No. _____

In the

Supreme Court of the United States

BENANCIO GARCIA III,
Petitioner,

v.

STEVEN HOBBS, in his official capacity as Secretary of State of Washington, and the STATE OF WASHINGTON,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Jason B. Torchinsky
Counsel of Record
Jared S. Bauman
HOLTZMAN VOGEL BARAN TORCHINSKY & JOSEFIAK PLLC
2300 N Street N.W.
Suite 643
Washington, DC 20037
(202) 737-8808
jtorchinsky@holtzmanvogel.com

Dallin B. Holt
HOLTZMAN VOGEL BARAN TORCHINSKY & JOSEFIAK PLLC
250 East 200 South
Suite 1609
Salt Lake City, UT 84111
(385) 313-9893

Andrew R. Stokesbary
CHALMERS, ADAMS, BACKER & KAUFMAN LLC
701 Fifth Avenue
Suite 4200
Seattle, WA 98104
(206) 813-9322

Counsel for Petitioner

LEGAL PRINTERS LLC ● Washington, DC ● 202-747-2400 ● legalprinters.com

QUESTION PRESENTED

Petitioner Benancio Garcia III challenged Washington State's Legislative District 15 as an unconstitutional racial gerrymander. The three-judge district court panel dismissed his claim as moot after a single-judge district court in a different case, *Soto Palmer* v. *Hobbs*, No. 3:22-cv-05035 (W.D. Wash.), enjoined the use of the map that created Legislative District 15 and ordered the State to draw a replacement district.

This Court vacated and remanded with instructions to enter a fresh judgment from which an appeal may be taken to the U.S. Court of Appeals for the Ninth Circuit. The three-judge Panel amended its judgment accordingly, and Petitioner appealed. The Ninth Circuit affirmed.

The question presented is:

Whether a plaintiff's Equal Protection Clause racial gerrymandering claim is rendered moot when the challenged legislative district is replaced in a different proceeding by a judicial remedy that intensifies the plaintiff's racial classification injury, and which is subject to ongoing appellate review.

PARTIES TO THE PROCEEDINGS

The Petitioner Benancio Garcia III was the Plaintiff before the district court and Plaintiff-Appellant before the Ninth Circuit.

Respondents the State of Washington and Steven Hobbs in his official capacity as the Washington Secretary of State, were Defendants before the district court and Defendants-Appellees before the Ninth Circuit.

STATEMENT OF RELATED PROCEEDINGS

- *Soto Palmer* v. *Hobbs*, No. 3:22-cv-05035, U.S. District Court for the Western District of Washington. Judgment entered Aug. 11, 2023 (merits); Mar. 15, 2024 (remedy).

- *Garcia* v. *Hobbs*, No. 3:22-cv-05152, U.S. District Court for the Western District of Washington. Judgment entered Sept. 8, 2023; amended judgment entered Mar. 25, 2024.

- *Garcia* v. *Hobbs*, No. 23-467, U.S. Supreme Court. Judgment entered Feb. 20, 2024.

- *Garcia* v. *Hobbs*, No. 24-2603, U.S. Court of Appeals for the Ninth Circuit. Judgment entered Aug. 27, 2025.

- *Palmer* v. *Hobbs*, No. 23-35595 (merits) & 24-1602 (remedy), U.S. Court of Appeals for the Ninth Circuit. Judgment entered Aug. 27, 2025.

TABLE OF CONTENTS

APPENDIX TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page(s)**

Statutes

Constitutional Provisions

Secondary Sources

OPINION BELOW

The memorandum opinion of the U.S. Court of Appeals for the Ninth Circuit (No. 24-2603) is available at *Garcia* v. *Hobbs*, 2025 WL 2466997, 2025 U.S. App. LEXIS 22059 (9th Cir. Aug. 27, 2025). This memorandum opinion is also reproduced at App. 1–3.

The opinion and order of the three-judge district court Panel (No. 3:22-cv-05152) is available at *Garcia* v. *Hobbs*, 691 F. Supp. 3d 1254 (W.D. Wash. 2023). This opinion and order, as well as Judge VanDyke's dissenting opinion, is reproduced at App. 6–54.

JURISDICTION

The three-judge Panel entered its final judgment dismissing Petitioner's claim on September 8, 2023. App. 55–56. Petitioner timely noticed his appeal to this Court on September 28, 2023.

On February 20, 2024, this Court vacated and remanded with instructions to enter a fresh judgment suitable for appeal to the Ninth Circuit. *Garcia* v. *Hobbs*, 144 S. Ct. 994 (2024). The three-judge Panel reissued its judgment on March 25, 2024, App. 4–5, and Petitioner timely noticed his appeal to the Ninth Circuit. The Ninth Circuit affirmed the three-judge panel on August 27, 2025. App. 1–3.

On October 28, 2025, Justice Kagan granted Petitioner's unopposed application for a 60-day extension of time to file this petition. This Court thus properly has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The Fourteenth Amendment's Equal Protection Clause provides that no State shall "deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1.

STATEMENT OF THE CASE

This case arises from an Equal Protection Clause challenge to Washington State's Legislative District 15 ("LD-15"). Petitioner Benancio Garcia III ("Petitioner" or "Mr. Garcia"), a Hispanic resident of LD-15, alleged that Washington's independent, bipartisan redistricting commission sorted him into the district on the basis of his race. The evidence at trial confirmed what Mr. Garcia already knew—he was indeed sorted on the basis of his Hispanic ethnicity, as part of a plan to create a majority Hispanic Citizen Voting-Age Population ("HCVAP") district in the Yakima Valley region of central Washington State. But Mr. Garcia never received a ruling on the merits of that claim.

Instead, his case was dismissed as moot. A single district court judge, presiding over a separate challenge to LD-15 under Section 2 of the Voting Rights Act ("VRA"), ruled first—even though both cases were heard simultaneously, with the judge in the separate VRA challenge also sitting on the three-judge panel in this case—and ordered the State to redraw LD-15 with even more racial sorting. The three-judge panel presiding over Mr. Garcia's constitutional claim then held that this VRA remedy "mooted" Mr. Garcia's racial gerrymandering challenge, even though the remedy intensified the very constitutional injury of which he complained. The Ninth Circuit affirmed without addressing Mr. Garcia's principal arguments.

