

In the Supreme Court of the United States

FAYTIMA HOWARD,

Petitioner,

v.

MACOMB COUNTY,

Respondent.

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

PETITION FOR REHEARING

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PETITION FOR REHEARING

Petitioner Faytima Howard respectfully petitions under Rule 44.2 for rehearing of the Court’s January 12, 2025, order denying her Petition for a Writ of Certiorari. *Howard v. Macomb County*, No. 25-451. Rehearing is warranted based on intervening circumstances that occurred after the Petition was distributed. In *Pung v. Isabella County*, No. 25-95 (petition granted Oct. 3, 2025), the Court is considering whether the Takings Clause requires more than an auction’s surplus proceeds where a Michigan County confiscated a home as payment for a small tax debt. Although the questions presented differ from this case, the Respondent—whose brief was filed the same day this Court denied Ms. Howard’s Petition—relies in part on the same Supreme Court decision at the heart of Ms. Howard’s Petition: *Nelson v. City of New York*, 352 U.S. 103, 110 (1956) (the availability of a procedure prior to foreclosure to recover surplus proceeds remaining from a future tax sale allows the government to confiscate the proceeds otherwise due as just compensation if owners fail to navigate the procedure). Because that reliance brings *Nelson* to the forefront of the dispute in *Pung*, this Court should either grant rehearing or hold this motion and Howard’s Petition pending the decision in *Pung*.

REASONS FOR GRANTING REHEARING

1. Ms. Howard’s Petition for Writ of Certiorari poses the question of whether the takings language in *Nelson* is binding, and if so, whether it should be overturned. Petitioner’s case arises from the County confiscating all of the surplus proceeds from the sale of her home because she failed to properly serve a

special notice-of-claim form that was due more than a month before the auction, long before the government took physical possession of the real estate, and approximately one year before she would have been able to collect any money from the sale had she filed the form on time. Mich. Comp. Laws § 211.78t. The lower court upheld the draconian, Kafkaesque claim procedure against a takings claim raised by the Petitioner based on this Court's decision in *Nelson*, 352 U.S. 103.

2. This Court agreed to hear *Pung v. Isabella County* on October 3, 2025. But it was not apparent from the questions presented in the *Pung* Petition that *Nelson* would have any bearing on the issues presented in *Pung*.

This Court considered Ms. Howard's Petition at the Conference on January 9, 2025. Three days later, on January 12, 2025, the Brief of Respondent Isabella County was filed in *Pung*. In that brief, the County relies upon takings language in *Nelson* to argue that the Court should rule that it needs only to pay surplus proceeds to satisfy the Takings Clause in that case. Respondent's Brief at 22, *Pung*, No. 25-95. Thus, in *Pung*, this Court may decide whether *Nelson* is binding or *dicta* and whether its assumptions about the Takings Clause, which were arrived at with almost no briefing on the issue, are consistent with modern takings jurisprudence. Those questions relate directly to the Petition here, which expressly asks whether *Nelson*'s takings language is binding, and if so, whether it should be overturned. If *Pung* holds that *Nelson*'s language is non-binding or incorrect in any way, that decision would undermine the core rationale for the Sixth Circuit ruling against Ms. Howard's takings claim. See Appendix at 6a. ("*Nelson*

v. City of New York shows that this kind of process complies with the Takings Clause.”). If that occurs, it would be appropriate for the Court to grant, vacate, and remand (GVR) the lower court’s decision in this case for reconsideration in light of *Pung*. See *Lawrence v. Chater*, 516 U.S. 163, 167 (1996) (per curiam) (noting that a GVR may be proper when an intervening decision yields “a reasonable probability that the decision below rests upon a premise that the lower court would reject if given the opportunity for further consideration”); *see also id.* at 180 (Scalia, J., dissenting) (“This is undoubtedly the largest category of ‘GVRs’ that now exists.”).

In these circumstances, petitions for certiorari “regularly” are held to allow for the possibility of a GVR, *id.* at 181 (Scalia, J., dissenting), and petitions for rehearing have been granted to facilitate such GVRs. See, e.g., *Oklahoma v. United States*, 145 S. Ct. 2836 (2025) (rehearing granted and GVR in light of *FCC v. Consumers’ Rsch.*, 606 U.S. 656 (2025)); *Kent Recycling Servs., LLC v. Army Corps of Eng’rs*, 578 U.S. 1019 (2016) (rehearing granted and GVR in light of *Army Corps of Eng’rs v. Hawkes Co.*, 578 U.S. 590 (2016); *Liberty Univ. v. Geithner*, 568 U.S. 1022 (2012)) (rehearing granted and GVR in light of *Nat’l Fed’n of Indep. Bus. v. Sebelius*, 567 U.S. 519 (2012)); *Melson v. Allen*, 561 U.S. 1001 (2010) (granting rehearing and GVR in light of *Holland v. Florida*, 560 U.S. 631 (2010)); *Soto v. United States*, 543 U.S. 1117 (2005) (granting rehearing and GVR in light of *United States v. Booker*, 543 U.S. 220 (2005)); *Hitchcock v. Florida*, 505 U.S. 1215 (1992) (granting rehearing and GVR in light of *Espinosa v. Florida*, 505 U.S. 1079 (1992)); *Florida v. Rodriguez*, 461 U.S. 940 (1983)

(granting rehearing and GVR in light of *Florida v. Royer*, 460 U.S. 491 (1983)).

This petition for rehearing should thus be granted or held pending a decision in *Pung*. If the decision in *Pung* implicates *Nelson* or otherwise implicates the lower court's decision on the Takings Clause here, then the Court should grant Howard's Petition for Writ of Certiorari.

CONCLUSION

The petition for rehearing should be granted.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

I hereby certify that this petition for rehearing is presented in good faith and not for delay, and that it is restricted to the grounds specified in Supreme Court Rule 44.2.

/s/ Christina M. Martin
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