No. 25-547

In the Supreme Court of the United States

ANDREW GRIMM,
Petitioner,
v.
CITY OF PORTLAND,
Respondent.

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

BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION IN SUPPORT OF PETITIONER

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IDENTITY AND INTEREST OF AMICUS CURIAE[1]

Pacific Legal Foundation (PLF) is a nonprofit, nonpartisan public-interest law firm that has defended individual liberty and limited government since 1973—including many appearances before this Court. PLF believes that the Due Process Clause requires robust notice prior to government confiscation of essential property, such as homes and vehicles. To that end, PLF has brought multiple petitions to this Court and filed amicus briefs seeking guidance as to the notice required prior to a confiscation, particularly in the contexts of foreclosures and forfeitures. *See, e.g.*, *Beeman v. Muskegon Cnty.*, No. 24-858 (pending) (challenging procedures prior to homeowner losing both her home and equity for failure to strictly comply with complicated, onerous claims statute); *Koetter v. Manistee Cnty.*, 24-1095 (pending) (same); *McGee v. Alger Cnty.*, No. 25-203 (pending) (same); *Barnette v. HBI, L.L.C.*, 141 S. Ct. 1370 (2021) (challenging notice sent by third-party tax-lien purchaser who subsequently foreclosed on home and retained all equity); *Culley v. Marshall*, 601 U.S. 377 (2024) (determining due process required for vehicle forfeiture).

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[1] Pursuant to Rule 37.2, amicus curiae provided ten days' notice of the filing of this brief 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 made a monetary contribution to its preparation or submission.

INTRODUCTION AND SUMMARY OF ARGUMENT

On December 14, 2017, Andrew Grimm parked on a side street near downtown Portland, Oregon, and paid for short-term parking using the city's parking app, Parking Kitty. To use the app, Grimm entered his phone number, email address, credit card information, and the car's license plate number. Pet. App. 4a. Grimm did not return to the vehicle and, after placing parking citations followed by a tow notice on his windshield, the city's towing contractor towed and impounded the car on December 21. Pet. App. 5a. The city then mailed a notice and information about how to retrieve the car to the addresses listed on the car's registration. Grimm retrieved the car on December 30, for $514. Pet. App. 6a.

This deprivation of property requires advance notice to comply with the Fourteenth Amendment's due process clause. Notice must be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). The notice must be of a nature as to "reasonably convey [the] required information." *Ibid.* In other words, the method of notice "'must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it.'" *Jones v. Flowers*, 547 U.S. 220, 229 (2006), quoting *Mullane*, 339 U.S. at 315. The present petition asks an essential question of increasing relevance in our modern, electronic age: When government has a reason to suspect that traditional hardcopy paper notice was not received, does the Due

Process Clause require modern communications options (*e.g.*, email, texting) as a reasonable additional step to deliver notice required by the Due Process Clause?

Whether government must use the most common methods of communication to notify people when their property is about to be confiscated arises in a variety of contexts such as tax sales and foreclosures; estate settlement; condemnation proceedings; code enforcement proceedings; and nuisance abatement. The Constitution requires consideration of individual circumstances for notice, especially when it is reasonable to suspect that initial notices are not received. *Jones*, 547 U.S. at 230. In such cases, regular mail and posting paper notices on property no longer suffice, and government should be required to use contact information within its own files regarding property that may be seized, such as homes and cars.

The requirements of due process notice change with the times. Publication once was acceptable; now far fewer people read newspapers and publication is a "last resort" option, "a poor and sometimes a hopeless substitute for actual service of notice." *City of N.Y. v. N.Y., N.H. & H.R. Co.*, 344 U.S. 293, 296 (1953). Mail and posting replaced publication, *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 798 (1983); and technologically-driven methods of communication should at least supplement notice on paper. People should not be deprived of their homes or vehicles or large sums of money without adequate notice of the confiscation, delivered in a way most likely to reach them.