The result is paradoxical. Mr. Garcia was first sorted into LD-15 on the basis of his Hispanic ethnicity. He was then sorted out of LD-15—and into

a new district, LD-14—for the same reason. His injury has not been remedied; if anything, it has only increased in magnitude. Yet, no court has ever addressed whether sorting him by race violated his constitutional rights.

A. The Washington State Redistricting Commission and Legislative District 15

Under Washington state law, congressional and legislative districts are redrawn by an independent and bipartisan redistricting commission (the "Commission") every ten years. *See* Wash. Const. art. II, § 43(1); App. 18–20 (VanDyke, J., dissenting) (describing Washington's redistricting process). The Commission consists of four voting members (each, a "Commissioner") and one non-voting member, with each voting member appointed by the "legislative leader of the two largest political parties in each house of the legislature." Wash. Const. art. II, § 43(2). The four voting members, in turn, select the nonvoting chair by majority vote. *Id.* At least three of the four voting members must approve a redistricting map. *Id.* art. II, § 43(6).

Following the 2020 Census, the Commission's voting members were duly appointed: "The House Democratic leadership selected April Sims, the Senate Democratic leadership selected Brady Piñero Walkinshaw, the Senate Republican leadership selected Joe Fain, and the House Republican leadership selected Paul Graves." App. 19 (VanDyke, J., dissenting). Together, these voting Commissioners elected Sarah Augustine as the nonvoting Chairwoman of the Commission. App. 19–20.

Per state statute, the Commissioners were tasked with creating compact and convenient districts with as-equal-as-practicable populations that respected communities of interest, minimized the splitting of existing county and town boundaries, and encouraged electoral competition. *See* Wash. Const. art. II, § 43(5); Wash. Rev. Code § 44.05.090. The Commissioners were required to agree by majority vote on a map by November 15, 2021, and then transmit the proposed plan to the Legislature. *See* Wash. Rev. Code § 44.05.100(1). At that point, the state legislature would have thirty days from the beginning of its next legislative session to adopt limited amendments to the map by a two-thirds supermajority vote of both chambers, or else the Commission's plan would become the final enacted plan. Wash. Const. art. II, § 43(7); Wash. Rev. Code § 44.05.100(2). In any event, the state legislature would not be empowered to reject the map. *See* Wash. Const. art. II, § 43(7).

At the beginning of negotiations on the map in September 2021, each of the four Commissioners released his or her own legislative redistricting proposal. App. 20 (VanDyke, J., dissenting). During those early stages, none of the four proposals contained a majority-Hispanic district anywhere in the State, including in the Yakima Valley region. *Id.* The following month, Commissioners Sims and Walkinshaw—the two Democratic Party appointees—sought the assistance of Dr. Matt Barreto, a well-known Democratic Party consultant, University of California, Los Angeles professor, and advisor on VRA compliance. According to Dr. Barreto—who prepared a PowerPoint slide deck for Commissioners Sims and Walkinshaw containing a scatterplot of demographic

figures and precinct-level results for some statewide races—all four initial redistricting proposals were illegal under Section 2 of the VRA because they failed to include a majority-Hispanic district in the Yakima Valley region. *See id.*

"From the circulation of this slideshow onward, the racial composition of the Yakima Valley district became an enduring focus of the Commission." *Id.* On October 25, 2021—just three weeks before the redistricting deadline—Commissioners Sims and Walkinshaw released new draft legislative map proposals that each included a majority-HCVAP, majority-Democrat legislative district in the Yakima Valley region. *See* Proposed Pretrial Order at Ex.1, ¶¶ 79–81, *Garcia*, No. 3:22-cv-05152 (May 24, 2023), DE 64. The two Republican Commissioners, knowing that three votes were needed to pass any map, concluded that no map without such a majority-minority district could garner a majority of the Commission. *See* App. 21–22 (VanDyke, J., dissenting). As such, with just seconds to go before Washington's constitutional deadline, the Commissioners agreed to send the state legislature a map with a majority-HCVAP legislative district in the Yakima Valley region (the "Enacted Map"). *See* App. 24–25.

This agreement specified the HCVAP proportion of LD-15, but did not stipulate the racial composition of any other district. *See id.* The Commission's final map resulted in LD-15, have a racial composition of 51.5% HCVAP, according to 2020 U.S. Census figures. *See Soto Palmer* v. *Hobbs*, 686 F. Supp. 3d 1213, 1222 (W.D. Wash. 2023). LD-15 did not contain any whole counties, but instead pulled in narrow slivers of dense Hispanic populations on opposite sides of the

district—the City of Yakima in the northwest and Pasco to the southeast—even though those distinct areas had never been included in the same legislative district in Washington's history. *See* Am. Compl. at ¶ 4, *Garcia*, No. 3:22-cv-05152 (June 9, 2022), DE 14. After a few minor tweaks (which resulted in no population change to LD-15), the state legislature adopted the map on an up-or-down vote. App. 25 (VanDyke, J., dissenting).

B. Mr. Garcia's Racial Gerrymandering Claim

Due to the obvious racial gerrymandering of LD-15, Mr. Garcia, a resident of the district, sued Secretary of State Hobbs and the State of Washington on March 15, 2022. In his amended complaint, Mr. Garcia alleged that the Commission violated the Equal Protection Clause of the Fourteenth Amendment by drawing LD-15 in a manner that sorted voters on the basis of their race without sufficient justification. *See* Am. Compl. at ¶¶ 72–77, *Garcia*, No. 3:22-cv-05152 (June 9, 2022), DE 14. Mr. Garcia asked for the following relief: (1) a declaration that LD-15 was an illegal racial gerrymander; (2) a permanent injunction against the Secretary using LD-15 in further elections; (3) an order for a remedial map that did not violate Mr. Garcia's Equal Protection Clause rights; and (4) attorneys' fees. *Id.* at ¶ 78. As a constitutional challenge to a legislative map, Mr. Garcia's claim triggered 28 U.S.C. § 2284, and a three-judge district court panel—consisting of Ninth Circuit Judge Lawrence VanDyke, District Court Judge Robert Lasnik, and Chief District Judge David Estudillo—was empaneled to hear his case. *See* App. 6.

