No. 25-491

In the Supreme Court of the United States

GILLIAN FILYAW,

Petitioner,

v.

STEVE CORSI, IN HIS OFFICIAL CAPACITY AS CHIEF EXECUTIVE OFFICER OF THE NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES, ET AL.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

BRIEF IN OPPOSITION

MICHAEL T. HILGERS
Nebraska Attorney General

NEBRASKA DEPARTMENT OF JUSTICE
1445 K Street, Room 2115
Lincoln, Nebraska 68508
(402) 471-2683
cody.barnett@nebraska.gov

CODY S. BARNETT
Solicitor General
Counsel of Record
ZACHARY B. POHLMAN
Deputy Solicitor General

Counsel for Respondents

QUESTION PRESENTED

The State of Nebraska terminated Petitioner Gillian Filyaw's Medicaid coverage after it determined that her income exceeded the amount to qualify for benefits. Petitioner never appealed that determination through the state administrative process. Instead, she sued in federal court, alleging that the State gave her inadequate notice under the Due Process Clause. By the time Petitioner sued, she "had no Medicaid benefits to lose and was not at risk of being erroneously deprived of Medicaid coverage." Nor did Petitioner "allege in her complaint that she would be entitled to Medicaid if she applied today." She admitted as much to the court below. The question presented is:

> Whether the alleged inadequate notice, which happened at one point in time, constitutes an ongoing violation of federal law, even when the recipient no longer alleges an entitlement to the underlying Medicaid benefits.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Regulations

Other Authorities

INTRODUCTION

The decision below faithfully "conduct[ed] a straightforward inquiry into whether the complaint alleges an ongoing violation of federal law and seeks relief properly characterized as prospective." *Verizon Md., Inc.* v. *Pub. Serv. Comm'n of Md.*, 535 U.S. 635, 645 (2002) (cleaned up). The Eighth Circuit found the complaint lacking on both fronts. Petitioner claims that she did not receive appropriate notice under the Due Process Clause before Respondents terminated her Medicaid coverage. Yet her complaint failed to allege that she was even entitled to Medicaid benefits anymore—something she admitted again at oral argument. Without a present interest in the underlying property, the court below correctly applied decades of precedent and held that Petitioner did not allege an "ongoing violation" of federal law, so *Ex parte Young* does not give Petitioner an avenue around sovereign immunity.

The circuit courts do not disagree on this point. Petitioner conflates two distinct lines of cases—ones where the plaintiff had a present property interest and ones where the plaintiff did not—to suggest otherwise. But the courts all agree with the decision that the Eighth Circuit reached here: when a plaintiff lacks a continuing interest in the property, the alleged violation cannot be said to be "ongoing."

Petitioner's lack of a property interest also makes this case a poor vehicle to resolve any of the broader questions raised in her petition. Whether allegedly inadequate notice under the Due Process Clause—

something that happens at one discrete moment in time—can fairly be framed as a "ongoing violation" cannot be resolved in a case where the Petitioner lacks an entitlement to the property.

Petitioner's theory of an "ongoing violation" would make "the Eleventh Amendment, and not *Ex parte Young*, … the legal fiction." *Id.* at 649 (Kennedy, J., concurring). Petitioner would have this Court bootstrap the *effects* of an alleged deprivation as the "ongoing violation"—even if the plaintiff lacks an interest in the property itself. But that would allow a plaintiff to *always* circumvent sovereign immunity. If a plaintiff no longer has an interest in the property, then the plaintiff cannot be said to face any inadequate processes anymore, and there is no "ongoing violation." This Court should not "subscribe to such a substantial and novel expansion of … 'a narrow exception' to a State's sovereign immunity." *Va. Off. for Prot. & Advoc.* v. *Stewart*, 563 U.S. 247, 266 (2011) (Roberts, C.J., dissenting).

This Court should deny review.

STATEMENT OF THE CASE

A. Factual Background

1. Medicaid is a public program that helps cover medical costs for low-income individuals. Neb. Rev. Stat. §§ 68-904, 68-905. The state and federal governments jointly fund the program. See *id.* § 68-905. Nebraska participates in Medicaid and administers the program through its Department of Health and Human Services. *Id.* §§ 68-907(2), 68-908. As administrator, the Department determines whether an applicant is eligible for Medicaid and reevaluates a recipient's eligibility every 12 months in a process known as "renewal." See 42 C.F.R. 435.916; 477 Neb. Admin. Code, ch. 3, § 007.

