No. 24-____

IN THE

Supreme Court of the United States

JAMES DOYLE, DBA ROCKY MOUNTAIN VENTURES, DBA ENVIRONMENTAL LAND TECHNOLOGIES, LTD.,

Petitioner,

v.

UNITED STATES,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Under *Knick* v. *Township of Scott*, 588 U.S. 180 (2019), a regulatory takings claim is ripe for adjudication in federal court when the government reaches a final decision concerning any restrictions on private property; exhausting state-litigation procedures is unnecessary. *Pakdel* v. *City and County of San Francisco*, 594 U.S. 474 (2021) (per curiam), likewise rejected administrative exhaustion as a condition of ripeness. Instead, *Pakdel* clarified that "nothing more than *de facto* finality is necessary"—meaning that "the government has reached a conclusive position" about how it will regulate the claimant's property. Yet the Federal Circuit held in the decision below that "*Knick* and *Pakdel* are inapplicable" to takings claims against the United States. The court of appeals added that such claims are unripe until the owner satisfies "federal administrative agency exhaustion" by submitting "a complete permit application."

The questions presented are:

1. Whether a regulatory takings claim against the United States is ripe when a property owner demonstrates "*de facto* finality."

2. Whether a property owner can show that his regulatory takings claim against the United States is ripe without obtaining the government's denial of a complete application for administrative relief.

CORPORATE DISCLOSURE STATEMENT

Petitioners have no parent corporations, and no shareholders own 10% or more of their stock.

STATEMENT OF RELATED PROCEEDINGS

The following proceedings are directly related to this case within the meaning of Rule 14.1(b)(iii):

- *Doyle* v. *United States*, No. 2023-1735, (Fed. Cir.), judgment entered on December 18, 2024.
- *Doyle* v. *United States*, No. 22-499 (Fed. Cl.), judgment entered on March 24, 2023.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Jim Doyle is a property developer whose 2,440 acres of stunningly picturesque land overlooking St. George, Utah (plus other property interests) were taken by the United States to protect the desert tortoise. Yet the Federal Circuit dismissed Jim's takings claim as unripe. Its primary reason was that he did not submit a permit application that the Fish and Wildlife Service (FWS) deems complete.

The decision below essentially reshapes ripeness doctrine into a barrier thwarting judicial review for regulatory takings claims against the United States. Such claims are unripe, the court of appeals held, until the claimant satisfies "federal administrative agency exhaustion." App.10a. By that court's lights, a takings claim is unripe until the government denies a procedurally impeccable application under a federal agency's permit scheme.

The Federal Circuit's decision is wrong and urgently merits review.

First, the court of appeals has decided an important question of federal law that conflicts with this Court's decisions three times over.

The Federal Circuit openly rejected *Knick* and *Pakdel* as "inapplicable" to takings claims against the United States. App.10a. Spurning the ripeness standard established by this Court poses a significant conflict by itself.

But the court of appeals went further, insisting that Doyle's takings claim is unripe until he satisfies "federal administrative agency exhaustion" by "receiv[ing] a final decision from FWS on an Incidental Take Permit." App.10a. The decision below

thus imposes on federal takings claimants the same burden that *Knick* and *Pakdel* eliminated for other takings claimants.

Another conflict arises because the decision below is inconsistent with *Patsy* v. *Board of Regents of Florida*, 457 U.S. 496 (1982). That is so because the court of appeals required administrative exhaustion as a condition of bringing a federal takings claim, without express authority from Congress.

Second, the decision below deepens the division among federal circuits concerning the correct ripeness standard in takings cases. The Second, Ninth, and Eleventh Circuits faithfully follow *Knick* and *Pakdel* by applying the standard of *de facto* finality. But the First, Fifth, Seventh, Tenth, and now Federal Circuits require administrative exhaustion as an element of ripeness—or confuse finality with exhaustion.

Third, the decision below also raises an important question of federal law that this Court should resolve. If ripeness requires only proof of finality, may a takings claimant satisfy that requirement without obtaining the government's denial of a procedurally correct application for administrative relief? Unless this Court resolves that question, lower courts will continue to misapply ripeness doctrine by mingling the separate inquiries into finality and exhaustion. And that result would be difficult to square with *Knick* and *Pakdel*—much less with the Fifth Amendment.

Fourth, the questions presented hold undeniable national importance. The Federal Circuit's exclusive jurisdiction over significant takings claims against the United States means that the decision below will distort Fifth Amendment claims arising from every corner of federal law. The decision below also results

in starkly different ripeness standards for takings claims against the federal government than for such claims against State and local governments. And there is no warrant for requiring federal takings claimants to satisfy administrative exhaustion when neither the Tucker Act nor the ESA says so. Only this Court's review can resolve the conflicts unleashed by the decision below and "restor[e] takings claims to the full-fledged constitutional status the Framers envisioned." *Knick*, 588 U.S. at 189.

OPINIONS BELOW

The Federal Circuit's opinion is unreported and reproduced at App.1a–15a. The Court of Federal Claims' opinion is reported at 165 Fed. Cl. 161 (2023) and reproduced at App.16a–34a.

JURISDICTION

The U.S. Court of Appeals for the Federal Circuit issued its opinion on December 18, 2024. This Court has jurisdiction under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS AT ISSUE

The Fifth Amendment to the Constitution of the United States provides, "nor shall private property be taken for public use without just compensation." U.S. Const. amend. V.

Relevant provisions of the Endangered Species Act and related regulations are reproduced at App.35a–50a.

STATEMENT OF THE CASE

A. Legal Framework

1. Congress enacted the ESA "to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved." 16 U.S.C. §1531(b). The statute prohibits "any person" to "take"[1] an "endangered species of fish or wildlife" or to "violate any regulation pertaining to such species or threatened species" promulgated by the Secretary of the Interior. *Id.* §§ 1538(a)(1), 1538(a)(1)(B), and 1538(a)(1)(G). "Take" means to "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." *Id.* § 1532(19). Related regulations define "harm" to include "significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering." 50 C.F.R. § 17.3.

Once a wildlife species is listed as threatened or endangered, the Secretary must designate critical habitat "essential to the conservation of the [listed] species and * * * may require special management consideration or protection[.]" 16 U.S.C. §§1532(5)(A), 1533(a)(3). Land development within an area designated as critical habitat risks violating the ESA by resulting in the "take" of listed wildlife in the form of "significant habitat modification or degradation" that

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[1] The ESA's nomenclature can be confusing in this context. Its prohibition on the "take" of an endangered species, 16 U.S.C. §1538(a)(1), should not be confounded with the Fifth Amendment's right to compensation when the government has "taken" private property for public use. U.S. Const. amend. V.

interferes with a listed species' "breeding, feeding or sheltering." 50 C.F.R. § 17.3.