Shortly before Mr. Garcia filed his suit, a separate group of voters challenged LD-15 under Section 2 of the VRA, alleging that the Commission intentionally configured LD-15 "to be a *façade* of a Latino opportunity district" and "dilute Hispanic and/or Latino voters' ability to elect candidates of choice." Compl. for Declar. and Inj. Relief, *Soto Palmer* v. *Hobbs*, No. 3:22-cv-05035 (Jan. 19, 2022), DE 1. That case was assigned to Judge Lasnik, and as a result, the three-judge district court that was empaneled to hear *Garcia* (which also included Judge Lasnik) consolidated *Soto Palmer* and *Garcia* for trial. *See* App. 7 n.2.

At the joint trial, the three-judge panel heard testimony from the Commissioners and their staffers on their purposes in crafting LD-15 and the Enacted Map, as well as the evidence they had before them on the need for a "VRA Compl[ia]nt" district in the Yakima Valley region. App. 20–25 (VanDyke, J., dissenting). According to Commissioners Graves and Fain—the two Republican appointees—a majority-HCVAP LD-15 was a "very important component of th[e] negotiation," which they felt they needed to support to secure the votes of Commissioners Sims and Walkinshaw. *See* App. 20–21, 47–48. Although Commissioners Graves and Fain (and the legal expert on which they relied) did not personally believe that a majority-HCVAP district was necessary to comply with the VRA, *see* App. 24, they recognized such a district was a de facto "requirement" for a final agreement. App. 22–23.

Commissioner Sims's testimony supported this characterization. She noted that reaching at least 50% HCVAP in LD-15 was a "priorit[y]" for her, without

which she was not "going to reach an agreement" with the other Commissioners. App. 21. Commissioner Walkinshaw, who had proposed a new map containing a majority-HCVAP district following the release of Dr. Barreto's PowerPoint, agreed that the majority-HCVAP LD-15 reflected a bipartisan compromise, and a member of his staff confirmed that a district which "perform[ed] for Latino voters" was "nonnegotiable." App. 46. Notably, Commissioner Walkinshaw and his staff also testified that the map the Commission adopted just moments before their constitutional deadline was actually an unwritten, handshake "framework," which mostly specified the political and geographic makeup of the new legislative districts, but with respect to LD-15 only—and no other legislative district—stipulated a racial composition. App. 24–25.

During the consolidated trial, the three-judge panel presided over all portions that addressed the role of the Commission in drawing LD-15. Once the trial concluded, the two courts (consisting of three judges in total) began their deliberations, assisted by the parties' July 12, 2023 post-trial briefs. *See* Closing Trial Brief by All Plaintiffs, *Garcia*, No. 3:22-cv-05152 (July 12, 2023), DE 79. For his part, Mr. Garcia asked the three-judge panel to find that "LD-15 was an unjustified and unconstitutional racial gerrymander," *id.* at 31, and to order a new map that would "not sort Washington voters on the basis of their race or ethnicity." *Id.* at 1.

C. The *Soto Palmer* Decision and the Three-Judge Panel's Mootness Holding

On August 10, 2023, Judge Lasnik—sitting alone in *Soto Palmer*—issued a decision finding that LD-15 violated Section 2 of the VRA. *Soto Palmer* v. *Hobbs*, 686 F. Supp. 3d 1213, 1221 (W.D. Wash. 2023). The court enjoined the use of LD-15 and ordered the State to redraw the district by February 7, 2024. *Id.* at 1235–36.

Nearly one month after the *Soto Palmer* decision, on September 8, 2023, a majority of the three-judge panel in this case dismissed Mr. Garcia's constitutional claim as moot. App. 6–16. The majority reasoned that, because the *Soto Palmer* decision had already invalidated LD-15 and ordered the State to craft a new legislative map, the court could "[]not provide any more relief to Plaintiff." App. 8. The majority further reasoned that Mr. Garcia "lacks a specific, live grievance" because he "does not assert that any new district drawn by the [Commission] would be a 'mere continuation[] of the old, gerrymandered district[],'" *id.* (quoting *North Carolina* v. *Covington*, 585 U.S. 969, 976 (2018)), and also invoked constitutional avoidance principles that it reasoned "counsel against resolving Plaintiff's Equal Protection Clause claim." App. 8–9 ("[T]he court's decision in *Soto Palmer* makes any decision in the instant case superfluous.").

Judge VanDyke dissented. App. 17–54 (VanDyke, J., dissenting). He explained that "[n]ot only is the case not moot, but the panel should have acknowledged the map was enacted in violation of the Equal Protection Clause, found in favor of Garcia, and

directed the State of Washington to redraw the maps in a way that does not violate the Constitution." App. 26–27.

On mootness, Judge VanDyke identified a critical asymmetry between the two cases: "the correct decision in *Garcia* would moot *Soto Palmer*, but a decision in *Soto Palmer*, regardless of the result, does not moot *Garcia*." App. 30. This was because Mr. Garcia and the *Soto Palmer* plaintiffs were on opposite sides of the fundamental legal question—although both challenged LD-15, Mr. Garcia sought relief from racial sorting, while the *Soto Palmer* plaintiffs complained that LD-15 "did not *consider race enough*." App. 31 (emphasis in original). As such, an order in the *Soto Palmer* plaintiffs' favor could not, by definition, eliminate Mr. Garcia's racial gerrymandering injury. App. 31–34. To the contrary, the *Soto Palmer* remedy "ensures that [Mr. Garcia] will not receive what he argues is a constitutionally valid legislative map," such that his "claimed injury is not merely capable of repetition; it is almost certain to repeat itself." App. 36.

