No.

IN THE
Supreme Court of the United States

PHILIP G. POTTER,
Petitioner,

v.

INCORPORATED VILLAGE OF OCEAN BEACH, ET AL.,
Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

This Court has repeatedly instructed courts to determine when a claim challenging state action under 42 U.S.C. § 1983 accrues by first "identifying 'the specific constitutional right' alleged to have been infringed." *McDonough* v. *Smith*, 588 U.S. 109, 115 (2019); see, *e.g.*, *Reed* v. *Goertz*, 598 U.S. 230, 236 (2023); *Manuel* v. *City of Joliet*, 580 U.S. 357, 370 (2017).

The Second Circuit, however, takes a different approach in cases involving disputes over land use. Rather than focus on the "'the specific constitutional right'" at issue, the Second Circuit subjects procedural due process claims asserted in the land-use context to the accrual rule for *takings* claims announced in *Williamson County Regional Planning Commission* v. *Hamilton Bank of Johnson City*, 473 U.S. 172 (1985), and refined in *Knick* v. *Township of Scott*, 588 U.S. 180 (2019), and *Pakdel* v. *City & County of San Francisco*, 594 U.S. 474 (2021). That one-size-fits-all approach tracks the law of the Third Circuit. But it conflicts with the approach taken by the Fifth, Sixth, Seventh, Ninth, and Tenth Circuits, which apply the takings rule only to claims that seek relief for takings.

The question presented is:

Whether the accrual rule for takings claims under 42 U.S.C. § 1983 applies to procedural due process claims asserted in land-use disputes.

PARTIES TO THE PROCEEDINGS BELOW

1. Petitioner Philip G. Potter was plaintiff-appellant below.

2. Respondents Incorporated Village of Ocean Beach, Village Building Department, Village Board of Trustees, Mayor of the Village of Ocean Beach, Village Board of Zoning Appeals, Gerard S. Driscoll, Village Building Inspector, in his official and individual capacities, Theodore Minski, Village Building Inspector, in his official and individual capacities, Nicholas Weiss, Village Building Inspector, in his official and individual capacities, Louis Santora, Village Building Inspector, in his official and individual capacities, Robert Fuchs, Village Prosecutor, in his official and individual capacities, and Kenneth Gray, Village Hearing Officer, in his official and individual capacities, were defendants-appellees below.

STATEMENT OF RELATED PROCEEDINGS

This case arises from the following proceedings:

- *Potter* v. *Incorporated Village of Ocean Beach*, No. 24-2033-cv (2d Cir. Apr. 10, 2025) (affirming judgment for respondents)
- *Potter* v. *Incorporated Village of Ocean Beach*, No. 2:23-cv-6456 (E.D.N.Y. July 10, 2024) (entering judgment for respondents)

There are no other proceedings in state or federal trial or appellate courts, or in this Court, directly related to this case within the meaning of this Court's Rule 14.1(b)(iii).

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PETITION FOR A WRIT OF CERTIORARI

Philip G. Potter respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit.

OPINIONS BELOW

The Second Circuit's opinion (App., *infra*, 1a-8a) is unreported, but available at 2025 WL 1077405. The district court's opinion (App., *infra*, 9a-18a) is likewise unreported, but available at 2024 WL 3344041.

JURISDICTION

The Second Circuit entered judgment on April 10, 2025, App., *infra*, 1a-8a, and denied petitioner's timely rehearing petition on May 13, 2025, App., *infra*, 19a-20a. On August 1, 2025, Justice Sotomayor extended the time

to file this petition to October 10, 2025. No. 25A130. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Due Process Clause of the Fourteenth Amendment to the U.S. Constitution provides in pertinent part:

> [N]or shall any State deprive any person of life, liberty, or property, without due process of law.

Section 1983 of Title 42, U.S. Code, provides in pertinent part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress * * *.

INTRODUCTION

This case presents an important and recurring question that has divided the courts of appeals: whether procedural due process claims asserted in land-use disputes are subject to the same accrual rule as takings claims. Two circuits—the Second and Third—have held that they are. Five others—the Fifth, Sixth, Seventh, Ninth, and Tenth—have held they are not.

In this case, the Second Circuit subjected a procedural due process claim to the accrual rule for takings, for no other reason than that it arose "in the land-use context." App., *infra*, 6a n.1. That defies this Court's repeated admonition that an "accrual analysis begins with identifying 'the specific *constitutional right*' alleged to have

been infringed"—not the context in which it was infringed. *McDonough* v. *Smith*, 588 U.S. 109, 115 (2019) (emphasis added). It also deepens an entrenched and acknowledged circuit conflict. The Second Circuit's one-size-fits-all approach to claims asserted in land-use disputes tracks the law in the Third Circuit. But it splits with the Fifth, Sixth, Seventh, Ninth, and Tenth Circuits, which apply the takings rule only to claims that seek relief for takings.

The distinction matters because takings and procedural due process claims do not necessarily ripen at the same time. Since this Court's decision in *Knick* v. *Township of Scott*, 588 U.S. 180 (2019), takings claims ripen as soon as the government "deprives [the plaintiff] of his property," *id.* at 194. But procedural due process claims are "'*not* complete when the deprivation occurs.'" *Reed* v. *Goertz*, 598 U.S. 230, 236 (2023) (emphasis added). Such claims ripen "only when 'the State fails to provide due process'" for the deprivation—something that might not be clear until much later. *Ibid.*

If the limitations clock for a procedural due process claim ran from the moment of the underlying deprivation, plaintiffs would have to "pursue relief in the state system and simultaneously file a protective federal §1983 suit challenging that ongoing state process." *Reed*, 598 U.S. at 237. Such "parallel litigation would 'run counter to core principles of federalism, comity, consistency, and judicial economy.'" *Ibid.* Worse, it would require plaintiffs to foresee—sometimes years in advance—that flaws in the state process would eventually rise to the level of a due process violation.

