No. 24-986

In the Supreme Court of the United States

MENDOCINO RAILWAY, A CALIFORNIA CORPORATION,
Petitioner,

v.

JACK AINSWORTH, EXECUTIVE DIRECTOR,
CALIFORNIA COASTAL COMMISSION, ET AL.,
Respondents.

On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

BRIEF OF *AMICUS CURIAE* PACIFIC LEGAL FOUNDATION IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Whether prudential considerations alone permit a federal court to dismiss a case arising under federal law over which it concededly has jurisdiction under both Article III and 28 U.S.C. § 1331.

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INTEREST OF AMICUS CURIAE[1]

Founded in 1973, Pacific Legal Foundation (PLF) is a nonprofit, tax-exempt California corporation established to litigate matters affecting the public interest. PLF defends Americans' liberties when threatened by government overreach. PLF is the most experienced public interest legal nonprofit, both as lead counsel and amicus curiae, in cases vindicating the right to meaningful judicial review of government action. *See, e.g.*, *Wilkins v. United States*, 598 U.S. 152 (2023); *Pakdel v. City & Cnty. of San Francisco*, 594 U.S. 474 (2021); *Knick v. Township of Scott*, 588 U.S. 180 (2019); *Weyerhaeuser Co. v. U.S. Fish & Wildlife Serv.*, 586 U.S. 9 (2018); *U.S. Army Corps of Eng'rs v. Hawkes Co.*, 578 U.S. 590 (2016); *Sackett v. EPA*, 566 U.S. 120 (2012); *Suitum v. Tahoe Reg'l Plan. Agency*, 520 U.S. 725 (1997).

PLF is interested in this case because it squarely presents an exceptionally important question regarding the ability of private citizens to vindicate their federal rights in federal court. As a public interest law firm that represents citizens in civil liberties litigation against every level of government, PLF has seen time and again how governments wield doctrines like *Colorado River* to shield themselves from federal court scrutiny. PLF therefore supports Petitioner's argument that Petitioner is entitled to vindicate its federal

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[1] Pursuant to Rule 37.2, PLF provided timely notice to all parties. Pursuant to Rule 37.6, Amicus Curiae affirms that no counsel for any party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than Amicus Curiae, its members, or its counsel made a monetary contribution to its preparation or submission.

rights in a federal court with jurisdiction over Petitioner's claims.

INTRODUCTION AND SUMMARY OF ARGUMENT

This case presents a fundamental question: whether a plaintiff seeking to vindicate its federal rights in a federal court that concededly has jurisdiction may nevertheless be thrown out of court simply based on a desire to avoid concurrent state and federal litigation.

Ordinarily, the answer would be a resounding no. The settled rule is that a federal "court with jurisdiction has a virtually unflagging obligation to hear and resolve questions properly before it." *FBI v. Fikre*, 601 U.S. 234, 240 (2024) (quotation omitted). There is a "deeply rooted presumption in favor of concurrent" state and federal jurisdiction. *Tafflin v. Levitt*, 493 U.S. 455, 459 (1990). Congress has altered that presumption only in narrow circumstances not relevant here. *E.g.*, 28 U.S.C. § 1334 (bankruptcy jurisdiction and abstention); *id.* § 2283 (Anti-Injunction Act). And this Court has increasingly forsworn reliance on nebulous "prudential" concerns to avoid the clear directives of the Constitution and Congress. *See Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 126-27 (2014).

Yet in the decision below, the Ninth Circuit affirmed the dismissal of Petitioner's federal preemption claim based on nothing more than its view that "considerations of wise judicial administration" outweighed its obligation to exercise jurisdiction. Pet. App. 7a (quoting *Ernest Bock, LLC v. Steelman*, 76 F.4th 827, 836 (9th Cir. 2023)) (cleaned up). Nobody

questions Petitioner's standing, nor that Petitioner has asserted a federal cause of action. There is therefore no question that the district court had jurisdiction under both Article III and 28 U.S.C. § 1331. The Ninth Circuit nevertheless thought dismissal was appropriate under this Court's decision in *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800 (1976).

