No. 25-901

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, *et al.*,
Respondents.

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

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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

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

Jared S. Bauman
HOLTZMAN VOGEL BARAN TORCHINSKY & JOSEFIAK PLLC
1221 Broadway
Suite 2100
Nashville, TN 37203
(615) 647-8528

Counsel for Petitioner

QUESTION PRESENTED

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.

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INTRODUCTION

Petitioner Benancio Garcia III ("Petitioner" or "Mr. Garcia") challenged Washington State's Legislative District 15 ("LD-15") as an "unjustified and unconstitutional racial gerrymander" that sorted him on the basis of his Hispanic ethnicity. Pet. 9. After trial, Mr. Garcia asked the three-judge panel that heard his case to order a new map that would remedy his constitutional injury and "not sort Washington voters on the basis of their race or ethnicity." *Id.*

Mr. Garcia never received that relief. Instead, a majority of the three-judge panel dismissed his claim as moot after one of the judges on the panel enjoined the use of LD-15 in *Soto Palmer v. Hobbs*, a separate challenge to the district by entirely different plaintiffs under Section 2 of the Voting Rights Act that was heard alongside Mr. Garcia's claim at a consolidated trial. 686 F. Supp. 3d 1213 (W.D. Wash. 2023); *see also* Pet. 10. After this Court vacated and the three-judge panel amended its judgment, the U.S. Court of Appeals for the Ninth Circuit affirmed dismissal on mootness. *See* Pet. 12.

But Mr. Garcia's claim is not moot. As detailed in his petition for certiorari, the *Soto Palmer* remedy did not cure the racial sorting Mr. Garcia challenges. Rather, it exacerbated his constitutional injury by establishing a new legislative district—LD-14—that was explicitly crafted to "unite the Latino community of interest" in the region. Pet. 18–19 (quoting *Soto Palmer v. Hobbs*, No. 3:22-cv-05035, 2024 U.S. Dist. LEXIS 50419, at *10 (W.D. Wash. Mar. 15, 2024)). And because a court can still order a map that does not sort him by race or ethnicity—and because the

entire appellate process for *Soto Palmer v. Hobbs* has yet to conclude—his claim remains very much alive.

Respondent the State of Washington ("Respondent") disagrees. Opp'n Br. 1. Although it now concedes that this Court "should grant, vacate, and remand the court of appeals' opinion"—both in this case and in its response to the petition for certiorari filed by the *Soto Palmer* Intervenors—in light of this Court's recent decision in *Louisiana v. Callais*, 146 S. Ct. 1131 (2026), it maintains that Mr. Garcia's petition "fails the Court's ordinary standards for certiorari."[1] Opp'n Br. 1–2; *see also* Br. of Resp't State of Washington, *Trevino v. Hobbs*, No. 25-918 (U.S. June 2, 2026).

This position is incorrect. The lower court's egregious departures from this Court's Article III mootness precedents warrant review, and Respondent's attempted justifications do not move the needle. This Court should grant certiorari.

ARGUMENT

I. THE MOOTNESS RULING BELOW CANNOT BE RECONCILED WITH *COVINGTON* OR *MOORE*.

The sole issue here is whether a racial gerrymandering claim is rendered moot when the challenged legislative district is replaced, in a separate proceeding, by a judicial remedy that (1) intensifies the plaintiff's racial classification injury, and (2) is subject to ongoing appellate review. The lower courts answered yes, and certiorari is

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[1] Respondent Steven Hobbs, in his official capacity as Secretary of State of Washington, "takes no position on the merits of the petition." Opp'n Br. 2.

warranted because that conclusion cannot be reconciled with this Court's decisions in *North Carolina v. Covington*, 585 U.S. 969 (2018), and *Moore v. Harper*, 600 U.S. 1 (2023).

A. Mr. Garcia's Claim Is Not Moot Under *Covington* Because His Racial-Classification Injury Persists.

As this Court noted in *Covington*, the injury in a racial gerrymandering case "is the segregation of the plaintiffs—not the legislature's line-drawing as such." *Covington*, 585 U.S. at 976; *see also Alexander v. S.C. State Conf. of the NAACP*, 602 U.S. 1, 38 (2024) ("The racial classification itself is the relevant harm."). As such, so long as that constitutional injury persists, the plaintiff's claim will not become moot even if "new district lines" are drawn around them. *Covington*, 585 U.S. at 976. This is because the plaintiff retains a "concrete interest" in seeing their constitutional injury remedied, which a court can still provide by ordering a remedy that actually ends the relevant unconstitutional sorting. *Knox v. Serv. Emps. Int'l Union, Loc. 1000*, 567 U.S. 298, 307–08 (2012) (internal quotations omitted).