This case illustrates the problem. Petitioner sued respondents under §1983, alleging that they had revoked the certificate of occupancy for his home without due process. State courts repeatedly told him that it was *too soon* to

challenge the revocation because revocation proceedings were ongoing. But the Second Circuit, applying the takings rule, held it was *too late* for petitioner's procedural due process challenge to those very proceedings because respondents had revoked, as a practical matter, the certificate years earlier. By the Second Circuit's logic, petitioner should have filed his federal suit years before his claim was ripe. That makes no sense.

This Court's review is needed.

STATEMENT

This case arises from petitioner's efforts to reinstate the certificate of occupancy for his home in Ocean Beach, New York. The district court appropriately described that fifteen-year ordeal as "Sisyphean." App., *infra*, 9a-10a. After being told repeatedly by state courts that his claims were not ripe because proceedings to revoke the certificate remained ongoing, federal courts held that his challenge to those proceedings came too late because respondents had made a *de facto* decision to revoke the certificate years earlier.

A. Legal Framework

A claim challenging state action under 42 U.S.C. § 1983 accrues "when the plaintiff has a complete and present cause of action." *McDonough* v. *Smith*, 588 U.S. 109, 115 (2019) (quotation marks omitted). Determining when a cause of action is "complete" "begins with identifying 'the specific constitutional right' alleged to have been infringed." *Ibid.* Different rules apply to claims seeking just compensation under the Takings Clause, on one hand, and to claims asserting violations of the Due Process Clause's right to fair procedures, on the other.

1. In *Williamson County Regional Planning Commission* v. *Hamilton Bank of Johnson City*, 473 U.S. 172

(1985), the Court held that a takings claim does not accrue until (i) the government has reached a "final decision" respecting the property at issue, *id.* at 190, and (ii) the property owner has sought "compensation through the procedures the State has provided for doing so," *id.* at 194.

This Court eliminated *Williamson County*'s state-litigation requirement in *Knick*. After *Knick*, a property owner need not exhaust state procedures for obtaining compensation before filing suit. 588 U.S. at 185. The property owner suffers a "'deprivation' of a right 'secured by the Constitution'" "as soon as a government takes his property for public use without paying for it." *Id.* at 189.

But *Knick* left in place *Williamson County*'s final-decision requirement. 588 U.S. at 188. Under that prong of the *Williamson County* analysis, a deprivation does not occur until the government has reached a final decision respecting the plaintiff's property. See *Pakdel* v. *City & Cnty. of San Francisco*, 594 U.S. 474, 478-479 (2021). That requirement is not demanding. It takes "nothing more than *de facto* finality" to ensure "that a plaintiff has actually 'been injured by the Government's action' and is not prematurely suing over a hypothetical harm." *Id.* at 479. "Once the government is committed to a position," the "dispute is ripe for judicial resolution," and the limitations clock begins to run. *Ibid.*

2. A different rule applies to procedural due process claims. Unlike takings claims, procedural due process claims are "*not* complete when the deprivation occurs." *Zinermon* v. *Burch*, 494 U.S. 113, 126 (1990) (emphasis added). In such cases, "the deprivation by state action of a constitutionally protected interest in 'life, liberty, or property' is not in itself unconstitutional; what is unconstitutional is the deprivation of such an interest *without due process of law*." *Id.* at 125. A procedural due process claim

accordingly "is 'complete'"—and thus ripe for adjudication—"only when 'the State fails to provide due process.'" *Reed*, 598 U.S. at 236 (quoting *Zinermon*, 494 U.S. at 126).

B. Background

In 2010, the Incorporated Village of Ocean Beach, New York issued petitioner a permanent certificate of occupancy for his residence. App., *infra*, 11a; see C.A. App. 243. Just under a year later, in July 2011, the Village sent petitioner a letter purporting to revoke that certificate without notice or an opportunity to contest the Village's decision. C.A. App. 244. That was just the beginning.

1. Relying on that revocation, the Village proceeded to issue a series of criminal citations against petitioner for violations of the Village building code. C.A. App. 223-224. Yet when the matter came before the Village Justice Court in November 2014, the Village prosecutor admitted he could not, "'in all good faith,'" defend the citations because petitioner *had* a certificate of occupancy. C.A. App. 248.

Indeed, the Village had convened a hearing just months earlier to consider "the *proposed* revocation" of the certificate of occupancy—even though the Village had purported to revoke it three years earlier. C.A. App. 56 (emphasis added). That hearing culminated in August 2014 with a recommendation that the Village Board revoke the certificate. C.A. App. 346-349. But it was another year before the Board took up that recommendation. C.A. App. 350. When it finally did so, in October 2015, the Board voted to table the recommendation indefinitely. C.A. App. 352.

Despite admitting in 2014 that petitioner *had* a valid certificate of occupancy and then tabling a resolution to revoke it in 2015, the Village denied petitioner's applications for rental permits in 2016 and 2017, citing purported

code violations premised on the absence of a valid certificate. C.A. App. 364-366.