Although *Colorado River* acknowledged the federal courts' "virtually unflagging obligation" to exercise their jurisdiction, it allowed that prudence might dictate dismissal in certain "exceptional" circumstances so as to avoid concurrent state and federal litigation. *Id.* at 817-18. Even while permitting dismissal in *Colorado River* itself, this Court emphasized the narrow nature of the exception relative to the general rule that courts decide cases properly before them. As such, in the nearly fifty years since *Colorado River*, this Court has found exceptional circumstances warranting dismissal "only in the circumstances described in *Colorado River* itself." *Edge Investment, LLC v. District of Columbia*, 927 F.3d 549, 553 (D.C. Cir. 2019).

Like then-Chief Judge Garland in that case, many have argued that *Colorado River* should be "confined to its banks." *Id.* at 550. Amicus suggests that this approach has not worked in containing the spread of prudential abstention. Instead, amicus urges this Court to grant the petition to overrule *Colorado River* for good.

I. This Court's review is warranted to resolve the circuits' confusion over *Colorado River*. In two cases, both decided over forty years ago, this Court identified a litany of potentially but not necessarily relevant factors that courts "may" consider under *Colorado River*.

In part due to this Court's lack of clear guidance, the circuits have failed to coalesce around any uniform understanding of *Colorado River*. The circuits have reached conflicting outcomes based on open splits over which factors to consider, what individual factors mean, how to weigh the same factors, and the proper disposition on the same facts.

That deeply fractured caselaw imposes significant costs on litigants seeking to vindicate their federal rights in federal court. And those costs can themselves be a barrier to federal review since many private citizens often lack the resources to engage in protracted litigation just to confirm their right to be in federal court.

II. This Court's review is warranted because the question presented is exceptionally important and frequently recurring.

A. The question presented is vitally important because it affects the availability of a federal forum for individuals seeking to vindicate their federal rights. In our tripartite system of government, the Constitution makes the judiciary the last line of defense for civil liberties. Congress has confirmed the judiciary's role as the guardian of federal rights by granting federal courts the full scope of federal question jurisdiction, *see* 28 U.S.C. § 1331, and recognizing a cause of action for asserting federal civil rights in federal court, *see* 42 U.S.C. § 1983.

Colorado River and other prudential doctrines upset that system of accountability. When the judiciary refrains from exercising its jurisdiction, it abdicates its duty to enforce the constitutional limits imposed on the government and protect federal rights. And unlike conventional abstention doctrines, *Colorado River*

rests solely on prudential considerations. But precluding federal review based on prudential considerations is especially problematic because such considerations are unrelated to any constitutional or statutory requirement.

B. The question presented is frequently recurring because government actors frequently invoke prudential review-precluding doctrines like *Colorado River* to avoid federal court scrutiny of their actions. This Court has often granted review to trim back overgrown prudential doctrines that preclude effective federal court review of cases implicating federal rights. *See Pakdel v. City & County of San Francisco*, 594 U.S. 474 (2021) (per curiam); *Knick v. Township of Scott*, 588 U.S. 180 (2019). But as multiple examples from PLF's property rights practice show, government actors and courts still invoke such doctrines to avoid reaching the merits in constitutional cases.

Accordingly, the petition should be granted.

ARGUMENT

I. The Circuits' Confusion Over *Colorado River* Is Itself A Barrier To Federal Court Review

A. Nearly fifty years ago, *Colorado River* announced a new exception to "the virtually unflagging obligation of the federal courts to exercise the jurisdiction given [to] them." 424 U.S. at 817. The Court held that certain "exceptional" circumstances "permit[] the dismissal of a federal suit due to the presence of a concurrent state proceeding for reasons of wise judicial administration." *Id.* at 818. Rather than explain which circumstances qualify as "exceptional," the Court identified a "combination of factors" that "a federal court

may . . . consider." *Ibid.* But, the Court clarified, "[n]o one factor is necessarily determinative." *Ibid.*

Seven years later, the Court again "declined to prescribe a hard and fast rule for dismissals of this type." *Moses H. Cone Mem. Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 15 (1983). The Court instead reiterated that "the decision whether to dismiss a federal action . . . does not rest on a mechanical checklist, but on a careful balancing of the important factors as they apply in a given case." *Id.* at 16. And the Court identified a laundry list of potentially relevant factors. *Ibid.* Still, the Court cautioned that "[t]he weight to be given to any one factor may vary greatly from case to case, depending on the particular setting of the case." *Ibid.*

B. Fast forward to today and the circuits have met this Court's lack of guidance with "wildly divergent approaches" to *Colorado River* abstention. Owen W. Gallogly, Note, Colorado River *Abstention: A Practical Reassessment*, 106 Va. L. Rev. 199, 199 (2020). As the petition correctly explains, the decision below only deepens that already entrenched split. Pet. 19-27.