Sanctions for noncompliance with the ESA are severe. A person who "knowingly violates" the statute, related regulations, or "any permit or certificate issued hereunder" shall be "fined not more than $50,000 or imprisoned for not more than one year, or both." 16 U.S.C. §1540(b)(1).

2. The ESA allows an owner affected by a wildlife listing to apply for an incidental take permit. This allows the owner to use his property containing a listed species of wildlife "if such taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity." 16 U.S.C. §1539(a)(1)(B). Such a permit cannot be issued unless the applicant includes "a conservation plan" with certain information. *Id.* § 1539(a)(2)(A). Required information includes:

> (i) the impact which will likely result from such taking;
>
> (ii) what steps the applicant will take to minimize and mitigate such impacts, and the funding that will be available to implement such steps;
>
> (iii) what alternative actions to such taking the applicant considered and the reasons why such alternatives are not being utilized; and
>
> (iv) such other measures that the Secretary may require as being necessary or appropriate for purposes of the plan.

Id. § 1539(a)(2)(A)(i)–(iv). Required conservation plans are also "known as 'habitat conservation plans' or 'HCPs.'" 50 C.F.R. § 17.3.

Regulations elaborate on these requirements and add others. Such an application must describe the "purpose, location, timing, and proposed covered activities." *Id.* § 17.32(b)(1)(i). It must describe the "[e]xpected timing, geographic distribution, type and amount of take, and the likely impact of take on the species." *Id.* § 17.32(b)(1)(iv). It must set out a "conservation program" that details "[c]onservation measures that will be taken to minimize and mitigate the impacts of the incidental take for all covered species commensurate with the taking." *Id.* § 17.32(b)(1)(v)(A). And the permit application must include "[a]n accounting of the costs for properly implementing the conservation plan and the sources and methods of funding." *Id.* § 17.32(b)(1)(ix).

Submitting an application with this information does not guarantee a permit. The FWS Director "will decide whether a permit should be issued," based on "the anticipated duration and geographic scope of the applicant's planned activities, including the amount of covered species' habitat that is involved and the degree to which covered species and their habitats are affected." *Id.* § 17.32(b)(2). Only when an application checks these boxes does the ESA direct that the Secretary "shall issue the permit"—and then only if "the taking will be incidental" and "the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild." 16 U.S.C. §§1539(a)(2)(B)(i), (iv).

Nor is issuance of an incidental take permit a one-and-done affair. The Secretary must revoke any such permit "if he finds that the permittee is not complying with the terms and conditions of the permit." *Id.*

§ 1539(a)(2)(C).[2] The Secretary may make exceptions for other reasons, but not for the criteria governing an incidental take permit. See *id.* § 1539(d).

B. Factual Background

1. Petitioner Jim Doyle is a real estate developer.[3] He is the general partner of Petitioner Environmental Land Technologies, Ltd., which has done business as Rocky Mountain Ventures.[4] Doyle planned to develop his property near St. George, Utah into "nine golf courses surrounded by luxury homes." App.55a. By 1985, Doyle held "title to 2,440 acres and held preferential rights to acquire an additional 11,000 acres for this development from the State of Utah." *Ibid.* After working for a decade and investing millions of dollars, Doyle had "all the necessary permits and other authorizations from state and local governments and * * * was prepared to break ground for the initial phase of home construction in the summer of 1990." *Id.* at 57a.

2. Doyle's plans came to a halt when FWS listed "the Mojave population of the desert tortoise, *Gopherus agassizii*," as a threatened species under the ESA. 55 Fed. Reg. 12178, 12178 (Apr. 2, 1990). The statute

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[2] The ESA contains a hardship exemption, 16 U.S.C. §1539(b)(1), but it does not cover the government actions that have taken Doyle's property.

[3] The factual background is borrowed from the complaint and its exhibits. See App.51a–69a. Because this case comes to the Court from a motion to dismiss, "well-pleaded factual allegations" of the complaint along with "reasonable inference[s]" from them are assumed to be true. *Ashcroft* v. *Iqbal*, 556 U.S. 662, 678–79 (2009).

[4] Doyle has conducted his development activities through his wholly owned business entities, so petitioners will be collectively referred to as "Doyle" or "petitioner."

defines a "threatened species" as "any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." 16 U.S.C. §1532(20). The FWS listing covered "all tortoises north and west of the Colorado in California, southern Nevada, southwestern Utah, and northwestern Arizona." 55 Fed. Reg. at 12178. FWS explained that "[c]onstruction projects such as roads, housing developments, energy developments and conversion of native habitats to agriculture have destroyed habitat supporting tortoises in the Mojave population." *Id.* FWS identified "construction activities," including "housing developments," as threats to tortoise habitat. *Id.* at 12180. And FWS noted that "[l]oss of habitat from a variety of human land uses" is "particularly acute" in "the St. George area in Utah." *Id.* at 12183.

The Federal Register listing mentioned the availability of permits "to carry out prohibited activities involving threatened wildlife under certain circumstances." *Id.* at 12190. By FWS's reckoning, "[s]uch permits are available for scientific purposes, to enhance the propagation or survival of the species, zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act, and/or for incidental take in connection with otherwise lawful activities." *Id.* Noticeably missing was permission to develop land for residential projects such as Doyle's. To the contrary, FWS noted the "irrevocable harm to the [tortoise] population if urban construction projects and other activities resume resulting in take of tortoises and destruction of habitat" as reason for the final rule to take immediate effect. *Id.* at 12180. FWS added that any lapse in the ESA's protections would create "serious law enforcement problems" since "the Government would have to prove that allegedly

unlawful takings did not occur during the period of the lapse." *Ibid.*

Four years later, FWS designated 6.4 million acres in California, Nevada, Arizona, and Utah as critical habitat. 59 Fed. Reg. 5820, 5820 (Feb. 8, 1994). Utah's portion of that area consisted of 129,100 acres, of which 10,500 acres were privately owned—including all of Doyle's property. *Id.* at 5827; App.57a. To visualize the size of FWS's designation, compare it with the size of the District of Columbia. Where the District occupies approximately 39,123 acres,[5] FWS designated 129,100 acres of land in Utah (including private land) as critical habitat for the desert tortoise. FWS's critical habitat designation in Utah thus encompasses an area *three times larger* than the Nation's capital. Because the FWS designation put Doyle on notice of the desert tortoises living on his property, he risked criminal liability if his development activities harmed the tortoise or its habitat. See 16 U.S.C. §1540(b)(1).