2. Unable to use, rent, or sell his home without risking further repercussions, petitioner turned to the courts.

In August 2019, petitioner filed an action in state court, seeking a declaration that his 2010 certificate of occupancy remained valid. *Potter* v. *Inc. Vill. of Ocean Beach*, No. 616547/2019, Dkt.1, ¶15(a) (N.Y. S. Ct. Aug. 22, 2019). The Village moved to dismiss, arguing, among other things, that the suit was premature because the Board had not yet decided whether to revoke the certificate. C.A. App. 466. The state court dismissed the action on the ground that petitioner had not filed a pre-suit notice of claim. C.A. App. 367-369.

Petitioner submitted the required notice of claim and, in October 2020, sued again. C.A. App. 384-391; *Potter* v. *Inc. Vill. of Ocean Beach*, No. 614599/2020, Dkt.1 (N.Y. S. Ct. Oct. 6, 2020). This time, rather than argue that the suit was premature, the Village claimed the suit was nearly a decade *too late*. C.A. App. 473-475. The Village acknowledged that the Board had still taken no action on the now six-year-old recommendation to revoke petitioner's certificate of occupancy. C.A. App. 471. Yet it now argued that the certificate had actually been revoked back in 2011. C.A. App. 474-475. The Village made no attempt to square that argument with the Village prosecutor's admission in 2014 that the criminal citations against petitioner were invalid precisely because his certificate had *not* been revoked. C.A. App. 248-250. Nor did it explain how the revocation could occur without Board approval.

The state court again dismissed—but not for the reasons the Village had urged. In a March 2021 order, the court rejected the argument that petitioner's certificate of

occupancy had been revoked in 2011. To the contrary, the court concluded that the suit was "premature" because the Village had "failed to make a final determination as to the revocation of the [certificate]." C.A. App. 372. The court found that petitioner was "entitled to a hearing with respect to the decision as to whether or not to revoke the [certificate]" and ordered the Village to convene such a hearing. *Ibid.* That hearing never took place.

C. Procedural History

When, two years later, the Village had still not held the state-court-ordered hearing on whether to revoke his certificate of occupancy, petitioner commissioned a search of Village property records. C.A. App. 170, 192. When the search turned up no sign of a certificate for his property, petitioner took his claims to federal court.

1. In August 2023, petitioner sued respondents (the Village and several of its officers) in the United States District Court for the Eastern District of New York, asserting state and federal constitutional claims related to the revocation of his certificate of occupancy, the issuance of the frivolous criminal citations, and the denial of his applications for rental permits. C.A. App. 10-47.

a. Respondents filed a pre-motion letter seeking leave to file a motion to dismiss petitioner's claims. C.A. App. 190-191. Invoking New York's three-year limitations period, applicable to claims under 42 U.S.C. § 1983, respondents again argued that any claims related to the certificate accrued in 2011. C.A. App. 190-191; see *Owens* v. *Okure*, 488 U.S. 235, 251 (1989). In response, petitioner pointed to the 2021 state-court ruling that the Village had *not* revoked the certificate. C.A. App. 192. In light of that ruling, petitioner argued, he had no reason to know that he no longer had a valid certificate until he obtained the results of the record search in March 2023. *Ibid.* The

district court dismissed the complaint without prejudice, finding that petitioner had not adequately alleged exhaustion of state-court remedies. C.A. App. 194, 201-204, 208.

b. In January 2024, immediately after the district court's dismissal order, petitioner commissioned a new search of Village records. This time, the Village responded with the "clarification" that there *had* been a certificate in the Village records, but that the certificate had been revoked in 2011. C.A. App. 376. Petitioner then filed a new state-court proceeding, in March 2024, seeking reinstatement of his certificate of occupancy and a finding that the Village was in contempt of the 2021 order to hold a revocation hearing. C.A. App. 490-491. The state court again held that the Village had not made "a final determination on the revocation of the [certificate]." C.A. App. 493. It ordered petitioner to allow an inspection of his property and ordered the Village to hold a hearing within four months of that inspection. C.A. App. 494. Petitioner timely appealed that ruling; the appeal remains pending.

c. Concurrently with the new state-court proceeding, petitioner filed an amended complaint in his federal action. The amended complaint asserted procedural and substantive due process claims under 42 U.S.C. § 1983; a *Monell* claim for municipal liability; and a 42 U.S.C. § 1985 civil conspiracy claim. C.A. App. 213-239. As relevant here, the amended complaint alleged that respondents violated petitioner's procedural due process rights by depriving him "of notice and an opportunity to be heard with regard to the [Village's] decision to obviate his rights to his premises." C.A. App. 233 ¶ 103.

Respondents again moved to dismiss petitioner's claims as untimely, arguing that any claims related to the revocation of the certificate of occupancy accrued in 2011.

C.A. App. 397-400. Petitioner countered that his claims had not accrued until January 2024, when the Village responded to his new records search by asserting that his certificate had been revoked years earlier. C.A. App. 452. State courts had twice held that the certificate had not yet been revoked. C.A. App. 450-451. And the Village had repeatedly taken the position that the certificate had not been revoked. C.A. App. 445-447, 450-451. It was only with the Village's response to his latest records search, petitioner explained, that it had become clear "that the Village had adopted the position that the [certificate] had been officially revoked." C.A. App. 452.