Even threshold issues have stumped the lower courts. For instance, the circuits cannot decide *how many* factors to consider. The First, Sixth, Ninth, and Tenth Circuits "use an eight-factor balancing test." Pet. App. 9a; *accord Healthcare Company Ltd. v. Upward Mobility, Inc.*, 784 F. App'x 390, 395 (6th Cir. 2019); *Wakaya Perfection, LLC v. Youngevity Int'l, Inc.*, 910 F.3d 1118, 1121 (10th Cir. 2018); *Nazario-Lugio v. Caribevision Holdings, Inc.*, 670 F.3d 109, 115 (1st Cir. 2012). The Second, Third, Fourth, Fifth, Eighth, Eleventh, and Federal Circuits "weigh six factors." *Vill. of Westerfield v. Welch's*, 170 F.3d 116, 121 (2d Cir. 1999); *accord Taveras v. Bank of Am., N.A.*, 89 F.4th 1279,

1286 (11th Cir. 2024); *vonRosenberg v. Lawrence*, 849 F.3d 163, 168 (4th Cir. 2017); *Spectra Comms. Grp., LLC v. City of Cameron*, 806 F.3d 1113, 1121 (8th Cir. 2015); *Saucier v. Aviva Life & Annuity Co.*, 701 F.3d 458, 462 (5th Cir. 2012); *Nationwide Mut. Fire Ins. Co. v. George V. Hamilton, Inc.*, 571 F.3d 299, 308 (3d Cir. 2009); *Profile Mfg., Inv. v. Kress*, 22 F.3d 1106 (Fed. Cir. 1994) (Table) (slip op. at 3). And the Seventh Circuit, not to be outdone, considers "ten nonexhaustive factors." *GeLab Cosmetics LLC v. Zhuhai Aobo Cosmetics Co.*, 99 F.4th 424, 430 (7th Cir. 2024). The D.C. Circuit, for its part, has taken an altogether different tack—refusing to endorse *any* list of factors. *See Edge Invest.*, 927 F.3d at 553 (Garland, C.J.); *see also ibid.* ("[T]his court has never found [exceptional] circumstances" warranting abstention.).

That confusion only escalates as courts wade into *Colorado River*'s multifactor morass. For starters, the circuits have reached conflicting outcomes based on disagreements over the *meaning* of individual factors. Applying the "piecemeal litigation" factor, the decision below reasoned that the fact that "federal adjudication of the claim would 'necessarily *duplicate* the state court's efforts'" justified abstention. Pet. App. 10a-11a (quoting the district court's opinion) (emphasis added). But the Fifth Circuit has held that "[t]he prevention of *duplicative* litigation is not a factor to be considered in an abstention determination." *Evanston Ins. Co. v. Jimco, Inc.*, 844 F.2d 1185, 1192 (5th Cir. 1988) (emphasis added). The Fifth Circuit has thus refused to abstain when parallel litigation "will result in only duplicative, not piecemeal, litigation." *Ibid.*

The Ninth Circuit similarly emphasized below that "the *potential* for piecemeal litigation supports dismissal." Pet. App. 11a (emphasis added). Yet the Third Circuit has rejected the argument "that the *mere possibility* of piecemeal litigation justifies *Colorado River* abstention." *Ryan v. Johnson*, 115 F.3d 193, 198 (3d Cir. 1997) (emphasis added). The Third Circuit instead requires that "there must be a strongly articulated congressional policy against piecemeal litigation in the specific context of the case under review." *Ibid.* (emphasis omitted).

Even when the circuits agree on which factors to consider and what they mean, they are split on the *weight* to accord them. Below, the Ninth Circuit stressed "that the first factor of jurisdiction over property at stake is *inapplicable* given there is no specific property in dispute." Pet. App. 10a (emphasis added); *see also* Pet. App. 20a (describing this factor as "neutral"). But the Second, Fifth, and Seventh Circuits have all "held that the absence of a res 'point[s] toward exercise of federal jurisdiction'" and "thus *weighs against*" abstention. *Welch's*, 170 F.3d at 122 (quoting *De Cisneros v. Younger*, 871 F.2d 305, 307 (2d Cir. 1989)) (emphasis added). As the Fifth Circuit explained, "[t]he absence of this factor is not, however, a *neutral* item"; its absence "weighs against abstention." *Murphy v. Uncle Ben's, Inc.*, 168 F.3d 734, 738 (5th Cir. 1999) (emphasis added); *accord Huon v. Johnson & Bell, Ltd.*, 657 F.3d 641, 648 (7th Cir. 2011).