Due process notification requirements are and must be flexible. *Morrissey v. Brewer*, 408 U.S. 471,

481 (1972); Jason Parkin, *Adaptable Due Process*, 160 U. Pa. L. Rev. 1309, 1311 (2012) (discussing the flexible nature of procedural due process). In every case, however, due process requires the government to do what a reasonable person would do before taking and selling an owner's property—and taking "no further action is not what someone 'desirous of actually informing' [the owner] would do." *Jones*, 547 U.S. at 226, 230 (quoting *Mullane*, 339 U.S. at 314).

Because "the protection of private property is indispensable to the promotion of individual freedom," *Cedar Point Nursery v. Hassid*, 594 U.S. 139, 147 (2021), courts must review the forced deprivation of private property through a sharply critical lens. The constitutional provisions protecting private property rights, including due process notice requirements, exist to protect both property owners *and* the state by giving state actors notice of the fundamental limitations on their conduct. *Ontario Knitting Co. v. State*, 69 Misc. 145, 164-65 (N.Y. Ct. Cl. 1910). The changed world of communications warrants revisiting existing standards of adequate notice. The petition squarely presents the issue and warrants this Court's review.

ARGUMENT

I. The Flexible Demands of Due Process Require Electronic Communication to Supplement Paper Notice

"These years have brought a dizzying transformation in how people communicate. . . . Social-media platforms, as well as other websites, have gone from unheard-of to inescapable. They structure how we relate to family and friends, as well as to businesses,

civic organizations, and *governments*." *Moody v. NetChoice, LLC*, 603 U.S. 707, 716 (2024) (emphasis added). These changes, while accelerated in the past 20 years, have been foreseeable for decades. In 1980, a district court cautioned that the legal system "cannot be blind to changes and advances in technology." *New England Merchants Nat'l Bank v. Iran Power Generation & Transmission Co.*, 495 F. Supp. 73, 81 (S.D.N.Y. 1980). The Due Process Clause requires the state to pursue reasonable attempts to effect actual notice of a pending deprivation. This is "not [to] say that the State *must provide* actual notice, but that it *must attempt to provide* actual notice." *Dusenbery v. United States*, 534 U.S. 161, 170 (2002). The advances and changes in communication in the 21st Century demand methods of notice beyond postal delivery and posting.

1. The Ninth Circuit applied the wrong standard. It held, "Grimm's failure to remove the citations and warning slip from the windshield did not provide the City with *actual knowledge* that its attempt to provide notice had failed." Pet. App. 3a (emphasis added). In so holding, the court below inverted the constitutional mandate. The government needs only "reason to suspect" that its initial attempts at notice failed. *Jones*, 547 U.S. at 230. That is, *Jones* requires presumed, imputed, or constructive knowledge of non-delivery, based on relevant circumstances and deductions. *Cf. Intel Corp. Inv. Policy Comm. v. Sulyma*, 589 U.S. 178, 184-85 (2020) (contrasting types of constructive or imputed knowledge with "direct and clear" actual knowledge). Similarly, although this Court does not require the highest confidence of "actual knowledge" from the recipient, it emphasizes the need for government to make sincere

efforts to communicate prior to confiscating someone's home or car.[2] *See, e.g.*¸ *Covey v. Somers*, 351 U.S. 141, 146-47 (1956) (foreclosure by mailing, posting, and publication was inadequate when town officials knew the owner was incompetent and without a guardian's protection); *Robinson v. Hanrahan*, 409 U.S. 38, 40 (1972) (forfeiture notice sent to a vehicle owner's home was inadequate when government knew the property owner was in prison).