The district court dismissed petitioner's amended complaint—this time with prejudice. The court concluded without analysis or explanation that any claims arising from "the 2011 revocation of the Certificate of Occupancy" had accrued "well outside the limitations period." App., *infra*, 15a. The court did not address the Village prosecutor's admission that petitioner had a certificate of occupancy. It did not address the Village's failure since 2015 to vote on a resolution to revoke the certificate of occupancy. Nor did it attempt to square its conclusion with the state court's findings, in both 2021 and 2024, that the Village had not finally decided one way or another whether to revoke the certificate of occupancy.

2. The Second Circuit affirmed. The court agreed with the district court that claims relating to the denial of rental permits and the criminal citations had accrued years earlier. But the Second Circuit found it "more difficult" to say when petitioner's "claims relating to the Village's revocation of his [certificate of occupancy]" accrued. App., *infra*, 5a.

The court of appeals recognized that a claim does not accrue until "'the plaintiff has a complete and present

cause of action.'" App., *infra*, 4a. But the court did not ask when a procedural due process claim becomes "complete." Instead, citing circuit precedent, the court analyzed the accrual of petitioner's procedural due process claim as though it were a *takings* claim. App., *infra*, 6a n.1; see pp. 4-5, *supra*. Under *Williamson County*, the court explained, "claims 'in the land-use context'" ripen once the "'landowner receives a final, definitive decision'" from the relevant authorities. App., *infra*, 6a n.1.

Applying that framework to this case, the court held that petitioner's claims accrued when the Village reached a "'*de facto*'" final decision to revoke his certificate of occupancy. App., *infra*, 6a n.1 (quoting *Pakdel*, 594 U.S. at 479). According to the court, the Village "inflicted an actual, concrete injury," sufficient to start the limitations clock on petitioner's claim for "procedural due process violations," when it began to act "as though" he lacked a valid certificate. App., *infra*, 6a, 7a & n.1 (brackets and quotations marks omitted). The court did not address this Court's precedent holding that a procedural due process injury does not occur "until the State fails to provide due process." *Zinermon*, 494 U.S. at 126. To the contrary, the court cited petitioner's prior state-court litigation as "further support[]" that his claim had accrued, App., *infra*, 7a—even though the state court held his claims *un*ripe, see pp.7-9, *supra*.

Although the court concluded that petitioner's claim accrued outside the limitations period, it could not say exactly when. At one point, the court asserted it was "clear" by 2018 "that [petitioner] 'ha[d] reason to know of the injury which is the basis of his action'—that the Village had taken the position that the revocation of [petitioner's certificate] was final, despite the Village Board's purported indefinite tabling of the revocation." App.,

infra, 6a. At another point, however, the court opined that, "while [petitioner's] claims for substantive and procedural due process violations based on the Village's revocation of the 2010 [certificate] did not accrue when the Village Building Inspector voided his certificate in 2011," petitioner should have brought his claims "by at least 2020." App, *infra*, 7a.[1]

REASONS FOR GRANTING THE PETITION

The Second Circuit analyzed petitioner's procedural due process claim under the rule that governs the accrual of *takings* claims, for no other reason than that it arose "'in the land-use context.'" App., *infra*, 6a n.1. That defies this Court's instruction that the "accrual analysis" for claims under 42 U.S.C. § 1983 "begins with identifying the specific constitutional right alleged to have been infringed"—not the context in which it was infringed. *McDonough*, 588 U.S. at 115 (quotation marks omitted). It also deepens an entrenched and acknowledged circuit split.

The Second and Third Circuits apply the accrual rule for takings claims to all procedural due process claims asserted in land-use disputes. The Fifth, Sixth, Seventh, Ninth, and Tenth Circuits reject that one-size-fits-all approach. Those courts apply the takings rule only to claims that seek relief for takings. That conflict is untenable. It cannot be that the limitations clock on a procedural due process challenge in the land-use context starts running sooner in New York than New Mexico.

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[1] The Second Circuit asserted that petitioner had forfeited "the district court's ruling regarding the Village's failure to hold the state-court ordered hearing on the revocation of [petitioner's certificate]." App., *infra*, 8a n.3. But the only ruling on that issue was the district court's assertion that petitioner had no "'property interest[ ]'" in a hearing—something petitioner had not argued. App., *infra*, 18a.

The issue is also increasingly important. Since this Court eliminated the requirement that takings plaintiffs exhaust state remedies, takings claims accrue under *Williamson County* as soon as the government arrives at a "final" decision that deprives the plaintiff of his property. *Pakdel*, 594 U.S. at 479. That standard is not demanding. "[N]othing more than *de facto* finality is necessary." *Ibid.*; see *Knick*, 588 U.S. at 194. But procedural due process claims are "*not* complete when the deprivation occurs." *Zinermon*, 494 U.S. at 126 (em-phasis added). They ripen only when "the State fails to provide due process." *Ibid.* That might not happen until long after the deprivation, when state litigation ends. See *Reed*, 598 U.S. at 236.

To preserve their rights to state-law remedies without risking their federal right to challenge the procedures for obtaining those remedies, plaintiffs in the Second and Third Circuits may have to pursue state proceedings while simultaneously filing protective federal §1983 suits challenging those proceedings. That is exactly the "senseless" result this Court warned three Terms ago "would 'run counter to core principles of federalism, comity, consistency, and judicial economy.'" *Reed*, 598 U.S. at 237.