States participating in Medicaid must follow federal rules to receive funds. Congress enacted special eligibility rules during the COVID-19 pandemic. States could receive additional funding if they kept most Medicaid recipients continuously enrolled in coverage from March 1, 2020, to March 31, 2023. See Families First Coronavirus Response Act, Pub. L. No. 116-127, § 6008(b), 134 Stat. 178, 208–09 (2020); Consolidated Appropriations Act, 2023, Pub. L. No. 117-328, 136 Stat. 4459, 5949, § 5131(a)(1)(B) (2022). During that period, the Department did not conduct renewals. See Pet.App.48a–49a.

2. After three years of mandatory continuous enrollment, the Department restarted its renewal process. *Ibid.* On April 18, 2024, Petitioner Gillian Filyaw received a "Notice of Action" from the

Department. Pet.App.3a. It informed Petitioner that, effective May 1, 2024, she was "[i]neligible" for medical coverage through Medicaid for the "[r]eason" that her "[i]ncome [e]xceeds [s]tandards." *Ibid.*

The notice also laid out Petitioner's rights in detail. Those included the right to a conference with the Department to discuss why her coverage ended, the right to receive an adequate and timely notice of the Department's action, and the right to administratively appeal. *Ibid.* In explaining the right to appeal, the notice stated, in bold print, that "if you request an appeal hearing within ten days following the date on this notice (or in a Medicaid case, before the effective date on this notice), [the Department] will not carry out the adverse action until a fair hearing decision is made." *Ibid.* Thus, had Petitioner appealed within 10 days, she would have retained Medicaid coverage while her appeal was pending. See 477 Neb. Admin. Code, ch. 10, § 004.

The notice also explained that even if Petitioner did not appeal before her benefits ended, she had "90 days following the date of this notice to request a fair hearing." Pet.App.3a. When a Medicaid recipient requests a fair hearing—i.e., administratively appeals—the Department must conduct a hearing in accordance with state and federal requirements. See 465 Neb. Admin. Code, ch. 2, § 002. If the Department affirms the reduction or termination of benefits after the hearing, the beneficiary may seek review of the administrative action in state court. See Neb. Rev. Stat. § 84-917.

B. Procedural History

1. Petitioner never requested an appeal hearing with the Department. Because she did not appeal, Petitioner's Medicaid coverage ended on May 1, 2024. Pet.App.60a. Nearly two months after she received the termination notice, but still within her 90-day window to appeal, Petitioner sued Respondents—Department officials who oversee the administration of Medicaid in Nebraska—in federal court. Pet.App.51a.

Petitioner alleged that the notice did not adequately inform her why her coverage was to end, in violation of the Due Process Clause. Pet.App.50a–51a. She moved to certify a class of Nebraskans who received a notice that their Medicaid coverage would end because their "income exceeds standards." Pet.App.52a–54a. She also sought temporary and permanent injunctive relief and a declaration that the notice violates due process. Pet.App.64a. Because they were sued in their official capacities, Respondents asserted sovereign immunity and moved to dismiss the complaint. See Pet.App.5a.

2. The district court granted the motion. Pet.App.23a. The court first determined that only Petitioner's claims, and not the claims of anyone in the proposed class, would be considered in the motion to dismiss. Pet.App.29a–30a. It then concluded that Petitioner's suit was barred by sovereign immunity because it did not fall within *Ex parte Young*, 209 U.S. 123 (1908).

Specifically, the district court ruled that Petitioner failed to allege an ongoing violation of federal law because her Medicaid coverage already ended, giving her "no Medicaid benefits to lose." Pet.App.42a. And Filyaw failed to seek prospective relief because, without an ongoing violation of federal law, any relief would be backwards-looking. Pet.App.43a–45a. The district court thus dismissed the complaint for lack of subject-matter jurisdiction and did not address the merits of Petitioner's claim. Pet.App.45a–46a.

