No. 21-30335

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

ARIYAN, INCORPORATED, doing business as DISCOUNT CORNER; M. LANGENSTEIN & SONS, INCORPORATED; PRYTANIA LIQUOR STORE, INCORPORATED; WEST PRYTANIA, INCORPORATED, doing business as PRYTANIA MAIL SERVICE/BARBARA WEST; BRITISH ANTIQUES, L.L.C./BENNET POWELL; ARLEN BRUNSON; KRISTINA DUPRE; BRETT DUPRE; GAIL MARIE HATCHER; BETTY PRICE, et al.,

Plaintiffs-Appellants,

v.

SEWERAGE & WATER BOARD OF NEW ORLEANS, GHASSAN KORBAN, in his capacity as EXECUTIVE DIRECTOR OF SEWERAGE & WATER BOARD OF NEW ORLEANS,

Defendants-Appellees.

On Appeal from the United States District Court
for the Eastern District of Louisiana
No. 2:21-cv-534, Honorable Martin L.C. Feldman, District Judge

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BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION IN SUPPORT OF PLAINTIFFS-APPELLANTS

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CERTIFICATE OF INTERESTED PERSONS

No. 21-30335
Ariyan, Inc., et al. v. Sewerage & Water Board of New Orleans, et al.
USDC No. 2:21-CV-534 (E.D. La.)

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Fifth Circuit Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal:

Plaintiffs-Appellants:

Ariyan, Inc.
Doing business as Discount Corner

M. Langenstein & Sons, Inc.

Prytania Liquor Store, Inc.

West Prytania Inc.,
Doing business as Prytania Mail Service/Barbara West

British Antiques, L.L.C./Bennet Powell

Fine Arts Management, L.L.C
Doing business as Prytania Theatre

Superior Seafood & Oyster Bar, L.L.C.

The Magic Box, Ltd.
Doing business as Magic Box Toys

Mark Defelice, Savare Defelice, Jr., Esteff Defelice, and Virginia Defelice
On behalf of the entity f/k/a Pascal-Manale Restaurant

Arlen Brunson

Kristina Dupre

Brett Dupre

Gail Marie Hatcher

Betty Price

Bojan Ristic

Patsy Searcy

Helen Green

Theada Thompson

Kim Alvarez

Allan Basik

Jill Bossier

John Bossier, Jr.

David Engles

Estate of Louise Stewart

Cathleen Hightower

Ruth Hinson

Leon Hinson

Margaret Leche

Harry Leche

George Mouledoux

Elizabeth Sewell

William Sewell

Patricia Wynn

Geraldine Baloney

Abbrica Callaghan

Burnell Cotlon

Eirinn Erny

Gregory Kozlowski

Larry Hameen

Noella Hayes

Stephen Hogan

Fransisca Medina-Hogan

Keeba McAllister

Gaylin McAllister

Cody Myers

Heather Weathers

Elio Brancaforte

Charlotte Brancaforte

Benito Brancaforte

Dr. Josephine S. Brown

Richard Parke Ellis

Nancy Ellis

Mark Hamrick

Dr. Robert Link

Charlotte Link

Ross McDiarmid

Laurel McDiarmid

Jerry Osborne

Jack Stolier

Dr. William B. Taylor, III

Watson Memorial Spiritual Temple of Christ
Doing business as Watson Memorial Teaching Ministries

George Duessing

Beth Duessing

David Epstein

Faye Lieder

Thomas Ryan

Judith Jurisich

Dorothy White

Thomas Lowenburg

Judith Lowenburg

Dr. John Ochner, Jr.

Lori Ochner

Ronald Ruiz

Anne Lowenburg

Sarah A. Lowman

Barbara H. West

Nanette Colomb

Mary Kearney

Clay Kearney

Michael T. Gray

Mark Kurt

Anna Kurt

The American Insurance Company
As subrogee of Mark and Anna Kurt

Virginia Carter Stevens Molony

Dat Dog Enterprises, LLC

Dat Dog Properties, LLC

Superior Bar & Grill, Inc.

The Fresh Market, Inc.

