

No. 25-931

In the Supreme Court of the United States

BAS, LLC,

Petitioner,

v.

TOMMY LAND, IN HIS OFFICIAL CAPACITY AS
COMMISSIONER OF STATE LANDS
FOR THE STATE OF ARKANSAS,

Respondent.

*On Petition For A Writ Of Certiorari
To The Supreme Court Of Arkansas*

PETITIONER'S SUPPLEMENTAL BRIEF

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PETITIONER'S SUPPLEMENTAL BRIEF

Petitioner BAS, LLC (“BAS”), submits this supplemental brief pursuant to S. Ct. R. 15.8 to call the Court’s attention to a new order, *BAS, LLC v. Land*, No. 3:25-cv-00224-BSM (E.D. Ark. Mar. 9, 2026), in which the United States District Court for the Eastern District of Arkansas dismissed BAS’s federal takings and due process claims on preclusion grounds. The district court treated the Arkansas Supreme Court’s sovereign immunity holding as a final judgment on the merits of BAS’s constitutional claims. This order deepens the conflict identified in the Petition and leaves BAS without any forum to vindicate its federal constitutional rights.

As detailed in the Petition, BAS brought its Fifth and Fourteenth Amendment claims in Arkansas state court after the Respondent foreclosed and auctioned BAS’s property—worth over \$1,500,000—to collect an unpaid \$9,897.88 tax bill and sold it at auction for just less than \$30,000, stripping BAS of its equity in the process. Pet. at 5–7. The Arkansas Supreme Court held that state sovereign immunity barred BAS’s federal claims because BAS had not shown an unconstitutional act sufficient to overcome the State’s immunity defense. App. 1a–24a.

With the state courthouse doors closed, BAS filed suit in the Eastern District of Arkansas to reassert its federal constitutional claims. Respondent moved to dismiss, arguing that the Rooker-Feldman doctrine and *res judicata* barred the federal claims. BAS responded that neither doctrine applied: it was not asking the federal court to reverse the state court judgment but rather relying on that judgment as the basis for federal jurisdiction. Because the Arkansas Supreme Court had

refused to hear BAS's federal constitutional claims on sovereign immunity grounds, the Eleventh Amendment should no longer provide any shield to the State in federal court. See *EEE Minerals, LLC v. State of North Dakota*, 81 F.4th 809, 816 (8th Cir. 2023) (the Eleventh Amendment bars federal claims against a State "as long as state courts remain open to entertain the action").

On March 9, 2026, the district court rejected BAS's argument and granted Respondent's motion to dismiss. *BAS, LLC v. Land*, No. 3:25-cv-00224-BSM (E.D. Ark. Mar. 9, 2026). The district court concluded that BAS's claims were barred by both claim preclusion and issue preclusion. In reaching this holding, the court held that the Arkansas Supreme Court's ruling constituted a "final judgment on the merits." *Id.* at 3–4.

It bears emphasis that this merits characterization is not just the federal court's reading, as it is the position the Respondent advanced as well. In its brief in support of the motion to dismiss, Respondent argued that "[t]he ruling in state court was a final decision on the merits" and that BAS's "only recourse . . . is to seek a writ of certiorari with the United States Supreme Court" in the state court case. Def.'s Br. in Supp. of Mot. to Dismiss at 6–7, No. 3:25-cv-00224-BSM (E.D. Ark. Dec. 11, 2025).

That characterization should concern this Court, because it means one of two things: either the Arkansas Supreme Court decided the merits of BAS's takings claim adversely to BAS or it barred those claims on sovereign immunity grounds without reaching the merits. It cannot be both, as that would leave BAS without any forum to bring its Fifth and Fourteenth Amendment claims.

The district court's reasoning on this point is revealing. It acknowledged that sovereign immunity in Arkansas "certainly has jurisdictional qualities," but relied on the fact that Arkansas courts have "historically . . . treated it like an affirmative defense." *BAS, LLC v. Land*, No. 3:25-cv-00224-BSM, slip op. at 3 (E.D. Ark. Mar. 9, 2026), (quoting *Walther v. FLIS Enters., Inc.*, 540 S.W.3d 264, 267 (Ark. 2018)). The court then reasoned that because one method for overcoming the immunity defense in Arkansas is proving a constitutional violation, the Arkansas Supreme Court's conclusion that BAS had not shown such a violation was a merits ruling. *Id.* at 3–4. But this reasoning conflates two distinct inquiries. It assumes that Respondent is immune *because* it is not liable. The Arkansas Supreme Court may well believe that BAS's claims fail on the merits. It may have said as much in dicta. But that court's actual holding was that sovereign immunity barred the suit. The court never adjudicated whether the Commissioner's retention of BAS's equity constituted a taking under *Tyler v. Hennepin County*, 598 U.S. 631 (2023). App. 12a–15a.

If the federal court's reading is correct, and the state court really did decide the merits of BAS's takings claim, then that merits determination is in direct conflict with this Court's holding in *Tyler*. This Court held that a government's retention of surplus equity from a tax sale is a taking requiring just compensation. 598 U.S. at 642. BAS alleges exactly that: the Commissioner took property worth over \$1,500,000 to satisfy a debt of less than \$10,000 and kept the difference. If the Arkansas Supreme Court concluded on the merits that these facts do not amount to a constitutional violation, that conclusion cannot be squared with *Tyler*. The case

would be worthy of this Court's review on error-correction grounds alone.

On the other hand, if the Arkansas Supreme Court did not decide the merits, then the federal court's preclusion ruling is wrong, and BAS's federal claims should proceed. But that scenario only returns us to the question presented in the Petition: does sovereign immunity bar a state-court action for just compensation under the Fifth and Fourteenth Amendments?

Either way, BAS has been left without a forum to review its Fifth and Fourteenth Amendment claims. The state court says sovereign immunity bars the door. The federal court says the state court already decided the case on the merits. The result is that BAS has no courthouse, state or federal, in which to press a takings claim that this Court's precedent plainly supports. That is exactly the kind of Catch-22 this Court warned against in *Knick v. Township of Scott*, 588 U.S. 180, 184–85 (2019), where the Court refused to put a property owner in a position where “[h]e cannot go to federal court without going to state court first; but if he goes to state court and loses, his claim will be barred in federal court.”

The district court's order also eliminates two potential objections to the Court's review. First, it removes any question about finality. Respondent's own litigation position in the federal proceeding was that the Arkansas Supreme Court rendered a final judgment on the merits of BAS's constitutional claims, and the district court agreed. Whatever uncertainty might have existed about whether the state proceedings were truly concluded, Respondent has now told a federal court that they are. The case is, as this Court's finality standard requires, “for all practical purposes concluded.” *Cox*

Broadcasting Corp. v. Cohn, 420 U.S. 469, 479 (1975). Second, Respondent can no longer argue that BAS has an adequate federal forum for its constitutional claims and that this Court need not resolve the sovereign immunity question at this time. The Eastern District of Arkansas has shut its doors too. The only court that can hear BAS's claim is this one.

The federal district court's order confirms what the Petition explains at length: the relationship between sovereign immunity and the obligation to pay just compensation is in urgent need of this Court's attention. Lower courts are reaching conflicting results. Property owners are being denied any forum. And the constitutional guarantee of just compensation is being rendered meaningless. The Court should grant the Petition.

DATED: March 2026.

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Respectfully submitted,

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