3. The Eighth Circuit affirmed. Like the district court, the Eighth Circuit concluded that the alleged constitutional violation—lack of sufficient notice—was not ongoing. Pet.App.7a–8a. The court analogized to other cases where a discrete event in the past did not constitute an ongoing violation, even when that event's effects continued to be felt. Pet.App.8a–11a. Moreover, because Petitioner challenged only the notice's adequacy and because she failed to allege that she was eligible for Medicaid going forward, she was not at risk of receiving the notice again. Pet.App.15a–17a. Without that risk, no alleged violation was ongoing. And without an ongoing violation, any relief would be backwards-looking and not prospective.

Chief Judge Colloton dissented. He believed that, because Petitioner alleged the State never gave her sufficient notice, the termination of her Medicaid benefits was enough to constitute an ongoing violation. Pet.App.19a–21a.

REASONS FOR DENYING THE PETITION

This Court's review of the decision below is unwarranted. *Ex parte Young* provides a "narrow" exception to States' sovereign immunity, permitting federal courts to grant prospective, injunctive relief against a state official who violates federal law. *Puerto Rico Aqueduct & Sewer Auth.* v. *Metcalf & Eddy, Inc.*, 506 U.S. 139, 146 (1993). But it applies only when several factors coalesce. Namely, the plaintiff must seek prospective—not retroactive—relief. See *Green* v. *Mansour*, 474 U.S. 64, 68–69 (1985). And the violation of federal law must be ongoing. *Verizon Md.*, 535 U.S. at 645. The Eighth Circuit correctly held that Petitioner's case did not feature those factors. She neither alleged an ongoing violation of federal law nor, consequently, did she seek prospective relief.

Contrary to Petitioner's contention, the Eighth Circuit's decision does not conflict with any other circuit's opinion. Moreover, the Eighth Circuit got the decision right—even under Petitioner's own theory. Finally, this case is a poor vehicle for the broad question presented that Petitioner posits. Not only is Petitioner's claim more nuanced than she contends, but she also lacks standing to press it. This Court should deny certiorari.

I. No Circuit Split Exists.

Though Petitioner attempts to concoct a split amongst the circuit courts, none exists. When a plaintiff alleges an ongoing violation with respect to the deprivation of property, the circuit courts agree on two basic principles. *First*, if a plaintiff alleges that state officials are unlawfully depriving her of a *current* property interest, her complaint may properly allege an "ongoing violation" of federal law. *Second* and conversely, if a plaintiff alleges that state officials unlawfully deprived her of property she no longer holds an interest in, there's no "ongoing violation," so *Ex parte Young* does not apply. In the first scenario, the violation has the potential to be ongoing; in the second, it does not.

Petitioner tries to construct a circuit split by conflating these two distinct lines of cases. This case, like the First Circuit's decision in *Cotto* v. *Campbell*, falls into the second bucket. The other six cases that Petitioner cites fall into the first. These two lines of cases are entirely consistent, and the line between them is clear: The availability of relief under *Ex parte Young* initially turns on whether the plaintiff has a *continuing* interest in the property. If she does, then the alleged procedural harms could reoccur, so the violation is ongoing, and sovereign immunity is no bar to seeking relief in federal court.

Nothing in any of Petitioner's cases is to the contrary. There is no circuit split to resolve.

A. *Ex parte Young* applies only when the plaintiff has a continuing property interest.

Petitioner points to six circuits that let a plaintiff sue under *Ex parte Young* when state officials were depriving that plaintiff of a currently held property interest. The plaintiffs in each case alleged that they were deprived of a property interest to which they had an ongoing entitlement. Given the ongoing entitlement to the property, the potential of insufficient process remained live, so the State's deprivation of that property interest constituted an ongoing violation under *Ex parte Young*.

1. Petitioner leads with *Sherwood* v. *Marchiori*, 76 F.4th 688 (7th Cir. 2023), but that case clearly spells out the plaintiffs' ongoing entitlement to the unemployment benefits the State deprived them of. The court found *Ex parte Young* applicable because the "plaintiffs' *continued property interest* in the underlying benefits" meant that the alleged "federal due-process violations are still ongoing." *Id.* at 696 (emphasis added). Because the plaintiffs had a right to the benefits when they sued, the State's alleged due process violation in refusing to issue benefits constituted an ongoing harm.