The Ninth Circuit likewise concluded below that "the second factor addressing inconvenience of the federal forum is *neutral* given the state and federal courthouses are less than 200 miles apart." Pet. App. 10a (emphasis added). But again, the Second, Fifth, and

Seventh Circuits "have held that where the federal court is 'just as convenient' as the state court, that factor *favors retention* of the case in federal court." *Welch's*, 170 F.3d at 122 (quoting *Youell v. Exxon Corp.*, 48 F.3d 105, 113 (2d Cir. 1995)) (emphasis added); *accord Murphy*, 168 F.3d at 738; *Nat'l Cas. Co. v. Gonzales*, 637 F. App'x 812, 816 (5th Cir. 2016); *Huon*, 657 F.3d at 648 ("[A]bsent or neutral factors weigh in favor of exercising jurisdiction.").

Finally, the circuits conflict over the proper disposition in analogous cases. The Ninth Circuit affirmed the "dismissal under *Colorado River*," Pet. App. 19a, below despite acknowledging the "possibility the State Action will not fully resolve the Federal Action," Pet. App. 18a. Yet the Third Circuit has recognized that "dismissal under *Colorado River* contemplates that parallel state-court litigation will *completely resolve* the issues between the parties." *Ingersoll-Rand Fin. Corp. v. Callison*, 844 F.2d 133, 138 (3d Cir. 1988) (emphasis added). Accordingly, when "some matters arguably will remain for resolution after the state proceedings are concluded," the Third Circuit "stay[s] the federal action rather than dismissing it." *Ibid.*

C. That deeply fractured *Colorado River* caselaw does more than just fill pages in federal courts textbooks and law reviews—it imposes "real costs" on "individuals seeking to vindicate their rights" in federal court. *Axon Enter., Inc. v. FTC*, 598 U.S. 175, 216 (2023) (Gorsuch, J., concurring in the judgment).

As this Court has recognized, uniformity and predictability are especially important when it comes to the rules for determining the proper forum. "Simple jurisdictional rules," this Court has emphasized, "promote greater predictability." *Hertz Corp. v. Friend*,

559 U.S. 77, 94 (2010). But when those straightforward rules are replaced by "a jumble of factors, the room for disagreement grows." *Axon*, 598 U.S. at 215 (Gorsuch, J., concurring in the judgment). That disagreement causes uncertainty, which "complicate[s] a case, eating up time and money as the parties litigate, not the merits of their claims, but which court is the right court to decide those claims." *Hertz*, 559 U.S. at 94. That "cost, time, and uncertainty associated with litigating a raft of opaque jurisdictional factors," in turn, "deter[s] many people from even trying to reach" the federal forum to which they are entitled. *Axon*, 598 U.S. at 215 (Gorsuch, J., concurring in the judgment).

This case illustrates those consequences. In nearly three years of litigation just in federal court, Petitioner has been through a motion to dismiss at the district court, an appeal to the Ninth Circuit, a motion for rehearing en banc, and now a petition for a writ of certiorari. *See* Pet. App. 5a-7a. And all that was just to determine whether Petitioner may assert its federal rights in a federal court that everyone agrees has jurisdiction. Each step of that process comes with significant costs—costs many private citizens with meritorious claims may be unable to bear.

Although substantial costs are not unknown in federal litigation, the disarray in the circuits at each step of the *Colorado River* analysis can transform those costs into an insurmountable barrier to federal court review. After all, "[n]ot many possess the perseverance" or the resources required to endure years of protracted litigation just to confirm their right to be heard in the forum of their choice. *Axon*, 598 U.S. at 215 (Gorsuch, J., concurring in the judgment); *see Royal Canin U.S.A., Inc. v. Wullschleger*, 604 U.S. 22, 35

(2025). But those burdens become backbreaking when there is no way of telling how a court ultimately will rule after consulting *Colorado River*'s many factors and the morass of conflicting caselaw interpreting them. The Ninth Circuit, for instance, has openly acknowledged that it has reached contradictory conclusions in similar cases under *Colorado River*. *See Ernest Bock*, 76 F.4th at 838. And as explained above, any litigant who looks beyond the Ninth Circuit for help deciphering *Colorado River* will find only more confusion. That alone warrants this Court's review.