That is exactly the case here. When crafting LD-14 during the remedial stage, the *Soto Palmer* court layered additional race-based sorting on top of the already racially-gerrymandered LD-15, with the explicit goal of "unit[ing] the Latino community of interest" in the Yakima Valley region. Pet. 18–19 (quoting *Soto Palmer*, 2024 U.S. Dist. LEXIS 50419, at *10). This involved bringing in the "Latino community of interest that stretches from East Yakima, through the smaller Latino population centers along the Yakima River, to Pasco," and

resulted in an LD-14 that "resembled an octopus slithering on the ocean floor." Pet. 13 (quotations omitted). Mr. Garcia is thus still sorted on the basis of his ethnicity, which means his constitutional injury persists even though the exact lines around him have changed. *See Covington*, 585 U.S. at 976; *Alexander*, 602 U.S. at 38.

Respondent's attempt to distinguish *Covington* as "a starkly different scenario" is to no avail. Opp'n Br. 17. According to Respondent, the fact that LD-14 was "selected by a different decisionmaker"—i.e., the *Soto Palmer* court, as opposed to the Commission that drew LD-15—makes it a "fundamentally different district." *Id.* This assertion, however, simply repeats the Ninth Circuit's reasoning, without even engaging with Mr. Garcia's arguments about the authorities upon which it relied. *Compare id. with* Pet. 20–22 (discussing the Ninth Circuit's misplaced reliance on *Fusari v. Steinberg*, 419 U.S. 379, 386–87 (1975), and *Chem. Producers & Distribs. Ass'n v. Helliker*, 463 F.3d 871, 875 (9th Cir. 2006)). Indeed, Respondent does not, and cannot, refute the assertion that it is the injury—not the identity of the actor inflicting it——which is dispositive. *See* Pet. 20–21.

Nor does Respondent attempt to answer Mr. Garcia's arguments about how, even if the identity of the decisionmaker were relevant, his injury was still caused and entrenched by the same Defendants—the Secretary of State and the State of Washington. *See* Pet. 21 (noting that these parties continue to enforce and implement the racial gerrymander, and that it was only because the State refused to act that the *Soto Palmer* court "was compelled to step in" and draw LD-14 (quoting 2024 U.S. Dist. LEXIS 50419, at *15–16)).

This omission is telling, and betrays the "kind of logic [that] should make us wonder if this case is really moot." Pet. App. 33 (VanDyke, J., dissenting). Respondent cannot simply engineer a change in decisionmaker by refusing to act and then invoke that change to defeat Mr. Garcia's claim. *Cf. Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013) (criticizing defendants who attempt to "automatically moot a case simply by ending its unlawful conduct once sued" (citing *City of Mesquite v. Aladdin's Castle, Inc.*, 455 U.S. 283, 289 (1982))).

B. Mr. Garcia's Claim Is Not Moot Under *Moore* Because Reversal in *Soto Palmer* Would Restore LD-15.

Respondent's arguments about *Moore v. Harper*, 600 U.S. 1 (2023), the holding of which provides an independent basis for rejecting mootness (and which the Ninth Circuit failed to address below), are similarly misguided. Under *Moore*, a challenge to an invalidated districting plan is not moot so long as reversal on appeal could cause the plan to "again take effect." 600 U.S. at 15. In that circumstance, the "path to complete relief runs through this Court," and the parties "continue to have a 'personal stake in the ultimate disposition of the lawsuit.'" *Id.* at 15–16 (quoting *Chafin v. Chafin*, 568 U.S. 165, 172 (2013)). Such is the case here—this Court may grant certiorari in *Trevino* and reverse, which would end the injunction against LD-15 and resuscitate the map that led to Mr. Garcia's claim in the first place. This means that, until the "ultimate disposition" of LD-15's fate before this Court, Mr. Garcia's path to relief remains ongoing. *Id.*; *see also Knox*, 567 U.S. at 307.

