No. 25-491

IN THE
Supreme Court of the United States

GILLIAN FILYAW,
Petitioner,
v.
STEVE CORSI, ET AL.,
Respondents.

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

REPLY IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES—Continued

INTRODUCTION

This Court should grant certiorari to resolve a circuit split on an exceptionally important and recurring question of federal jurisdiction involving property rights. In six circuits, federal courts have jurisdiction under *Ex parte Young* to hear claims that state officials have unlawfully deprived a plaintiff of property and to reinstate that property prospectively. By contrast, two circuits, including the Eighth Circuit below, have closed the federal courts to such claims on the theory that they challenge a prior act rather than an ongoing violation. In these circuits, once the state takes your property in violation of due process, federal courts are powerless to provide redress.

Respondents' arguments against certiorari all boil down to the same contention (at 12)—that Ms. Filyaw "conceded that she lacked a continuing property interest" in Medicaid. That is emphatically false. Ms. Filyaw did not allege that she would necessarily be eligible for Medicaid if she applied today because the crux of her complaint is that Respondents *failed to provide her with adequate information* to assess that question. But her complaint explicitly alleges an "ongoing" entitlement to her "constitutionally protected property interests" "until such time that sufficient notice" is provided. Pet. App. 50a (¶ 11). With the record corrected, all of Respondents' arguments against review fall away.

Respondents dispute the split on the ground that the two lines of cases answer different questions rather than providing different answers to the same question. According to Respondents (at 9-12), the six circuits in the majority confronted claims where the plaintiff had an "ongoing entitlement" to property, whereas the two circuits in the minority confronted claims where the plaintiff did not. But that logic is entirely circular. The

question in all of these cases is whether the plaintiff has an ongoing entitlement to property by virtue of the state's unlawful deprivation of that interest. Six circuits squarely hold that such claims allege an ongoing violation for which relief under *Ex parte Young* is available—including in Medicaid cases indistinguishable from this one. For the reasons noted by Chief Judge Colloton in dissent below, the Eighth and First Circuits hold otherwise by erroneously assuming away the merits of the plaintiffs' claims. Pet. App. 19a-21a.

Respondents' defense of the Eighth Circuit is conspicuously weak. When a plaintiff alleges that state officials have deprived her of property through a defective process, "she has alleged an ongoing violation of her constitutional rights." Pet. App. 19a. And where—as here—a plaintiff seeks an injunction compelling prospective reinstatement, she seeks prospective relief. As explained in the legal scholars' amicus brief, the contrary approach embraced below would require plaintiffs to bring suit *before* a deprivation occurs—thereby shortening the statute of limitations for Section 1983 claims involving property rights—or would impose a *de facto* state-law exhaustion requirement in violation of this Court's precedent. See Legal Scholars' Br. at 12-15.

This case is an excellent vehicle given that the issue was dispositive below and yielded thorough majority and dissenting opinions. Respondents' contrary arguments fail. Ms. Filyaw obviously has standing to challenge the termination of her benefits, no unique factual issues would impede this Court's review, and there is no disagreement within the Eighth Circuit. And, as the Liberty Justice Center amicus brief confirms, this case raises a profoundly important question of property rights and federal jurisdiction. Liberty Justice Center Br. at 1-3. *Ex parte Young* "gives life to the Supremacy Clause." *Green* v. *Mansour*, 474 U.S. 64, 68 (1985). This Court's review is

necessary to restore the supremacy of federal law in property-rights cases nationwide.

ARGUMENT

I. THE CIRCUITS ARE IRRECONCILABLY SPLIT.

The petition explained that the circuits are split six-to-two on the question presented. Respondents dispute the split (at 1) on the ground that the two different approaches actually involve "two distinct lines of cases." That is wrong. The claims at issue in all of the cases are materially indistinguishable. The divergent outcomes result not from "merely different applications of settled doctrine to varying circumstances," but from the application of sharply different legal rules. Legal Scholars' Br. at 3. This Court's intervention is needed to resolve the split.