The Ninth Circuit also determined that a tow notice placed on the car—even when other untouched citations provide a reasonable suspicion that they have not been seen—provides adequate notice because "[a]n individual with an interest in preserving uninterrupted access to his car would revisit the car after his parking session ended or his meter ran, and, seeing such a notice, would either move the vehicle or pay for additional parking time." Pet. App. 13a. This blame-the-victim language echoes government arguments in confiscatory tax foreclosure cases that if she paid her taxes, she wouldn't lose her home. *See, e.g.*, *Tyler v. Hennepin Cnty.*, 598 U.S. 631, 646-47 (2023) (rejecting county's argument that failure to pay taxes is equivalent to abandonment); *Jones*, 547 U.S. at 232 (taxpayer did not forfeit his right to constitutionally sufficient notice when he failed to update his address with the State as required by statute). The court below ignores valid reasons why someone might be unable to physically attend to the vehicle, such as

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[2] Some people have no home other than their cars, compounding the potential injury of towed vehicles without notice should they be hospitalized or otherwise unable to view paper citations. *City of Grants Pass v. Johnson*, 603 U.S. 520, 571 (2024) (Sotomayor, J., dissenting).

illness or travel, but could make arrangements if notified of an impending tow.

2. Government entities frequently communicate with citizens electronically. *See, e.g.*, *Lax v. Mayorkas*, 20 F.4th 1178, 1182 (7th Cir. 2021) (Title VII statute of limitations begins to run when government emails an accessible final agency decision to complainant);[3] *Center for Coalfield Justice v. Washington Cnty. Bd. of Elections*, 343 A.3d 1178, 1184-85 (Pa. 2025) (where provisional ballots had barcode scan that created an electronic record for voters, government used the provided email address to provide further notice regarding the vote). Government agencies frequently communicate with each other the same way. *See, e.g.*, *United States Fish and Wildlife Serv. v. Sierra Club, Inc.*, 592 U.S. 261, 265 (2021) ("the Services and the EPA conducted meetings, held conference calls, and exchanged emails and draft documents on the proposed rule and its potential effect on endangered species"). Here, the city's contractor that operates the parking app to enforce the traffic laws obtains personal electronic contact information from anyone using the city's parking app. Pet. App. 4a.[4] Government that demands personal contact information as a

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[3] Emails with nonworking internal links or agency failure to provide a working password to open attached documents will not suffice as adequate notice to trigger the statute of limitations. *Asuncion v. Hegseth*, 150 F.4th 1252, 1257-59 (9th Cir. 2025) (discussing cases).

[4] *Fuentes v. Shevin*, 407 U.S. 67 (1972), was a due process case where the plaintiff prevailed against both the government and a private party. This Court's judgment "ran against" the private parties and thus necessarily "involved a finding of state action as an implicit predicate of the application of due process standards." *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 927, 933 (1982).

prerequisite to using government services must not disavow the same information as a means to send notice that a person's property is about to be confiscated.

A consistent approach to notice—using the same method as initial contact was initiated—is neither new nor uncommon. *See, e.g.*, *Teksystems, Inc. v. Khan*, 273 F. App'x 248, 250 (4th Cir. 2008) (approving notices to litigant using same method by which complaint was filed); *Rodriguez v. Compass Shipping Co. Ltd.*, 617 F.2d 955, 957 (2d Cir. 1980) (federal workers' compensation law requires commissioner to document settlement agreement and "the parties shall be notified by the same means that agreement was reached"); 10 C.F.R. § 2.305(a) (Nuclear Regulatory Commission "shall serve all orders, decisions, notices, and other documents to all participants, by the same delivery method those participants use to file and accept service.").

Many state and federal courts acknowledge that most modern communications are made by electronic means rather than on paper. *See, e.g.*, *McLaughlin Chiropractic Assocs., Inc. v. McKesson Corp.*, 606 U.S. 146, 150 (2025) (noting that even fax transmissions frequently are received via email or an online portal). Electronic communication is prevalent for notices in class action litigation, such as those advising potential members of their right to opt out. *See, e.g.*, *LaGarde v. Support.com, Inc.*, No. C12-0609 JSC, 2013 WL 1283325, at *2 (N.D. Cal. Mar. 26, 2013) ("Notice to the class was delivered via e-mail, reaching more than 92% of the 759,000 class members' email addresses."); *Popular Enters., LLC v. Webcom Media Grp., Inc.*, 225 F.R.D. 560, 562-63 (E.D. Tenn. 2004) (permitting service via e-mail where the e-mail did not "bounce

back" and thus "presumably reached defendant"); *United States v. Twenty-Four Cryptocurrency Accounts*, No. 19-cv-3098 (DLF), 2020 WL 4049914, at *3-*4 (D.D.C. July 20, 2020) (same). Having sought and obtained individual electronic contact information via the parking app, the government was obliged to inquire about it when the city had reasons to suspect that its paper notices were not received.

