No. _____

IN THE
Supreme Court of the United States

74 PINEHURST LLC ET AL.,

Petitioners,

v.

STATE OF NEW YORK ET AL.,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Petitioners own small apartment buildings in New York City that are subject to New York's Rent Stabilization Law ("RSL"). Once an owner leases a unit for a fixed term, the RSL grants the tenant and the tenant's successors a perpetual right to renew the lease, regardless of whether the owner consents. That renewal right strips owners of their right to exclude others from their property and prevents them from living in their own apartments. The Second Circuit held that these facts failed to state a physical-takings claim because Petitioners voluntarily entered the rental market in the first instance and could, in some circumstances, evict tenants who breach their leases. Petitioners' regulatory-takings claims likewise failed because, among other reasons, the RSL serves an important purpose and does not deprive petitioners' property of all value. In so holding, the Second Circuit deepened or created circuit splits at each step of its analysis. The questions presented are:

1. Whether a law that prohibits owners from terminating a tenancy at the end of a fixed lease term, except on grounds outside the owner's control, constitutes a physical taking.

2. Whether allegations that such a law conscripts private property for use as public housing stock, and thereby substantially reduces its value, state a regulatory takings claim.

PARTIES TO THE PROCEEDINGS BELOW

Petitioners Dino Panagoulias, Dimos Panagoulias, Vasiliki Panagoulias, 74 Pinehurst LLC, 141 Wadsworth LLC, 177 Wadsworth LLC, and Eighty Mulberry Realty Corporation, were appellants in the Second Circuit.

The State of New York, New York Division of Housing and Community Renewal, City of New York, New York City Rent Guidelines Board, New York State Division of Housing and Community Renewal Commissioner Ruthanne Visnauskas, and Rent Guidelines Board members David Reiss, Alex Schwartz, Arpit Gupta, Christian Gonzalez-Rivera, Christina DeRose, Robert Ehrlich, Christina Smyth, Sheila Garcia, and Adán Soltren were appellees in the Second Circuit.

New York Tenants and Neighbors, Community Voices Heard, and Coalition for the Homeless appeared in the Second Circuit as intervenors supporting the appellees.

CORPORATE DISCLOSURE STATEMENT

74 Pinehurst LLC, 141 Wadsworth LLC, 177 Wadsworth LLC, and Eighty Mulberry Realty Corporation have no parent corporations, and no publicly held corporation owns 10% or more of the stock of any of these entities.

RELATED PROCEEDINGS

The following proceedings are directly related to this petition under this Court's Rule 14.1(b)(iii):

74 Pinehurst LLC v. State of New York, No. 19-cv-6447, U.S. District Court for the Eastern District of New York. Judgment entered Sept. 30, 2020.

74 Pinehurst LLC v. State of New York, Nos. 21-467, 21-558. U.S. Court of Appeals for the Second Circuit. Judgment entered Feb. 6, 2023.

Although, under Rule 14.1(b)(iii), this petition is not directly related to *Community Housing Improvement Program v. City of New York*, No. 19-cv-4087 (E.D.N.Y. judgment entered Sept. 30, 2020), *aff'd*, No. 20-3366 (2d Cir. judgment entered Feb. 6, 2023), *pet. for cert. filed*, No. 22-1095 (U.S. filed May 8, 2023), the cases present related issues. Oral argument in the two cases was heard together in both the District Court and the Court of Appeals, and the two cases were decided by the District Court in a single opinion and by the Second Circuit in companion opinions issued on the same date.

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The decision of the District Court is reported at 492 F. Supp. 3d 33 (E.D.N.Y. 2020), and reprinted at App. 21a-55a.

The decision of the Court of Appeals is reported at 59 F.4th 557 (2d Cir. 2023), and reprinted at App. 1a-20a.

JURISDICTION

The Second Circuit entered judgment February 6, 2023. App. 1a. On May 4, 2023, Justice Sotomayor extended the time for Petitioners to file this petition to and including June 7, 2023. *See* No. 22A955. This Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT PROVISIONS

The Takings Clause of the Fifth Amendment, which applies to the States through the Fourteenth Amendment, provides: "Nor shall private property be taken for public use, without just compensation."

Relevant provisions of the Rent Stabilization Law are reprinted at App. 91a-162a.

INTRODUCTION

New York's Rent Stabilization Law ("RSL") governs nearly one million apartments in New York City and does far more than regulate rents. It strips owners of their rights to use, possess, and exclude others from their property—including by forcing owners to

continue renting to current tenants and their chosen successors indefinitely, barring owners from using their apartments as personal residences or housing for family members, and making it impossible for owners to use their property for purposes other than rent-stabilized housing. The RSL thus transfers core elements of property ownership from apartment owners to tenants, relegating owners to caretakers of housing conscripted into the service of an off-budget public-assistance program.

Petitioners own small apartment buildings subject to the RSL. They contend that the RSL inflicts a physical taking of their property under *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982), and *Cedar Point Nursery v. Hassid*, 141 S. Ct. 2063 (2021), which establish that a law "constitutes a *per se* physical taking" when it "appropriates for the enjoyment of third parties [a property] owner['s] right to exclude." *Id.* at 2072. Petitioners also allege that the RSL constitutes a regulatory taking under *Penn Central Transportation Co. v. New York City*, 438 U.S. 104 (1978). The Second Circuit affirmed the dismissal of Petitioners' takings claims.