Respondent, however, asserts that *Moore* does not control because Mr. Garcia "already obtained the relief he originally requested: the district he challenged will not be used in future elections." Opp'n Br. 18–19. This misses the point. As a threshold matter, the relief Mr. Garcia "originally requested" was not just to get rid of LD-15; rather, it was for the three-judge panel to find that "LD-15 was an unjustified and unconstitutional racial gerrymander," and to order a new map that would "not sort Washington voters on the basis of their race or ethnicity." Pet. 9 (quoting Closing Trial Brief by All Plaintiffs, *Garcia v. Hobbs*, No. 3:22-cv-05152 (W.D. Wash. July 12, 2023), DE 79). Contrary to Respondent's assertion, Mr. Garcia never received that relief. If anything, LD-14 exacerbated his underlying constitutional injury. *See supra* Part I.A.

Moreover, even if the injunction against LD-15 technically freed Mr. Garcia from the legislative district that initially caused his injury, *Moore*'s focus is on "the path to complete relief" and the "ultimate disposition" of the claims. 600 U.S. at 15–16. Indeed, this reflects a principle that other courts have recognized when holding that a case becomes moot only once it is "undisputed" that the "district lines will neither be used nor operate as a base for any future election." *Thomas v. Reeves*, 961 F.3d 800, 801 (5th Cir. 2020) (en banc) (emphasis added); *see also* Pet. 24 n.1 (collecting analogous cases from other circuits). Respondent, however, does not address these cases, and only cites *Reeves* once—albeit without including the key qualification that there was no dispute over whether the map could snap back into effect in that case. *See* Opp'n Br. 16–17.

It stands to reason that this omission is because it is not, in fact, "undisputed" that LD-15 "will neither be used nor operate as a base for any future election." *Reeves*, 961 F.3d at 801. That Respondent now also asks this Court to grant, vacate, and remand alongside *Trevino* confirms this, as the very premise of that request is that LD-15's "ultimate disposition" is still unknown. *Moore*, 600 U.S. at 15–16. And while Respondent presents that request as an "[a]lternativ[e]" to its mootness arguments, it made the same concession in the proceedings below, where it agreed 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." Pet. 25 (quoting Appellee State of Washington's Answering Brief at 21, *Garcia*, No. 24-2603 (9th Cir. Oct. 16, 2024), DE 23.1).

As such, Respondent is unable to refute *Moore*'s applicability or the principles it reflects. Nor can it refute the logic of Mr. Garcia's consistent argument that mootness is binary—a case is either moot or not moot—despite Respondent's claims to the contrary. *See* Pet. 25–26 (quoting *Knox*, 567 U.S. at 307). Certiorari is therefore warranted to review the lower court's egregious departures from this Court's precedents.

II. Purported Constitutional Avoidance Cannot Provide a Basis to Deny Review.

Respondent further argues that the decision below should be left undisturbed because the sequence of events that led to the mootness dismissal was a faithful exercise of constitutional avoidance, as opposed to an example of docket manipulation. Opp'n

Br. 19. That argument misunderstands both the canon of constitutional avoidance and what happened below.

Properly understood, the canon of constitutional avoidance has no application to Mr. Garcia's case. Under the precedents of this Court, "this canon 'is a tool for choosing between competing plausible interpretations of a provision,'" *McFadden v. United States*, 576 U.S. 186, 197 (2015) (quoting *Warger v. Shauers*, 574 U.S. 40, 50 (2014)), as well as between "alternative" constitutional and non-constitutional grounds to resolve the case, *see Nw. Austin Mun. Util. Dist. No. One v. Holder*, 557 U.S. 193, 206 (2009); *Ashwander v. TVA*, 297 U.S. 288, 347 (1936) (Brandeis, J., concurring). It "has no application," however, "in the interpretation of an unambiguous statute," *McFadden*, 576 U.S. at 197 (internal quotation omitted), nor can it be applied when resolving the constitutional question is "necessary to a decision of a case," in that the case cannot "be decided on either of two grounds, one involving a constitutional question, the other a question of statutory construction or general law." *Ashwander*, 297 U.S. at 347 (Brandeis, J., concurring).