Petitioner's Tenth Circuit authority tells a similar story. See *Lewis* v. *N.M. Dep't of Health*, 261 F.3d 970, 977 (10th Cir. 2001). The plaintiffs "were individuals who claimed they were eligible for Medicaid services." *Id.* at 974. And they sued seeking an injunction to force the State to determine the extent of the benefits

to which they were entitled. *Id.* at 977–78. Because they had a viable interest in those benefits, *Ex parte Young* posed no obstacle to suit.

Petitioner's Sixth Circuit case presents similar facts. There, the State suspended a coffee shop owner's license to operate. *Cooperrider* v. *Woods*, 127 F.4th 1019, 1024 (6th Cir. 2025). The owner's substantive due process claim seeking reinstatement satisfied *Ex parte Young* because he claimed an ongoing property interest in the license. *Id.* at 1044.

Yet again, Petitioner's Fourth and Ninth Circuit cases paint the same basic picture. In *Coakley* v. *Welch*, 877 F.2d 304 (4th Cir. 1989), the plaintiff claimed an ongoing right to public employment; his primary allegation was that "he was terminated without cause," in violation of due process. *Id.* at 305. Similarly, in *Kimble* v. *Solomon*, 599 F.2d 599 (4th Cir. 1979), the plaintiffs were active and continuing recipients of Medicaid when they sued to challenge a notice reducing coverage.[1] *Id.* at 601–02 & n.1. So too for the plaintiffs in *K.W. ex rel. D.W.* v. *Armstrong*, 789 F.3d 962, 966 (9th Cir. 2015). (Not to mention that the Ninth Circuit considered only the "prospective relief" prong of the *Ex parte Young* analysis and skipped the "ongoing violation" discussion at the heart of this case. See *id.* at 974–75.)

---

[1] *Albert* v. *Lierman*, 152 F.4th 554 (4th Cir. 2025), is irrelevant as it raises a claim under the Takings Clause, not the Due Process Clause. *Id.* at 557. See Pet.11.

2. All six circuits agree: When a plaintiff is deprived of a continuing property interest, that deprivation constitutes an ongoing violation under *Ex parte Young*. What Petitioner does not mention is that the Eighth Circuit adheres to that straightforward rule as well.

In *Elder* v. *Gillespie*, 54 F.4th 1055 (8th Cir. 2022), Medicaid recipients claimed that a notice informing them that their benefits would be cut violated due process. *Id.* at 1059. But unlike Petitioner, the plaintiffs in that case continued to receive Medicaid benefits while the federal litigation played out. *Id.* at 1062. That meant that the "very harm alleged"—receiving another deficient termination notice—"remain[ed] likely to recur." *Ibid.* And because the threat of a due process violation was imminent (i.e., "ongoing"), the plaintiffs' claim could proceed under *Ex parte Young*.

Elder maps on perfectly to the six circuits that hold that *Ex parte Young* is available when "state officials are depriving a plaintiff of property in violation of due process." Pet.i. In *Elder*, as in all of Petitioner's cases, the plaintiffs alleged that they had a continuing property interest in the underlying government benefits. The Eighth Circuit is not in the minority of Petitioner's feigned circuit split because it agrees with the very rule that she presses here. Petitioner has not identified a single case where *Ex parte Young* has allowed a plaintiff to bring a due process claim to reinstate property in which she no longer holds an interest.

B. *Ex parte Young* does not apply when the plaintiff lacks a continuing property interest.

Just as the circuits agree that a plaintiff might suffer an ongoing harm when she has a continuing interest in the deprived property, so also do they agree there is no ongoing violation when the plaintiff lacks an interest in the property. Start with this case. The complaint does not allege that Petitioner is currently eligible for Medicaid or even intends to reapply, let alone that she would be eligible for benefits today. See Pet.App.18a, 59a–61a. Indeed, at oral argument below, Petitioner conceded that she lacked a continuing property interest:

> Judge Shepherd: Does the complaint allege that the appellant is in fact eligible for Medicaid?
>
> Counsel for Petitioner: It does not.