This case squarely presents the question. The Second Circuit dismissed petitioner's procedural due process claim based on its view that petitioner's certificate of occupancy was revoked at some point before 2020. App., *infra*, 7a. But the procedures petitioner challenged were still ongoing then. Indeed, state courts twice dismissed his attempts to reinstate his certificate as unripe for that very reason. See pp. 7-9, *supra*. By the Second Circuit's reasoning, petitioner would have had to file his federal suit long before his procedural due process claim would have been ripe. That makes no sense.

This Court's intervention is needed.

I. THERE IS AN ENTRENCHED AND ACKNOWLEDGED SPLIT ON THE QUESTION PRESENTED

The courts of appeals are divided, two-to-five, on whether the accrual rule for takings claims applies to procedural due process claims asserted in the land-use context. That acknowledged split—on a question of federal law with enormous consequences for property owners across the country—demands this Court's intervention.[2]

1. The Fifth, Sixth, Seventh, Ninth, and Tenth Circuits analyze the accrual of procedural due process claims in the land-use context by focusing on the specific constitutional right at issue. Those courts decline to apply *Williamson County*'s takings rule to bona fide procedural due process claims, reserving that framework for claims that seek relief for takings.[3]

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[2] The courts of appeals have long acknowledged these divergent approaches. See *Murphy* v. *New Milford Zoning Comm'n*, 402 F.3d 342, 349-350 (2d Cir. 2005) (recognizing agreement with *Taylor Inv., Ltd.* v. *Upper Darby Twp.*, 983 F.2d 1285, 1292 (3d Cir. 1993), cert. denied, 510 U.S. 914 (1993), and disagreement with *Nasierowski Bros. Inv. Co.* v. *City of Sterling Heights*, 949 F.2d 890, 894 (6th Cir. 1991)); *Taylor*, 983 F.2d at 1293 n.15 (distinguishing *Nasierowski*, 949 F.2d at 894-895); *John Corp.* v. *City of Houston*, 214 F.3d 573, 584-585 (5th Cir. 2000) (noting disagreement with *Taylor*, 983 F.2d at 1292-1294, and *Southview Assocs., Ltd.* v. *Bongartz*, 980 F.2d 84, 96-97 (2d Cir. 1992), cert. denied, 507 U.S. 987 (1993)); *Insomnia Inc.* v. *City of Memphis*, 278 F. App'x 609, 613-614 (6th Cir. 2008) (distinguishing Sixth Circuit's approach from approach in *Taylor*, 983 F.2d at 1295, and *Dougherty* v. *N. Hempstead Bd. of Zoning Appeals*, 282 F.3d 83, 91 (2d Cir. 2002)).

[3] Although they have not directly addressed the question presented, the First and D.C. Circuits have rejected procedural due process claims on the merits, without considering ripeness, while simultaneously dismissing associated takings claims on ripeness grounds. See *Elena* v. *Mun. of San Juan*, 677 F.3d 1, 4 (1st Cir. 2012); *Tri Cnty.*

Under Fifth Circuit precedent, even "a procedural due process claim that is brought concurrently with a takings claim" is "analyzed not under the principles of *Williamson County*, but according to 'general ripeness principles.'" *Bowlby* v. *City of Aberdeen*, 681 F.3d 215, 223 (5th Cir. 2012) (quoting *Rosedale Missionary Baptist Church* v. *New Orleans City*, 641 F.3d 86, 90 (5th Cir. 2011)). "[W]here the injury that resulted from an alleged procedural due process violation is merely a taking without just compensation," the procedural due process claim may ripen at the same time as the underlying takings claim. *Id.* at 224. But where the "'main thrust'" of the procedural due process claim "'is *not* a claim for a taking,'" its ripeness is "separate" from "any attendant takings claim." *Ibid.* (emphasis added) (quoting *Hidden Oaks Ltd.* v. *City of Austin*, 138 F.3d 1036, 1045 n.6 (5th Cir. 1998)).

Thus, in *Bowlby*, the court of appeals distinguished between the plaintiff's claim that "process was due before" the defendant city "revok[ed] her business permits" and the distinct Takings Clause claim "that her business was destroyed as a result." 681 F.3d at 225. The district court analyzed both claims under *Williamson County*'s takings rule, *id.* at 219, but the court of appeals disagreed. "In contrast to her takings claim," the court explained, the plaintiff's "due process claim challenges the permitting decision in isolation, as a single decision with its *own* consequences, rather than as one in a series of City actions resulting in a taking." *Id.* at 225 (brackets and ellipses omitted; emphasis added). So while the plaintiff's claim for the "value of her business" was subject to *Williamson County*'s rule, the procedural due process

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Indus., Inc. v. *District of Columbia*, 104 F.3d 455, 456, 458-459, 462 (D.C. Cir. 1997).

claim—premised on an injury independent of any taking—was not. *Id.* at 226.

The Sixth Circuit has joined the Fifth in enforcing the "'vital distinction between procedural due process claims and other varieties of constitutional grievances stemming from land use decisions.'" *Warren* v. *City of Athens*, 411 F.3d 697, 708 (6th Cir. 2005) (quoting *Nasierowski Bros. Inv. Co.* v. *City of Sterling Heights*, 949 F.2d 890, 893-894 (6th Cir. 1991); citing *Hidden Oaks*, 138 F.3d at 1045 n.6).

