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P R O C E E D I N G S

(10:05 a.m.)

CHIEF JUSTICE ROBERTS: We'll hear argument first this morning in Case 17-647, Knick versus the Township of Scott, Pennsylvania.

Mr. Breemer.

ORAL ARGUMENT OF J. DAVID BREEMER
ON BEHALF OF THE PETITIONER

MR. BREEMER: Mr. Chief Justice, and may it please the Court:

Requiring Ms. Knick to prosecute her federal takings claim in state court conflicts with Section 1983 and is incompatible with the nature of her claim. Her claim is not based on the government's failure to compensate. It's based on the township's failure to recognize that the imposition of an access easement is a Fifth Amendment taking that triggers a compensation requirement.

Because lack of compensation is not an element of her federal takings claim, state compensation remedies do not bear on the presentation of the claim in federal court.

CHIEF JUSTICE ROBERTS: How is it not

1 an element of her claim? There's no violation
2 unless she is denied just compensation.

3 MR. BREEMER: Well, Your Honor, in the
4 inverse condemnation context, the problem is
5 not that the government's violating the Just
6 Compensation Clause by failing to pay. The
7 problem is that it's depriving her of her right
8 to just compensation because it does not
9 recognize that its invasion of her property is
10 a taking that triggers the entitlement to
11 compensation.

12 CHIEF JUSTICE ROBERTS: Well, I
13 thought that was the whole point of an inverse
14 condemnation. They recognize that they owe her
15 money, and the whole point of the process,
16 which can be fairly elaborate, is that they're
17 just trying to figure out how much. If it's
18 not enough, then she can bring a claim.

19 But it seems to me that it's imposing
20 a considerable burden on the state or the local
21 entities to say you've got to pay right away;
22 in other words, go through some sort of process
23 to figure out what you owe before you can even
24 -- you know, it's -- it's simply a process to
25 figure out how much is due. I don't know why

1 it's such a problem to make her go through that
2 in the initial instance.

3 MR. BREEMER: To -- well, Your Honor,
4 it helps to remember that condemnation and
5 inverse condemnation takings are quite
6 different. In a condemnation case, which
7 corresponds to what you were just describing,
8 the government condemns a property and then
9 it's just a process of -- of figuring out where
10 and how she's going to get her money.

11 But, when the question is whether
12 there is even a constitutional entitlement to
13 compensation, that before --

14 JUSTICE SOTOMAYOR: I'm sorry. Isn't
15 that what condemnation, whether it's regular or
16 inverse, does? The first question the court
17 answers is, is there a taking? So it does
18 reach the constitutional question. Even in a
19 -- in a regular condemnation -- condemnation
20 proceeding, they have to decide whether it --
21 the government has a public interest or not.
22 That's what makes it constitutional. So I
23 don't understand.

24 Can I ask another question, however?
25 Assuming that you were right and that you had a

1 federal cause of action or should have one
2 under 1983, when this case goes to a federal
3 court, why would a district court be -- abuse
4 its discretion for abstaining under any of the
5 three doctrines, Pullman, Louisiana Power &
6 Light, or Colorado River? All of them say that
7 district courts can abstain when a legal issue
8 involves state law and that state law could
9 obviate the federal proceeding.

10 So one of two things can happen in the
11 state court below. They say no taking, and
12 then there's no taking; or, second, there's a
13 taking, and the inverse condemnation proceeding
14 will provide the remedy.

15 So, in many ways, this obviates the
16 proceeding altogether.

17 MR. BREEMER: Well, if I could -- Your
18 Honor, if I could answer the abstention
19 question first. Williamson County is different
20 than any known abstention doctrine. For
21 instance, in Quackenbush, this Court held
22 that -- a damages claim, that the federal court
23 couldn't abstain from a constitutional claim
24 for damages under Burford. The other
25 abstention doctrines deal when there's an

1 explicit state claim that might resolve the
2 federal --

3 JUSTICE SOTOMAYOR: Why isn't --

4 MR. BREEMER: -- question but there
5 isn't here.

6 JUSTICE SOTOMAYOR: -- why isn't that
7 the case here? The whole issue is whether this
8 graveyard law is a -- was inherent in the
9 property she took, meaning that's what I
10 understood the legal question was. It's all
11 about the state law rights of landowners
12 vis-a-vis cemeteries.

13 MR. BREEMER: That, Your Honor, is the
14 township's defense. That's a merits defense.
15 The problem here, the question here is whether
16 Ms. Knick must go to the state court with her
17 federal claim. She can't even get in through
18 the courthouse door. That's the fundamental --
19 we think --

20 JUSTICE SOTOMAYOR: I guess my
21 bottom-line question is, if the abstention
22 doctrines apply, which I think they would --
23 you've given me no reason why they shouldn't --
24 aren't you just inviting now a patchwork of
25 federal and state involvement in cases?

1 Williamson has at least the advantage of
2 clarifying where people go and how these claims
3 are adjudicated.

4 MR. BREEMER: Well --

5 JUSTICE SOTOMAYOR: If we have
6 abstention playing in, you're going to have a
7 patchwork of some state inverse condemnation
8 proceedings, some not, some courts taking
9 cases, others rightfully talking about
10 abstention.

11 MR. BREEMER: Well, I think that's
12 actually, the situation you're describing, is
13 what is happening under Williamson County.
14 There's no predictable forum for adjudicating a
15 Fifth Amendment claim that there's a taking
16 that creates the entitlement to a compensation
17 remedy. Property owners like Ms. Knick for 30
18 years have had no reasonable way to litigate
19 that federal question: Is there a taking or
20 not a quest -- or not a taking?

21 JUSTICE SOTOMAYOR: Well, why are you
22 claiming that the state courts in an inverse
23 condemnation proceeding are inadequate?

24 MR. BREEMER: I'm not claiming that at
25 all. State courts can deal with many

1 constitutional questions and they do. The
2 question here, though, is whether Ms. Knick
3 must go to a state court with her federal
4 takings claim to decide to get the town to
5 recognize that there is a taking within the
6 meaning of the Constitution that creates an
7 entitlement to compensation.

8 JUSTICE KAGAN: Mr. Breemer, may I get
9 back to this -- the question that you started
10 off with, which is when exactly the violation
11 occurs and why it occurs before the state
12 denies compensation in the inverse condemnation
13 proceeding, which is, I take it, what you're
14 saying.

15 Is that because -- are you saying that
16 that's because the right to compensation is
17 immediate; in other words, there's a right to
18 compensation contemporaneous with the taking?
19 Is that what your claim is?

20 MR. BREEMER: The -- not exactly.
21 There is -- there is a right to compensation as
22 soon as there's a determined that there's -- a
23 determination that there's a taking in the
24 inverse condemnation context. Remember, what
25 we're talking about is an invasion of property.

1 The township, which has the power of
2 eminent domain, doesn't use the power of
3 eminent domain to take that easement. It just
4 used its regulatory powers.

5 So there's no entitlement to
6 compensation until the property owner,
7 Ms. Knick, goes in and gets a determination
8 that's a taking. After that, compensation --

9 JUSTICE GINSBURG: And then, and then
10 --

11 MR. BREEMER: -- issues --

12 JUSTICE KAGAN: Okay --

13 JUSTICE GINSBURG: -- and then what
14 happens? Then suppose you're right and the --
15 the preliminary question, is there a taking,
16 you can bring in federal court.

17 Then -- and if the answer to that is
18 yes, then the whole inverse condemnation
19 proceeding goes forward in -- in federal court
20 with --

21 MR. BREEMER: I understand your --
22 your question, Your Honor. Once a takings
23 determination is made, then a federal court
24 would hold a -- a damages proceeding, just like
25 it does in other Section 1983 contexts,

1 unreasonable seizure, due -- due process
2 deprivations. And it -- it would be easier in
3 a takings context than those other contexts
4 because damages for a taking is simply just
5 compensation. So a federal court --

6 JUSTICE GINSBURG: But how would this
7 -- and that's what -- that's what inverse
8 condemn -- condemnation is as well. So how do
9 -- how does step 2 -- step 1, is there a
10 taking? Yes. Something else happens in
11 federal court.

12 How would -- does that something else
13 differ from an inverse condemnation proceeding
14 in state court?

15 MR. BREEMER: It -- it doesn't. It's
16 -- it's dual -- the inverse condemnation
17 rights. The Fifth Amendment under First
18 English incorporates a right of inverse
19 condemnation under the federal Constitution.