Filyaw v. *Corsi*, No. 24-3041, Oral Argument, 7:21 (8th Cir. May 15, 2025).

Petitioner's lack of an ongoing property interest distinguishes this case from other Eighth Circuit precedent. Cf. *Elder*, 54 F.4th at 1062. As the court below noted, "Filyaw is no longer enrolled in Medicaid, and *she does not allege in her complaint that she would be entitled to Medicaid if she applied today*." Pet.App.16a (emphasis added). Because Petitioner is not receiving Medicaid benefits while this litigation plays out (like the plaintiffs in *Elder* were) and has not even alleged that she is Medicaid-eligible, she has

no *ongoing* property interest in Medicaid benefits. Without an ongoing property interest, there's no threat of ongoing violations—and thus no avenue open to Petitioner under *Ex parte Young*.

The First Circuit's decision in *Cotto* v. *Campbell*, 126 F.4th 761 (1st Cir. 2025), sings the same tune. There, many prisoners had their convictions vacated. *Id.* at 764–65. The Supreme Judicial Court of Massachusetts held that they were entitled to repayment of any fines they paid in connection with those convictions "but not to the automatic return of any *forfeited property* seized in connection with those convictions." *Id.* at 765 (emphasis added) (citing *Massachusetts* v. *Martinez*, 109 N.E.3d 459, 471–76 (Mass. 2018)). Those forfeitures came after a separate, civil proceeding that did not depend on a finding of guilt in the criminal case. *Martinez*, 109 N.E.3d at 476. So the prisoners held no present, ongoing interest in the property they previously forfeited. And because they lacked an ongoing interest in that property, the "continued withholding of forfeited property [did] not qualify as an ongoing violation" under *Ex parte Young*.[2] *Cotto*, 126 F.4th at 770.

For good measure, the Third Circuit has also held that *Ex parte Young* does not apply when the plaintiff lacks a continuing interest in the underlying property. In *Merritts* v. *Richards*, the State acquired an

[2] Cf. *James* v. *Hegar*, 86 F.4th 1076, 1082 (5th Cir. 2023) ("Plaintiffs point to no authority supporting their assertion that an unconstitutional taking is an 'ongoing violation' for the purpose of seeking prospective relief when the government has failed to return a claimant's property.").

easement across the plaintiff's land in a condemnation proceeding. Once the proceeding ended, he lost the right to exclude state employees from his land. Nonetheless, the plaintiff sought an injunction to prohibit state employees from accessing the easement. 62 F.4th 764, 771 (3d Cir. 2024). The Third Circuit concluded that *Ex parte Young* was inapplicable because the landowner sought "relief based on two claimed past violations of federal law." *Id.* at 772. And it held that "[t]he lingering effects of [the State's] discrete past action do not convert it into an ongoing violation." *Ibid.* The plaintiff thus sought nothing more than a "reparative injunction"—something impermissible under *Ex parte Young*. *Ibid.* (citing Dan B. Dobbs & Caprice L. Roberts, *Law of Remedies* § 2.9(1) (3d ed. 2018) ("The reparative injunction requires defendant to restore plaintiff to a preexisting entitlement.")).

Like the courts in *Cotto* and *Merritts*, the Eighth Circuit below faced a different question than the broad one that Petitioner posits. These courts grappled with whether a plaintiff *without* an ongoing property interest can be said to face an *ongoing violation* of federal law to justify injunctive relief under *Ex parte Young*. The answer was obviously no. That answer does not conflict with other circuits that faced a different question when the plaintiffs *had* an interest in the underlying property. The harmony amongst the lower courts across these two distinct lines of cases does not call for this Court's intervention.

II. The Eighth Circuit's Decision Was Correct.

The Eighth Circuit correctly held that sovereign immunity barred Petitioner's suit. Petitioner did not plead an "ongoing violation of federal law," nor did she seek "relief properly characterized as prospective." *Verizon Md.*, 535 U.S. at 645 (cleaned up). The "two requirements are closely related." *Cotto*, 126 F.4th at 771. As the Eighth Circuit determined, Petitioner failed to satisfy both.