II. The Question Presented Is Vitally Important And Frequently Recurring

A. *Colorado River* and other "prudential" doctrines short-circuit accountability

1. The Framers of our "Constitution divided the 'powers of the new Federal Government into three defined categories, Legislative, Executive, and Judicial.'" *Free Enter. Fund v. PCAOB*, 561 U.S. 477, 483 (2010) (quoting *INS v. Chadha*, 462 U.S. 919, 951 (1983)). The Constitution they designed thus created "three coequal branches" of government, *Clinton v. Jones*, 520 U.S. 681, 699 (1997), "and vest[ed] a different form of power in each," *Seila Law LLC v. CFPB*, 591 U.S. 197, 239 (2020) (Thomas, J., concurring in part and dissenting in part); *see also* U.S. Const. art. I, § 1; art. II, § 1, cl. 1; art. III, § 1, cl. 1. As part of that larger system, Article III vests the "judicial Power" in the judiciary and directs that it "shall extend to all Cases" arising under federal law, among other cases. U.S. Const. art. III, § 2, cl. 1.

In that tripartite system, the judiciary functions as the last line of defense for civil liberties. As Madison

explained, the very purpose of the structure of our government is "the preservation of liberty." The Federalist No. 47, p. 324 (J. Cooke ed. 1961) (J. Madison); *accord Stern v. Marshall*, 564 U.S. 462, 483 (2011); *Wellness Int'l Network, Ltd. v. Sharif*, 575 U.S. 665, 695 (Roberts, C.J., dissenting) ("[T]he Framers devised a structure of government that promotes both liberty and accountability."). To that end, the Constitution imposes limitations on each branch of the federal government, *e.g.*, *INS v. Chadha*, 462 U.S. at 946 (bicameralism and presentment), and takes some matters outside the scope of state or federal regulation altogether, *e.g.*, U.S. Const. amends. I-IX, XIV; *Timbs v. Indiana*, 586 U.S. 146, 150 (2019). The judiciary, too, is subject to separation-of-powers-based limitations on its power. *See TransUnion LLC v. Ramirez*, 594 U.S. 413, 422-23 (2021). But when the judicial power is properly invoked, it is "'the peculiar province of the judiciary' to safeguard life, liberty, and property." *SEC v. Jarkesy*, 603 U.S. 109, 150 (2024) (Gorsuch, J., concurring) (quotations omitted). And the judiciary's role is doubly important when it is called "to evaluate the constitutionality" of government action and enforce the limitations imposed by the Constitution. *Moore v. Harper*, 600 U.S. 1, 19 (2023); *accord Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 176-77 (1803). In other words, the guarantees of liberty enshrined in our Constitution "are only as strong as this Court's will to enforce them." *Sharif*, 575 U.S. at 705 (Roberts, C.J., dissenting).

Congress confirmed that principle by granting the federal courts the full scope of federal question jurisdiction in 28 U.S.C. § 1331. Federal courts "possess only that power authorized by [the] Constitution and

statute." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). And in the early Republic, Congress was content letting "state courts resolve[] questions of federal and constitutional law." F. Andrew Hessick III, *The Common Law of Federal Question Jurisdiction*, 60 Ala. L. Rev. 895, 908 (2009). That changed in 1875 when Congress first granted federal courts federal question jurisdiction. *Id.* at 907. Congress's decision to vest federal courts with federal question jurisdiction "in the wake of the Civil War" represented Congress's judgment "that state courts could no longer be trusted to vindicate federal or constitutional rights." *Id.* at 908. Congress thus made federal courts "the principal guardians of those rights" by granting the federal courts jurisdiction over cases implicating them. *Ibid.* And Congress provided a federal civil rights cause of action in 42 U.S.C. § 1983, further interposing "federal courts between the States and the people, as guardians of the people's federal rights." *Mitchum v. Foster*, 407 U.S. 225, 242 (1972). Although the federal courts have not always lived up to that promise, the lessons of history have confirmed the wisdom of Congress's decision to provide a federal forum in which citizens may seek to vindicate their federal rights. *See, e.g.*, *Cooper v. Aaron*, 358 U.S. 1 (1958); *Brown v. Bd. of Educ.*, 349 U.S. 294 (1955); *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954); *Smith v. Allwright*, 321 U.S. 649 (1944).