20 The states have also inverse
21 condemnation procedures, but, again, the
22 question is when you have a federal claim, when
23 your claim is that the takings provision in the
24 Fifth Amendment is violated -- excuse me, not
25 violated, when it's implicated so that there's

1 a just compensation remedy, do you have to go
2 use a state inverse condemnation instead of the
3 Fifth Amendment's inverse condemnation
4 procedure that's recognized as self-executing.

5 JUSTICE KAGAN: Right --

6 JUSTICE ALITO: Let me see --

7 JUSTICE KAGAN: -- but usually --

8 JUSTICE ALITO: -- if I understand
9 your claim, because a little -- some of the
10 questions and the discussion up to this point
11 is a bit confusing to me.

12 I thought your claim was that there is
13 a violation of the takings clause and you can,
14 therefore, bring a suit under 1983 when the
15 state does something that constitutes a taking
16 but at the same time says we're not paying you
17 anything for this.

18 Now it's not a question of when they
19 would have to pay once they've admitted that
20 there's a taking, but when they do something
21 that constitutes a taking, and they say, no,
22 this isn't a taking at all, and, therefore,
23 you're getting zero, which I understand to be
24 your claim here, then you can go directly to
25 federal court and bring an action under 1983.

1 And to require you to go to state
2 court before you do that is essentially to
3 require you to exhaust state remedies before
4 you can bring a 1983 claim, which is never
5 required under 1983. I thought that that was
6 your argument.

7 MR. BREEMER: Right. And that is one
8 of our arguments, is that when the government,
9 the township here in this case, invades
10 property without -- without condemning it, it's
11 clear that it's not compensating and that your
12 claim --

13 JUSTICE KAGAN: Well, how --

14 MR. BREEMER: -- accrues at that --

15 JUSTICE KAGAN: -- is it clear that
16 it's not compensating? In other words, what
17 Justice Alito says clarifies matters
18 considerably, that if the state has already
19 said we're not compensating, then it seems you
20 can claim both that you've had a taking and
21 that the state has refused to compensate.

22 But I thought that the question here
23 arose from the fact that the state has not said
24 yet that it's not compensating, that, instead,
25 it uses the inverse condemnation proceeding to

1 make that determination. Is that wrong?

2 MR. BREEMER: Well, yes, in -- in this
3 way: The township is taking her property. The
4 township has imposed an easement on Ms. Knick's
5 property that allows the public in every day of
6 the week, every day of the year.

7 It has the power to condemn easements.
8 It did not use it. So we know that the
9 township is not compensating her. It denies
10 that there's even a taking. So it's not a
11 matter of what the state does. It's a matter
12 of what the township, as the -- as the
13 defendant that's taking your property, and
14 could have used condemnation and declared a
15 taking, gone into state court, kept it there,
16 but instead used its regulatory power.

17 JUSTICE ALITO: And the township has
18 --

19 JUSTICE SOTOMAYOR: How about the town
20 --

21 JUSTICE ALITO: -- the township has
22 imposed these restrictions on the property and
23 it hasn't said that it will pay anything for
24 it. Of course, it hasn't said that if you sue
25 us in state court and you win in an inverse --

1 inverse condemnation proceeding which we will
2 resist, we will refuse to pay the judgment of
3 the state court. It hasn't said that. But it
4 has -- has certainly has not said we admit that
5 this is a taking and we owe you money, and
6 there -- and you have to go to state court to
7 determine how much money we owe. Am I right on
8 that?

9 MR. BREEMER: That's right. And --
10 and the entitle -- that's -- the issue is the
11 entitlement. The township denies that there's
12 an entitlement to compensation. Ms. --

13 JUSTICE KAGAN: But does it? I mean,
14 I -- I'm following Justice Alito's point
15 exactly, except what I'm not understanding is I
16 -- I had thought that in a case like this there
17 had been no determination by the state that
18 there was liability one way or the other. In
19 other words, the state had not denied
20 liability, nor had the state conceded
21 liability.

22 So this isn't a -- a question where
23 the state has said: Look, we deny any
24 liability. It's -- it's -- the state hasn't
25 said one way or the other. And we're going to

1 find out in the inverse condemnation action
2 whether the state is, in fact, denying all
3 liability or whether the state is going to come
4 in and say: You're right, there is liability
5 here, and now let's talk about how much.

6 MR. BREEMER: Well, we -- we could,
7 but, again, that liability issue arises under
8 the Fifth Amendment under the takings
9 provision. So a federal court is capable of
10 deciding that very question, is there liability
11 or not?

12 If there is, there's a compensation
13 remedy ensuring that a de facto taking does not
14 go without compensation --

15 JUSTICE KAGAN: Right. But my --

16 MR. BREEMER: -- if there is, which --

17 JUSTICE KAGAN: -- question is, if the
18 state has not denied liability yet, how do you
19 have a Fifth Amendment claim? If the state has
20 denied liability, if it has said we're refusing
21 to pay, then I take Justice Alito's point
22 exactly. Then you have both your elements of
23 the Fifth Amendment claim. There's been a
24 taking and the state has refused to pay just
25 compensation, allegedly.

1 But, if the state has not yet refused
2 to pay, how do you have a Fifth Amendment
3 claim?

4 MR. BREEMER: Because in the inverse
5 condemnation context -- well, let me back up
6 one minute.

7 I think the appropriate actor is the
8 township, but in the inverse condemnation
9 context, again, the problem is not whether or
10 not the government will pay. It's will it
11 recognize an entitlement because there's been a
12 taking.

13 Until you get that entitle -- that
14 takings determination made, compensation issues
15 don't play into the equation. And if
16 compensation issues aren't part of the element
17 of the takings dispute, then state remedies are
18 irrelevant to the presentation of claims.

19 CHIEF JUSTICE ROBERTS: But this isn't
20 -- this isn't sort of a black or white thing.
21 I assume what the state -- well, I thought what
22 the state had done and will do in -- in many
23 cases is say, look, we don't think we owe you
24 anything, but we have a process for determining
25 whether we do or not. And if -- if it turns

1 out under the inverse condemnation action we
2 do, well, that's what we'll pay. Is -- is --
3 is that what is going on here?

4 MR. BREEMER: Well, again, Your Honor,
5 I would say this, that the fact that there are
6 state procedures like inverse condemnation
7 doesn't mean that they must be used for a
8 federal claim. That's the question here: Must
9 Ms. Knick use the state inverse condemnation
10 remedies rather than the federal remedy that's
11 under the Fifth Amendment. And Section 1983
12 would say no, the language and purpose of
13 Section 1983 says no. The history and language
14 and purpose of Section 1331 says no.

15 So --

16 JUSTICE GINSBURG: In this case --

17 MR. BREEMER: -- what we're asking --

18 JUSTICE GINSBURG: -- this case, I
19 think the first -- first question was, should
20 the Court overrule Williamson.

21 Are you asking the Court to do that,
22 or are you distinguishing the claim that you're
23 making from the claim in Williamson?

24 MR. BREEMER: We're -- we are asking,
25 Your Honor, for the Court to overrule

1 Williamson County to this -- to this extent,
2 the state compensation requirement, because it
3 is inconsistent with Section 1983 and with the
4 nature of a Fifth Amendment inverse
5 condemnation claim.

6 But, again, we're not asking the Court
7 to overrule the entirety of Williamson County.
8 The finality, the ripeness prong, which is
9 still a difficult hurdle to get by, would
10 remain intact and would keep many claims --
11 would -- would stop many claims at an early
12 stage. And so we're asking the Court return --

13 JUSTICE SOTOMAYOR: Would that mean
14 that if the state or the locality says once we
15 have an administrative law, if you disagree
16 with it, you have to go through this
17 administrative process and, if we violated
18 something, we'll pay for it? Would that be
19 okay?

20 MR. BREEMER: No, Your Honor, it would
21 not, for two reasons, and then I'd like to
22 reserve the rest of my time. That would raise
23 the same res judicata and issue preclusion
24 problems that Williamson County already
25 generates because administrative procedures in

1 Pennsylvania and many places elsewhere are res
2 judicata and issue preclusion in court.

3 And, secondly, as this --

4 JUSTICE SOTOMAYOR: So --

5 MR. BREEMER: -- Court --

6 JUSTICE SOTOMAYOR: -- but wait a
7 minute. What you're saying is a state passes a
8 law, it says at the bottom of the law we don't
9 think this is a condemnation, but, if it is,
10 follow this administrative process.