1. *No ongoing violation of federal law*. The *Ex parte Young* exception applies only in "cases in which a violation of federal law by a state official is ongoing as opposed to cases in which federal law has been violated at one time or over a period of time in the past." *Papasan* v. *Allain*, 478 U.S. 265, 277–78 (1986). Petitioner alleged that the "withholding [of] her Medicaid benefits" established an ongoing violation. Pet.15. For at least two reasons, that misses the mark.

First, the argument fails on its own terms. Petitioner no longer has an interest in Medicaid benefits. Her complaint failed to allege an ongoing entitlement. Pet.App.18a. If Petitioner does not have a current interest in Medicaid benefits, then Respondents are not improperly "withholding" her property without due process, even under her own theory. The Eighth Circuit correctly rejected it.

Second, Petitioner's theory improperly blurs the line between past actions and ongoing effects. The crux of Petitioner's procedural due process claim is

that Respondents' letter did not give her adequate notice before she was disenrolled from Medicaid. But whether the letter gave Petitioner sufficient notice is a *past event*. It happened at a discrete moment in time and cannot fairly be classified as "ongoing." *Merritts*, 62 F.4th at 772 ("Although those earlier actions may have present effect, that does not mean that they are ongoing."); *Copperrider*, 127 F.4th at 1044 ("With respect to the procedural-due-process claim, the allegedly inadequate process of which Cooperrider complains—that is, the process afforded him prior to the revocation of Brewed's license—concluded when the license was revoked.").

If a past action (allegedly deficient notice) can be combined with a present-day effect (not receiving Medicaid benefits), then every plaintiff could show an "ongoing violation" without ongoing state action. But that would defeat the whole purpose of *Ex parte Young*, which gives federal courts jurisdiction to stop only "present violations" of federal law. *Green*, 474 U.S. at 74 (1985) (emphasis added).

Indeed, the Eighth Circuit's holding comports with this Court's precedents. Time and again this Court has held that "state officials' continued withholding of past benefits, even if wrongful, amount[s] to a past wrong and not an ongoing violation for *Ex parte Young* purposes." *Cotto*, 126 F.4th at 769. For instance, in *Edelman* v. *Jordan*, "plaintiffs argued that state officials violated federal law in calculating benefits under the Aid to the Aged, Blind, and Disabled (AABD) program and, citing *Ex parte Young*, requested an injunction ordering defendants 'to award

... all AABD benefits wrongfully withheld.'" *Ibid.* (quoting *Edelman* v. *Jordan*, 415 U.S. 651, 655–56 (1974)). Yet this Court "concluded there was no ongoing violation of federal law, explaining that plaintiffs' claims were merely for 'a monetary loss resulting from [the state officials'] past breach of a legal duty.'" *Ibid.* (quoting *Edelman*, 415 U.S. at 668).

Similarly, in *Papasan* v. *Allain*, this Court distinguished between ongoing and past state action. There, petitioners alleged that Mississippi officials were underfunding some public schools. 478 U.S. at 274–75. The Court held that the Eleventh Amendment barred the request for an injunction to better fund the schools based on the officials' past breach of trust. *Id.* at 279–81. But it also held that the petitioners were not barred from seeking an injunction based on the alleged unlawfulness of the State's current school-funding methods. *Id.* at 281–82.

In other contexts, the Court has also held that the continued effects of a past wrong did not make that wrong ongoing. *E.g.*, *Del. State Coll.* v. *Ricks*, 449 U.S. 250 (1980). In *Ricks*, a college professor alleged a Title VII violation after the school denied him tenure. One year later, the university terminated his employment. This Court held that the "alleged discrimination occurred—and the filing limitations periods therefore commenced—at the time the tenure decision was made and communicated to [the professor]." *Id.* at 258. That was "so even though one of the effects of the denial of tenure—the eventual loss of a teaching position—did not occur until later." *Ibid.*

So too with Petitioner. Her complaint focuses on a single past action: an allegedly deficient notice letter sent on April 18, 2024. Her subsequent removal from Medicaid is not an "ongoing violation."