On the merits, Judge VanDyke concluded that the record established that "[r]ace clearly predominated the considerations of the 2021 Redistricting Commission when it drew LD-15." App. 45. Per their own testimony, "[a]ll the Commissioners, for varying reasons, elevated the racial composition of LD-15 to be a nonnegotiable criterion around which other factors and passage of the map itself must fall." *Id.* And this predominating consideration of race fails strict scrutiny, as "a majority of the voting Commissioners did not 'judg[e]' the gerrymander 'necessary' under the VRA" when it approved the

Enacted Map. App. 50 (alteration in original) (quoting *Wis. Legis.* v. *Wis. Elections Comm'n*, 595 U.S. 398 (2022)). This failure, Judge VanDyke concluded, rendered the Enacted Map void *ab initio*, which in turn rendered the *Soto Palmer* decision an impermissible advisory opinion that "never should have been issued." App. 18.

D. The Subsequent Proceedings Below

Mr. Garcia filed a notice of appeal directly to this Court pursuant to 28 U.S.C. § 1253. On February 20, 2024, this Court vacated the judgment and remanded with instructions that the three-judge panel enter a "fresh judgment" suitable for appeal to the Ninth Circuit. *Garcia* v. *Hobbs*, 144 S. Ct. 994 (2024).

On March 25, 2024, the three-judge panel reissued its mootness dismissal. App. 4–5. Mr. Garcia timely appealed to the Ninth Circuit. On August 27, 2025, after full briefing and oral argument, the Ninth Circuit issued a three-page unpublished memorandum opinion affirming the mootness dismissal. App. 1–3.

Throughout this process, the parallel *Soto Palmer* case continued. Although the district court had ordered the State to adopt a new map by February 7, 2024, Washington's Democratic governor and the Democratic majorities in both legislative chambers ultimately declined to reconvene the Commission (the sole method for changing or establishing legislative districts under state law, *see* Wash Const. art. II, § 43(11)), or even convene a special session of the state legislature to debate whether to reconvene the Commission. *See* Order Regarding Remedy, *Soto*

Palmer, No. 3:22-cv-05035, 2024 U.S. Dist. LEXIS 50419, at *4 (W.D. Wash. Mar. 15, 2024). The district court thus initiated its own process for crafting a remedial map, and adopted one on March 15, 2024 (the "Remedial Map"). *See id.* at *16.

According to the *Soto Palmer* court, the "fundamental goal of the remedial process" was to "unite the Latino community of interest in the Yakima Valley region." *Id.* at *10 n.7, *15. It accomplished this by "start[ing] with" the Enacted Map, and then redrawing LD-15 (renamed as LD-14) to bring in the "Latino community of interest that stretches from East Yakima, through the smaller Latino population centers along the Yakima River, to Pasco." *Id.* at *7. In the words of the primary line-drawer, this specifically involved "unif[ying] the population centers from East Yakima to Pasco that form a community of interest, including cities in the Lower Yakima Valley like Wapato, Toppenish, Granger, Sunnyside, Mabton, and Grandview." Expert Report Submitted on Behalf of Plaintiffs at ¶ 7, *Soto Palmer*, No. 3:22-cv-05035 (Dec. 1, 2023), DE 245-1.

The result was a map that, according to the *Soto Palmer* Intervenors' expert, resembled "an octopus slithering on the ocean floor." Expert Report of Sean P. Trende, Ph.D. at 41, *Soto Palmer*, No. 3:22-cv-05035 (Dec. 22, 2023), DE 251. And for Mr. Garcia—a Hispanic resident of Grandview—the result was a map that, once again, sorted him on the basis of race. The *Soto Palmer* court purported to cure Hispanic vote dilution by further diluting the Hispanic vote—the court actually *decreased* the Hispanic CVAP in the challenged region.

The *Soto Palmer* Intervenor-Defendants appealed the district court's merits decision and remedial order, and the Ninth Circuit affirmed both on the same day it affirmed the three-judge panel's dismissal of Mr. Garcia's claim. *See Palmer* v. *Hobbs*, 150 F.4th 1131 (9th Cir. 2025).

Mr. Garcia thus remains subject to ongoing racial classification. He was first sorted *into* LD-15 by the Commission on the basis of his Hispanic ethnicity, and then sorted *out of* LD-15 and into LD-14 by the *Soto Palmer* district court for the same reason. Far from remedying his constitutional injury, the *Soto Palmer* proceedings intensified it. Yet, because of the mootness holdings below, Mr. Garcia has never received a ruling on the merits of his Equal Protection claim. He now respectfully petitions this Court to grant certiorari and correct the egregious errors below.

REASONS FOR GRANTING THE PETITION

As it currently stands, Mr. Garcia has been racially gerrymandered twice—first into LD-15, and then into LD-14—yet no court has ruled on whether his constitutional rights were violated. The lower courts dismissed his claim as "moot," reasoning that a VRA remedy requiring *more* racial sorting somehow provided "complete relief" to a plaintiff *challenging* racial sorting. That conclusion defies logic and this Court's precedents.

Certiorari is warranted for two reasons. First, the decision below directly conflicts with this Court's mootness jurisprudence, including *North Carolina* v. *Covington* and *Moore* v. *Harper*. The Ninth Circuit either misapplied or ignored both cases, despite Mr. Garcia's extensive explanation of their applicability in the proceedings below.

Second, the question presented is important and recurring. The tension between Section 2 of the VRA and the Equal Protection Clause has generated parallel litigation across the country, and the decision below creates an alarming roadmap for evading constitutional review through strategic docket manipulation. This Court's intervention is necessary to restore clarity to an increasingly turbulent area of law.

I. THE DECISION BELOW DIRECTLY CONFLICTS WITH THIS COURT'S MOOTNESS PRECEDENTS

Mr. Garcia's claim is not moot for two independent reasons. First, a racial gerrymandering plaintiff's claim does not become moot when a remedial map

continues—and indeed intensifies—the racial sorting he challenges. Under *North Carolina* v. *Covington*, 585 U.S. 969 (2018), "it is the segregation of the plaintiffs—not the legislature's line-drawing as such—that gives rise to their claims." *Id.* at 976. Here, the *Soto Palmer* remedy did not eliminate Mr. Garcia's segregation. Rather, it exacerbated and entrenched it. The Ninth Circuit's contrary holding fundamentally misunderstands this Court's racial gerrymandering jurisprudence.