11 So it's basically saying we'll pay you
12 if you're right. You're saying they don't have
13 to exhaust that administrative process even?

14 MR. BREEMER: If I understand
15 correctly, if you're -- you're saying that if a
16 court, a federal court found a taking that
17 maybe a property owner should go --

18 JUSTICE SOTOMAYOR: No, no.

19 MR. BREEMER: Okay. That's what I --

20 JUSTICE SOTOMAYOR: I'm saying they
21 pass an administrative law that puts -- that
22 recognizes some sort of easement, whether it's
23 historical or not I'm not going to get into.
24 There's a dispute as to whether it -- you took
25 title to that property with that easement or

1 not.

2 Do you say that if the state or the
3 city or whatever says you have to follow this
4 administrative process to determine whether
5 this law is right or not, that you don't have
6 to exhaust that administrative process?

7 MR. BREEMER: No, you wouldn't have
8 to, Your Honor, because that would require you
9 to prove a taking at an administrative level.
10 And as the Court said in Thunder Basin,
11 administrative agencies are --

12 JUSTICE SOTOMAYOR: So there's no hope
13 for states. They're going to be in federal
14 court all of the time on every administrative
15 law that they pass?

16 MR. BREEMER: May I answer the
17 question?

18 CHIEF JUSTICE ROBERTS: You can answer
19 briefly. You'll be able to reserve some time.

20 MR. BREEMER: These cases, takings
21 cases, will get spread out across state and
22 federal courts just like other constitutional
23 claims, and the existing ripeness, the
24 traditional ripeness for rule of finality will
25 ensure that -- that many of these cases don't

1 make it very far in federal court.

2 CHIEF JUSTICE ROBERTS: Thank you,
3 counsel.

4 General Francisco.

5 ORAL ARGUMENT OF NOEL J. FRANCISCO
6 ON BEHALF OF THE UNITED STATES,
7 AS AMICUS CURIAE, SUPPORTING THE PETITIONER

8 GENERAL FRANCISCO: Mr. Chief Justice,
9 and may -- may it please the Court:

10 I'd like to address two basic points
11 that I think are relevant to the discussion
12 that we've been having here.

13 First, Williamson County's premise was
14 correct. The government doesn't violate the
15 takings clause if it provides just compensation
16 after the fact. But it erred in assuming that
17 Section 1983 is only available to address
18 constitutional violations. Instead, it's
19 available to enforce the deprivation of all
20 constitutional rights, and there's no basis for
21 concluding that the right to just compensation
22 is the only right that Section 1983 doesn't
23 cover.

24 But, second, I think you can
25 effectively reach the same result under Section

1 1331 because, as this Court held in
2 International College of Surgeons, is -- if a
3 state cause of action asserts a federal takings
4 claim as such, then that state cause of action
5 arises under the Constitution for purposes of
6 Section 1331, and so the property owner falls
7 within the district court's original
8 jurisdiction, and you don't have to address
9 whether Williamson County was rightly or
10 wrongly decided --

11 JUSTICE KAGAN: Has that --

12 GENERAL FRANCISCO: -- at all.

13 JUSTICE KAGAN: -- ever been
14 considered before? Because it seems a -- a way
15 out of this difficulty. Has anybody ever
16 addressed it?

17 GENERAL FRANCISCO: Your Honor, I
18 think the only thing that I can point you to is
19 International College of Surgeons itself, but,
20 no, no court has addressed it in the context of
21 Williamson County.

22 CHIEF JUSTICE ROBERTS: Well, you --

23 GENERAL FRANCISCO: But --

24 CHIEF JUSTICE ROBERTS: -- you can
25 answer the letters that we're going to get from

1 district court judges around the country who
2 are not going to be very happy learning that
3 they now have to adjudicate state inverse
4 condemnation actions, which can be fairly
5 elaborate.

6 You know, the judge appoints a special
7 master. They go out and evaluate it. The --
8 you know, it's a -- it's like arbitration.
9 It's -- it's a very intensive procedure that
10 seems more suited for state court than federal
11 court.

12 GENERAL FRANCISCO: Well, Your Honor,
13 I -- I think the Court crossed that bridge in
14 International College of Surgeons when it --
15 really in a factually analogous case. In that
16 case, Illinois's landmarks law applied to
17 buildings owned by the International College of
18 Surgeons, and they asserted in a state cause of
19 action that the application of that law
20 constituted a federal taking. And this Court
21 held that it was within federal jurisdiction.

22 I agree that there are going to be
23 Erie issues that courts are going to have to
24 confront, but I don't think they'd be
25 particularly problematic. Take, for example,

1 affirmative condemnation proceedings, state
2 eminent domain proceedings that are brought in
3 federal court because of diversity
4 jurisdiction.

5 The federal rules, Federal Rule
6 71.1(k), I think it is, already provide for
7 federal courts to apply the state procedural
8 rules for assessing the amount of compensation
9 in that context.

10 So, yes, they will have to confront
11 those types of state law questions, but I don't
12 think it would be particularly problematic.
13 It's something that courts do in diversity
14 cases all the time, and in cases -- other cases
15 that raise federal questions all the time,
16 like --

17 JUSTICE BREYER: General, my -- my
18 question is I can see his point, that you could
19 say a state that says our regulation doesn't
20 take anything, and they dispute it. And you
21 could say a state that acts that way is a state
22 that isn't going to pay you any money and,
23 therefore, it is complete, the violation. Or
24 you could say we don't know about the second
25 answer yet, so we'll see. Or you could say

1 sometimes the one, sometimes the other.

2 GENERAL FRANCISCO: Right.

3 JUSTICE BREYER: Or we could go into
4 1331. But Williamson was decided 32 years ago.
5 This is a very complicated area of law. Why
6 not let sleeping dogs lie?

7 GENERAL FRANCISCO: And --

8 JUSTICE BREYER: It's called stare
9 decisis.

10 GENERAL FRANCISCO: And, Your Honor --

11 JUSTICE BREYER: There is one harm,
12 the harm of the person who tries to remove and
13 then gets kicked out of court.

14 GENERAL FRANCISCO: Right.

15 JUSTICE BREYER: We could write a
16 sentence saying that's wrong, you've waived it.
17 All right. But I couldn't find in any of these
18 briefs any serious harm that would, in fact --
19 your 1331 point can be tried out by somebody --
20 but any serious point that right now provides a
21 strong reason for overturning a case that's
22 been on the books in a complex area for 32
23 years.

24 GENERAL FRANCISCO: So a couple of
25 responses, Your Honor. I think our 1331

1 argument doesn't require you to overturn
2 Williamson County.

3 JUSTICE BREYER: It doesn't.

4 GENERAL FRANCISCO: I think it exists
5 very nicely alongside of Williamson County.

6 JUSTICE GINSBURG: It wasn't raised
7 below. Thirteen -- the 1331 theory was not
8 raised below.

9 GENERAL FRANCISCO: No, Your Honor,
10 but we think it is well within the question
11 presented. The Court --

12 JUSTICE SOTOMAYOR: Was it raised by
13 the parties?

14 GENERAL FRANCISCO: That's correct,
15 Your Honor, but I think it's well within the
16 question presented because this Court granted
17 certiorari on whether or not to overrule
18 Williamson County. The principal criticism of
19 Williamson County is that it closes the federal
20 courthouse doors to an entire category of
21 takings litigants. And I think that our
22 alternative argument is directly relevant to
23 whether Williamson County does, in fact, close
24 the federal courthouse doors to an entire
25 category of takings litigants.

1 I'd also note that Williamson County
2 itself -- the parties below didn't raise the
3 issue that we are here talking about before the
4 Court. So I think --

5 JUSTICE BREYER: But this is a theory
6 -- a pretty -- there's no reason in history
7 that federal courts have to be open to every
8 federal claim. I mean, sometimes they are.
9 Sometimes they're not.

10 GENERAL FRANCISCO: That's --

11 JUSTICE BREYER: So, therefore, state
12 courts can litigate too. They're okay. So --
13 so why do it? My question is, why not simply
14 say, law for 32 years, end of this case, stare
15 decisis, the solicitor general raises a very
16 interesting point, not litigated here.