2. *No prospective relief sought*. Because Petitioner focuses on past conduct, her relief cannot be prospective. "Without an ongoing violation to curtail, there are no prospective injunctions for a federal court to issue." *Cotto*, 126 F.4th at 771. At most, Petitioner seeks a "reparative injunction" that "requires defendant to restore plaintiff to a preexisting entitlement." *Merritts*, 62 F.4th at 772 (cleaned up). But "[s]uch an injunction cannot be fairly characterized as prospective." *Ibid*. See *Edelman*, 415 U.S. at 668 (refusing to extend *Ex parte Young* to claims that amounted to monetary relief for past wrongs even when stylized as "equitable restitution").

That does not leave Petitioner without alternatives. Contrary to Petitioner's exaggerations, other remedies are available. Contra Pet.22. To start, Petitioner could have sought injunctive relief *before* termination. See *Elde*r, 54 F.4th at 1062. Or she could have alleged a present right to receive Medicaid benefits and an ongoing deprivation of that right. And most obviously, she could have brought her due process claim in state court, with the backstop of federal review in this Court. See Neb. Rev. Stat. § 84-917 (waiving sovereign immunity in state court for administrative appeals); *Whittle* v. *Dep't of Health & Hum. Servs.*, 962 N.W.2d 339, 358 (Neb. 2021) (deciding federal due process notice claim in state administrative appeal).

In the end, any fault lies not with the Constitution's recognition of state sovereignty but instead with Petitioner's own litigation strategies.

III. This Case Is a Poor Vehicle to Address the Question Presented.

Petitioners raise a single question: "When a suit alleges that state officials are depriving a plaintiff of property in violation of due process, does the suit allege an ongoing violation of the law for which prospective relief is available under *Ex parte Young*?" Pet.i. But three factors strongly counsel against certiorari on this question given the facts here.

First, Petitioner lacks standing. At oral argument, Petitioner admitted that she did not allege that she was currently eligible for Medicaid. Without that critical fact, she cannot seek injunctive relief, for she cannot "establish a sufficient likelihood of future injury." *FDA* v. *All. for Hippocratic Medicine*, 602 U.S. 367, 381 (2024). Not only that, but her ineligibility means that this Court cannot afford her effective relief. Petitioner cannot be reinstated to benefits she admits she's ineligible for. So her alleged injury will *not* "be redressed by the requested judicial relief." *Id.* at 380.

Second, the question here is more "discrete" than Petitioner claims. See Pet.App.14a–15a. Petitioner frames the case as one about the broad contours of "suit[s] to restore property unlawfully withheld by the state." Pet.i. It's not. This case involves several variables that factored into the court's decision below.

To start, Petitioner challenged the adequacy of a *predeprivation* notice. And she did so *after* she was terminated from Medicaid, *without* seeking any relief before the termination, and *without* alleging that she remains eligible for those benefits today. Many of the cases Petitioner cites from other circuits did not involve these factual nuances. That this case does makes it a poor vehicle to decide the scope of the question presented.

Third and finally, Petitioner's real gripe is with how the Eighth Circuit applied its own precedent. In *Elder*, the Eighth Circuit largely adopted the rule Petitioner advances here. It just did not apply that rule to Petitioner's case. There's no tension between *Elder* and Petitioner's case. In any event, that's a question best left to the Eighth Circuit to resolve, not this Court. Yet Petitioner did not even seek en banc review. Such supposed error correction is "outside the mainstream of the Court's functions." E. Gressman, K. Geller, S. Shapiro, T. Bishop, & E. Hartnett, Supreme Court Practice § 5.12(c)(3), p. 351 (9th ed. 2007). See also S. Ct. R. 10 ("A petition for a writ of certiorari is rarely granted when the asserted error [is] ... the misapplication of a properly stated rule of law.").

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

MICHAEL T. HILGERS
Nebraska Attorney General

NEBRASKA DEPARTMENT OF JUSTICE
1445 K Street, Room 2115
Lincoln, Nebraska 68508
(402) 471-2683
cody.barnett@nebraska.gov

CODY S. BARNETT
Solicitor General
Counsel of Record
ZACHARY B. POHLMAN
Deputy Solicitor General

Counsel for Respondents

DECEMBER 2025