Doyle "spearheaded an effort" by landowners and local governments to submit an incidental take permit application for Washington County "that would allow development of some of Doyle's (and other owners') land while protecting the listed tortoise." App.57a. That proposal "would have established a 27,000-acre reserve to protect the tortoise habitat but would have allowed development on [Doyle's] land." *Id.* at 71a. But FWS "rejected that plan in 1994, requiring that the reserve be made larger, and insisted that [Doyle's]

[5] See U.S. Census Bureau, QuickFacts: District of Columbia, *available at* https://www.census.gov/quickfacts/fact/table/DC/PST045223 (last visited Mar. 14, 2025).

land and other private land be entirely off-limits to development." *Ibid.*

Concerned that FWS's critical habitat designation would block "substantially all development in the county," Washington County submitted a new plan in 1995, reserving "approximately 62,000 acres" for tortoise habitat. *Ibid.* FWS approved the revised plan and issued an incidental take permit to the County. See 61 Fed. Reg. 26,529 (May 28, 1996).

Washington County's incidental take permit expired in 2016 and was renewed in 2020. See App.4a n.1. The accompanying HCP divides the tortoise's critical habitat into five zones. *Id.* at 88a. Zone 3, described as the most critical area of tortoise habitat, is where all of Doyle's property lies. *Id.* at 73a.

In 1996, the Bureau of Land Management (BLM) erected fences enclosing Doyle's land. *Id.* at 60a. That fencing "blocked access to the tortoise reserve, including [Doyle's] property." *Ibid.* His declaration contains a startling fact: "*The gate to my property is controlled by the government. I do not have a key to the lock that controls access to my own property.*" *Id.* at 74a (emphasis added). A color photograph of the fence was submitted to the Court of Claims as an exhibit to the complaint and is reproduced in the appendix. *See ibid*.

In 1996, the United States entered an agreement with the State of Utah, Washington County, and the City of Ivins requiring BLM to "exchange or otherwise acquire private lands within the Reserve, which included Doyle's land." *Id.* at 61a. BLM later acknowledged its "obligation to acquire from willing sellers upwards of 12,600 acres of non-federal land"—including Doyle's property. *Id.* at 60a.

Despite that commitment, BLM has not compensated Doyle for the property to which he still holds title. *Id.* at 62a–63a.[6] The United States "has in fact paid Doyle for only a small fraction of the land it took for the tortoise reserve in 1996." *Id.* at 62a. The government has approved "a few small land exchanges with Doyle," but these "compensate for only a small portion of the land" he has lost to the government's enforcement of the ESA. *Id.* at 63a.

Denied compensation and yet obligated to pay mortgages and property taxes, Doyle was forced to put his land-holding company, Environmental Land Technologies, Ltd., into bankruptcy in 2004. *Ibid.* To satisfy his creditors, the bankruptcy court ordered that entity to "transfer to his creditors all but 266 acres of his land." *Id.* at 63a–64a. Similar factors forced Doyle into personal bankruptcy in 2020. See *id.* at 65a–66a. As a result, "Doyle was forced to sell all but the remaining 115.72 acres" out of his original 2,440-acre holdings. *Id.* at 65a.[7]

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[6] In 2009, Congress established the Red Cliffs National Conservation Area to protect the FWS tortoise reserve. See 16 U.S.C. §460www(c). Although the Red Cliffs designation does not appear in the complaint, the Court of Federal Claims acknowledged that "Mr. Doyle's lands and several other private land holdings are located among the public lands in this designated conservation area." App.21a.

[7] Transactions since filing the complaint have reduced Doyle's holdings to 70 acres. Washington County, Utah, Property Records Database, https://eweb.washco.utah.gov:8443/recorder/taxweb/account.jsp?accountNum=0179013 (last visited Mar. 14, 2025). Doyle has received no compensation for the taking of that property. See App.62a–63a.

Doyle first sought judicial redress in 2015.[8] He filed a complaint in the Court of Federal Claims seeking compensation under the Fifth Amendment. The court dismissed the complaint as unripe because he had not applied for an incidental take permit. See *Doyle* v. *United States*, 129 Fed. Cl. 147, 158 (2016).

Encouraged by this Court's decision in *Knick*, Doyle submitted an application for an incidental take permit in March 2020. App.5a, 22a. His application incorporated the Washington County HCP, *id.* at 9a, but did not include an HCP of his own because of the cost. See *id.* at 77a ("Funding is a major issue for every HCP" and one study found that the median cost of an individual HCP approaches $1 million). When FWS took no action on his application, Doyle's counsel sent a letter "requesting that the Government take action to approve or deny Doyle's application, but the Government never responded to either the letter or Doyle's application." *Id.* at 65a.

C. Proceedings Below

1. In May 2022, Doyle filed a second complaint in the Court of Federal Claims under the Tucker Act, 28 U.S.C. §1491(a)(1). His sole claim was for "just compensation for property rights in land taken." App.67a. The court dismissed the complaint as unripe. In its view, Doyle must "appl[y] for an incidental take permit with [FWS]" and such an application must

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[8] Litigation was Doyle's last resort. While the government "managed to purchase or exchange about a third of the 2,440 acres [he] owned within the [tortoise] Reserve," App.71a, by "the early 2000s * * * the BLM land exchange program for private landowners * * * was for all practical purposes shut down." *Id.* at 72a. Doyle then invested years pursuing relief through federal legislation, without success. *Ibid.*

"include[] an HCP for [FWS's] consideration and final approval." *Id.* at 23a.

Doyle contended that under *Knick* and *Pakdel*, his takings claim was ripe because the government's treatment of his property is final. But the Court of Federal Claims read those decisions to mean that "federal courts can review takings claims once it is clear that the government entity has 'firmly rejected [the property owner's] request for a property-law exemption." *Id.* at 26a. Unlike takings claims under Section 1983, which do not require administrative exhaustion, "the ESA includes Congress's clear guidance on how and when [FWS] reaches a 'conclusive position' on how the ESA's restrictions should apply to a particular land." *Id.* at 29a. On that understanding, the court concluded that Doyle's claim was unripe because "de facto finality entailed submitting an [incidental take permit application] accompanied by an HCP." *Id.* at 33a.