17 GENERAL FRANCISCO: Right.

18 JUSTICE BREYER: We'll see what
19 happens. If it's --

20 GENERAL FRANCISCO: Well, look, I'll
21 put my 1331 argument to the side because I
22 think, as -- as I've -- I've explained, that
23 exists alongside Williamson County. But let me
24 take on your question directly, why should the
25 Court consider overturning Williamson County?

1 And we think that the principal
2 reason, if you decide to get there, and we
3 don't think you have to decide to get there,
4 but if you decide to get there, it's because
5 Williamson County's rationale has never
6 actually been explained.

7 And as a result, it has been
8 understood by the lower courts to produce this
9 unintended consequence of essentially closing
10 the courthouse -- federal courthouse doors to a
11 class of takings litigants. We --

12 JUSTICE SOTOMAYOR: I'm sorry, the
13 courthouse doors are closed to people on tax
14 issues, even though there's constitutional
15 claims. So there's a class that we have both
16 for -- for doctrinal reasons and -- and comity
17 issues and a lot of other reasons, we've closed
18 the courthouse doors.

19 We've closed them to people claiming
20 that they had an unreasonable search and
21 seizure. If they litigated in state court
22 under the Fourth Amendment, a claim in state
23 court, they can't come to federal court
24 afterwards.

25 So it's not as if our courthouse doors

1 are open uniformly to everybody anytime.

2 There -- there are all sorts of doctrines that
3 preclude people --

4 GENERAL FRANCISCO: Right.

5 JUSTICE SOTOMAYOR: -- from coming to
6 federal court once they've been issue-precluded
7 in state court.

8 GENERAL FRANCISCO: Right. And that's
9 the key, I think, once they've been
10 issue-precluded in state court. None of those
11 doctrines, with the exception of the tax
12 doctrine, which I'll address in a moment,
13 actually close the federal courthouse doors
14 when there's not a pending state court
15 proceeding, because I think the criminal cases
16 you're talking about are the Younger doctrine.

17 When it comes to the tax laws, that's
18 a very tax-specific rule -- rule that doesn't
19 just apply to property claims; it applies
20 across the board and bars any constitutional
21 challenge in federal courts to state or local
22 tax laws. There's no comparable rule that
23 applies across the board to property claims.

24 After all, courts --

25 JUSTICE SOTOMAYOR: Well, except

1 Williamson, which basically says there's no
2 taking. And you don't -- you're not
3 encouraging us to believe that compensation is
4 due the minute there's a taking, is it?

5 GENERAL FRANCISCO: We don't think --

6 JUSTICE SOTOMAYOR: That it has to be
7 -- happen before the taking?

8 GENERAL FRANCISCO: Yeah, we certainly
9 don't think you violate the clause if you
10 provide compensation after the taking. But, to
11 go directly to your question, under the First
12 Amendment and the Fourteenth Amendment, courts
13 regularly entertain challenges to state
14 property laws. Think of cases like City of
15 Cleburne or City of Renton against Playtime
16 Theatres.

17 There's no general rule that bars all
18 federal claims, all claims in federal court to
19 state and local property laws, other than
20 Williamson County, I agree. And I don't think
21 that there's any basis for treating the takings
22 clause any differently than the other parts of
23 the Constitution.

24 JUSTICE SOTOMAYOR: If --

25 JUSTICE KAGAN: General, I assume we

1 wouldn't have a problem here if we didn't have
2 preclusive effect of the state action. Is that
3 correct in your view?

4 GENERAL FRANCISCO: Your Honor, no, I
5 don't think it is correct in my view. I think
6 that highlights one of the unintended
7 consequences of Williamson County, but we
8 believe that, properly construed, Section 1983
9 was meant to provide a remedy for the
10 deprivation of all constitutional rights,
11 including the right to just compensation.

12 And that's a right that vests the
13 moment the property is taken. You don't
14 violate it if you pay after the fact, but the
15 right, in fact, vests the moment the property
16 is taken, which is why you're actually entitled
17 to interest from the moment of the taking until
18 you get paid.

19 So, under Section 1983, we think quite
20 literally that a property owner is being
21 deprived of the right to just compensation at
22 the moment the government engages in the lawful
23 act of taking their property without payment.
24 That's why we think that the error in
25 Williamson County was the --

1 JUSTICE KAGAN: General, I -- you
2 know, I read those pages in your brief a couple
3 of times, and I have -- I have to say that
4 they're -- it's just going over my head a
5 little bit, what -- how it is that you can say
6 that there's a deprivation of a right when you
7 simultaneously say that there's been no
8 violation --

9 GENERAL FRANCISCO: Right.

10 JUSTICE KAGAN: -- even though the
11 government hasn't paid yet.

12 GENERAL FRANCISCO: Right. And for
13 most constitutional provisions, there's no
14 difference. So, under the First Amendment, you
15 don't deprive somebody of their free speech
16 rights unless you violate their free speech
17 rights.

18 But the takings clause is meaningfully
19 different because the right to just
20 compensation vests only when the government
21 acts lawfully. It's at the moment of the
22 government's lawful action in taking your
23 property that your right to just compensation
24 vests, which is why you get interest. And I'll
25 just finish up.

1 And so we think that, quite literally,
2 the property owner is deprived of their right
3 to just compensation from the moment the
4 government acts lawfully to take their property
5 until the property owner is paid.

6 Thank you, Mr. Chief Justice.

7 CHIEF JUSTICE ROBERTS: Thank you,
8 General.

9 Ms. Sachs?

10 ORAL ARGUMENT OF TERESA FICKEN SACHS

11 ON BEHALF OF THE RESPONDENTS

12 MS. SACHS: Mr. Chief Justice, and may
13 it please the Court:

14 The reinterpretations proposed here as
15 to both Section 1983 and also what we've heard
16 about a possible interpretation of Section 1331
17 would create federal jurisdiction over every
18 local land use planning decision made in the
19 39,000 plus jurisdictions across the country.

20 We ask that this Court affirm
21 Williamson County because it was correct then
22 and it is correct now in this case. What this
23 Court held in Williamson County was that a
24 claimant can't come to federal court under
25 Section 1983 claiming that their constitutional

1 right to just compensation has been violated,
2 when the state provides a reasonable, certain,
3 and adequate means to obtain just compensation

4 --

5 CHIEF JUSTICE ROBERTS: Well, I think

6 --

7 MS. SACHS: -- and Petitioner --

8 CHIEF JUSTICE ROBERTS: -- it was
9 clear in Williamson County, because they used
10 terms of ripeness and -- and -- and the like
11 that I don't think the court contemplated the
12 later decision in San Remo, that by sending it
13 to state court, they were effectively taking
14 the federal courts out of the whole business of
15 adjudicating these claims because of the
16 preclusive effect of the state -- state remedy.

17 MS. SACHS: Well, first of all, Your
18 Honor, if I may, the -- the court did use terms
19 like ripeness, and at that time, ripeness
20 perhaps was not as closely associated with
21 jurisdictional considerations as it is today.

22 It was not a jurisdictional decision
23 and that the court could certainly clarify that
24 Williamson County was not jurisdictional. In
25 Williamson County, an element of the Section

1 1983 cause of action was missing, for the same
2 reason in this case. The only claim raised was
3 a Section 1983 that the -- the Petitioner's
4 rights to just compensation had been violated.

5 And yet we know from 130 years of this
6 Court's jurisprudence that there is no
7 violation of the just compensation clause if
8 that reasonable, certain, and adequate
9 provision exists at the time of the taking.

10 JUSTICE KAGAN: But I think what the
11 --

12 CHIEF JUSTICE ROBERTS: You -- you
13 agree -- you agree that the compensation that
14 is due runs from the moment of the taking? In
15 other words, if it takes you six months to
16 adjudicate the -- the claim and you say, well,
17 this is how much you owe, you owe interest
18 going all the way back to the point at which
19 the property was taken, correct?

20 MS. SACHS: Well, yes, this Court has
21 certainly -- the -- that -- the -- the fact
22 that in the interest begins to run is another
23 reason --

24 CHIEF JUSTICE ROBERTS: And that must
25 be --

1 MS. SACHS: -- why the time is -- the
2 time to pursue the inverse condemnation action,
3 means that there has not been any deprivation
4 of a constitutional right in the interim.