2. *Colorado River* upsets that carefully calibrated system. As *Colorado River* itself acknowledged in an oft-quoted line, federal courts have a "virtually unflagging obligation" to exercise their jurisdiction. *Colorado River*, 424 U.S. at 817. That is because, as Hamilton explained, the judiciary has "neither Force nor

Will, but merely judgment." The Federalist No. 78, p. 523 (J. Cooke ed. 1961) (A. Hamilton); *accord Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 385 (2024). Federal courts therefore must exercise their jurisdiction to fulfill their role in our constitutional system. *See Sharif*, 575 U.S. at 705 (Roberts, C.J., dissenting). When federal courts refuse to do so, they abdicate the duty entrusted to them by Article III and Congress to enforce the law and protect private rights.

As members of this Court have explained, the Court "would reverse in the blink of an eye" if a district court refused to hear a diversity case based only on the court's judgment that diversity jurisdiction is "not really so important" or the desire to save "time" for "more important matters." *Texas v. California*, 141 S. Ct. 1469, 1469 (2021) (Alito, J., joined by Thomas, J., dissenting from the denial of motion for leave to file complaint). As those Justices recognized, "the Framers of the Constitution and the Congress that enacted the statute thought that diversity jurisdiction was important." *Ibid.* And the judiciary has no power to second-guess those judgments because "Congress, and not the Judiciary, defines the scope of federal jurisdiction within the constitutionally permissible bounds." *New Orleans Pub. Serv., Inc. v. Council of City of New Orleans*, 491 U.S. 350, 359 (1989). In other words, "such prudential decisions are not" for courts "to make." *Alabama v. California*, 145 S. Ct. 757, 758 (2025) (Thomas, J., joined by Alito, J., dissenting from the denial of motion for leave to file complaint).

That is exactly what *Colorado River* allows. Unlike conventional abstention doctrines, *Colorado River* allows dismissal based solely on prudential concerns "unrelated to considerations of proper constitutional

adjudication and regard for federal-state relations." *Colorado River*, 424 U.S. at 817. *Colorado River*, in its own words, invoked "considerations of wise judicial administration," including the "conservation of judicial resources" and the "comprehensive disposition of litigation." *Ibid.* (quotations and alteration omitted). But as this Court has recognized, allowing federal courts to refuse to exercise their jurisdiction based on such "prudential" concerns is "in some tension" with "the principle that 'a federal court's obligation to hear and decide' cases within its jurisdiction 'is virtually unflagging.'" *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 125-26 (2014) (quoting *Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 77 (2013)).

Colorado River is also plainly contrary to the text of § 1331. Section 1331 provides that "[t]he district courts *shall* have original jurisdiction of *all* civil actions arising under the Constitution, laws, or treaties of the United States." (Emphasis added). That "is as clear as statutes get, and everyone agrees it encompasses the claims" that *Colorado River* prevents from being heard in federal court. *Axon*, 598 U.S. at 205 (Gorsuch, J., concurring in the judgment). Under *Colorado River*, plaintiffs like Petitioner "must satisfy not only § 1331," but "must also satisfy a judge-made, multi-factor balancing test" that appears nowhere in § 1331. *Ibid.* *Colorado River* therefore precludes federal court review of cases for which Congress has provided a federal forum.

B. Governments frequently invoke such doctrines to avoid federal court review

This Court has frequently and recently granted review to reconsider judge-made doctrines, like *Colorado River*, that preclude meaningful review of government

action in federal court. Despite this Court's guidance in those cases, however, state and federal government actors still frequently invoke such doctrines to avoid accountability for their actions in federal court.

1. In *Knick v. Township of Scott*, 588 U.S. 180, 185 (2019), this Court granted review to reconsider the "state-litigation requirement" imposed on Takings Clause claims by *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985). *Williamson County* held "that a property owner must pursue state procedures for obtaining compensation before bringing a federal suit" under 28 U.S.C. § 1983. *Knick*, 588 U.S. at 194. As the Court explained in *Knick*, the state-litigation requirement "effectively established an exhaustion requirement" for takings claims under § 1983. *Ibid.* In *Knick*, the Township of Scott, Pennsylvania, invoked that requirement to avoid review of the Township's law mandating public access to a private cemetery on Petitioner Rose Mary Knick's private farm. *See id.* at 185-87.