The plaintiffs in *Warren* asserted a procedural due process claim challenging the installation of barricades that restricted access to their business. 411 F.3d at 700. The Sixth Circuit noted that, under circuit precedent, "procedural due process claims that are ancillary to takings claims" are subject to *Williamson County*'s takings rule. *Id.* at 708. But it held that the plaintiffs' procedural due process claim was not "ancillary" (and thus not subject to *Williamson County*'s rule) because it addressed "a separate injury—the deprivation of a property interest without a predeprivation hearing." *Ibid.*; see also *Peters* v. *Fair*, 427 F.3d 1035, 1037 (6th Cir. 2005) (noting this distinction).

The Tenth Circuit has similarly declined to apply *Williamson County*'s takings rule to "procedural-due-process claim[s]" that are "factually and conceptually distinct from [a] takings claim." *Schanzenbach* v. *Town of La Barge*, 706 F.3d 1277, 1283 (10th Cir. 2013). The plaintiff in *Schanzenbach* asserted takings and procedural due process claims challenging the revocation of building permits. *Id.* at 1280. The court of appeals held *Williamson County*'s requirements inapplicable to the procedural due process claim because, while the takings claim challenged the revocation itself, the procedural due process claim "relate[d] to the denial of an opportunity to argue *against*

the revocation." *Id.* at 1283 (emphasis added). That claim did "not depend on whether revocation of the permit constituted a compensable taking." *Ibid.*; cf., *e.g.*, *Rocky Mountain Materials & Asphalt, Inc.* v. *Bd. of Cnty. Comm'rs of El Paso Cnty.*, 972 F.2d 309, 311 (10th Cir. 1992) (applying *Williamson County* to procedural due process claim "coextensive" with claim for "complete taking").

The Ninth Circuit has likewise held that ripe procedural due process claims "concerning land use may proceed even when related" takings claims "are not yet ripe for adjudication" under *Williamson County*. *Carpinteria Valley Farms, Ltd.* v. *Cnty. of Santa Barbara*, 344 F.3d 822, 831 (9th Cir. 2003). "[S]o long as" a plaintiff "otherwise meets ripeness requirements," the fact that the claims "arise in the context" of a "permitting process" does not subject procedural due process claims to the accrual rule for takings. *Ibid.*

The plaintiff in *Carpinteria Valley Farms* asserted takings, due process, and other claims challenging the defendant county's treatment of his applications to develop his property. 344 F.3d at 826. The district court held that the "gravamen" of the complaint was a "takings challenge." *Id.* at 829. It dismissed the procedural due process and related claims as unripe under *Williamson County*'s takings rule because there had been no "final agency decision" on the plaintiff's applications. *Ibid.* The Ninth Circuit reversed. The plaintiff's alleged procedural due process challenge, the court of appeals explained, "is to the *procedure* he had to endure"—a harm "separate from any purported taking" and "independent of whether or not the County's decision-making has been completed." *Id.* at 830-831 (emphasis added); cf. *Guatay Christian Fellowship* v. *Cnty. of San Diego*, 670 F.3d 957, 984 (9th Cir.

2011) (procedural due process claims not subject to *Williamson County* where they allege "distinct deprivation of a constitutionally protected interest").

The Seventh Circuit, too, recognizes that there are "*bona fide* non-takings claims 'arising from land-use decisions' that 'can be made independently from a takings claim and without being subject to *Williamson* ripeness.'" *Black Earth Meat Mkt., LLC* v. *Vill. of Black Earth*, 834 F.3d 841, 847 (7th Cir. 2016).

The plaintiff in *Black Earth Meat Market* asserted a series of procedural due process claims related to a dispute over its operation of a slaughterhouse. The court of appeals held that the due process claims based on the plaintiff's asserted interest in using its property as a slaughterhouse and obtaining permission for that "nonconforming use" gave "rise to archetypal takings claims" that were unripe under *Williamson County*. 834 F.3d at 848. By contrast, the plaintiff's asserted interests in "the occupation of slaughter" and in a financing agreement that had been derailed by the dispute "represent[ed] interests independent of the property itself." *Ibid.* The claims related to those interests could "be properly construed as (non-takings) procedural due process claims, and therefore as ripe," without being subject to *Williamson County*'s takings rule. *Ibid.*; cf. *Forseth* v. *Vill. of Sussex*, 199 F.3d 363, 371 (7th Cir. 2000) (equal protection claim alleging conduct "'wholly unrelated to any legitimate state objective'" not subject to *Williamson County*).

2. The Second and Third Circuits, by contrast, take a one-size-fits-all approach. Those courts subject all procedural due process claims asserted in land-use disputes to the accrual rule for takings claims announced in *Williamson County*, regardless of the nature of the claim.

The Second Circuit has held the takings rule applicable "to *all* procedural due process claims arising from the same circumstances as a taking claim." *Kurtz* v. *Verizon N.Y., Inc.*, 758 F.3d 506, 516 (2d Cir. 2014) (emphasis added). It has applied *Williamson County*'s takings rule to "various" other types of "land use challenges," whether asserted alongside takings claims or not. *Murphy* v. *New Milford Zoning Comm'n*, 402 F.3d 342, 346 n.3, 350 (2d Cir. 2005) (First Amendment claim; takings claim abandoned); see App., *infra*, 2a (procedural due process claim; takings claim abandoned); *Leonard* v. *Plan. Bd. of the Town of Union Vale*, 659 F. App'x 35, 37 n.1 (2d Cir. 2016) (same); *Thomas* v. *Genova*, No. 23-7452, 2025 WL 583182, at *3 (2d Cir. Feb. 24, 2025) (no takings claim asserted). And it has expressly rejected the argument that *Williamson County*'s "test should be confined to a claim for an unconstitutional 'taking.'" *Dougherty* v. *N. Hempstead Bd. of Zoning Appeals*, 282 F.3d 83, 88 (2d Cir. 2002) (applying *Williamson County*'s takings rule to procedural due process claim).

