's assertion before the Sixth Circuit).

[21]Macomb County and one other Michigan county outsource the auctions to SRI Services, which uses the Zeus online auction platform. *See supra* n.6. Most Michigan counties outsource the notice and auction tasks to Title Check, a company that 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).

II. The Court Should Resolve the Conflict Between *Nelson*'s Exhaustion Requirement and the Court's Disavowal of Exhaustion Requirements in Other Takings Cases

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 just compensation after a tax foreclosure—even though 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*

Nelson's reasoning is most analogous to *Williamson County Regional Planning Commission v. Hamilton Bank*, 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 and unjust, often barring takings claims from both federal and state courts. *See Knick*, 588 U.S. at 185.

That is largely why this Court 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." *Knick*, 588 U.S. at 189. *Knick* restored the traditional understanding that merely offering a process is not the same 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). In short, "a property owner acquires an *irrevocable* right to just compensation immediately upon a taking." *Knick*, 588 U.S. at 192 (citing *First English Evangelical Lutheran Church of Glendale v. Los Angeles Cnty.* 482 U.S. 304, 315, 318 (1987) (emphasis added).

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. In *Felder*, 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 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.*[22] 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. 12a (*Nelson* "tells us everything we need to know") *and In re Muskegon County Treasurer for Foreclosure*, 348 Mich. App. at 688 ("[O]ur Legislature's own words could hardly be clearer: Section 78t 'is the *exclusive mechanism* for a claimant to claim and receive any

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[22] *Cf. Williams v. Reed*, 604 U.S. 168, 170 (2025) (states may not employ an "exclusive" statutory process requirement that effectively immunizes state officials from lawsuits brought under 42 U.S.C. § 1983).

applicable remaining proceeds under the laws of this state.'"), *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). The court below does not hold that the claims are *nonjusticiable* because Howard missed the deadline; it holds that, per *Nelson*, missing the notice of claim deadline *means there was no taking*. App. 11a ("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."). 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.* *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 in 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."). Similarly, in *Fulton* the Eleventh Circuit held that a property owner could still bring a takings claim in federal court even though he did not comply with Georgia's twelve-month notice of claim deadline. *Fulton*, 148 F.4th at 1236. *See also id.* at 1240 ("A guaranteed remedy is a guaranteed remedy only if it's accessible.").

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. 11a; *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 because she 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) (Alaska's six-month claim process "meets the low threshold implied by *Tyler* and *Nelson*," and therefore takings and due process claims seeking $243,235 in excess proceeds must be dismissed).

The decision below is now infecting 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).

The Sixth Circuit followed the lead of Michigan state courts. In addition to the decisions presently on petition before this Court, *see supra* at 1, the Michigan Supreme Court recently relied on *Nelson* to add exhaustion requirements to takings claims. In *Hathon v. Michigan*, 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 686, 686-87 (Mich. 2025) (following *Nelson*). 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.* *Hathon* and the court below thus mimic the exhaustion rationale that this Court rejected in *Knick* and *Felder*. *See also Schafer v. Kent Cnty.*, No. 164975, __ N.W.3d __, 2024 WL 3573500, at *6, *16 n.94, *17 (Mich. 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*.

CONCLUSION

This Court should grant the petition.

Respectfully submitted,

DEBORAH J. LA FETRA
Pacific Legal Foundation
3100 Clarendon Blvd.
Suite 1000
Arlington, VA 22201

MATTHEW E. GRONDA
4800 Fashion Sq. Blvd.
Ste. 200
Saginaw, MI 48604

CHRISTINA M. MARTIN
Counsel of Record
Pacific Legal Foundation
4440 PGA Blvd., Suite 307
Palm Beach Gardens, FL 33410
(916) 330-4059
CMartin@pacificlegal.org

PHILLIP L. ELLISON
Outside Legal Counsel PLC
530 West Saginaw St.
P.O. Box 107
Hemlock, MI 48626

Counsel for Petitioner

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