5 CHIEF JUSTICE ROBERTS: Well, it turns
6 out there was a violation of the constitutional
7 right at the moment of the taking, right?
8 That's the whole point of interest.

9 MS. SACHS: No.

10 CHIEF JUSTICE ROBERTS: Why, if there
11 hasn't been a violation, why do you owe
12 interest --

13 MS. SACHS: That just --

14 CHIEF JUSTICE ROBERTS: -- from the
15 moment of the taking?

16 MS. SACHS: -- because it's a -- the
17 -- the post-deprivation process has been
18 determined to be appropriate here, as well as
19 in other situations, because there -- this is a
20 circumstance, particularly a regulatory
21 circumstance, where it's impossible to
22 determine in advance, given the, as this Court
23 has said, the -- the myriad ways that
24 regulations can affect property and whether or
25 not any of them will ultimately end up being

1 considered to be a taking.

2 JUSTICE ALITO: Does the township owe

3 --

4 MS. SACHS: It's appropriate --

5 JUSTICE ALITO: -- does the township

6 owe Ms. Knick any money, any compensation?

7 MS. SACHS: That has yet to be

8 determined, Your Honor.

9 JUSTICE ALITO: You can't -- well,

10 have you made any -- you don't know whether you

11 owe her any money?

12 MS. SACHS: The reason that --

13 JUSTICE ALITO: Are you going to go

14 back to your office and -- and think about

15 that, and then send her a letter saying whether

16 you owe her any money? If she does absolutely

17 nothing, what will you do?

18 MS. SACHS: Your Honor, what she is

19 supposed to do in -- in this situation to find

20 out the answer to Your Honor's question is

21 pursue the Pennsylvania procedure that has been

22 in effect for some 300 years.

23 JUSTICE ALITO: You can't tell me

24 whether you owe her any money?

25 MS. SACHS: The state has to tell her

1 whether --

2 JUSTICE ALITO: You are the state.

3 MS. SACHS: -- we owe her any money,
4 Your Honor.

5 JUSTICE ALITO: You represent the
6 township. The township is part of the state.
7 So what is before us here is the Commonwealth
8 of Pennsylvania.

9 Does the township owe her any money?
10 Yes or no? I don't see how you cannot have an
11 answer to that question.

12 MS. SACHS: Your Honor, I cannot -- I
13 can't have an answer to that question because
14 that is why inverse condemnation exists.
15 That's why the proceeding --

16 JUSTICE ALITO: All right. If she --

17 MR. SACHS: -- as you recall --

18 JUSTICE ALITO: -- files an inverse
19 condemnation proceeding, are you going to --
20 are you going to confess that you owe her
21 money, at the outset?

22 MS. SACHS: The first step in a
23 Pennsylvania inverse condemnation proceeding
24 would not involve that. The first question is
25 for the court. The court determines in an

1 inverse condemnation proceeding whether there
2 has been a taking --

3 JUSTICE ALITO: What will your
4 position be?

5 MS. SACHS: -- we as the township --

6 JUSTICE ALITO: What will your
7 position be?

8 JUSTICE BREYER: His point is that --

9 JUSTICE ALITO: What will your
10 position be?

11 JUSTICE BREYER: That's right.

12 MS. SACHS: What would the position
13 be?

14 JUSTICE ALITO: Yes, what will the
15 position --

16 MS. SACHS: In this particular case --

17 JUSTICE ALITO: -- of the township be?

18 MS. SACHS: -- I think the township
19 would say there has been no taking.

20 JUSTICE ALITO: Therefore, if you have
21 taken her property, you have taken her property
22 and you have denied her compensation. Why is
23 that not a violation of the takings clause? It
24 is a taking without compensation.

25 MS. SACHS: Because we do not agree

1 that we have taken anything, Your Honor.

2 JUSTICE ALITO: Well, that's fine.
3 That's a merits issue. That can be decided in
4 a 1983 action.

5 MS. SACHS: But, under 1983, there is
6 no violation. Her right to just compensation
7 is what Section 1983 protects. And, of course,
8 because the Fifth Amendment provides the right
9 to compensation, and the Fourteenth Amendment
10 prohibits a state from denying that right, we
11 have not denied --

12 JUSTICE GORSUCH: Counsel, I -- I --

13 MS. SACHS: -- that right.

14 JUSTICE KAGAN: Can I go back --

15 JUSTICE GORSUCH: -- I think this gets
16 back to Justice Breyer's question a little bit,
17 which is you could say that the violation is
18 complete upon the taking of the property with
19 the denial of compensation, as Justice Alito
20 just alluded to, as you've just denied that any
21 compensation is due.

22 Or you could say it should wait until
23 a state litigation process has exhausted
24 itself. And maybe it makes sense to wait when
25 the state has acknowledged a duty to pay, and

1 we can say the state's probably good for it.
2 And that's where those cases originally came
3 from, Cherokee and some of the early ones.

4 But maybe -- maybe it doesn't make
5 sense when the state has denied any obligation
6 to pay. Maybe -- maybe it makes -- maybe it is
7 different when it's an inverse condemnation,
8 because when we look at other -- other
9 constitutional rights, we don't say that a
10 First Amendment violation isn't complete until
11 someone has litigated that claim in state court
12 under state processes or a Fourth Amendment
13 claim.

14 And when you look at the history of
15 inverse condemnation suits, they originated in
16 common law under trespass. It's a simple claim
17 against the state for trespass. That's what an
18 inverse condemnation suit is. Nothing more,
19 nothing less.

20 So why should we single out the --
21 this particular right, the takings clause, for
22 such disfavored treatment to wait to exhaust
23 state remedies that wind up in this ripeness
24 world to yield a moot federal claim?

25 MS. SACHS: A -- a couple of answers

1 to that question, Your Honor.

2 Number one, we are not giving
3 disfavored treatment to property rights. The
4 Constitution does not protect the right to hold
5 onto your property when the government has a
6 just reason to take it.

7 And the -- what the Constitution
8 protects is the right to get just compensation
9 for that. And this Court since, I think, 1895,
10 has specifically said inverse condemnation is
11 an appropriate form of -- of providing that
12 reasonable, certain, and adequate compensation.

13 JUSTICE GORSUCH: But we could say --

14 MS. SACHS: But when --

15 JUSTICE GORSUCH: -- the exact --

16 MS. SACHS: -- but when --

17 JUSTICE GORSUCH: -- same thing with a
18 Fourth Amendment claim or a First Amendment
19 claim. There are a lot of great state judges
20 out there, every bit as good as any federal
21 judge. And there are a lot of state tort
22 claims that are available equivalent to the
23 trespass claim of an inverse condemnation suit.

24 Why don't we wait to see how they
25 adjudicate a Fourth Amendment violation by a

1 police officer who's engaged in excessive
2 force? Why don't we wait for -- when the
3 prosecutor's engaged in malicious prosecution?
4 We don't because 1983 says you don't have to
5 wait. Why not here?

6 MS. SACHS: Actually, with malicious
7 prosecution, Your Honor, we do. And that's one
8 example of times when we do require litigants
9 to have -- have completed their state process.
10 And here, that -- we are not suggesting that
11 there isn't a right to seek compensation.

12 The question is, has Congress created
13 a basis in federal court to seek compensation?
14 The suggestion that this is a federal takings
15 claim is not where this claim -- case --

16 JUSTICE KAGAN: Well, Ms. --

17 MS. SACHS: -- started or where
18 Williamson County started.

19 JUSTICE KAGAN: -- Ms. Sachs, I -- I
20 think you have a pretty good argument that
21 there's no Fifth Amendment violation until both
22 the taking has been accomplished and there's
23 been a denial of just compensation. And until
24 both of those things happen, there's no claim.

25 But I think the problem is -- and the

1 Chief Justice referred to this -- the way that
2 rule combines with the preclusion principles in
3 such a way that it prevents somebody from
4 getting into federal court at all. In other
5 words, does -- and I don't think Williams
6 really understood that this would happen, that
7 saying, well, look, you have to go through the
8 state process for determining just compensation
9 before you can bring a federal claim, I don't
10 think Williams understood that the result of
11 going through the state process for determining
12 just compensation was that you were never going
13 to be able to bring a Fifth Amendment claim.

14 And -- and that seems to me an issue
15 and one that I'm trying to find my way around.
16 And I'm wondering whether there is one.