This Court rejected *Williamson County*'s "'prudential' ripeness rule" as, among other things, inconsistent with "the settled construction of § 1983." *Id.* at 204. Section 1983, the Court explained, "guarantees 'a federal forum for claims of unconstitutional treatment at the hands of state officials.'" *Id.* at 185 (quoting *Heck v. Humphrey*, 512 U.S. 477, 480 (1994)). And "the settled rule," the Court emphasized, "is that 'exhaustion of state remedies is *not* a prerequisite to an action under § 1983.'" *Ibid.* (alteration omitted). Nor could federalism justify the state-litigation requirement. As the Court explained, "since the Civil Rights Act of 1871, part of 'judicial federalism' has been the availability of

a federal cause of action when a local government violates the Constitution." *Id.* at 202 n.8. Accordingly, the Court held that a plaintiff "may bring his [takings] claim in federal court under § 1983" without first litigating that claim in state court. *Knick*, 588 U.S. at 185.

In *Pakdel v. City and County of San Francisco*, 594 U.S. 474 (2021) (per curiam), this Court similarly granted review and summarily vacated and remanded the Ninth Circuit's decision requiring "exhaustion of state remedies" under the guise of finality in takings claims under § 1983. *Id.* at 480. The Ninth Circuit had affirmed the dismissal of the petitioners' takings claim because the petitioners failed to "seek 'an exemption [from the challenged law] through the prescribed state procedures.'" *Id.* at 479 (quoting the Ninth Circuit's opinion) (alteration omitted). As the Court explained, that "plainly" amounted to an exhaustion requirement. *Ibid.* But as the Court made clear in *Knick*, "'exhaustion of state remedies is *not* a prerequisite to an action under § 1983.'" *Ibid.* (quoting *Knick*, 588 U.S. at 185) (alteration omitted). And although "Congress always has the option of imposing" an exhaustion requirement, the Court stressed, "it has not done so for takings plaintiffs" under § 1983. *Id.* at 481. The Court thus reaffirmed that § 1983 "guarantees a federal forum" for takings claims along with other "claims of unconstitutional treatment at the hands of state officials." *Id.* at 479 (quotation omitted).

2. Despite this Court's clear guidance in *Knick* and *Pakdel*, government actors continue to invoke judicially constructed obstacles to federal court scrutiny. And as the below examples from PLF's property rights

practice show, lower courts continue to use such doctrines to dodge the merits of constitutional challenges to government action.

Lemon Bay Cove LLC. Lemon Bay Cove LLC was formed to develop 5.64 acres of land on Sandpiper Key, a picturesque beachfront community and vacation destination on Florida's Gulf Coast. Petition for Writ of Certiorari at 4, *Lemon Bay Cove, LLC v. United States*, No. 24-134 (cert. denied Oct. 7, 2024). Lemon Bay sought to build 12 single-family units of townhome-style housing on its undeveloped property. *Ibid.* Like most of the land on Sandpiper Key, parts of the land Lemon Bay sought to develop were submerged in the mangroves that line the shores of the eponymous Lemon Bay. *Ibid.*

To encourage the beneficial use of this coveted beachfront real estate, Florida law provided that the purchaser of land on Sandpiper Key, including Lemon Bay, had the right to "bulkhead and fill"—the process of filling in submerged areas to create firm ground on which to build. *Id.* at 5. Accordingly, much of the surrounding land on Sandpiper Key had been filled and developed when Lemon Bay acquired its property. *Id.* at 6-7.

Once it acquired the property, Lemon Bay received approval for the 12-unit project, including filling 1.95 acres of the property, from the County and the State. *Id.* at 8. Lemon Bay also applied for a permit from the Army Corps of Engineers, which had the final say over the project under the Clean Water Act. *Ibid.* After three years of bureaucratic back and forth, the Corps denied Lemon Bay's permit for the 12-unit project "*with prejudice*," as well as Lemon Bay's appeal from

that denial. *Id.* at 9. That denial meant Lemon Bay could not build the 12-unit project. *Ibid.*

With nowhere left to turn, Lemon Bay sued the Corps in federal court under the Tucker Act, arguing that the Corps' denial constituted an uncompensated taking. *See Lemon Bay Cove, LLC v. United States*, 160 Fed. Cl. 593 (2022). Instead of defending the merits of its denial of the 12-unit project, the Corps argued there was no compensable taking because Lemon Bay never "propos[ed] a smaller footprint or fewer units" for the Corps to consider instead. *Id.* at 608.