1. The Eighth Circuit below unequivocally held that a plaintiff unconstitutionally deprived of property without adequate notice "faces no ongoing violation of federal law" but instead challenges only "the effects of the allegedly unconstitutional pre-termination notice." Pet. App. 8a. Respondents claim (at 12) that this holding follows from the fact that Ms. Filyaw "conceded" at oral argument "that she lacked a continuing property interest." But she conceded no such thing. Ms. Filyaw's counsel below confirmed the obvious: She cannot allege that she is "in fact eligible for Medicaid" (at 12) when the crux of her complaint is that she was not provided with adequate information to assess whether her property interest was correctly terminated. Pet. App. 48a, 61a-62a (¶¶ 2, 66). But her complaint alleges an "ongoing" right to her "constitutionally protected property interests" "until such time that sufficient notice" is provided. Pet. App. 50a (¶ 11). As Chief Judge Colloton explained, she has alleged entitlement to Medicaid benefits until proper notice is provided, and the majority rejected her claim only by

"erroneously assum[ing] on the merits that the allegedly deficient notice was not deficient." Pet. App. 21a.

Respondents err in claiming (at 11) that the Eighth Circuit's decision in *Elder* v. *Gillespie*, 54 F.4th 1055 (8th Cir. 2022), follows the rule that Ms. Filyaw presses here. The court in *Elder* found an ongoing violation, not on the basis of a continued deprivation of property, but because the "very harm alleged remains likely to recur" in the future given that "benefits must be reassessed each year." *Id.* at 1062-63. By relying on the likelihood of a recurrence, rather than the existing deprivation, *Elder* actually confirms that, in the Eighth Circuit, a deprivation of property without due process does not qualify as an ongoing violation. Indeed, the panel below acknowledged *Elder* but found it inapplicable because Ms. Filyaw's harm was unlikely to recur. Pet. App. 16a.

Like the Eighth Circuit, the First Circuit has held that "even if" the "continued withholding of plaintiffs' forfeited property did violate federal law, it would be a past violation, not an ongoing one." *Cotto* v. *Campbell*, 126 F.4th 761, 770 (1st Cir. 2025). Respondents contend (at 13) that the plaintiffs there "held no present, ongoing interest in the property" at issue. But the *Cotto* plaintiffs vehemently contended otherwise. See *id.* at 769 (alleging that continued withholding of property was an ongoing violation). The First Circuit deemed it "irrelevant" as a matter of law whether the "continued withholding of forfeited assets" in fact violated due process, because even assuming it did, that would merely amount to "continuing liability for a past harm" rather than an "ongoing violation." *Ibid*.[1]

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[1] Respondents err in claiming (at 13) that the Third Circuit follows the Eighth and First Circuits. *Merritts* v. *Richards*, 62 F.4th 764 (3d Cir. 2024), was a Takings Clause case, and the plaintiff was seeking a

2. The Eighth and First Circuit's approach is irreconcilable with the approach applied in six other circuits.

The Seventh Circuit's decision *Sherwood* v. *Marchiori*, 76 F.4th 688 (7th Cir. 2023), exemplifies the conflict. Respondents contend (at 9) that *Sherwood* "clearly spells out the plaintiffs' ongoing entitlement" to benefits. But in *Sherwood*, the plaintiffs *were not eligible* for their terminated unemployment benefits when they filed suit because by then they were reemployed. See *id.* at 692-693. The court nonetheless held that "assuming plaintiffs were eligible for benefits when they applied," they "maintain a property interest in those benefits today." *Id.* at 695. The court rejected the argument "that the alleged violations are not ongoing because the complaint solely challenges [the] denial of benefits over a period of time in the past and plaintiffs are no longer eligible for benefits." *Ibid.*; see *Driftless Area Land Conservancy* v. *Valcq*, 16 F.4th 508, 522 (7th Cir. 2021) ("an ongoing violation of federal law" occurs even "when the alleged violation is a procedural error committed by a state actor at a discrete point" in the past).

Similarly, in *Russell* v. *Dunston*, 896 F.2d 664 (2d Cir. 1990), which Respondents ignore, the Second Circuit permitted an *Ex parte Young* suit alleging that the plaintiff was deprived of "a property interest in disability retirement benefits" "without constitutionally adequate notice." *Id.* at 667. Critically, the plaintiff did not allege that he was *necessarily* entitled to benefits—he instead sought an injunction "requiring defendants to reinstate him to medical leave and to *determine his eligibility*"

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second opportunity to adjudicate a claim that the state court had already rejected. *Id.* at 769-770. *Merritt* therefore has no bearing on the split.

through a constitutionally adequate process. *Ibid.* (emphasis added).