Unfortunately, some jurisdictions require shockingly minimal notice prior to confiscating important property interests like homes or huge sums of money. For example, in Michigan, the government can confiscate home equity after providing only two poorly written, hardcopy notices sent by mail that direct recipients to a website to download a critical form. For example, *Koetter*, No. 24-1095, Petition for Writ of Certiorari at 29, describes how two mailed notices obfuscate the significant point that the owner can protect her future rights to recover just compensation only by filing an unenclosed form. By sending the notices solely as paper, recipients must accurately understand the confusing notice, retype the url into a computer, download the form, and print it out for submission. *Id.* at 29-30. Minimal due process requirements should include both enclosing the critical form in its hard copy notice and providing a link to the form in supplemental electronic notice. "As advances in technology make it easier and easier to identify and locate property owners, many States appear to be doing less and less to meet their constitutional obligation to provide adequate notice before escheating private property." *Taylor v. Yee*, 136 S. Ct. 929, 930 (2016) (Alito, J., concurring in denial of cert.). This Court should ensure that due process

requires notice that matches the severity of the deprivation.

3. Because government agencies and officials as well as companies and individuals in the private sector communicate largely—sometimes exclusively—through electronic means,[5] it places an insignificant burden on the government to issue notice via these channels. *Nunley v. Dep't of Justice*, 425 F.3d 1132, 1138-39 (8th Cir. 2005) ("we have to make common-sense judgments about the efficacy of methods of notice in different circumstances" and "a few phone calls or e-mails" are not "heroic effort[s]"). These days, of course, "phone calls" are more often in the form of instant messaging texts. *Cf. Evans v. Evans*, 300 Va. 134, 148 (2021) (noting "the precipitous decline in print newspaper readership, the increasing mobility of the population, and the Internet's ever-expanding ability to locate and communicate with individuals."). Either method is far more effective than the "mere gesture" of posting a series of untouched citations on a windshield. *See Kelber, LLC v. WVT, LLC*, 213 F. Supp. 3d 789, 804 (N.D. W.V. 2016) (requiring a phone call or checking a website for contact information would not "require[] even leaving the office, and certainly were not extraordinary.").

It "is not necessarily that the usage of older tech is undesirable, but . . . there is an ongoing need to reevaluate these laws [regarding types of communi-

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[5] *See, e.g.*, *Keller v. Ameritel Inns, Inc.*, 164 Idaho 636, 641 (2019) (employer who routinely accepts communications via text message is deemed to have adopted a policy that an employee acts reasonably who attempts to communicate by that means); *Dinh v. Raines*, 544 P.3d 1156, 1174 (Alaska 2024) (tenant successfully delivers notice "in writing" by sending electronic text message).

cation] to ensure they operate for the benefit of the legal system's users." Anat Lior, *Video Killed the Radio Star, So How is the Fax Machine Still Alive? When Law Cements Old Technologies*, 9 Geo. L. Tech. Rev. 372, 383-84 (2025). The example of some courts allowing service of process by new tech shows "slow but steady progress that is attentive to innovation while maintaining legal traditions to ensure justice and fairness." *Id.* at 388 & nn.58-60 (citing cases). The federal government also acknowledges that technological changes have significantly altered communications between debtors and debt collectors. The Federal Trade Commission reported:

> Technological innovations have increased exponentially the ability of creditors and debt collectors to obtain, store, and transfer data about consumers and their debts. Changes in database technologies have dramatically enhanced the ability of debt collectors to aggregate disparate pieces of information about consumers, thus making it cheaper and easier to locate and contact consumers.