K&B Corporation
Doing business as Rite Aid Corporation

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Respectfully submitted,

/s/ Kathryn D. Valois
KATHRYN D. VALOIS

CORPORATE DISCLOSURE STATEMENT

Amicus Curiae Pacific Legal Foundation, a nonprofit corporation organized under the laws of California, has no parent companies, subsidiaries, or affiliates that have issued shares to the public.

DISCLOSURES PER RULE 29, FEDERAL RULES OF APPELLATE PROCEDURE

Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), Amicus Curiae states:

(A) the amicus curiae brief was authored by attorneys of Pacific Legal Foundation, and no portion was authored by counsel for any party;

(B) funding for preparation of the amicus curiae brief was provided by Pacific Legal Foundation, and no party or party's counsel contributed money that was intended to fund preparing or submitting the amicus curiae brief; and

(C) no person, other than Amicus Curiae Pacific Legal Foundation, contributed money that was intended to fund preparing or submitting the amicus curiae brief.

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IDENTITY AND INTEREST OF AMICUS CURIAE

Pacific Legal Foundation (PLF) is a nonprofit, tax-exempt corporation organized for the purpose of litigating matters affecting the public interest in private property rights, individual liberty, and economic freedom. Founded over 45 years ago, PLF is the most experienced legal organization of its kind. PLF attorneys have participated as lead counsel in numerous landmark United States Supreme Court cases and cases in this Court in defense of the right to make reasonable use of property, and the corollary right to obtain just compensation when that right is infringed. *See, e.g., Cedar Point Nursery v. Hassid*, 141 S. Ct. 2063 (2021)*; Pakdel v. City and Cty. of San Francisco*, 141 S. Ct. 2226 (2021)*; Knick v. Twp. of Scott*, 139 S. Ct. 2162 (2019); *Murr v. Wisconsin*, 137 S. Ct. 1933 (2017); *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595 (2013); *Palazzolo v. Rhode Island*, 533 U.S. 606 (2001); *Suitum v. Tahoe Reg'l Plan. Agency*, 520 U.S. 725 (1997); *Nollan v. California Coastal Comm'n*, 483 U.S. 825 (1987); *Archbold-Garrett v. City of New Orleans*, 893 F.3d 318 (5th Cir. 2018). PLF also routinely participates in important property rights cases as amicus curiae, including cases in this court. *See e.g., Horne v. Dep't of Agriculture*, 576 U.S. 350 (2015); *Arkansas Game & Fish Comm'n v. United States*, 568 U.S. 23 (2012); *Belle Co., L.L.C. v. U.S. Army Corps of Engineers*, 761 F.3d 383 (5th Cir. 2014). PLF attorneys have extensive experience with the questions at issue in this case, having participated in many cases where

courts evaluate the validity of takings and just compensation, and section 1983. *See, e.g., Stop the Beach Renourishment, Inc. v. Florida Dep't of Envtl. Prot.*, 560 U.S. 702 (2010); *Yawn v. Dorchester Cty.*, 1 F.4th 191 (4th Cir. 2021); *Walcek v. United States*, 303 F.3d 1349 (Fed. Cir. 2002).

INTRODUCTION AND SUMMARY OF ARGUMENT

The Takings Clause does not permit the Sewerage Board to take property and hand the owner an IOU the Board might pay sometime in the future if and when it feels like it. Instead, it requires the Sewerage Board to pay the court ordered just compensation without "unreasonable delay."

The Sewerage Board began abandoning its obligations long ago. Before the Sewerage Board even began its drainage and flood prevention project in uptown New Orleans, it recognized that it would damage multiple properties, including a neighborhood gas station and convenience store owned by Alireza Aghighi. Complaint, ROA.64, ¶ 16 ("The [Sewerage and Water Board of New Orleans] and the [US Army Corps of Engineers] both recognized that the [South Louisiana Urban Drainage Project or Southeast Louisiana Urban Flood Control Program] would damage nearby properties adjacent to the construction sites."). The Sewerage Board promised to compensate the owners for any damage it caused. As predicted, the project inflicted structural damage on multiple homes and businesses (including shifting porches, broken floors, cracked interior and exterior walls, broken and

shifting fireplaces, leaking roofs, broken plumbing and sewer lines, cracked sidewalks, inoperable doors and windows, and loss of use and customers).