The Ninth Circuit follows the same rule. In *K.W. ex rel. D.W.* v. *Armstrong*, 789 F.3d 962 (9th Cir. 2015), the court held that an *Ex parte Young* suit was available in a case indistinguishable from this one—where the plaintiff challenged Medicaid reductions based on a letter that allegedly "failed to provide meaningful notice of the reasons for the reductions." *Id.* at 968. Defendants there made an argument much like Respondents, claiming that the plaintiffs may have in fact been ineligible for the benefits. *Id.* at 973. The Ninth Circuit "reject[ed] this argument" as question-begging, because the defendants' inadequate procedures for determining entitlement were "precisely what the Plaintiffs challenge." *Ibid.*

Likewise, in *Kimble* v. *Solomon*, 599 F.2d 599 (4th Cir. 1979), the Fourth Circuit held that claims challenging the termination of certain Medicaid benefits without notice could proceed without assessing whether the plaintiffs would be entitled to those benefits had the proper notice been given. *Id.* at 604. Respondents' contention (at 10) that the plaintiffs in *Kimble* were "active and continuing recipients of Medicaid when they sued" is irrelevant because plaintiffs were *not* receiving the services at the heart of the suit, and their eligibility for those services was unsettled. *Ibid.*

The Sixth and Tenth Circuits follow the same rule. Respondents note (at 9) that the plaintiffs in one Tenth Circuit case "claimed they were eligible for Medicaid services." *Lewis* v. *N.M. Dep't of Health*, 261 F.3d 970, 974 (10th Cir. 2001). But the basis for that claim was that they had been denied the services without due process—just like here. And in *Cooperrider* v. *Woods*, 127 F.4th 1019 (6th Cir. 2025), the plaintiff's allegations of an ongoing violation were premised on the assertion that the state

continued to unlawfully deprive him of a protected property interest. *Id.* at 1043-44. That is precisely what Ms. Filyaw alleges here.

II. THE EIGHTH CIRCUIT'S DECISION IS WRONG.

1. Because Ms. Filyaw alleges an ongoing violation of federal law and seeks prospective reinstatement of her property rights, she is entitled to sue under *Ex parte Young*. Respondents' defense of the Eighth Circuit's contrary holding is unpersuasive.

Respondents' primary assertion (at 15)—that Ms. Filyaw "no longer has an interest in Medicaid benefits"—assumes away the merits of her claim, which is that she should still be receiving Medicaid because Respondents terminated her benefits without due process. Respondents are flatly wrong (at 15) that the complaint "failed to allege an ongoing entitlement." Again, Ms. Filyaw could not allege that she would be eligible for Medicaid if she applied today because the state's deficient notice made it impossible to assess her eligibility. See Pet. App. 60a (¶ 60). But the complaint nonetheless alleges an "ongoing deprivation" because she is entitled to benefits until she receives constitutionally adequate notice. Pet. App. 50a (¶ 11).

Respondents maintain (at 16) that the violation cannot be ongoing because inadequate notice "is a *past event*." This Court rejected the same argument in *Papasan* v. *Allain*, 478 U.S. 265 (1986), holding that an ongoing disparity in school funding was "precisely the type of continuing violation for which a remedy may permissibly be fashioned under *Young*," notwithstanding that it was the "result[ ]" of "actions *in the past*." *Id.* at 282 (emphasis added).

Respondents note (at 17) that *Papasan* also found that a different claim challenging the alleged breach of a constructive trust sought retrospective rather than

prospective relief. See *id.* at 279-281. But that was because that claim sought "an *accrued* monetary liability" for a prior breach and was therefore a request for damages in disguise. *Id.* at 281 (citation omitted). Here Ms. Filyaw does not pursue any accrued liability—she seeks only "prospective reinstatement" of her property interests. Pet. App. 50a (¶ 11).

Respondents' reliance (at 16-17) on *Edelman* v. *Jordan*, 415 U.S. 651 (1974), fails for similar reasons. *Edelman* held that the Eleventh Amendment barred relief requiring the payment of improperly withheld benefits *retroactively*, but it affirmed that prospective relief was permissible, even in the form of a monetary payment. Paying money from the treasury in the future is often the "necessary result of compliance with decrees which by their terms [a]re prospective in nature," and "is a permissible and often an inevitable consequence" of *Ex parte Young*. *Id.* at 668.

Like the court below, Respondents cite cases (at 17) addressing whether a plaintiff alleged a "continuing violation" for purposes of determining when a claim accrued. The petition explained why the question whether a plaintiff has alleged a continuing violation for purposes of timeliness has no bearing on the question whether a plaintiff states an ongoing violation under *Ex parte Young*. See Pet. 16-17. Indeed, this Court recently found that a complaint alleged an ongoing violation under *Ex parte Young* notwithstanding that the claim was "complete" for statute-of-limitations purposes. *Reed* v. *Goertz*, 598 U.S. 230, 233, 236 (2023). Respondents have no response.