17 MS. SACHS: Well, I think, when you go
18 back and look at Williamson County, Williamson
19 County was, again, in terms of a 1983 cause of
20 action, whether there had been a violation. So
21 we're talking about establishing whether there
22 has been a violation.

23 And with respect to the -- the full
24 faith and credit aspect, in Williamson County,
25 the -- the Court specifically cites the Migra

1 case, which the Court had decided one year
2 earlier and which specifically turned on
3 exactly that point --

4 JUSTICE BREYER: You don't have to --

5 MS. SACHS: -- that adjudication --

6 JUSTICE BREYER: -- the problem -- the
7 problem -- I mean, you could say what Justice
8 Gorsuch said, couldn't you? The state says:
9 No, we're not going to pay you. Ha, because
10 there's no compensation -- there's no taking.
11 Ha.

12 And we could say that's a final
13 decision not to take it. We could. I mean, I
14 don't see any logic. But Williamson didn't.
15 So I thought: Well, why let the sleeping
16 dog -- let it lie? And -- and then one thing,
17 however, they have a good point and what do you
18 think of that? Their point is there's surely
19 no reason for the defendant in the state case,
20 where you can do so, remove it to federal
21 court, and then, once he's in federal court,
22 they won't decide it because it wasn't in state
23 court.

24 You agree that we should -- no matter
25 what we do, we should write a sentence which

1 says that's wrong?

2 MS. SACHS: Yes, Your Honor. And --
3 and to -- to put that in context, I think of
4 all of the cases that have been raised as
5 supposedly illustrating this dramatic problem
6 created by Williamson County, there were only
7 three situations that we could identify where
8 an actual takings -- an actual inverse
9 condemnation claim had been pursued properly in
10 state court and then was dismissed when it was
11 removed.

12 And we agree, no one advocates for --
13 for not having property owners have their
14 appropriate --

15 JUSTICE BREYER: How does it work?

16 MS. SACHS: -- day in court.

17 JUSTICE BREYER: How does it work? I
18 just -- I should know this, but I don't. A
19 group of people would like to demonstrate in
20 the park next Thursday. To do that in the
21 city, you have to have a permit. They go to
22 the city authorities. And they say we do not
23 want you to demonstrate in park, and we won't
24 give you a permit.

25 Can the person who wants to

1 demonstrate then and there bring a suit in
2 federal court and -- saying that violates my
3 First Amendment right?

4 MS. SACHS: Well, if -- if that is a
5 complete --

6 JUSTICE BREYER: I should know.

7 MS. SACHS: -- yeah, I --

8 JUSTICE BREYER: I don't know.

9 MS. SACHS: Your Honor, I would say
10 that that might be an example of one of the
11 many situations where the -- the -- the state
12 doesn't have the right to violate anyone's
13 First Amendment right. The state doesn't have
14 the right to deny anyone of due process.

15 The state does have the right to take
16 property. That is a normal, legitimate,
17 appropriate function of government. And that's
18 why the -- the Fourteenth Amendment and the
19 Section 1983 cause of action very appropriately
20 allow violations of the right to get
21 compensation in exchange for the taking --

22 CHIEF JUSTICE ROBERTS: You -- you
23 answered --

24 MS. SACHS: -- to be litigated just
25 like any other violation.

1 CHIEF JUSTICE ROBERTS: You -- you
2 answered a question from Justice Breyer about
3 removal, is that correct?

4 MS. SACHS: About --

5 CHIEF JUSTICE ROBERTS: Removal to
6 federal court? Or did I misunderstand?

7 MS. SACHS: About whether a federal --
8 whether a federal -- if a federal cause of
9 action existed, could there be removal, yes.

10 CHIEF JUSTICE ROBERTS: So, under our
11 cases in Gunn and -- I forget whether it's
12 Gamble or Gramble -- we said there -- that
13 logic suggests there would be a federal cause
14 of action in this case, right? Any type of
15 condemnation case?

16 MS. SACHS: We would disagree with
17 that, Your Honor, because federal question
18 jurisdiction, arising under jurisdiction, under
19 Section 1331, is a very different analysis --

20 CHIEF JUSTICE ROBERTS: Okay.

21 MS. SACHS: -- and this Court has
22 pointed out.

23 CHIEF JUSTICE ROBERTS: I'll take your
24 point on that. But then -- so in what
25 situation would somebody be able to remove an

1 inverse condemnation case to federal court?

2 MS. SACHS: If it were coupled with a
3 claim that properly stated a federal cause of
4 action. If there were a facial challenge to
5 the --

6 CHIEF JUSTICE ROBERTS: Oh, so it's
7 really not --

8 MS. SACHS: -- statute that caused --

9 CHIEF JUSTICE ROBERTS: -- you're not
10 talking about anything like the case we're
11 talking about today?

12 MS. SACHS: No, with it -- and this
13 case was --

14 CHIEF JUSTICE ROBERTS: Okay. So
15 removal's not a responsive argument to the
16 objections that are being raised?

17 MS. SACHS: Well, we -- this case
18 didn't start off in state court. This
19 plaintiff filed this particular case in federal
20 court. So there was no removal issue.

21 JUSTICE SOTOMAYOR: I'm sorry.

22 MS. SACHS: But --

23 JUSTICE SOTOMAYOR: You -- you can
24 remove a state -- a state reverse condemnation
25 case if there's diversity.

1 JUSTICE BREYER: Yeah, that's --

2 MS. SACHS: Yes, if there's diversity,
3 yes. And there are other circumstances too.
4 There could be -- there could be a
5 legitimate --

6 JUSTICE BREYER: That's what I was
7 thinking.

8 MS. SACHS: Right.

9 JUSTICE BREYER: I was thinking
10 only --

11 MS. SACHS: A legitimate --

12 JUSTICE BREYER: -- I was thinking
13 only of their complaint, that there are two or
14 three cases where removal is proper, probably
15 because of diversity.

16 MS. SACHS: Right.

17 JUSTICE BREYER: And then the poor
18 plaintiff gets into federal court and it's
19 dismissed.

20 MS. SACHS: Right. Diversity is one
21 example.

22 JUSTICE BREYER: You have no objection
23 to changing that?

24 MS. SACHS: Correct. The -- the --
25 yes, that -- that would not be what the

1 argument is here. But the distinction is --

2 CHIEF JUSTICE ROBERTS: Well, just
3 to --

4 MS. SACHS: -- that there has to be a
5 right to be in federal court in the first
6 place. If they are stating other valid claims
7 that belong in federal court, the case should
8 be in federal court. But Congress has not
9 created a cause of action for general federal
10 takings.

11 And the -- the City of Chicago case
12 that was mentioned earlier --

13 JUSTICE SOTOMAYOR: To have a due
14 process right claim under 1983 --

15 MS. SACHS: A --

16 JUSTICE SOTOMAYOR: -- you have to
17 have a valid claim that the process that you're
18 being offered by the state is inadequate,
19 unfair. There's a bunch of different words.

20 MS. SACHS: Yes.

21 JUSTICE SOTOMAYOR: So that if
22 compensation is unfair, inadequate, et cetera,
23 you could still have a federal claim under
24 1983?

25 MS. SACHS: Absolutely, Your Honor.

1 The --

2 JUSTICE SOTOMAYOR: And if you have a
3 -- if you're claiming that you haven't had a
4 fair process, you can still go -- even after
5 you finish the process, you can still go to
6 federal court and you won't be claim-precluded
7 if you prove that the process you received
8 wasn't fair, correct?

9 MS. SACHS: Correct. Absolutely.

10 JUSTICE SOTOMAYOR: So to say --

11 JUSTICE GINSBURG: And when you were
12 discussing --

13 JUSTICE SOTOMAYOR: -- that you have a
14 right --

15 CHIEF JUSTICE ROBERTS: Justice
16 Ginsburg.

17 JUSTICE GINSBURG: -- City of Chicago,
18 when you -- you were in the middle of saying
19 something about City of Chicago, which the --
20 the solicitor general relies on for the 1331
21 argument. Could you complete your answer to
22 that, the relevance of City of Chicago?