But when the time came to actually pay, the Sewerage Board balked; it acknowledged little or no damage, resulting in either nominal settlements or more frequently, the denial of damage claims. As a result, over 70 property owners were forced to bring inverse condemnation lawsuits in Louisiana state courts to force the Sewerage Board to provide just compensation for takings under both the Louisiana and Federal Constitutions. Every court agreed with the property owners: the trial court entered multi-million-dollar judgments against the Board, and the appellate courts affirmed rendering the judgments final and collectable.

The story should have ended with the Sewerage Board paying the ordered compensation. However, it has never paid, despite having the funds to do so. Nor has it explained why it has abandoned its constitutional duty to pay for the takings. Instead, it has stonewalled, in some cases for nearly three years. And while interest may be running on the judgments, one more unfulfilled promise to pay—someday—is of scant help to the property owners who have already borne the brunt of public improvements.

After the Sewerage Board turned their final judgments into just another IOU, Ariyan and other property owners brought a civil rights action for a taking of their property (which includes the state court judgments, which under Louisiana law are

private property interests separate from the owners' homes and businesses). Section 1983 empowers federal courts to enforce federal rights when a municipal government fails to live up to its constitutional obligations—here, the Sewerage Board's self-executing duty to provide just compensation when it takes private property for a public use. But instead of considering the merits of the takings claims, the District Court misunderstood the nature of the complaint, concluding that the lawsuit merely asked it to enforce the state court judgments. This brief makes two main points why the District Court's dismissal should be vacated, and the case remanded for trial.

First, the Sewerage Board's refusal to timely provide compensation is especially egregious because, as the Supreme Court has concluded, the Fifth Amendment's just compensation obligation is a "self-executing" duty, meaning that once it takes private property, the government lacks any discretion to decline to provide, or delay providing, compensation. A local government failing to meet its constitutional obligations is exactly the type of thing section 1983 was designed to remedy. The District Court's dismissal left the owners without any practicable remedy to enforce their constitutional rights, except continue to wait, in the perhaps vain hope that the Sewerage Board will eventually pay up.

Second, the heart of the District Court's erroneous conclusion is its view of the complaint as merely seeking to enforce a state court judgment. That, in turn, was

a result of the District Court misconstruing the private property that the Sewerage Board took. In the state court litigation, the property alleged to have been taken was the owners' homes and businesses. Here by contrast, the federal complaint alleges that the Sewerage Board has also taken a different private property interest: the property owners' property rights in the final judgments, which under Louisiana law are vested private property interests.

ARGUMENT

The duty to provide compensation arises automatically at the time of the taking—by the very virtue of the taking—because the Fifth Amendment obligation is "self-executing," meaning that the government's acquiescence or consent to pay is not needed. *See First English Evangelical Lutheran Church of Glendale v. Los Angeles Cty.*, 482 U.S. 304, 315–16 (1987) ("We have recognized that a landowner is entitled to bring an action in inverse condemnation as a result of the self-executing character of the constitutional provision with respect to compensation[.]") (internal citation and quotations omitted). To state a viable takings claim, all the complaint need have alleged is: (1) the plaintiffs own private property that was taken for a public use, and (2) the defendant unreasonably delayed providing compensation. In the present case, the complaint plausibly alleges that in addition to their homes and businesses, the property owners own a final judgment (a separate, vested property right under Louisiana law), that their properties were taken for public use, and that

the Sewerage Board has unreasonably delayed providing compensation. *See*, *e.g.*, Complaint, ROA.79, ¶ 62 ("The Takings Clause of the Fifth Amendment of the United States Constitution, applied to the States through the Fourteenth Amendment, requires the government to compensate its citizens for any taking of private property for a public purpose 'without unreasonable delay.' Plaintiffs fully pursued the state remedy available and received final judgments from the court obligating the [Sewerage and Water Board of New Orleans] to compensate the Plaintiffs for violating their Constitutional rights through inverse condemnation."). That was more than enough to meet the low bar to survive a motion to dismiss.