2. Doyle timely appealed to the Federal Circuit, which affirmed. The court began with the rule that "the initial denial of a permit is still a necessary trigger for a ripe takings claim." *Id.* at 8a (quoting *Boise Cascade Corp.* v. *United States*, 296 F.3d 1339, 1347 (Fed. Cir. 2002) (footnote omitted)). An incidental take permit application is incomplete, the court said, unless it contains "an individualized conservation plan." *Id.* at 9a. Doyle's application fell short because it did not include his own HCP. *Ibid.* For the court, the County's HCP "did not pertain to the development Mr. Doyle proposed to undertake on his land and did not show how his actions would impact the endangered species." *Ibid.* The court concluded that without a complete application, FWS "could not come to a final determination with respect to [Doyle's]

property, [and] his challenge to the agency action is not ripe." *Id.* at 8a.

The Federal Circuit then made the surprising announcement that "*Knick* and *Pakdel* are inapplicable here." *Id.* at 10a. These decisions are immaterial, the court said, because they do not address "federal administrative agency exhaustion." *Ibid.* That principle requires "compliance with an agency's deadlines and other critical procedural rules." *Id.* at 11a (quoting *Pakdel*, 594 U.S. at 480). From the court's perspective, Doyle's takings claim is unripe until he "receive[s] a final decision from FWS on an Incidental Take Permit." *Id.* at 10a.

The decision below purported to offer an alternative holding by saying that Doyle has not "shown 'de facto' finality." *Id.* at 11a. But that line of reasoning excluded any evidence of finality besides the government's denial of a complete permit application. See *ibid.* Because Doyle has not submitted an incidental take permit application with his own HCP, the court held that FWS "has not had a chance to undertake this evaluation and, hence, has not arrived at any final decision." *Id.* at 13a.

Omission of Doyle's individualized HCP from his incidental take permit application was critical to the decision below. *Ibid.* Doyle pointed to other facts showing that FWS had reached a final decision concerning the allowed uses of his property, yet the court denied that those facts "alter the finality analysis." *Id.* at 14a (footnote omitted). Even so, the court conceded that "*there may be good reason to suspect that even a complete permit application—one containing an individualized conservation plan—would have been denied by [FWS].*" *Id.* at 15a (emphasis added).

In a solitary footnote, the decision below rebuffed Doyle's claim that "there has been a physical taking of Mr. Doyle's land through fences erected by [BLM]." *Id.* at 14a n.5. The court wrote that Doyle forfeited that claim by omitting it from his complaint. Even if he had not, "any such fences were erected in 1996 by [his] own account," rendering a physical takings claim time-barred. *Ibid.*

Doyle's complaint was thus dismissed as unripe. Doyle asked the Federal Circuit to reissue its decision as precedential, but the court declined.[9] This timely petition for a writ of certiorari followed.

[9] The Federal Circuit's decision not to reissue its opinion as precedential is perplexing. The decision below poorly fits the standard reason for a nonprecedential opinion "as not adding significantly to the body of law." Fed. Cir. R. 32.1(b). The court of appeals had full briefing and argument on Doyle's claim and issued a 14-page slip opinion addressing issues of broad significance for regulatory takings law—especially the conclusion that "*Knick* and *Pakdel* are inapplicable" in takings claims against the United States. App.10a–11a. Whatever the reasons for declining to publish, that decision should not affect the cert-worthiness of this case. See Aaron L. Nielson & Paul Stancil, *Gaming Certiorari*, 170 U. Pa. L. Rev. 1129, 1145–48 (2022) (discussing the concern that issuing an unpublished decision can be a strategy for evading certiorari).

REASONS FOR GRANTING THE PETITION

I. THE DECISION BELOW IS IN APPARENT CONFLICT WITH THIS COURT'S DECISIONS AND DEEPENS THE CONFLICT AND CONFUSION OF LOWER COURTS OVER RIPENESS DOCTRINE.

A. The Decision Below Is in Apparent Conflict with This Court's Decisions.

1. The Federal Circuit has rejected *Knick* and *Pakdel* for takings claims against the United States.

a. The Federal Circuit dismissed Doyle's regulatory takings claim against the United States as unripe because he did not submit his own HCP with his application for an incidental take permit. *Id.* at 9a. To reach that conclusion, the court of appeals denied that *Knick* and *Pakdel* establish the controlling ripeness standard in regulatory takings cases. Those decisions, the court said, "are inapplicable here." *Id.* at 10a. In the court's view, *Knick* and *Pakdel* "pertain, instead, solely to exhaustion of *state* remedies before a takings claim is ripe." *Ibid.*

Rejecting the ripeness standard in *Knick* and *Pakdel* conflicts with those decisions. *Id.* at 10a–11a. That conflict presents "one of the strongest possible grounds" for granting certiorari. Stephen M. Shapiro, et al., Supreme Court Practice 4-20 (11th ed. 2019).

b. Consider *Knick*. There, a property owner in rural Pennsylvania brought a regulatory takings claim based on a local ordinance requiring her to let visitors enter her land to visit a private family cemetery. 588 U.S. at 185–86. The owner asked the Court to revisit *Williamson County Regional Planning Commission* v. *Hamilton Bank of Johnson City*, 473 U.S. 172 (1985),

which held that a takings claim is unripe until an owner is denied compensation through the procedures available under State law. See *Knick*, 588 U.S. at 194. *Knick* overruled that exhaustion requirement while leaving *Williamson County*'s finality requirement intact. *Id.* at 188.

Knick's leading principle is that "a property owner has a claim for a violation of the Takings Clause as soon as a government takes his property for public use without paying for it." *Id.* at 189. Requiring exhaustion as a condition of bringing a takings claim is inconsistent with "the 'self-executing character' of the Takings Clause 'with respect to compensation.'" *Id.* at 192 (quoting *First Eng. Evangelical Lutheran Church of Glendale* v. *County of Los Angeles*, 482 U.S. 304, 315 (1987)).

c. *Pakdel* reaffirmed that exhaustion is not a condition of a regulatory takings claim and clarified the finality requirement still viable after *Knick*.

Pakdel arose when the owners of a multi-unit residential building brought a takings claim against the City of San Franciso for disallowing the conversion of building units into condominiums without offering tenants a lifetime lease. 594 U.S. at 475–76. On appeal, the Ninth Circuit concluded that the owners had to show both that the city "had firmly rejected their request for a property-law exemption" and that "they had complied with the agency's administrative procedures for seeking relief." *Id.* at 475.