23 MS. SACHS: Absolutely, Justice
24 Ginsburg. The reason that we -- we wanted to
25 point out City of Chicago is that City of

1 Chicago is another example, I think, of what
2 Justice Sotomayor was just talking about: a
3 case that belonged in federal court from the
4 start or could have been filed in federal court
5 from the start, because, when you look at the
6 actual complaint, a notice of removal, which we
7 actually got from the federal court archives
8 for that purpose, they were all federal facial
9 claims that could have been brought in federal
10 court in the first place.

11 There was no claim for compensation
12 that was removed. The issue in that case and
13 the reason the Court referenced, I think,
14 Section 1331 jurisdiction was because the Court
15 made a point of saying every issue raised by
16 the plaintiff in that case was a substantial
17 federal issue.

18 And so that was a case that was
19 properly in federal court. And those cases --

20 JUSTICE GINSBURG: Well, that's not
21 100 percent clear.

22 MS. SACHS: I'm sorry, Your Honor?

23 JUSTICE GINSBURG: Because I dissented
24 in City of Chicago.

25 (Laughter.)

1 MS. SACHS: And -- and I -- I -- I
2 remember that, Your Honor, because of the cross
3 -- the cross sort of jurisdictional appeal
4 issue, which was really, I think, what was a
5 big issue in that case, not whether there
6 weren't claims that couldn't have been brought
7 in federal court to start with. And I think
8 that's --

9 CHIEF JUSTICE ROBERTS: One of the
10 problems --

11 MS. SACHS: -- what it's been cited
12 for here.

13 CHIEF JUSTICE ROBERTS: -- one of the
14 problems with requiring takings plaintiffs to
15 go to state court is that the inverse
16 condemnation procedures can be very elaborate,
17 can be very expensive, requiring the hiring of
18 experts and economic analyses and all that.
19 And somebody with a legitimate takings claim,
20 forced to go through the state procedures, as a
21 practical matter may not be able to defend
22 their -- their rights.

23 MS. SACHS: Well, that is certainly
24 not the case in Pennsylvania, Your Honor, which
25 is what I can speak to. Pennsylvania's process

1 not only is very comprehensive, their -- it
2 provides for expert review, it provides for
3 more relief --

4 CHIEF JUSTICE ROBERTS: Well, okay --
5 well, I -- I assume it's not necessarily the
6 case in every other state. So what would you
7 do in a situation where -- where that's the --
8 the case, that the -- the procedure is very
9 expensive and requiring someone to go through
10 it will discourage people with legitimate
11 federal claims from going forward with them?

12 MS. SACHS: Again, nobody advocates
13 for a position that would not allow owners to
14 go to court. But what Your Honor is positing
15 sounds like it could be a Section 1983 claim
16 because there's been a denial of a means to
17 provide just compensation.

18 If the process is so byzantine or long
19 or complicated that it -- it doesn't represent
20 that reasonable, certain, adequate component,
21 that constitutionality demands.

22 JUSTICE KAGAN: Ms. Sachs --

23 JUSTICE ALITO: Are there -- are there
24 any reliance interests at issue here? That's
25 an important consideration under stare decisis.

1 MS. SACHS: Yes, I think there are,
2 Your Honor. And I --

3 JUSTICE ALITO: In what way are states
4 and their subdivisions in a different position
5 today than they were on the eve of the decision
6 in Williamson County?

7 MS. SACHS: Well, I think the
8 Williamson County, and just if -- if I may put
9 a bit of context to that question, because
10 there's been so much focus on Williamson
11 County, Williamson County was actually not so
12 much the sea change in this area as Monell,
13 because Monell was where this Court first said
14 you can make a Section 1983 claim against a
15 municipality.

16 That was just seven years before
17 Williamson County. And the Court said we're
18 not establishing the contours of -- of what
19 liability against township -- municipalities
20 will look like.

21 So the amount of Section 1983
22 litigation really arose after Monell and -- and
23 -- and came to this Court in Williamson County.
24 But to answer then the question of -- of the
25 difference between then and now, before and

1 after Williamson County, states have used
2 eminent domain and inverse condemnation
3 proceedings to be sure that they're providing
4 the appropriate compensation for any regulatory
5 taking that might be deemed to occur.

6 And, of course, they've continued to
7 -- to do that and to enact statutes in
8 reliance, and regulations, in reliance --

9 JUSTICE ALITO: So what --

10 MS. SACHS: -- upon the fact that --

11 JUSTICE ALITO: -- have they done --

12 what have they done in reliance on their
13 understanding that they can't be required to go
14 directly to federal court in a case like this?

15 MS. SACHS: Well, I -- I -- I think
16 that they've relied on the existence of their
17 processes as providing the compensation that is
18 required for any taking so that they don't have
19 to determine that in some fashion --

20 JUSTICE ALITO: What --

21 MS. SACHS: -- in advance.

22 JUSTICE ALITO: So what would they
23 have done differently if that rule had never
24 been adopted?

25 MS. SACHS: If -- if Williamson County

1 had come out differently?

2 JUSTICE ALITO: Yeah. What would they
3 have done differently?

4 MS. SACHS: I --

5 JUSTICE ALITO: What would they have
6 done differently as a result of Williamson
7 County that cannot be easily undone?

8 MS. SACHS: It's -- it's -- well, I
9 think depending upon the basis for -- for
10 undoing Williamson County, if this Court were
11 to say that you have to make payment in
12 advance, I think that would affect counties and
13 municipalities all over the country
14 tremendously because it would require the
15 rewriting of every eminent domain code out
16 there and it would require every statute,
17 presumably, or regulation or ordinance --

18 JUSTICE GORSUCH: Well, but, counsel,
19 that's not --

20 MS. SACHS: -- to somehow be --

21 JUSTICE GORSUCH: -- that's not --
22 that's not quite what's at issue, of course.
23 We're just talking about a remedial regime in
24 either case, a suit in federal court or a suit
25 in state court.

1 And I would have thought presumably
2 the answer would be that the state's conduct
3 would be the same in either circumstance.
4 You'd be prepared to pay just compensation for
5 takings, and prepared not to pay just
6 compensation where there is no taking, and it
7 wouldn't matter whether the claim's in federal
8 court or state court. Isn't that right?

9 MS. SACHS: If -- if -- if -- if
10 that's the question and then I misunderstood
11 Justice Alito's question, and I apologize, but
12 I thought when you were talking about
13 overruling Williamson County, you were thinking
14 of one of the arguments that we've heard here
15 today, which is that perhaps it's always
16 unconstitutional if taking isn't made at the
17 time --

18 JUSTICE ALITO: No, I'm talking about

19 MS. SACHS: -- of inverse --

20 JUSTICE ALITO: -- reliance. Usually,
21 in a stare -- when -- when stare decisis is at
22 issue, the party invoking stare decisis will
23 say: Well, you know, this has been on the
24 books for a long time, and -- and we've done
25 all sorts of things or the society has done all

1 sorts of things, and it would be a great burden
2 to undo, very upsetting to undo all of that.
3 That's what I was getting at.

4 But you've addressed the reliance
5 part. What -- what other factors under stare
6 decisis weigh strongly in favor of retaining
7 Williamson County in your judgment?

8 MS. SACHS: The fact that it was
9 correct from the outset, Your Honor, and the
10 fact that this is an area where one of the
11 factors for stare decisis is whether the
12 Court's recent decisions are consistent or
13 inconsistent with any steps Congress may have
14 taken recently.

15 JUSTICE ALITO: Well, if we overruled
16 it --

17 MS. SACHS: Now some --

18 JUSTICE ALITO: -- would that
19 undermine other decisions of ours?

20 MS. SACHS: Well, Your Honor, there
21 isn't a whole web of -- of precedents from this
22 Court, both on the full faith and credit issue,
23 but, obviously, that would be minimized, but
24 things like Del Monte Dunes, where the Court
25 specifically said, again, and I think in the

1 1983 context, that there is no -- that you need
2 that element of denial.

3 JUSTICE BREYER: I don't know if
4 you've come across this anywhere, but --

5 MS. SACHS: I'm sorry, Your Honor?

6 JUSTICE BREYER: I don't know if
7 you've come across this in stare decisis cases,
8 but I think a factor that moves me -- maybe it
9 shouldn't -- is it's a technical area of law,
10 two generations at least of lawyers have grown
11 up knowing this is how you proceed, that if you
12 change it, suddenly there will be new lines
13 that have to be drawn, which are the complete
14 refusals, which are the not refusals, but we --
15 which are the partial refusals, and maybe it
16 will be a boon to law schools that have courses
17 to catch property lawyers up on what's going
18 on.