There's no question that if the property owners were to file their original takings complaint in federal court today, the District Court could not have dismissed it. *See Knick*, 139 S. Ct. at 2179 ("A property owner may bring a takings claim [in federal court] under § 1983 upon the taking of his property without just compensation[.]"). Having obtained a final judgment that the Sewerage Board took their property, and having adjudicated compensation, the property owners are in a *better* position. Yet, the District Court concluded that they must suffer a *worse* consequence—being dismissed from federal court with nowhere else to go and nothing to do but wait.

I. The "Categorical" Imperative To Provide Compensation Is Rendered Meaningless If the Sewerage Board Alone Can Decide Whether and When To Pay

A. Just Compensation Delayed Is Just Compensation Denied

The Constitution requires individuals who take property under the Fifth Amendment, like the Sewerage Board, to pay just compensation without "unreasonable delay". *Bragg v. Weaver*, 251 U.S. 57, 62 (1919) ("But it is settled by the decisions of this court that where adequate provision is made for the certain payment of the compensation *without unreasonable delay* the taking does not contravene due process of law in the sense of the Fourteenth Amendment merely because it precedes the ascertainment of what compensation is just.") (emphasis added). The Supreme Court has never elaborated on what constitutes an unreasonable delay, however; and a motion to dismiss was not the proper place for the District Court to conclude, as a matter of law, that the Sewerage Board had not unreasonably delayed payment. *Joslin Mfg. Co. v. City of Providence*, 262 U.S. 668, 688 (1923) ("the requirement of just compensation is satisfied when the public faith and credit are pledged to a reasonably prompt ascertainment and payment"). By dismissing for the sole reason that it appeared that the property owners were attempting to enforce a state judgment, the District Court held, in essence, that once just compensation is ascertained no delay can be "unreasonable" and a municipality may take as long as it wants to pay.

Normal delays in satisfying a judgment may be addressed by the Supreme Court's general rule that "just compensation" includes the time value of money (in other words, owners are entitled to "interest" on compensation judgments). *See Seaboard Air Line Ry. Co. v. United States*, 261 U.S. 299, 306 ("Where the United States condemns and takes possession of land before ascertaining or paying compensation, the owner is not limited to the value of the property at the time of the taking; he is entitled to such addition as will produce the full equivalent of that value paid contemporaneously with the taking."). But where a property owner plausibly alleges that a municipality is purposefully dragging its feet paying after it has already taken property—and after the amount of compensation has already been determined—the mere availability of post-hoc interest does not satisfy the Fifth Amendment's requirements of prompt payment. *See Brown v. Legal Found. of Wash.*, 538 U.S. 216, 233 (2003) (when government "physically takes possession of an interest in property for some public purpose, it has a *categorical duty* to compensate the former owner") (emphasis added, internal quotation marks and citation omitted). Any contrary rule, such as the rule the District Court adopted, would allow governmental entities to simply ignore takings judgments for however long they desired, without any recourse for property owners except to wait and hope.

The most recent example of a court holding the government to its obligation to timely pay adjudicated compensation is from a Florida District Court of Appeal.

Fla. Dep't of Agric. v. Dolliver, 283 So. 3d 953 (Fla. Dist. Ct. App. 2019). There, like here, property owners obtained state court inverse condemnation judgments for the damage to their property done by the government. *Id*. at 955. Also like here, the state appellate courts affirmed the judgments, which became final. *Id*. at 955–56. And also, like here, the government did not promptly pay the judgment even though it was required to do so. *Id*. at 956 ("Although the judgments have long been final and the Department claimed that it would be 'happy to pay the three judgments,' the Department asserted that it is unable to make payment until the legislature appropriates the funds[.]"). And, like here, a statute required the legislature to first earmark the funds in its budget and the judgment owners alleged that the Department had not instituted the process to obtain the appropriation. *Id*.