A unanimous Court reversed. In a per curiam opinion, it held that administrative exhaustion "is not a prerequisite for a takings claim." *Id.* at 480. *Pakdel* added that "[t]he finality requirement is relatively modest." *Id.* at 478. "For the limited purpose of

ripeness," the Court explained, "ordinary finality is sufficient." *Id.* at 481. Or, in other words, "nothing more than *de facto* finality is necessary." *Id.* at 479. Finality is the sole measure of ripeness—which means that a regulatory takings claim should be heard when the owner shows that "the government has reached a conclusive position" about how it will restrict the owner's property. *Id.* at 480.

d. The decision below openly disclaims the need to follow *Knick* and *Pakdel*. The Federal Circuit found them "inapplicable here" because they "did not address federal administrative exhaustion." App.10a. In that court's view, these decisions "pertain, instead, solely to exhaustion of *state* remedies before a takings claim is ripe." *Ibid.* But selective quotations cannot reformulate *Knick* and *Pakdel* as narrow decisions limited to takings claims against State and local governments. *Ibid.* (quoting *Knick*, 588 U.S. at 194; *Pakdel*, 594 U.S. at 480).

Knick primarily rests on an interpretation of the Fifth Amendment right to just compensation. Its central holding is that *Williamson County*'s exhaustion requirement defies the "'self-executing character' of the Takings Clause 'with respect to compensation.'" 588 U.S. at 192 (quotation omitted). In the Court's view, "[t]he state-litigation requirement relegates the Takings Clause 'to the status of a poor relation' among the provisions of the Bill of Rights." *Id.* at 189 (quoting *Dolan* v. *City of Tigard*, 512 U.S. 374, 392 (1994)). Eliminating that requirement was imperative to "restor[e] takings claims to the full-fledged constitutional status the Framers envisioned when they included the [Takings] Clause among the other protections in the Bill of Rights." *Ibid.*

Knick brims with references to federal law as an instructive counterpoint to highlight the errors unleashed by *Williamson County*. An extended discussion of *Jacobs* v. *United States*, 290 U.S. 13 (1933) is pertinent, *Knick* explained, because "the same reasoning [as in *Jacobs*] applies to takings by the States." 588 U.S. at 191. *Knick* contains other textual clues that establish a single ripeness standard for Fifth Amendment takings claims. *Knick* canvasses "[t]he history of takings litigation" and offers the reassurance that "[f]ederal courts will not invalidate an otherwise lawful uncompensated taking when the property owner can receive complete relief through a Fifth Amendment claim brought under the Tucker Act." *Id.* at 199, 205. All of this makes sense only if *Knick* applies to all regulatory takings claims.

Knick's only significant distinction between state and federal takings claims turns out to be immaterial. It is true that "Congress—unlike the States—is free to require plaintiffs to exhaust administrative remedies before bringing constitutional claims." *Id.* at 195–96. But neither the Tucker Act nor the ESA conditions judicial review on administrative exhaustion generally, and neither requires a property owner to submit a complete application for an incidental take permit before bringing a takings claim.

Pakdel likewise turned to federal law in articulating the proper understanding of ripeness for takings claimants. Specifically, *Pakdel* turned to the doctrine of federal administrative exhaustion to show that the Ninth Circuit's understanding of ripeness was flawed. 594 U.S. at 479. That doctrine demands "compliance with an agency's deadlines and other critical procedural rules." *Id.* at 480. But as *Pakdel* explained, administrative 'exhaustion of state remedies'

is not a prerequisite for a takings claim when the government has reached a conclusive position." *Ibid.* *Pakdel* added that Congress has not prescribed "a strict administrative-exhaustion requirement * * * for takings plaintiffs." *Id.* at 481.

By rejecting *Knick* and *Pakdel*, the decision below cries out for review. Nothing in those decisions limits their application to takings by State or local government. That the Federal Circuit held to the contrary merits this Court's intervention.

2. The decision below conflicts with *Knick* and *Pakdel* by requiring administrative exhaustion.

a. Rejecting *Knick* and *Pakdel* outright wasn't the only way the decision below conflicted with those decisions. The Federal Circuit rejected Doyle's claim as unripe because he had not satisfied "federal administrative agency exhaustion." App.10a. By this, the court meant that Doyle must show that he has "received a final decision from FWS on an Incidental Take Permit." *Ibid.* Without a complete permit application, the court said, "FWS has not had a chance to undertake this evaluation and, hence, has not arrived at any final decision." *Id.* at 13a.

b. Imposing administrative exhaustion as a condition of a ripe takings claim contradicts the holding and reasoning of *Knick* and *Pakdel*.

Knick overruled *Williamson County*'s exhaustion requirement as contrary to the Fifth Amendment right to compensation—which arises "as soon as government takes [private property] for public use without paying for it." 588 U.S. at 189. Given the nature of the constitutional right, *Williamson County* was incorrect to hold that "a property owner does not have a ripe

federal takings claim until he has unsuccessfully pursued an initial state law claim for just compensation." *Id.* at 203.

Pakdel likewise denied that administrative exhaustion is "a prerequisite for a takings claim when the government has reached a conclusive position." 594 U.S. at 480. Compelling the owners to pursue an exemption under State law "plainly requires exhaustion." *Id.* at 479. In fact, it "mirrors" administrative exhaustion under federal law, which withholds "judicial relief for a supposed or threatened injury until the prescribed administrative remedy has been exhausted." *Ibid.* (quoting *Woodford* v. *Ngo*, 548 U.S. 81, 88–89 (2006)). But *Pakdel* stressed that exhaustion has no place in ripeness doctrine. "Whatever policy virtues this doctrine might have, administrative 'exhaustion of state remedies' is not a prerequisite for a takings claim when the government has reached a conclusive position." *Id.* at 480.

The Federal Circuit's requirement of "federal administrative agency exhaustion," App.10a, thrusts onto federal takings claimants the same "unjustifiable burden" that *Knick* and *Pakdel* took pains to eliminate. *Knick*, 588 U.S. at 185; accord *Pakdel*, 594 U.S. at 480. This conflict is another reason for review.

c. The decision below further deepened these conflicts by failing to distinguish finality from exhaustion. *Knick* and *Pakdel* carefully distinguished these factors. See *Knick*, 588 U.S. at 188; *Pakdel*, 594 U.S. at 480. Yet the decision below merged them. That is why the Federal Circuit demanded "federal administrative agency exhaustion" as a condition of ripeness. App.10a. And it is why the court of appeals incorrectly concluded that "because Mr. Doyle's permit application was defective, and FWS could not come to a final

determination with respect to his property, his challenge to the agency action is not ripe." *Id.* at 8a–9a. Treating exhaustion as the sole measure of finality confuses inquiries that *Knick* and *Pakdel* deliberately separated.