The Third Circuit has likewise rejected the argument that *Williamson County*'s takings rule "applies only to 'takings' claims." *Taylor Inv., Ltd.* v. *Upper Darby Twp.*, 983 F.2d 1285, 1291 (3d Cir. 1993). It has "consistently applied" the rule to claims challenging permitting decisions in the land-use context, even where there is no takings claim at issue. *Lauderbaugh* v. *Hopewell Twp.*, 319 F.3d 568, 574 (3d Cir. 2003).

For example, the plaintiffs in *Taylor* challenged the revocation of a use permit on due process and equal protection grounds. 983 F.2d at 1290. They argued that *Williamson County*'s takings rule should "not apply" to their procedural due process claim because the alleged denial of due process, "in itself, cause[d] injury" separate

from any taking. *Id.* at 1294. The court of appeals disagreed, holding the claim unripe because there had not yet been a final decision on the revocation. *Ibid.*; see also *Lauderbaugh*, 319 F.3d at 574 (applying *Williamson County* to statutory preemption claim); *Acierno* v. *Mitchell*, 6 F.3d 970, 975 (3d Cir. 1993) (procedural due process claim challenging the denial of a building permit without notice and a hearing); *E&R Enter. LLC* v. *City of Rehoboth Beach*, 650 F. App'x 811, 814 (3d Cir. 2016) ("[t]he finality rule bars premature, as-applied procedural due process claims"); cf. *CMR D.N. Corp.* v. *City of Philadelphia*, 703 F.3d 612, 626 (3d Cir. 2013) (as-applied challenge to zoning ordinance).

II. THE DECISION BELOW IS INCORRECT

The Second Circuit's approach—treating all due process claims asserted in land-use disputes as though they were takings claims for accrual purposes—improperly privileges a claim's factual circumstances over its substance. In this case, the court of appeals held that petitioner's procedural due process claim was subject to the accrual rule for takings claims because it arose "'in the land-use context.'" App., *infra*, 6a n.1. But this Court has made clear that "[a]n accrual analysis begins with identifying 'the specific *constitutional right*' alleged to have been infringed"—not the context in which it was infringed. *McDonough*, 588 U.S. at 115 (emphasis added).

This Court's focus on the constitutional right at issue makes sense. After all, a claim does not accrue until "the plaintiff has a 'complete and present cause of action.'" *Reed*, 598 U.S. at 235; accord, *e.g.*, *Green* v. *Brennan*, 578 U.S. 547, 554 (2016) (calling this the "standard rule"). Claims with different elements will be "complete" and ripe for adjudication at different times. Yet the Second Circuit did not consider—or even mention—the elements of

petitioner's procedural due process claim. It treated that claim as though it were a takings claim based on the "land-use context" alone.

That points to the second way in which the Second Circuit's decision violates this Court's precedent. A takings claim is "ripe for judicial resolution" as soon as the government has "committed to a position" that deprives the plaintiff of their property. *Pakdel*, 594 U.S. at 479; see *Knick*, 588 U.S. at 204 (observing that the Court "abandoned the view that the requirement" to seek just compensation through state procedures "is an element of a takings claim"). By contrast, procedural due process claims comprise "two elements: (i) deprivation by state action of a protected interest in life, liberty, or property, and (ii) inadequate state process." *Reed*, 598 U.S. at 236. "[A] procedural due process claim" accordingly "'is *not* complete when the deprivation occurs.'" *Ibid.* (emphasis added). It cannot be "complete unless and until the State fails to provide due process." *Zinermon*, 494 U.S. at 126.

By treating procedural due process claims in the land-use context as "complete" at the time of deprivation, the Second Circuit's rule effectively excises one element of such claims. That invites exactly the situation this Court found unacceptable in *Reed*—forcing litigants such as petitioner to "continue to pursue relief in the state system and simultaneously file a protective federal §1983 suit challenging that ongoing state process." 598 U.S. at 237. Such "parallel litigation" runs "'counter to core principles of federalism, comity, consistency, and judicial economy.'" *Ibid.* Worse, it puts plaintiffs in the absurd position of challenging the adequacy of procedures that may be ongoing or not yet even started.

The implications of the Second Circuit's rule were particularly absurd in this case. While state courts

repeatedly told petitioner his claim was unripe because the Village had not completed the procedures needed to revoke his certificate of occupancy, the court of appeals held that petitioner's challenge to those procedures accrued years before they began.

III. The Question Presented Is Important, and This Case Is An Ideal Vehicle To Resolve It

The question of which accrual rule governs procedural due process claims asserted in land-use cases—whether it is the rule that governs takings claims or the rule otherwise applicable to procedural due process claims—affects countless property owners who, like petitioner, find themselves caught between federal accrual rules and the vagaries of state and local procedures.

The current situation is untenable. Procedural due process challenges arising from land-use disputes—from permitting decisions to zoning restrictions—accrue at different times, depending on whether the property is in Connecticut or California. It cannot be that when the limitations clock starts running turns on the location of the property at issue. With near infinite variations in state procedures, it is essential that clear, uniform rules govern the availability of federal remedies.