The Florida Court of Appeals concluded that the statute resulted in an unconstitutional taking of the judgment owners' property under the Florida and U.S. Constitutions and affirmed the trial court's order requiring the Department to pay immediately. *Id.* at 958–61. The court of appeals quoted the trial court's "well-reasoned decision," which concluded:

> To essentially argue that the [Lee Homeowners] should just hope that someday, some year, the Legislature eventually will pass an appropriation to cover the judgments, and further that the governor finally will assent, while at the same time doing absolutely nothing to secure such an appropriation, is a specious argument.

Id. at 956. The court rejected the argument that the delay in payment of the takings judgment was merely a reasonable restriction on the right to receive compensation, concluding that "the restrictions have not regulated payment; they have allowed the Department to completely avoid payment contrary to the Takings Clause." *Id*. at 961. The *Dolliver* court concluded that the constitution imposes an affirmative duty to pay compensation promptly once property has been taken. *Id.* at 958–63. The government may not sit on its hands and hold out without good reason. The conundrum the property owners face here illustrates the problem.

B. The Property Owners Have Nowhere Else To Go but Federal Court

On one hand, all the property owners can do under the District Court's dismissal is wait and hope that one day, the Sewerage Board may agree to pay compensation. And although interest may be running on the judgment in the interim, this perhaps vain hope offers little succor to the property owners who remain waiting while their properties have already been taken. Their damaged homes and businesses are evidence of the Sewerage Board's repeated failure to meet its obligations, even after the owners have a final state court judgment in hand. One more promise by the Sewerage Board to pay (at some point in the future—when and if it agrees to do so) rings hollow because the Board has not made any effort to actually pay. Wait long enough, and property owners die, go bankrupt, or simply give up. Unfortunately, the situation presented by this case is not rare. *See*, *e.g*., *Commonwealth of the N.*

Mariana Islands v. Lot No. 218-5 R/W, Nos. 2013-SCC-0006-CIV & 2013-SCC-0025-CIV, 2016 WL 7468001 *6 (S. Ct. N. Mariana Islands Dec. 28, 2016) ("If the court cannot order the government to pay the judgment, the Legislature would be able to effectively annul Quitugua's constitutional right to just compensation via non-action. This would be an unreasonable, unjust, and unconstitutional result."). *United States v. 9.94 Acres of Land in City of Charleston*, 51 F. Supp. 478, 483–84 (E.D. S.C. 1943) ("Just compensation in my opinion means exactly what it says, and it means that the owner himself is entitled to receive his compensation; not that his estate or his children or his grandchildren are to receive installment payments and perhaps inherit a law suit in the far future."); *McGibson v. Roane Cty. Ct.*, 121 S.E. 99, 103 (W. Va. 1924) ("[T]here must be provided some remedy to the owner whereby he may have compensation within a reasonable time and that he will receive it must be certain. He must not be put to risk or unreasonable delay."); *Maury County v. Porter*, 257 S.W.2d 16, 17 (Tenn. 1953) (law delaying trial on just compensation until 12 months after the project's completion was unconstitutional, because "adequate provision should be made for the payment of damages to the land owner without unreasonable delay").

On the other hand, the only practicable alternative the property owners are left with besides waiting is a federal takings claim. They cannot go to state court and execute on the judgment to obtain the just compensation admittedly owed. They are

prohibited by law. *See* La. Const. art. 12, § 10 (c) ("The Legislature shall provide a procedure for suits against the state, a state agency, or a political subdivision. It shall provide for the effect of a judgment, but no public property or public funds shall be subject to seizure. No judgment against the state, a state agency, or a political subdivision shall be exigible, payable, or paid except from funds appropriated by the legislature or by the political subdivision against which judgment is rendered."). And while they could potentially seek mandamus in state court, that order would be similarly unenforceable, and would leave the owners with yet one more Sewerage Board IOU. *See Newman Marchive Partnership, Inc. v. City of Shreveport*, 979 So. 2d 1262, 1265–71 (La. 2008) (finding a state court could not, through a writ of mandamus, compel a political subdivision to pay a judgment rendered against it).