Accordingly, the canon has no place where—as here—a case involves neither questions of statutory interpretation nor alternative constitutional and non-constitutional claims. This makes sense, and it balances the principles of judicial restraint with the federal judiciary's Article III constitutional "responsibility and power to adjudicate 'Cases' and 'Controversies'—concrete disputes with consequences for the parties involved." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 384 (2024). Respondent, by

contrast, oversimplifies the canon, presenting it as a free-standing justification for the three-judge district court to "declin[e] to reach Garcia's constitutional claim" because, in other redistricting cases, courts have addressed statutory VRA claims without ruling on alternative constitutional claims. Opp'n Br. 20.

The other cases that Respondent cites, however, do not support its proposed application of the canon to this case. Unlike Mr. Garcia, the plaintiffs in *League of United Latin American Citizens v. Perry*, 548 U.S. 399 (2006), and *Thornburg v. Gingles*, 478 U.S. 30 (1986), brought *both* constitutional and statutory VRA challenges against the relevant voting districts. This Court could thus clearly apply the canon to those cases (although it did not do so explicitly), choosing to resolve the statutory claims without needing to "reach[] constitutional questions in advance of the necessity of deciding them." *Lyng v. Nw. Indian Cemetery Protective Ass'n*, 485 U.S. 439, 445 (1988). Mr. Garcia, by contrast, only advanced a constitutional claim, with the statutory VRA challenge to LD-15 coming instead from the plaintiffs in *Soto Palmer*, a separate case. *Cf. Nw. Austin Mun. Util. Dist. No. One*, 557 U.S. at 205–06 (applying the canon where the plaintiff "expressly describe[d] its constitutional challenge . . . as being 'in the alternative' to its statutory argument").

Further, unlike here, the relief that the plaintiffs in *League of United Latin American Citizens* and *Gingles* sought—essentially, a districting plan that increased minority representation—was effectively identical for both their statutory and constitutional claims. This is not the case for Mr. Garcia, who seeks a map that does not sort voters by race or ethnicity at

all, and the *Soto Palmer* plaintiffs, who seek *more* racial sorting. *See supra* Part I.A. Thus, even if these separate claims sufficiently presented "alternative" grounds to dispose of Mr. Garcia's lawsuit for constitutional avoidance purposes, doing so would have left his constitutional injury wholly unredressed, if not worsened. And as *Lyng* instructs, constitutional avoidance "require[s] the courts below to determine, before addressing the constitutional issue, whether a decision on that question could have entitled respondents to relief beyond that to which they were entitled on their statutory claims." 485 U.S. at 446. "*If no additional relief would have been warranted*, a constitutional decision would have been unnecessary and therefore inappropriate." *Id.* (emphasis added).

This is precisely the asymmetry that Judge VanDyke identified in his dissent below: a ruling for Mr. Garcia on his Equal Protection claim would have mooted the *Soto Palmer* VRA claim because an unconstitutional map is void from its enactment, but a ruling for the *Soto Palmer* plaintiffs could not, by definition, eliminate Mr. Garcia's constitutional injury. *See* Pet. 11, 27–28; Pet. App. 31–36 (VanDyke, J., dissenting); *Collins v. Yellen*, 594 U.S. 220, 259 (2021) ("[A]n unconstitutional provision is never really part of the body of governing law."). In this sense, the most prudential order of operations here would have been to decide *Garcia* first. But the three-judge panel instead opted to "forcefully pull[] the plug on a case" that was "presented in the first instance to a district court with a non-discretionary obligation to adjudicate it." Pet. App. 53, 36 (VanDyke, J., dissenting); *see also* 28 U.S.C. § 2284; *Page v. Bartels*, 248 F.3d 175, 191 (3d Cir. 2001) (cautioning against "thwarting the expressed congressional policy of

requiring a specialized three-judge court for the disposition of such singularly important matters").

At a minimum, this sequence raises the specter of docket manipulation that Mr. Garcia identified, and Respondent offers nothing to dispel it. And even setting semantics about "manipulation" or "avoidance" aside, the questions this issue raises are of substantial and recurring importance. *See* Pet. 28–30 (discussing these implications and collecting cases). Respondent does not address these concerns, which are worthy of this Court's review and guidance.

CONCLUSION

This Court should grant the petition for writ of certiorari.

Respectfully submitted,

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

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

Jared S. Bauman
HOLTZMAN VOGEL BARAN
TORCHINSKY & JOSEFIAK
PLLC
1221 Broadway
Suite 2100
Nashville, TN 37203
(615) 647-8528

JUNE 10, 2026

Counsel for Petitioner