Second, a case cannot be moot until the entire appellate process has concluded. Under *Moore* v. *Harper*, 600 U.S. 1 (2023), a challenge to an invalidated map is not moot so long as reversal could cause the map to snap back into effect. *Id.* at 15. The State even admitted below that reversal of *Soto Palmer* would "resuscitate" Mr. Garcia's claim—and yet the Ninth Circuit did not even mention *Moore*, let alone explain why its straightforward rule would not apply in this case.

Either error independently warrants this Court's review.

A. A Remedy That Intensifies a Constitutional Injury Does Not Moot the Claim

Mr. Garcia's racial classification injury under the Equal Protection Clause remains live because the Enacted Map's racial gerrymander persists through the Remedial Map. In fact, the *Soto Palmer* court did not even purport to try to eliminate the use of race in the Enacted Map when it crafted the Remedial Map. Instead, it piled *more* consideration of race atop the

Enacted Map, such that Mr. Garcia still faces the same constitutional injury at the core of his suit. This means Mr. Garcia's claim cannot be moot under the precedents of this Court.

As this Court has repeatedly held, "[a] case becomes moot only when it is impossible for a court to grant any effectual relief whatever to the prevailing party." *Knox* v. *Serv. Emps. Int'l Union, Loc. 1000*, 567 U.S. 298, 307 (2012) (quoting *Erie* v. *Pap's A.M.*, 529 U.S. 277, 287 (2000)) (internal quotation marks omitted). The relevant inquiry in determining mootness is not whether a court can afford "fully satisfactory" relief, or simply "return the parties to the *status quo ante*," *Church of Scientology of Cal.* v. *United States*, 506 U.S. 9, 12 (1992)—rather, it is whether "a court can fashion *some* form of meaningful relief" under the circumstances. *Id.*; *see also id.* at 13 n.6 ("[W]e are concerned only with the question whether *any* relief can be ordered.").

This "impossibility" inquiry for mootness exists because the Court is particularly wary of attempts to avoid judicial review by taking advantage of the Article III case-or-controversy provision. These attempts often take the form of "voluntary compliance"—*i.e.*, when a defendant seeks to "automatically moot a case simply by ending its unlawful conduct once sued," *Already, LLC* v. *Nike, Inc.*, 568 U.S. 85, 91 (2013) (citing *City of Mesquite* v. *Aladdin's Castle, Inc.*, 455 U.S. 283, 289 (1982))—but can also occur when a plaintiff "attempt[s] to manipulate the Court's jurisdiction to insulate a favorable decision from review." *Erie* v. *Pap's A.M.*, 529 U.S. 277, 288–89 (2000) (citations omitted). In any event, an Article III court's interest in avoiding

artificial mootness is clear, regardless of who is responsible for the putative mooting. As such, "as long as the parties have a concrete interest, however small, in the outcome of the litigation, the case is not moot." *Knox*, 567 U.S. at 307–08 (quoting *Ellis* v. *Railway Clerks*, 466 U.S. 435, 442 (1984)).

A result of this doctrine is that where—as here—a plaintiff asserts a racial gerrymandering claim under the Fourteenth Amendment's Equal Protection Clause, the case *cannot* be moot as long as the racial segregation that gives rise to the claim continues. *Covington*, 585 U.S. at 975–76. As this Court held in *Covington*, this is true even where the original district at issue is replaced by a court-ordered remedial district, insofar as the plaintiff asserts "that they remained segregated on the basis of race" in the new district. *Id.* at 976. This is because "it is the segregation of the plaintiffs—not the legislature's line-drawing as such—that gives rise to their claims." *Id.* In other words, "the racial classification itself is the relevant harm." *Alexander* v. *S.C. State Conf. of the NAACP*, 602 U.S. 1, 38 (2024).

Here, Mr. Garcia faces an even more robust situation than the plaintiffs in *Covington* did. In *Covington*, the plaintiffs' claims were not moot because they argued that the remedial districts were "mere continuations of the old, gerrymandered districts." 585 U.S. at 976. By contrast, the Remedial Map here is not merely a continuation of the Enacted Map's racial gerrymander—it is an *intensification*. Indeed, the *Soto Palmer* court took the Enacted LD-15 as its baseline and then layered additional race-based sorting on top of it, with the express "fundamental goal" of "unit[ing] the Latino

community of interest in the region." *Soto Palmer*, 2024 U.S. Dist. LEXIS 50419, at *10. All of the original race-based sorting of the Enacted Map thus persists in the Remedial Map—the *Soto Palmer* court made no attempt to expunge it, as that was explicitly not its purpose—and the court added yet more race-based sorting of its own devising. As a result, Mr. Garcia was first sorted *into* LD-15 on the basis of his Hispanic ethnicity, and then sorted *out of* LD-15 into the new LD-14 for the same exact reason. This is *a fortiori Covington*.

The Ninth Circuit, however, disregarded the Remedial Map's explicit racial-gerrymander intensification and held that Mr. Garcia's claim was moot because "LD 14 has replaced LD 15." App. 2. The court acknowledged that *Covington* would foreclose a mootness holding if LD-14 was indeed a "continuation of LD 15," but held that this was not the case because—even though Mr. Garcia argued that he faced an ongoing injury of racial segregation—he could not "specifically argue[]" this "continuation" point. *Id.*

This reasoning fundamentally misunderstands *Covington* and this Court's treatment of racial gerrymandering injuries. The question is not whether the specific boundaries of LD-15 have been replaced, nor is it whether Mr. Garcia "specifically argued" that the new district is a literal "continuation[]" of the old one. *Compare id.* (finding mootness on those grounds), *with Covington*, 585 U.S. at 976 ("[T]he plaintiffs' claims that they were organized into legislative districts on the basis of their race did not become moot simply because the General Assembly drew new district lines around them."). Rather, the question is

whether "the segregation of the plaintiff[] . . . that gives rise to [his] claim[]" persists, *Covington*, 585 U.S. at 976, and if it does, whether it is now "impossible for a court to grant any effectual relief whatever." *Knox*, 567 U.S. at 307 (internal quotation omitted). And the answer is plainly no: a court could (and should) order the State to redraw Mr. Garcia's district without unconstitutional racial sorting, thereby remedying his constitutional injury in a manner that has yet to occur. *Cf.* App. 33 (VanDyke, J., dissenting) ("The majority's position is thus that an order directing the State to consider race *more* has 'granted . . . complete relief' to a plaintiff who complains the State shouldn't have considered race *at all*. This kind of logic should make us wonder if this case is really moot." (emphasis in original)).