The Court of Federal Claims accepted the Corps' argument and threw Lemon Bay out of court. *Id.* at 610. The court reasoned that "[t]he Corps' ultimate denial decision was limited to the discrete permit" for the 12-unit project and the "only application that the Corps denied with prejudice was the application to . . . construct 12 units." *Ibid.* In the court's view, Lemon Bay also should have submitted alternative proposals for different projects that it had no intention of building and would not have been economically viable before suing, such as "shrinking the footprint or reducing the number of units." *Ibid.* The court thus effectively converted Lemon Bay's burden to show a deprivation of "all economic value" into a requirement to exhaust administrative procedures before asserting a takings claim. *See ibid.* The Federal Circuit affirmed in an unsigned, single-sentence order. *Lemon Bay LLC v. United States*, No. 22-2242, 2024 WL 959732 (Fed. Cir. Mar. 6, 2024).

835 Hinesburg Road LLC. 835 Hinesburg Road LLC was formed to develop a plot of land in the cozy and increasingly bustling City of South Burlington, Vermont to provide both residential and commercial

spaces. Petition for Writ of Certiorari at 7, *835 Hinesburg Road, LLC v. City of South Burlington*, No. 23-1045 (cert. denied Oct. 7, 2024). Flanked by I-89 and Burlington International Airport, 835 Hinesburg's undeveloped property was surrounded by other residential and commercial developments. *Ibid.* The City's then-current ordinances, however, prohibited development within "Habitat Blocks" without City Council Approval. *Id.* at 6-7. 835 Hinesburg's property fell partially within a Habitat Block, meaning 835 Hinesburg needed City Council approval to build. *Ibid.*

Following the procedure prescribed by the City, 835 Hinesburg submitted a "sketch plan" to the City Council, which included 835 Hinesburg's plans to build office space, restaurants, light manufacturing facilities, and even an animal shelter. *Id.* at 8. After a public hearing, the City Council voted 3-1 (with one "not present" vote) to deny 835 Hinesburg's plan. *Id.* at 9 & n.3. In its written decision, the City Council reasoned that "the proposed project will or could be contrary" to as-of-then unenacted ordinances that were under consideration at the time. *Id.* at 9. The City later adopted those more stringent ordinances. *Id.* at 10.

Realizing that it would be pointless to reapply under the more stringent rules, 835 Hinesburg brought a regulatory takings claim in federal court. *See 835 Hinesburg Road, LLC v. City of South Burlington*, No. 23-218, 2023 WL 7383146 (2d Cir. Nov. 8, 2023). The district court dismissed after finding that 835 Hinesburg's "takings claim is unripe." *Id.* at *2.

The Second Circuit affirmed in a brief, unsigned opinion. *See ibid.* The Second Circuit reasoned that the City had "not reached a final decision," *id.* at *3,

despite acknowledging that it had "denied 835 Hinesburg's" proposal in a "written decision," *id.* at *1. In the court's view, the denial of the sketch plan was "both preliminary and incomplete" because the Council *may* have approved a *different* proposal. *See id.* at *3. And the court faulted 835 Hinesburg for "not submitt[ing]" a new proposal "under the [a]mended" ordinances before suing. *Ibid.* The court thus effectively smuggled an exhaustion requirement into the "'*de facto* finality'" standard for takings claims, *id.* at *2 (quoting *Pakdel*, 594 U.S. at 479).

* * *

Shutting the federal courthouse doors on private citizens seeking to vindicate federal rights based solely on prudential concerns frustrates the system of accountability created by the Constitution. And as the above cases illustrate, government actors and lower courts still frequently invoke prudential doctrines similar to *Colorado River* to avoid reaching the merits of constitutional claims. Although this Court need not resolve those specific issues here, this Court's review is warranted to make clear that prudential considerations can never overcome a federal court's "virtually unflagging obligation" to exercise its jurisdiction.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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