It does not render Doyle's takings claim unripe to say that "there *is* a world" where Doyle could get "his own Incidental Take Permit." *Id.* at 15a. The mere "possibility" of administrative relief under the ESA's permit system is no substitute for compensation. *Id.* at 12a. The Constitution entitles an owner to compensation—not to administrative relief of a different kind. By concluding otherwise, the Federal Circuit relied on the discredited idea that the "presence" of a procedural "remedy qualifies the right, preventing it from vesting until exhaustion of the [available] procedure." *Knick*, 588 U.S. at 191.

d. Nor did the Federal Circuit offer a genuine alternative holding by saying that "Mr. Doyle has failed to demonstrate even 'de facto' finality." App.10a. The court did not seriously consider whether Doyle could show finality without producing a final denial of a complete incidental take permit application. The court's reading of the Washington County HCP, for instance, turned on "the possibility that development by individual landowners will be allowed, pursuant to an Incidental Take Permit." *Id.* at 12a. The court viewed other facts in the same light, as if the possibility of an incidental take permit rendered any other evidence insufficient to demonstrate finality. See *id.* at 14a–15a. But even the court of appeals saw that possibility as a mirage. "*[T]here may be good reason to suspect that even a complete permit application * * * would have been denied by FWS*." *Id.* at 15a (emphasis added). How that suspicion can be reconciled with the

principle that "[r]ipeness doctrine does not require a landowner to submit applications for their own sake" was unexplained. *Palazzolo* v. *Rhode Island*, 533 U.S. 606, 622 (2001).

3. The decision below departs from *Patsy* by mandating administrative exhaustion without express congressional authority.

The Federal Circuit's dismissal of Doyle's takings claim because of his alleged failure to satisfy "federal administrative agency exhaustion," App.10a, also conflicts with *Patsy*, 457 U.S. at 496. *Patsy* held that a federal court cannot require exhaustion of state administrative remedies as a condition of bringing a claim under 42 U.S.C. §1983. *Id.* at 516. *Knick* cited *Patsy* for that "settled rule." 588 U.S. at 185. But *Patsy* also establishes the larger principle that "federal courts may create exhaustion requirements only where doing so is consistent with congressional intent." *Williams* v. *Reed*, 145 S. Ct. 465, 476 (2025) (Thomas, J., dissenting).

The decision below breaks with *Patsy* by requiring administrative exhaustion for takings claims against the United States. App.10a–11a. The court of appeals did not consider whether Congress has prescribed administrative exhaustion under the Tucker Act. It has not. See *Pakdel*, 594 U.S. at 481. Unlike some federal statutes, see *Horne* v. *Dep't of Agric.*, 569 U.S. 513, 527–28 (2013), the ESA's incidental take permit scheme does not withdraw Tucker Act jurisdiction in favor of that process. By requiring administrative exhaustion without congressional authority, the decision below contradicts *Patsy*—another reason to grant review.

B. The Decision Below Deepens the Confusion by Federal Circuits Concerning Ripeness in Takings Cases.

The Federal Circuit's rejection of *Knick* and *Pakdel* deepens conflict and confusion among federal circuits over the correct standard in takings cases.

1. The Second, Sixth, Ninth, and Eleventh Circuits measure ripeness by *de facto* finality.

The Sixth Circuit closely follows *Knick*. In *Harrison* v. *Montgomery County*, the court of appeals explained that *Knick* "dispensed with the requirement that a federal takings plaintiff must first exhaust all state remedies before seeking relief in federal court." 997 F.3d 643, 649 (6th Cir. 2021). It followed that the owner could bring a federal suit against the county immediately after it transferred title her property into a land bank, pursuant to an Ohio land bank foreclosure statute, without "invok[ing] any potential state procedures for receiving compensation." *Ibid.*

The Eleventh Circuit adhered to the same approach in *South Grande View Development Company, Inc.* v. *City of Alabaster*, 1 F.4th 1299 (11th Cir. 2021). There, an owner was allowed to bring a takings claim based on a city's application of a zoning ordinance targeting his property, without first pursuing a variance or other relief under Alabama law. See *id.* at 1308. The court concluded that "States are '[not] free to require plaintiffs to exhaust administrative remedies before bringing constitutional claims.'" *Id*. n.13 (quoting *Knick*, 588 U.S. at 195–96).

The Second and Ninth Circuits have applied the *de facto* finality standard even when concluding that particular takings claims are unripe.

In *74 Pinehurst LLC* v. *New York*, 59 F.4th 557 (2d Cir. 2023), the Second Circuit held that a takings claim was unripe when the plaintiff made no effort to determine whether a hardship exemption would be granted for relief from a New York City rent stabilization law. *Id.* at 565. The court noted that, unlike *Pakdel*, the plaintiff's failure to seek an exemption made it unclear how the regulation applied to the plaintiff's property. *Ibid*.

Likewise, the Ninth Circuit cited the *de facto* finality test when holding a takings claim unripe. *Mendelson* v. *San Mateo Cnty.*, No. 23-15494, 2024 WL 3518319, at *1 (9th Cir. July 24, 2024). There, it was unclear whether county development restrictions applied to the owner's property when the record did not establish the property's exact location. *Id*.

2. The First, Fifth, Seventh, and Tenth Circuits measure ripeness by administrative exhaustion.

The First Circuit requires administrative exhaustion as an element of ripeness. *Haney as Tr. of Gooseberry Island Tr.* v. *Town of Mashpee*, 70 F.4th 12 (1st Cir. 2023) held that a takings claim was unripe, even though the owner applied for, and was denied, two zoning-ordinance variances. *Id*. at 15–19.

Along similar lines, the Fifth Circuit concluded that a takings claim was unripe because the owner did not pursue administrative remedies after (1) his property was condemned by the City and his tenants required to vacate and (2) his later application to use the property for multifamily dwelling was denied. *Beach* v. *City of Galveston*, No. 21-40321, 2022 WL 996432, *1–3 (5th Cir. Apr. 4, 2022).

The Seventh Circuit also applied the wrong ripeness standard. In *Willan* v. *Dane County*, No. 21-1617, 2021 WL 4269922 (7th Cir. Sept. 20, 2021), a takings claim was deemed unripe because the owners did not apply for a variance from a zoning ordinance prohibiting the use of their barn for business—even when the County had denied their request to be rezoned for business and twice denied them a construction permit. *Id.* at *1–3.