The Ninth Circuit further reasoned that, even if Mr. Garcia's segregation-based injury continues, his claim was moot because "LD 14 was crafted by an entirely different party—the district court—from the Commission, the party that drew LD 15." App. 3. According to the court, this change in map-drawer meant that the "character of the system" had been "alter[ed] significantly," *id.* (quoting *Fusari* v. *Steinberg*, 419 U.S. 379, 386–87 (1975)), such that "it is no longer permissible to say that the [Commission's] challenged conduct continues." *Id.* (internal quotation omitted).

There are at least two significant errors embedded within this reasoning. First, the Ninth Circuit's reliance on *Fusari* is entirely misplaced. There, this Court remanded for further consideration because the challenged state procedures had been "significantly revised" in an explicit effort to remedy the

constitutional problems the lower court identified—something that simply did not happen here. *Fusari* v. *Steinberg*, 419 U.S. 379, 380–85 (1975). If anything, *Fusari* thus stands for the opposite of what the Ninth Circuit said: The "character of the system" is defined by the injury, not the identity of the actor inflicting it.

Second, the Ninth Circuit completely misconstrued this Court's test for when it is "permissible to say that the [] challenged conduct continues." App. 3 (quoting *Chem. Producers & Distribs. Ass'n* v. *Helliker*, 463 F.3d 871, 875 (9th Cir. 2006)). Indeed, as this Court stated in *Northeastern Florida Chapter of Associated General Contractors* v. *Jacksonville*, 508 U.S. 656, 662 n.3 (1993)—the original source of the Ninth Circuit's *Helliker* quote—"the question [is] whether the new [law] is sufficiently similar to the repealed [law] that it is permissible to say that the challenged conduct continues." The question does not, as the Ninth Circuit suggests, turn on the label attached to the change, or who is responsible for it.

Regardless, even if the Ninth Circuit's preoccupation with the map-drawer's identity was warranted, several factors underscore the error of its ultimate conclusion. First, the same Defendants—the Secretary of State and the State of Washington—continue to enforce and implement the Remedial Map's racial gerrymander. Second, as the *Soto Palmer* district court explained, "[i]t is only because the State declined to reconvene the Redistricting Commission—with its expertise, staff, and ability to solicit public comments—that the Court was compelled to step in" and draw the Remedial Map. 2024 U.S. Dist. LEXIS 50419, at *15–16. The State's refusal to act is the

reason for the change in the map-drawer's identity. Third, and most critically, the Remedial Map did not emerge from a clean slate; it incorporated and built upon the Enacted Map's racial considerations, using an already racially gerrymandered LD-15 to craft an even more racially gerrymandered LD-14. In these circumstances, the "character of the system" was not "altered significantly"—it was entrenched.

At bottom, the Ninth Circuit's decision creates an untenable rule: a constitutional claim can be rendered moot by a statutory remedy that makes the underlying constitutional injury even worse. That is simply not how this Court's mootness doctrine works. Certiorari is therefore warranted to correct the Ninth Circuit's egregious errors in this regard.

B. A Claim Cannot Be Moot When the Path to Complete Relief Runs Through an Incomplete Appellate Process

The Ninth Circuit's error is compounded by its complete failure to address *Moore* v. *Harper*, 600 U.S. 1 (2023), which provides an independent basis for rejecting mootness. Mr. Garcia squarely presented this argument below, yet the Ninth Circuit's three-page memorandum does not mention *Moore* at all—even though the case establishes a straightforward rule that applies directly here.

In *Moore*, this Court held that a challenge to a redistricting map invalidated by a lower court is not moot so long as appellate reversal could cause the challenged map to "again take effect." 600 U.S. at 15. There, the North Carolina Supreme Court had struck down the State's 2021 congressional maps as an

unconstitutional gerrymander, enjoining its use and remanding to the lower court to oversee the redrawing of remedial maps. *See Harper* v. *Hall*, 868 S.E.2d 499 (N.C. 2022). Although the court "overruled" its decision on rehearing, it did not "negate the force of its order striking down the 2021 plans." *Moore*, 600 U.S. at 13 (citation omitted). "As a result, the legislative defendants' path to complete relief [ran] through this Court," which had the power to reverse the North Carolina Supreme Court's judgment and, in turn, trigger a North Carolina statutory provision that would make the 2021 maps "again become 'effective.'" *Id.* at 15–16 (quoting 2022 N.C. Sess. Laws p. 10, § 2).

Such a snapback potential, the Court reasoned, is "sufficient to avoid mootness under Article III." *Id.* at 16 (citing *Hunt* v. *Cromartie*, 526 U.S. 541, 546 n.1 (1999)). This is due to the straightforward principle that, as long as a final appellate decision could reinstate a challenged electoral map that a lower court previously invalidated, "[t]he parties [] continue to have a 'personal stake in the ultimate disposition of the lawsuit'" throughout the appellate process. *Id.* at 15–16 (quoting *Chafin* v. *Chafin*, 568 U.S. 165, 172 (2013)).