Thus, a federal takings claim is their only shot to ask the judiciary to fulfill its essential role as the ultimate arbiter of compensation. *See Monongahela Navigation Co. v. United States*, 148 U.S. 312, 327 (1893) ("[C]ongress seems to have assumed the right to determine what shall be the measure of compensation. But this is a judicial, and not a legislative, question. The legislature may determine what private property is needed for public purposes; that is a question of a political and legislative

character. But when the taking has been ordered, then the question of compensation is judicial.").[1]

C. "A Promise To Pay Is Not Necessary" Under the Self-Executing Fifth Amendment

In *Dolliver*, Florida's court of appeal concluded, "[n]o legislative pronouncement may thwart the implementation of a constitutional mandate—particularly where, as is typically the case and here, the constitutional provision is self-executing." 283 So. 3d at 960. That rationale compels the same result here. The Fifth Amendment's Takings Clause is self-executing because the text's wording and inclusion in the Constitution impliedly promises compensation when property is taken. *See* U.S. Const. amend. V. Thus, no further action other than the taking itself is needed for the property owner to be entitled to compensation. *See Jacobs v. United States*, 290 U.S. 13, 16 (1933) ("The form of the remedy did not qualify the right. It rested upon the Fifth Amendment. Statutory recognition was not necessary. A promise to pay was not necessary. Such a promise was implied because of the duty to pay imposed by the amendment. The suits were thus founded upon the Constitution of the United States."); *First English*, 482 U.S. at 316 ("[T]he

[1] This raises the question, why the property owners did not bring their takings claim in state court, like the Florida property owners in *Dolliver*? The short answer is that the remedy is not available in Louisiana, La. Const. art. 12, § 10 (c), but, even if it were, since the Supreme Court's ruling in *Knick*, property owners alleging violations of the Takings Clause are not required to pursue state court remedies. *See Knick*, 139 S. Ct. at 2179 (overruling the Court's long-standing requirement prohibiting property owners from filing federal takings claims in federal court, until after they first pursue state takings claims in federal court).

compensation remedy is required by the Constitution."); *United States v. Clarke*, 445 U.S. 253, 257 (1980) ("A landowner is entitled to bring such an action as a result of 'the self-executing character of the constitutional provision with respect to compensation[.]'") (citation omitted). This means that once a municipality has taken property, it lacks any discretion to refuse or delay payment. In *Dolliver*, the court held,

> The difficulty with these provisions is that despite the constitutional imperative in the Takings Clause, they give the legislature the sole discretion to decide whether and when to make an appropriation. And if an appropriation is made, it is subject to the governor's sole discretion to veto it. By doing so, application of these statutory provisions could subject payment of a takings judgment to the whim of the legislature and governor. And this could result in sections 11.066(3) and (4) effectively abrogating judgment creditors' constitutional rights to full compensation under the Takings Clause.

Dolliver, 283 So. 3d at 957. The District Court's dismissal violates the same principle—it allows the Sewerage Board to be the judge of its own taking and the compensation owed. The Supreme Court long ago rejected situations where the government decides both what to take, and what to pay. *See Monongahela*, 148 U.S. at 327. The District Court's ruling blurred that separation-of-powers rationale, allowing the Sewerage Board to decide what to take and whether to pay.

The equitable principles underlying the Just Compensation Clause also support reversal. *See Miller v. United States*, 620 F.2d 812, 824 (Fed. Cl. 1980) ("In *United States v. Fuller*, 409 U.S. 488, 490, 93 S. Ct. 801, 803, 35 L.Ed.2d 16 (1973),

the Supreme Court observed that '(t)he constitutional requirement of just compensation derives as much content from the basic equitable principles of fairness * * * as it does from technical concepts of property law.' As a result, courts have had to adopt working rules in order to do substantial justice in just compensation cases."). "Substantial justice" includes the notion that the government cannot stonewall owners whose property it has admittedly taken, especially when compensation has been determined.[2] The Fifth Amendment contains Takings and Just Compensation clauses, not an IOU Clause.