Similarly, the Tenth Circuit. *North Mill Street, LLC* v. *City of Aspen*, 6 F.4th 1216 (10th Cir. 2021), noted that ripeness does not require administrative exhaustion. *Id.* at 1226. Yet the court of appeals held that the takings claim was unripe because the owner did not submit a separate development plan for his property after his rezoning application had been denied. *Id*. at 1222–23, 30.

Despite *Knick* and *Pakdel*, federal circuits are mired in conflict and confusion over the correct ripeness standard in regulatory takings cases. The decision below deepens that confusion by embracing administrative exhaustion as an element of ripeness in takings cases against the United States. This Court's intervention is needed to affirm, once again, that a claim for compensation under the Fifth Amendment does not require a showing of administrative exhaustion and that evidence of "ordinary finality" suffices to support judicial review. *Pakdel*, 594 at 481. Only this Court can supply the needed clarity.

II. THE FEDERAL CIRCUIT'S DECISION PRESENTS AN IMPORTANT FEDERAL QUESTION THAT THIS COURT SHOULD RESOLVE.

a. The court of appeals held that an owner such as Doyle does not have ripe takings claim "[u]nless and

until [he] files a complete permit application," because otherwise the government "is unable to make a decision with actual, or even de facto, finality, as to whether to grant or deny his application." App.14a. Misled by its faulty ripeness standard, the court of appeals brushed aside evidence showing that the government's position is final. *Id.* at 14a–15a. This reasoning raises an important question of federal law that should be resolved by this Court. See Sup. Ct. R. 10. May a takings claimant satisfy the finality requirement, and therefore demonstrate that his takings claim is ripe, through evidence other than the government's final decision rejecting a procedurally compliant permit application? The answer is yes—and this Court should say so.

b. *Knick* overruled the exhaustion requirement while leaving *Williamson County*'s finality requirement intact. *Knick*, 588 U.S. at 188. *Pakdel* added that the finality requirement obligates a takings claimant to show that "there [is] no question * * * about how the 'regulations at issue apply to the particular land in question." 594 U.S. at 479 (quotation omitted). Both decisions stressed that the government cannot qualify the right to compensation by requiring administrative exhaustion. *Knick*, 588 U.S. at 191; *Pakdel*, 594 U.S. at 479.

But neither decision had occasion to address what evidence is relevant to the finality requirement. In *Knick*, a Township officer "notified [the owner] that she was violating the ordinance by failing to open the cemetery to the public during the day." 588 U.S. at 186. In *Pakdel*, San Francisco expressly refused to "excuse [the owners] from exercising the lifetime lease or compensate them for the lease," as a condition of

converting their portion of a multi-unit residential building into a condominium. 594 U.S. at 476.

Not all takings claimants have the good fortune to get a direct response by the government to their assertion of property rights. Receiving a plain denial of a permit application is certainly one way to show that the government's position is reasonably final. But it's hardly the only way. Satisfying the "*de facto* finality" standard through other means should be allowed, if the owner can produce adequate evidence that there is no reasonable dispute about "how the regulations at issue apply to the particular land in question." *Pakdel*, 594 U.S. at 479 (quotation omitted).

At least one federal circuit has addressed whether there can be finality without a permit application or other procedure for an administrative remedy. In *Patel* v. *City of South El Monte*, No. 21-55546, 2022 WL 738625 (9th Cir. Mar. 11, 2022), the Ninth Circuit concluded that a takings claimant failed to demonstrate finality when "an informal conversation with a city employee made it clear that Patel could not receive an exemption." *Id.* at *2. The statement was insufficient, the court said, because "the employee that Patel spoke to was not the correct person to receive or decide an exemption application." *Ibid.* *Patel* illustrates the importance of clarifying what evidence is admissible to support the finality requirement.

Allowing an owner to demonstrate finality with other forms of evidence naturally follows from *Knick* and *Pakdel*. It would invite an owner to support the ripeness of a takings claim without stumbling into administrative exhaustion. See *Knick*, 588 U.S. at 191; *Pakdel*, 594 U.S. at 480. The finality requirement can retain its independent force only if an owner can show

that his takings claim is ripe, and thereby obtain judicial review, through evidence other than compliance with the government's procedures for obtaining administrative relief.

Inviting such alternative evidence does not lessen the terms of the finality requirement. An owner still must show that "the government has reached a conclusive position." *Pakdel*, 594 U.S. at 480. That position is sufficiently final when "'there [is] no question * * * about how the 'regulations at issue apply to the particular land in question.'" *Id.* at 479. Our contention is only that Doyle and other takings claimants should be permitted to introduce evidence supporting an assertion of finality from any admissible and persuasive source—not that the finality requirement should be modified.

c. Doyle has produced ample evidence of finality here.

First, BLM erected fences obstructing entry to Doyle's property in 1996. App.60a (explaining that the fence "blocked access to the tortoise reserve, including Doyle's property"). Doyle has attested that his property is "enclosed by tortoise fencing installed by the government." *Id.* at 73a. As he wrote, *"[t]he gate to my property is controlled by the government. I do not have a key to the lock that controls access to my own property." Id.* at 74a (emphasis added).

Erecting a fence barring a private owner from his property calls into question the vitality of all three essential attributes of private property—possession, use, and disposition. See 1 William Blackstone, Commentaries *134 (explaining that private property "consists in the free use, enjoyment, and disposal of [one's] acquisitions"). A fence evinces dispossession.

See *Cedar Point Nursery* v. *Hassid*, 594 U.S. 139, 147 (2021). A fence also evinces the government's seizure of the rights of use and disposition. See *Lucas* v. *S.C. Carolina Coastal Council*, 505 U.S. 1003, 1019 (1992); *Hodel* v. *Irving*, 481 U.S. 704, 717 (1987).

The Federal Circuit shrugged off the BLM fencing as immaterial because Doyle allegedly "forfeited" a physical takings clam by omitting it from his complaint and because the fences were erected in 1996, supposedly making any such claim time-barred. See App.14a n.5.[10] But that analysis misses the point. Enclosing Doyle's property within a fence to which he does not have the key is powerful evidence that the government reached a final decision that Doyle could put his property to commercial use as early as 1996.

Second, more generally, the United States has applied the ESA in a way that indicates a final decision to deny Doyle any economically beneficial use of his property. See *Lucas*, 505 U.S. at 1019.