Collecting Consumer Debts: The Challenges of Change (Feb. 2009).[6] As these methods have become ubiquitous in privte debt collection, it is reasonable to expect our government to keep pace when the stakes can be so much higher. This case presents an overdue opportunity for this Court to consider the role of "new tech" as the means to convey notices required by the Due Process Clause.

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[6] https://tinyurl.com/424xn8py.

II. The Due Process Clause Should Require Government to Review Its Own Documents and Records for Contact Information

All levels of government compile enormous amounts of information—much of it provided by the people themselves specifically so that the government has the ability to convey information to them. *See, e.g.*, *Bloedorn v. Grube*, 631 F.3d 1218, 1239 (11th Cir. 2011) (public university required potential campus speakers to provide contact information as the means by which the university would tell them whether their permits were granted or denied or rescheduled); *We the People PAC v. Bellows*, 40 F.4th 1, 20-21 (1st Cir. 2022) (rather than banning out-of-state resident paid initiative circulators, the narrower means of protecting the petition process from fraud and abuse is "requiring out-of-state circulators to provide up-to-date contact information and to submit to legal process in the state"); *Travis v. Park City Mun. Corp.*, 565 F.3d 1252, 1256-57 (10th Cir. 2009) (requiring artists to provide contact information before publicly displaying art for sale).

Contact information is therefore readily available in many cases. Yet courts are conflicted as to government's responsibility to search for this information. "A diligent search must include inquiries that someone who really wants to find the defendant would make, and diligence is measured not by the quantity of the search but by its quality." *In re E.R.*, 385 S.W.3d 552, 565 (Tex. 2012). Applying this general principle, unlike the court below, the Eighth Circuit held that government cannot ignore its own resources in deciding how to issue notice of pending property deprivation. In *Linn Farms & Timber*

Limited Partnership v. Union Pacific Railroad Company, 661 F.3d 354, 356 (8th Cir. 2011), the State Lands Commissioner failed to provide adequate notice to a railroad of the pending forfeiture of its mineral rights. Mailed notices were returned as undeliverable, yet the Commissioner made no further attempts to convey notice. *Ibid.* The court held that "the existence of these electronic records bolsters the reasonableness of an internal inquiry." *Id.* at 360-61. The court was unsympathetic to the government's complaint that its offices and electronic records existed in multiple locations, favoring a practical approach of asking commission employees to narrow down the likely counties where the railroad's office was located followed by a targeted search of electronic records. *Id.* at 361 ("there is a realistic possibility another employee in the Commissioner's office would recall other counties containing records with Missouri Pacific's correct address. With this information, the Commissioner could then access the system, based on the relevant county, and locate Missouri Pacific's correct address."). *See also Plemons v. Gale*, 396 F.3d 569, 577 (4th Cir. 2005) ("as most cases addressing this situation recognize, it is, at the very least, reasonable to require examination (or re-examination) of all available public records when initial mailings have been promptly returned as undeliverable."), citing *Akey v. Clinton Cnty.*, 375 F.3d 231, 237 (2d Cir. 2004) ("'[E]xtraordinary efforts' typically describe searches *beyond* the public record, not searches *of* the public record."). Similarly, the New York Court of Appeals held that one example of a reasonable additional step would be an "examination (or re-examination) of all available public records." *Kennedy v. Mossafa*, 100 N.Y.2d 1, 9-10 (2003) (when original

notice is ineffective, government should conduct a reasonable search of the public record for additional contact information).

A case pending before the Illinois Supreme Court asks whether a government's search of its own records to notify a property owner of an increased tax assessment is an "open-ended" search that *Jones* held was not required. *Jackson Generation, LLC v. Cnty. of Will*, 244 N.E.3d 862, 882 (Ill. App.), *appeal allowed*, 244 N.E.3d 224 (Ill. 2024); *see also id.* at 897 (McDade, P.J., concurring in part and dissenting in part) (noting that multiple attempts of same failed method of notice is not "reasonably calculated" to convey information required by the Due Process Clause). The extent to which governments must peruse their own records as a reasonable additional step remains uncertain and worthy of this Court's review.

CONCLUSION

This Court should grant the petition.

Respectfully submitted,

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