2. Respondents maintain (at 18) that their position does not leave Ms. Filyaw and others like her "without alternatives" to vindicate their property rights. But each of Respondents' alternatives underscores the problems with their position.

Respondents claim (at 18) that Ms. Filyaw "could have alleged a present right to receive Medicaid benefits and an ongoing deprivation of that right." But she could not have alleged that she was eligible for Medicaid given that she was not provided with adequate information to assess the basis for her termination. Alleging that she was in fact eligible for Medicaid would have required her to misrepresent her knowledge.

Respondents contend (at 18) that Ms. Filyaw "could have sought injunctive relief *before* termination." But, as she explained in her complaint, "[a]s a result of the conclusory" notice, she could not "adequately prepare a response to the proposed termination of coverage." Pet. App. 60a (¶ 60). And Ms. Filyaw was provided only a short window to object to the notice. As amici explain, if Respondents were correct, Ms. Filyaw's failure to request a hearing within that window would "permanently bar[ ] federal jurisdiction over her Section 1983 claim," thus allowing state officials to "effectively set their own limitations periods through administrative processes rather than legislation." Legal Scholars' Br. at 4. That result is irreconcilable with this Court's precedent holding that the applicable "statute of limitations" for Section 1983 claims must be set by state legislatures. *Wallace* v. *Kato*, 549 U.S. 384, 387 (2007).

Respondents claim (at 18) that Ms. Filyaw "could have brought her due process claim in state court." The result would be to make "exhaustion of state administrative remedies a functional prerequisite to maintaining federal jurisdiction." Legal Scholars' Br. at 13-14. Again, that contention contravenes precedent holding that "exhaustion of state administrative remedies should not be required as a prerequisite to bringing an action pursuant to § 1983." *Patsy* v. *Bd. of Regents of Fla.*, 457 U.S. 496, 516 (1982); cf. *Knick* v. *Twp. of Scott*, 588 U.S. 180, 185

(2019) (rejecting state-remedies exhaustion requirement for property takings claims).

III. THIS CASE IS AN IDEAL VEHICLE TO RESOLVE AN IMPORTANT QUESTION.

This case offers the ideal opportunity for the Court to resolve the question presented. The issue is squarely presented, dispositive in this case, and exceedingly important.

Respondents' assertion (at 19) that Ms. Filyaw lacks standing is meritless. She alleges that she suffered an injury that was caused by the state's denial of her property rights, and that alleged injury could be redressed by an order of prospective reinstatement. Respondents' suggestion that she may not ultimately succeed in proving a due process violation is irrelevant, because the "inquiry into whether suit lies under *Ex parte Young* does not include an analysis of the merits of the claim." *Verizon Md., Inc.* v. *Pub. Serv. Comm'n of Md.*, 535 U.S. 635, 646 (2002).

Respondents' efforts (at 19-20) to paint the case as fact-bound likewise fail. The case involves a straightforward *legal* question: Does a deprivation of property without due process constitute an ongoing violation for purposes of *Ex parte Young*? The Eighth Circuit held that it does not, and that erroneous holding will doom any case in which a plaintiff seeks prospective relief for a deprivation of property that was initiated in the past.

Respondents also err in suggesting (at 20) that Ms. Filyaw's "real gripe" is with the Eighth Circuit's application of its own precedent. The Eighth Circuit in *Elder* did not, as Respondents claim (at 20), "largely adopt[]" the rule Ms. Filyaw advances, nor did the court below refuse to apply the *Elder* rule. Rather the panel below easily reconciled its decision with *Elder*, Pet. App. 16a, because both cases rest on the erroneous premise that a continuing deprivation of property without due process cannot, by

itself, constitute an ongoing violation for purposes of *Ex parte Young*. See, p. 5, *supra.*

Finally, Respondents do not dispute that this case presents a preferable vehicle to resolve the question presented than *Cotto*, which this Court will consider at its conference of January 9, 2026. See *Cotto* v. *Campbell*, No. 24-1307. The Court should therefore grant this petition and hold the petition in *Cotto*. In the alternative, if the Court grants the petition in *Cotto*, it should hold this case pending the disposition of that one.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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