The need for clarity and uniformity is all the more urgent given that the differences between takings and procedural due process claims have sharpened since this Court's decisions in *Knick* and *Pakdel*. Now that takings claims can ripen as soon as the government reaches a *de facto* decision that effects a deprivation, the risk that property owners will need to file "protective" actions to preserve procedural due process claims is even greater. *Reed*, 598 U.S. at 237. This Court has not hesitated in recent years to grant review in cases surrounding

property disputes.[4] And it has repeatedly provided guidance on questions of accrual and limitations.[5] It should do so again here.

This case cleanly presents the circuit conflict. The case was resolved on the pleadings, leaving no factual disputes to impede review. The court of appeals decided the case solely on limitations grounds.[6] Petitioner abandoned his takings claim in the district court, leaving only his procedural due process claims on appeal. App., *infra*, 2a. Unlike previous petitions presenting the same question, this case comes to this Court unburdened by questions regarding the applicability of *Williamson County*'s now-defunct exhaustion requirement. *E.g.*, *Kurtz* v. *Verizon N.Y., Inc.*, No. 14-439; *Braun* v. *Ann Arbor Charter Twp.*,

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[4] *E.g.*, *Pung* v. *Isabella Cnty.*, No. 25-95 (cert. granted Oct. 3, 2025); *Devillier* v. *Texas*, 144 S. Ct. 477 (2023) (Mem.); *Sheetz* v. *Cnty. of El Dorado*, 144 S. Ct. 477 (2023) (Mem.); *Tyler* v. *Hennepin Cnty.*, 143 S. Ct. 644 (2023) (Mem.); *Cedar Point Nursery* v. *Hassid*, 141 S. Ct. 844 (2020) (Mem.); *Knick* v. *Twp. of Scott*, 583 U.S. 1166 (2018) (Mem.).

[5] *E.g.*, *Soto* v. *United States*, 145 S. Ct. 1123 (2025) (Mem.); *Warner Chappell Music, Inc.* v. *Nealy*, 144 S. Ct. 478 (2023) (Mem.); *Corner Post, Inc.* v. *Bd. of Governors of the Fed. Reserve Sys.*, 144 S. Ct. 478 (2023) (Mem.); *Reed* v. *Goertz*, 142 S. Ct. 2645 (2022) (Mem.); *Kemp* v. *United States*, 142 S. Ct. 752 (2022) (Mem.); *United States* v. *Briggs*, 140 S. Ct. 519 (2019) (Mem.); *United States* v. *Collins*, 140 S. Ct. 519 (2019) (Mem.); *Rotkiske* v. *Klemm*, 586 U.S. 1190 (2019) (Mem.); *McDonough* v. *Smith*, 586 U.S. 1112 (2019) (Mem.); *Cochise Consultancy, Inc.* v. *United States ex rel. Hunt*, 586 U.S. 1018 (2018) (Mem.).

[6] Although the decision is unpublished, this Court has repeatedly granted review in cases disposed of by summary order in the Second Circuit. See, *e.g.*, *Kirtsaeng* v. *John Wiley & Sons, Inc.*, 579 U.S. 197, 201 (2016); *FCC* v. *Fox Television Stations, Inc.*, 567 U.S. 239, 252 (2012); *CIGNA Corp.* v. *Amara*, 563 U.S. 421, 435 (2011); *Boyle* v. *United States*, 556 U.S. 938, 943 (2009); see also *Pung* v. *Isabella Cnty.*, No. 25-95 (cert. granted Oct. 3, 2025) (granting review of unpublished Sixth Circuit decision).

No. 08-250; *Town of Longboat Key* v. *Reserve, Ltd.*, No. 94-784; *Taylor Inv., Ltd.* v. *Upper Darby Twp.*, No. 93-217; *Alter* v. *Schroeder*, No. 88-282. And this Court has clarified the accrual rules for procedural due process and takings claims. See *Reed*, 598 U.S. at 236; *Pakdel*, 594 U.S. at 478-479. That leaves only the question of *which* accrual rule applies to a procedural due process claim.

The question presented is also outcome determinative. Petitioner's claim rests on a constitutional injury separate from the denial of just compensation. The amended complaint alleges that respondents violated petitioner's procedural due process rights by depriving him "of notice and an opportunity to be heard with regard to the [Village's] decision to obviate his rights to his premises." C.A. App. 233 ¶103. Had this case arisen in the Fifth, Sixth, Seventh, Ninth, or Tenth Circuits, that independent injury would have rendered *Williamson County*'s takings rule inapplicable. See, *e.g.*, *Carpinteria*, 344 F.3d at 830-831; *Warren*, 411 F.3d at 708. Under the accrual rule that governs procedural due process claims, petitioner's claims would—at worst—have been unripe. See *Reed*, 598 U.S. at 236 (procedural due process claim accrues when the challenged process is complete). That would have entitled petitioner to dismissal *without* prejudice, giving him an opportunity either to pursue further state-court proceedings or plead futility. But the Second Circuit, applying *Williamson County*'s rule, affirmed the dismissal of petitioner's claims *with* prejudice. App., *infra*, 7a.[7]

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[7] This Court has not hesitated to grant review in cases where the answer to the question presented could make the difference between with- and without-prejudice dismissal. See, *e.g.*, *Kellogg Brown & Root Servs., Inc.* v. *United States ex rel. Carter*, 575 U.S. 650, 662 (2015); *Pliler* v. *Ford*, 542 U.S. 225, 229 (2004).

CONCLUSION

The petition should be granted.

Respectfully submitted.

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October 2025