The self-executing nature of the Fifth Amendment is also why recognizing that the complaint states a claim for unreasonable delay in receiving compensation will not result in a flood of other lawsuits asking federal courts to enforce any run-of-the-mill unsatisfied state court judgments. The Fifth Amendment is one of the few provisions in the Constitution which expressly recognizes a claim (taking for

[2] This injustice is further highlighted by the fact the Sewerage Board can recover at least a portion of the money it pays out from the Army Corps of Engineers, under a contractual agreement those parties entered into before the flood prevention project began. *See*, *e.g.*, Complaint, ROA.67, ¶ 25 ("As part of the joint agreement between [the Sewerage and Water Board of New Orleans] and the [United States Army Corps of Engineers], as a federal entity, all damage settlements paid will be credited toward the [Sewerage and Water Board of New Orleans's] share of the project costs outlined in paragraph 11 of this Complaint. Upon receipt of a claim for damage to real property, the [Sewerage and Water Board of New Orleans] is required to notify the [Army Corps of Engineers] and to investigate the claim to determine whether the claims are eligible for compensation under the Damages SOP. As the federal government has acted as the creditor for this Project, the [Sewerage and Water Board of New Orleans] should promptly compensate its citizens and file the appropriate claim credits with the [Army Corps of Engineers], since the settlements paid will reduce its total debt owed to the [Army Corps of Engineers] and federal government.").

public use), and also expressly commands a specific remedy, just compensation in the form of damages. *See United States v. Miller*, 317 U.S. 369, 373 (1943) ("The Fifth Amendment of the Constitution provides that private property shall not be taken for public use without just compensation. Such compensation means the full and perfect equivalent *in money* of the property taken.") (emphasis added). Recognizing that the property owners may proceed with their unreasonable delay in compensation claim can be limited to the relatively rare circumstances presented here.

II. The Judgment Is Private Property Separate and Distinct from the Homes and Businesses Taken by the Sewerage Board

The District Court's key error was seeing the takings claim through an extraordinarily narrow lens that viewed the complaint merely as an attempt to enforce the state court's judgment. But the property alleged to be taken here is not the same as in the Louisiana courts. Here, the property interests taken include the final judgment, which under Louisiana law, as elsewhere, is a separate, vested private property right. *See Associates Financial Services Co. v. Hillebrandt*, 250 So. 2d 75, 78 (La. Ct. App. 1971) ("A judgment rendered in a Louisiana court may be made executory in any other Louisiana court of competent jurisdiction. . . . Ordinarily the judgment rendered by another Louisiana court will be enforced through the writ of fieri facias authorizing the sheriff where the debtor's property is located to seize and sell it under this writ to satisfy a judgment.") (internal citations

and quotations omitted); *1256 Hertel Avenue Associates, LLC v. Calloway*, 761 F.3d 252, 261–63 (2d Cir. 2014) ("The legal rights of a judgment lienholder are obviously far fewer than those of an owner in fee simple, but a judgment lien, like other security interests, 'is indisputably a property interest protected by the Fourteenth Amendment.'") (citation omitted).

As a result, any refusal to pay court-ordered just compensation is a new, separate taking of a vested property interest; the judgment may incorporate the property owners' underlying rights in their homes and businesses that the Louisiana courts held were taken by the Sewerage Board. But that is a different matter from saying that all the complaint in this case asked was for the District Court to "enforce" a state court judgment. The property owners asked the District Court to hold that the Sewerage Board failing to provide compensation even after it admittedly took their properties is also a taking. That the property involved is a judgment and not land does not insulate the Sewerage Board from its Fifth Amendment obligations. *See Horne v. Dep't of Agric.*, 576 U.S. at 358 ("Nothing in the text or history of the Takings Clause, or our precedents, suggests that the rule is any different when it comes to appropriation of personal property."). In short, the property owners are not asking the District Court to review the Louisiana state courts' judgments and determine whether they are enforceable. Instead, this Court would be evaluating an entirely new takings claim, one never reviewed by any court.

CONCLUSION

This Court should vacate or reverse the District Court's dismissal of the complaint for failure to state a claim and remand the case for further proceedings.

DATED: August 25, 2021.

Respectfully submitted,

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