Listing the Mojave population of the desert tortoise as a threatened species committed the resources of the United States behind its protection. That listing pointed to "housing developments"—Doyle's planned use of his property—as a leading factor contributing to the destruction of "habitat supporting tortoises in the Mojave population." 55 Fed. Reg. at 12178. In fact, FWS singled out such threats as "particularly acute" in "the St. George area in Utah" where Doyle's property is located. *Id.* at 12183. FWS pointed to the

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[10] We respectfully disagree. Because both lower courts have concluded that Doyle's takings claim is unripe, it cannot be time-barred. That was the conclusion of the Court of Federal Claims in the first round of litigation—and that conclusion is *res judicata*. See *Doyle* v. *United States*, 129 Fed. Cl. 147, 159 (2016).

"irrevocable harm" to the desert tortoise posed by "urban construction projects" as justification for making the listing effective immediately. 55 Fed. Reg. at 12180. The listing did not by itself impose a taking on Doyle, but it did put him on notice that proceeding with his development plans ran the considerable risk of an enforcement action that could include criminal prosecution. See 16 U.S.C. §1540(b)(1).

FWS's 1994 designation of critical habitat made the conflict between protection of the desert tortoise and Doyle's ability to develop his land even sharper. That designation swept across 129,100 acres in Utah, including all of Doyle's property. See 59 Fed. Reg. at 5827; App.57a.

Any doubts that FWS would protect the tortoise at the expense of Doyle's property rights ended in 1994, when FWS rebuffed a proposed incidental take permit application for Washington County "that would allow development of some of Doyle's (and other owners') land while protecting the listed tortoise." App.57a. Washington County then revised its habitat conservation plan by tripling the tortoise reserve to "approximately 62,000 acres"—including all of Doyle's property. *Id.* at 71a. The Federal Circuit did not mention the government's rejection of a proposal that would have allowed Doyle to develop his land. Yet FWS's demands had the practical effect of confiscating Doyle's property as a wildlife preserve.

Under the current Washington County HCP, the location of Doyle's property in Zone 3 is devastating for his ability to develop it. *Id.* at 73a. That Zone is "the largest block of contiguous [deseret tortoise] Habitat and is considered *the core of the Reserve*." *Id.* at 89a (emphasis added). The court of appeals did not consider the restrictive management plan for Zone 3.

Within that Zone (as on Doyle's property), the County HCP allows only "[a] narrow set of land development and land use activities." *Id.* at 83a. "These include recreation uses; utility, water development, and flood control activities; management of the Reserve; and certain other specific uses." *Ibid.* Nowhere among such allowed activities is commercial development.

Contrary language in the County HCP is at best ambiguous. It's difficult to credit that the HCP "will place no restrictions on the use of [private] property within the Reserve" or that "[i]t is possible that a private landowner * * * may * * * ultimately develop lands within the Reserve" when Zone 3 is separately described as "the core of the Reserve," with "[a] narrow set of land development and land use activities" that do not include building residential subdivisions. *Id.* at 12a, 89a. As an agreement directly affecting Doyle's property rights, any ambiguity in the County HCP should be construed against the government. See Restatement (Second) of Contracts § 206 (1981).

Together, these facts bolster Doyle's contention that the federal government has long since reached the "conclusive position" that the ESA leaves Doyle's property without commercial use. *Pakdel*, 594 U.S. at 480. There is no reason to defer to the Federal Circuit's factual rulings when the Court of Federal Claims did not address them. *Carnival Cruise Lines, Inc.* v. *Shute*, 499 U.S. 585, 594 (1991).

For these reasons, review should be granted to resolve whether an owner may demonstrate finality using evidence outside the permit-application process.

III. THIS CASE IS AN IDEAL VEHICLE TO RESOLVE IMPORTANT ISSUES OF FEDERAL LAW.

This case is an ideal vehicle to resolve the questions presented. The Federal Circuit expressly broke with this Court's decisions in *Knick* and *Pakdel* and disregarded *Patsy*'s limitation on the power of federal courts to engraft exhaustion requirements onto federal claims. The decision below is articulate, detailed, and wrong. And it furthers the lower court confusion we have described.

A decision by the Federal Circuit rewriting takings jurisprudence holds special importance. That court's exclusive jurisdiction over appeals from the Court of Federal Claims threatens to set the incorrect ripeness standard for all significant regulatory takings cases against the United States. See 28 U.S.C. §§1295(a)(3), 1491(a)(1), 1346(a)(2).

Takings claims arising under the ESA will be specifically distorted by the Federal Circuit's misconception of ripeness. Owners now face an ironclad duty to submit an incidental taking permit with the owner's individual HCP as a prerequisite to getting judicial review of even the most glaring takings claim. That requirement imposes special hardships on owners who cannot afford the exorbitant cost of a complete incidental take permit. See App.77a. Even more objectionable, administrative exhaustion blocks reasonably prompt post-deprivation relief when the government takes private property for public use. See *Knick*, 588 U.S. at 202.

But the damage does not stop with the ESA. All areas of federal law are potentially affected by the decision below, insofar as a statute or regulation results in the taking of private property for public use.

See, *e.g.*, *Presault* v. *I.C.C.*, 494 U.S. 1, 12–13 (1990) (discussing the availability of compensation for a taking resulting from the rails-to-trails statute).

The Federal Circuit's rejection of *Knick* and *Pakdel* as "inapplicable" means that access to judicial review turns on the identity of the defendant. Takings claims against State and local governments are ripe if they are final. But takings claims against the United States are ripe only if they also satisfy the Federal Circuit's conception of "federal administrative agency exhaustion." App.10a.

Doyle's situation illustrates the problem. Unless this Court intervenes, Doyle must submit another incidental take permit application along with his own HCP—if he can afford one—regardless of the implausibility of success. Yet if Doyle had suffered a taking because of the implementation of State or local law, *Knick* and *Pakdel* would entitle him to judicial review upon proof of a final government decision alone. Imposing a different ripeness standard on takings claimants depending on which government has taken private property creates a two-tier system of adjudicating takings claims. That system is unfair and constitutionally objectionable.

Holding owners to a more demanding ripeness standard when the United States takes private property intolerably burdens their Fifth Amendment right to compensation in ways that would not be sustained under any other provision of the Bill of Rights. If Doyle's claim were founded on any other constitutional basis, the path would be clear. His claim would be ripe for adjudication regardless of administrative exhaustion. See also *Knick*, 588 U.S. at 189. The same rule should apply to Doyle here.

CONCLUSION

For the foregoing reasons, this Court should grant the petition.

Respectfully submitted,

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