In this sense, *Moore* did not announce a new rule. It applied the same principle this Court recognized in *Hunt* v. *Cromartie*, 526 U.S. 541, 546 n.1 (1999), where it held the case was not moot because "the State will revert to the 1997 districting plan upon a favorable decision of this Court," and which other circuits have faithfully applied. *See Thomas* v. *Bryant*, 938 F.3d 134, 144 (5th Cir. 2019) (holding that an appeal was not moot because, "if [the State] prevails

on appeal, it could then revert to using its original map," remedial map notwithstanding), *on reh'g en banc sub nom. Thomas* v. *Reeves*, 961 F.3d 800, 801 (5th Cir. 2020) (holding that the case became moot once it was "undisputed" that the "district lines will neither be used nor operate as a base for any future election").[1]

The same analysis applies here. If this Court grants certiorari in *Trevino* v. *Hobbs*—the Intervenors' appeal of the *Soto Palmer* judgment—and reverses, the injunction against the Enacted Map

---

[1] Other circuits faithfully apply this principle in a variety of contexts as well. *See, e.g.*, *Moore* v. *Louisiana Bd. of Elementary & Secondary Educ.*, 743 F.3d 959, 963 (5th Cir. 2014) (waiting until the Louisiana Supreme Court had affirmed the trial court's decision declaring the federally challenged law unconstitutional to find the case moot); *Gagliardi* v. *TJCV Land Trust*, 889 F.3d 728, 732–33 (11th Cir. 2018) (finding moot a constitutional challenge based on a Florida circuit court's invalidation of a project only because "Florida's Fourth District Court of Appeal denied a writ of certiorari, *and there the case ended*, inasmuch as the parties did not seek certiorari review in the Florida Supreme Court" (citation omitted) (emphasis added)); *Enrico's, Inc.* v. *Rice*, 730 F.2d 1250, 1254 (9th Cir. 1984) (finding moot a federal challenge to California rule only once the petition for certiorari was denied in state court case holding the rule invalid); *International Bhd. of Teamsters, Local Union No. 639* v. *Airgas, Inc.*, 885 F.3d 230, 235–36 (4th Cir. 2018) (finding a case mooted by a "*final and binding arbitration award*" because the finality of the arbitrator's decision made any relief in the federal case "impossible"); *Medici* v. *City of Chi.*, 856 F.3d 530, 533 (7th Cir. 2017) (finding a case mooted by arbitration award because the losing party "elected not to appeal the arbitration award," thereby rendering it final); *Oklahoma* v. *Hobia*, 775 F.3d 1204, 1210–11 (10th Cir. 2014) (declining to find case mooted by agency action because the action was not "final agency action," such that the alleged harm would be impossible).

will be vacated, and LD-15 will snap back into effect. Mr. Garcia's "path to complete relief" in challenging LD-15 thus "runs through" the federal appellate process, and his "personal stake" in that challenge continues until its "ultimate disposition" before this Court. *Moore*, 600 U.S. at 15. Put differently, the *Soto Palmer* district court decision was not a walk-off home run that dramatically ended the season; the ball is still in the air, and Mr. Garcia can still win depending on where it lands.

The State effectively conceded as much in the proceedings below. In its briefing, it agreed with Mr. Garcia that, if an appellate court "were to reverse the liability ruling in *Soto Palmer*, so that the originally enacted LD 15 came back into effect, then Garcia's claim would present a live controversy." Appellee State of Washington's Answering Brief at 21, *Garcia*, No. 24-2603 (Oct. 16, 2024), DE 23.1; *see also id.* at 34 (noting that the "decision in *Soto Palmer* could resuscitate [Mr. Garcia's] claim"). The only point of disagreement on this issue between Mr. Garcia and the State is thus what this dynamic means for the case's current status. For Mr. Garcia, the fact that his "path to complete relief" vis-à-vis LD-15 has yet to run its course through a conclusive ruling means his claim is not moot. *Moore*, 600 U.S. at 15; *see also Knox*, 567 U.S. at 307. For the State, on the other hand, this just means that Mr. Garcia's claim is moot *now*, but could eventually become *un*-moot, depending on how this Court rules.

Mr. Garcia is correct. Mootness is binary; a case is either moot or not moot. If appellate reversal could revive a claim, it was never "impossible" to grant

effective relief in the first place—and the case was therefore never moot. *Knox*, 567 U.S. at 307.

The Ninth Circuit, however, failed to address *any* of these arguments in its decision. Despite the parties' extensive discussion of *Moore*'s applicability, the court offered no explanation for why *Moore*'s snapback doctrine should not apply, made no attempt to distinguish the case, and provided no acknowledgment that the State essentially conceded the dispositive "impossibility" point. This silence cannot be reconciled with *Moore*'s clear holding, just as what the Ninth Circuit did say cannot be reconciled with this Court's other mootness cases. *See supra* Section I.A.

This Court's review is warranted to correct the Ninth Circuit's disregard of directly applicable precedent. When a court of appeals ignores a controlling Supreme Court decision squarely raised by a party—particularly one where the opposing party has conceded the critical factual predicate—certiorari is appropriate to ensure the uniform application of this Court's jurisprudence.

II. THIS CASE IS AN IDEAL VEHICLE FOR RESOLVING IMPORTANT AND RECURRING ISSUES

A. The Decision Below Invites Strategic Manipulation of Constitutional Litigation

The procedural history of the decision below creates a roadmap for litigants and courts to circumvent the three-judge court procedure Congress mandated for constitutional redistricting challenges.

In effect, the Ninth Circuit signed off on the single-judge *Soto Palmer* court's attempt to divest the three-judge panel of its Article III jurisdiction through strategic docket manipulation. This failure warrants this Court's review, as it has profound consequences for both Mr. Garcia and all other similarly situated plaintiffs.

As Judge VanDyke noted in his district court dissent, the panel majority's decision amounted to "forcefully pulling the plug on a case" that was "presented in the first instance to a district court with a non-discretionary obligation to adjudicate it." App. 53, 36 (VanDyke, J., dissenting). This was accomplished not through well-reasoned constitutional principles, but through strategic docket management. Indeed, the *Soto Palmer* court undertook "a nine-factor indeterminate balancing test" to resolve the statutory VRA claim in just twenty-nine days, and then leveraged that resolution to "kill[] Garcia's entire case . . . before any court had the opportunity to review its merits." App. 38, 28.