19 Now is that sort of thing relevant to
20 stare decisis?

21 MS. SACHS: I -- I think that they --
22 the ability to rely upon existing
23 jurisprudence, to trust the courts to say that
24 we trust the state courts to resolve these
25 issues and to know that, especially in property

1 rights cases, where stare decisis has
2 particular force because people do rely upon
3 what they know about property rights, and --
4 and this Court has called that particular area
5 sort of a super-specialized type of stare
6 decisis that requires a super-specialized
7 justification --

8 JUSTICE KAGAN: Ms. Sachs?

9 MS. SACHS: -- for overruling it. And
10 that doesn't exist. I'm sorry?

11 JUSTICE KAGAN: I probably should know
12 the answer to this question, but if -- if
13 Pennsylvania, instead of using an inverse
14 condemnation procedure, used a strictly
15 administrative process so it didn't go to the
16 courts, it was just some kind of administrative
17 body, would that have the same kind of
18 preclusive effect as a state court judgment
19 does?

20 MS. SACHS: I think it would not have
21 the same type of preclusive effect in an
22 administrative proceeding. So that --

23 JUSTICE GINSBURG: Can you go over
24 what -- you said that there's an element
25 missing, this is not a 1983 claim because

1 there's an element of such a claim that's
2 missing. What is the element that's --

3 MS. SACHS: I think the element that
4 is missing, Justice Ginsburg, is the denial or
5 the -- the deprivation of a constitutional
6 right. There has been no deprivation of a
7 constitutional right because the right that
8 this Court has said is protected is the right
9 to get just compensation, that that can happen
10 afterwards as long as that reasonable, certain,
11 adequate provision exists.

12 And the Petitioner has not been
13 deprived of that. So, to state this as a 1983
14 cause of action, it -- it misses the fact that
15 it is missing an element.

16 This is an inverse condemnation case
17 which Petitioner could still bring. The
18 statute of limitations has not run on this
19 case. She has always had the right to file
20 what she should have filed in the first place,
21 which is an inverse condemnation proceeding
22 where, in Pennsylvania, there's all sorts of
23 emphasis on promptness, to Your Honor's point
24 about the length of -- of what could happen.
25 That's not the situation in Pennsylvania.

1 There's a tremendous emphasis on how
2 these proceed, and also a tremendous benefit to
3 a takings claimant who is successful, because
4 our inverse condemnation proceeding if
5 successful pays, and shall pay -- this is
6 mandatory -- attorneys' fees, costs, expert
7 fees, appraisal fees, interest obviously.

8 It is a very beneficial process for
9 property owners. This is not a bad situation
10 for them to --

11 CHIEF JUSTICE ROBERTS: How much --

12 MS. SACHS: -- be in, and they haven't
13 claimed that it is.

14 CHIEF JUSTICE ROBERTS: If you do owe
15 Ms. Knick compensation for requiring her to
16 grant access to people to come see the grave,
17 how -- how much do you think that would be
18 worth?

19 MS. SACHS: Oh, Your Honor --

20 CHIEF JUSTICE ROBERTS: Well, I know.
21 But my point is that it's very hard to litigate
22 that question. It's a fairly abstract
23 question. She's entitled to some compensation.
24 It's a taking of an easement. It's going to
25 require extraordinary amounts of valuation

1 procedures.

2 And you say, well, you get attorneys'
3 fees and expert fees, but only if you win at
4 the end, and that's requiring the property --
5 property owner to undertake a very big gamble
6 to vindicate a right granted under the
7 Constitution.

8 MS. SACHS: Your Honor, there's
9 nothing to suggest, and Petitioners have not
10 suggested, that the Pennsylvania process is any
11 more long or burdensome or expensive than any
12 litigation process would be.

13 And -- and -- and we submit that
14 actually it's the opposite. Pennsylvania would
15 be a much faster process. Here we are four
16 years later and -- and we're still litigating a
17 preliminary issue. If an inverse condemnation
18 proceeding had been filed, with all of the
19 emphasis on promptness and on the ability to
20 take interlocutory appeals, which is unusual,
21 but -- in Pennsylvania, but is provided for
22 this cause of action, this case would have been
23 over long ago.

24 The -- so the -- there -- there's been
25 no suggestion that Pennsylvania's process is

1 burdensome. I can't say there's no process out
2 there, but, certainly, there's nothing before
3 this Court that would give that as a basis to
4 say that the -- the -- the -- the Pennsylvania
5 process doesn't provide the reasonable,
6 certain, and adequate component.

7 And this Court has said it so many
8 times, for 130 years, that that is adequate.
9 And the -- that is what we have provided and
10 continue to provide.

11 And, you know, to suggest that every
12 one of these claims would now be appropriately
13 in the federal forum really deprives the -- the
14 states of the ability to help shape --

15 JUSTICE SOTOMAYOR: Now I have --

16 MS. SACHS: -- state property laws.

17 JUSTICE SOTOMAYOR: -- I have -- may

18 I?

19 CHIEF JUSTICE ROBERTS: Yes.

20 JUSTICE SOTOMAYOR: And I know there's
21 some dispute below, but have you taken a look
22 at sovereign immunity? Can states be sued for
23 reverse condemnation in federal court unless
24 they've agreed to be sued in federal court?

25 MS. SACHS: States cannot. But the

1 townships are -- do not have --

2 JUSTICE SOTOMAYOR: The township
3 could, but --

4 MS. SACHS: The township could. That
5 -- that -- the immunity was not an issue, Your
6 Honor. So that was not raised.

7 CHIEF JUSTICE ROBERTS: Thank you,
8 counsel.

9 MS. SACHS: Thank you.

10 CHIEF JUSTICE ROBERTS: Mr. Breemer,
11 you have two minutes remaining.

12 REBUTTAL ARGUMENT OF J. DAVID BREEMER
13 ON BEHALF OF THE PETITIONER

14 MR. BREEMER: Thank you, and may it
15 please the Court:

16 Williamson County is not a sleeping
17 dog. It has run wild through the state and
18 federal courts for 30 years swallowing just
19 compensation rights of ordinary people like
20 Ms. Knick.

21 There are so many problems with Ms. --
22 excuse me, with Williamson County -- res
23 judicata, removal, Rooker-Feldman, its
24 infection of other constitutional claims --
25 there's no way to set things right except

1 overruling that portion of Williamson County
2 and returning --

3 JUSTICE SOTOMAYOR: Sorry. I -- the
4 only right at issue here that you're claiming
5 is the right to have this adjudicated in
6 federal court. You haven't suggested that the
7 Pennsylvania inverse condemnation system is
8 unfair, unjust, not reasonable, not fast, not
9 anything else, right? So your only absolute
10 claim is "I should have had this done in
11 federal court, not state court," correct?

12 MR. BREEMER: Your Honor --

13 JUSTICE SOTOMAYOR: Because I wanted
14 it in federal court?

15 MR. BREEMER: The state process is
16 more complicated. Just like the government
17 sometimes wants a constitutional claim in
18 federal court, sometimes a person like
19 Ms. Knick believes that her federal rights will
20 be better protected in a federal forum.

21 Since it's a federal question whether
22 or not there is a taking --

23 JUSTICE SOTOMAYOR: Well, she's not --

24 MR. BREEMER: -- that is
25 appropriate --

1 JUSTICE SOTOMAYOR: -- guaranteed
2 that, unfortunately, because even under the
3 abstention doctrines, the issue of whether or
4 not there was a permanent easement on her
5 property the day she bought it, because this
6 has been historically true for 300 years, I
7 don't know. I don't know how the district
8 court's going to do that without referring to
9 state law. And so that's what she wishes for.

10 CHIEF JUSTICE ROBERTS: You -- you may
11 answer, briefly.

12 MR. BREEMER: Williamson County is not
13 an abstention doctrine. It's an incorrect
14 doctrine. The violation of a person's right to
15 just compensation occurs at the time of a
16 taking when the government has no intent or
17 means to compensate or denies compensation.

18 And that's what happened here when the
19 township took Ms. Knick's property without
20 condemning it and without any ability or means
21 to compensate.

22 CHIEF JUSTICE ROBERTS: Thank you,
23 counsel. The case is submitted.

24 (Whereupon, at 11:08 a.m., the case
25 was submitted.)

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