As Judge VanDyke further observed, this order of operations was hardly accidental. It did not make sense, "as a matter of prudence," to first "undertake a complicated test that involves indeterminate balancing when a simpler threshold basis exists for resolving the matter." App. 28. After all, the two cases did not share a "symmetrical relationship," where "a decision in one would necessarily moot the other case, and vice versa." App. 30. Instead, the relationship was one-sided: a ruling for Mr. Garcia on his Equal Protection claim would have definitively mooted the *Soto Palmer* VRA claim—if the Enacted Map was unconstitutional from the moment of enactment,

there was no valid map for the *Soto Palmer* plaintiffs to challenge. *See Collins* v. *Yellen*, 594 U.S. 220, 225 (2021) ("[A]n unconstitutional provision is never really part of the body of governing law.") But the reverse was never true: the *Soto Palmer* plaintiffs asked for—and eventually received—"*even more* racial gerrymandering," which by definition could not eliminate Mr. Garcia's injury. App. 34 (VanDyke, J., dissenting) (emphasis in original). It thus stands to reason that this procedural posture was deliberately designed to guarantee Mr. Garcia's constitutional claim would never be heard.

This is a significant problem. *See Page* v. *Bartels*, 248 F.3d 175, 191 (3d Cir. 2001) (warning of the "danger that the single district judge's conclusions with regard to the statutory claims—particularly his or her factual findings—might well have the effect of dictating the outcome of the constitutional claims, thereby thwarting the expressed congressional policy of requiring a specialized three-judge court for the disposition of such singularly important matters"). If left unresolved, it risks repetition in other jurisdictions across the country, where redistricting maps are increasingly subject to parallel challenges under Section 2 of the VRA and the Equal Protection Clause.[2] As with the *Soto Palmer* plaintiffs and Mr. Garcia, these claims often push in opposite directions: VRA plaintiffs typically seek *more* race-conscious redistricting to remedy vote dilution, while Equal

---

[2] *See generally Redistricting Litigation Roundup*, Brennan Center for Justice, https://www.brennancenter.org/our-work/research-reports/redistricting-litigation-roundup-0 (last updated Dec. 17, 2025) (collecting cases).

Protection plaintiffs challenge *excessive* racial sorting. *See* Travis Crum, *The Riddle of Race-Based Redistricting*, 124 Colum. L. Rev. 1823, 1825 (2024) (discussing the "Goldilocks problem" of racial considerations in drawing redistricting plans); *Abbott* v. *Perez*, 585 U.S. 579, 587 (2018) ("Since the Equal Protection Clause restricts consideration of race and the VRA demands consideration of race, a legislature attempting to produce a lawful districting plan is vulnerable to 'competing hazards of liability.'" (citation omitted)).

While this has been true for some time, the 2020 redistricting cycle has produced an unprecedented wave of such parallel litigation. In Louisiana, a Section 2 challenge led to a remedial map that was then challenged as an unconstitutional racial gerrymander, and which is now pending before this Court. *See Louisiana* v. *Callais*, Nos. 24-109 & 24-110. In Michigan, voters brought both VRA and Equal Protection Clause claims in the same lawsuit, and the three-judge panel resolved the constitutional claim first—holding the maps were racial gerrymanders—without reaching the VRA claims. *See Agee* v. *Benson*, 2023 U.S. Dist. LEXIS 227283, at *169 (W.D. Mich. Dec. 21, 2023). And in Alabama, multiple consolidated cases have raised both types of challenges to the same congressional maps. *See generally Singleton* v. *Allen*, 690 F. Supp. 3d 1226 (N.D. Ala. 2023).

The decision below creates perverse incentives for the future litigation that will inevitably continue to come before the courts. If a VRA plaintiff can moot a pending constitutional challenge that seeks a different form of relief simply by winning as quickly as possible, litigants have every reason to do whatever

they can to secure favorable sequencing. Likewise, courts would have every reason to manipulate their dockets to reach preferred outcomes without confronting constitutional questions. This dynamic is not sustainable, but it will continue to proliferate without this Court's intervention.

B. This Case Is an Ideal Vehicle

Mr. Garcia's case is an ideal vehicle for resolving the complex procedural and legal issues it raises. The trial record is complete, with extensive testimony from the Commissioners who drew LD-15 about their purposes and motivations, and the remedial process in *Soto Palmer* has yielded its own robust record regarding the adequacy of the LD-14 remedy. All arguments were preserved below.

Additionally, the three-judge panel already indicated how it would rule on the merits. App. 10–11 ("This testimony weighs heavily against finding that race predominated in the drawing of LD 15 and against finding an Equal Protection violation."). And Judge VanDyke's detailed dissent provides a roadmap for reversal. App. 38 (VanDyke, J., dissenting) ("My criticism that the *Soto Palmer* decision is an advisory opinion depends, of course, on my conclusion that the State of Washington violated the Equal Protection Clause. I thus turn now to that question. It is not a hard one on this record.").

Accordingly, this case—as well as the significant issues it raises—can be resolved by answering a straightforward question. Indeed, both the panel majority and the Ninth Circuit adopted the position "that an order directing the State to consider race

more has 'granted . . . complete relief' to a plaintiff who complains the State shouldn't have considered race *at all*." App. 33. As Judge VanDyke aptly observed, "[t]his kind of logic should make us wonder if this case is really moot." *Id.* This Court should grant certiorari to answer that question.

CONCLUSION

For the above reasons, this Court should grant the petition for a writ of certiorari.

Respectfully submitted,

Jason B. Torchinsky
Counsel of Record
Jared S. Bauman
HOLTZMAN VOGEL BARAN TORCHINSKY & JOSEFIAK PLLC
2300 N Street N.W.
Suite 643
Washington, DC 20037
(202) 737-8808
jtorchinsky@holtzmanvogel.com
jbauman@holtzmanvogel.com

Dallin B. Holt
HOLTZMAN VOGEL BARAN TORCHINSKY & JOSEFIAK PLLC
250 East 200 South
Suite 1609
Salt Lake City, UT 84111
(385) 313-9893
dholt@holtzmanvogel.com

Andrew R. Stokesbary
CHALMERS, ADAMS, BACKER & KAUFMAN LLC
701 Fifth Avenue
Suite 4200
Seattle, WA 98104
(206) 813-9322
dstokesbary@chalmersadams.com

Counsel for Petitioner