Petitioners' physical-takings claims would have been allowed to proceed if they were brought in the Eighth Circuit. That is because the Eighth Circuit has correctly held that property owners plead a physical taking under *Cedar Point* where a law prohibits them from terminating a tenancy at the end of a lease term. *See Heights Apartments, LLC v. Walz*, 30 F.4th 720, 733 (8th Cir. 2022), *reh'g en banc denied,* 30 F.4th 720. But the Second Circuit held here—as has the Ninth Circuit—that the physical-takings principles

articulated in *Cedar Point* are not implicated when an owner voluntarily offered housing for rent in the first instance. These courts instead read *Yee v. City of Escondido,* 503 U.S. 519 (1992), as precluding physical-takings claims so long as the property owner may evict tenants in the event they breach the lease or engage in other forms of malfeasance—thus carving out a special and particularly deferential landlord-tenant exception to the general principles articulated in *Cedar Point*. Those courts misread *Yee*, which reserved the question whether a taking would occur if a law forced "a landowner over objection to rent his property or to refrain in perpetuity from terminating a tenancy." *Id.* at 528.

In affirming the dismissal of Petitioners' regulatory-takings claims, the Second Circuit also split from other circuits on every *Penn Central* factor. The court deemed irrelevant the impact that the law would have on Petitioners' property rights, explaining that it was "of no moment" that they are forced to bear burdens that others are not. App. 16a. The court also viewed the character of the governmental action—which forces Petitioners to house tenants against their will—as counting *against* Petitioners' claims because the law serves important public purposes and "courts are not in the business of second-guessing legislative determinations such as this one." *Id.* The Second Circuit's ruling confirms that this Court's "current regulatory takings jurisprudence leaves much to be desired." *Bridge Aina Le'a, LLC v. Haw. Land Use Comm'n*, 141 S. Ct. 731, 731 (2021) (Thomas, J., dissenting from denial of certiorari).

The practical consequences of the Second Circuit's decision are substantial, as more and more jurisdictions consider and adopt laws that deny owners the right to terminate a tenancy at the conclusion of a fixed-term lease. And this case—which asserts both facial and as-applied claims, involves a major legislative scheme governing the nation's largest rental-housing market, and was the subject of a lengthy, published opinion below—provides an ideal vehicle for the Court to address these important constitutional claims.

STATEMENT

A. New York's Rent Stabilization Law

1. Originally enacted in 1969, the RSL governs approximately one million apartments in New York City. App. 174a, 178a-79a. The RSL prescribes a maximum rent for each apartment to which it applies. N.Y. Unconsol. L. § 8624. Those rents are generally well below market rates. App. 198a, 201a-02a.

The RSL also includes provisions that limit apartment owners' ability to occupy, use, and exclude others from their property. One of those restrictions requires owners to continue renting indefinitely to existing tenants. Before a tenant's lease expires, the owner must offer to renew the lease for one or two years. N.Y. Comp. Code R. & Regs., title 9 (hereinafter "9 NYCRR"), § 2523.5(a), (c)(1). A broad range of successors are permitted to assume the tenancy—with all the concomitant renewal rights—when the tenant of record vacates. *Id.* § 2520.6(*o*) (granting successorship rights to relatives by blood or marriage, as

well as certain others not related by blood or marriage). These successor tenants, in turn, may convey their occupancy and lease-renewal rights to *their* successors. As a result, so long as the tenant or the tenant's successors wish to occupy the apartment, the owner must perpetually continue renewing the lease, regardless of whether the owner would rather occupy the apartment or use it for another purpose.

Until 2019, the RSL offered pathways through which owners could regain control of their regulated apartments. For example, an individual owner could decline to renew a lease, and thus take possession of the apartment after the lease expired, to use the apartment as a primary residence for himself or an immediate family member. 9 NYCRR § 2524.4(a) (2018). Owners could exercise that right to reclaim multiple units. An owner could also extricate apartments from rent stabilization altogether—regaining the ability to rent them at market rates or put them to other uses—when the rent exceeded a prescribed amount per month and the unit either became vacant or was occupied by a tenant whose income exceeded a statutory threshold. NYC Admin. Code § 26-504.1 to .3 (2018).

2. In 2019, New York State enacted the Housing Stability and Tenant Protection Act, 2019 N.Y. Laws ch. 36 (the "2019 Amendments"), which adopted sweeping changes to the RSL. Key provisions of the 2019 Amendments include:

Repeal of decontrol provisions. The 2019 Amendments repealed the statutes that allowed owners to remove apartments from the RSL's scope once the

monthly rent exceeded a prescribed threshold. The Complaint alleges that this change, together with the others adopted in 2019, results in a framework under which Petitioners specifically (and other apartment owners generally) cannot convert their rent-stabilized apartments to other uses. App. 182a, 202a-04a.[1]

Limits on personal and family use. Under the 2019 Amendments, an owner can recover, at most, a single apartment for personal or family use. An owner who occupies a recovered unit thus cannot recover a second unit to house a growing family or take in an ailing parent. Even as to that single apartment, the owner may reclaim possession only if, among other things, he demonstrates an "immediate and compelling necessity" to use the unit as a primary residence. NYC Admin. Code § 26-511(c)(9)(b); 9 NYCRR § 2520.6(u).

Eviction restrictions. An owner may evict a tenant for breaching a material term in the lease. But the amended RSL authorizes courts to stay the eviction for a full year *after* determining that the tenant breached. N.Y. Real Prop. L. § 753; *see* App. 215a-16a

[1] The 2019 Amendments preserved rules that allow owners, in narrow circumstances, to deregulate rent-stabilized apartments by demolishing the building. 9 NYCRR §§ 2524.5(a). Even that option is available only after the owner (i) pays each tenant's moving expenses plus a $5,000 stipend *and* (ii) secures equivalent housing for the tenants or pays them a stipend that can exceed $300,000 per tenant. App. 194a-95a. The Complaint alleges that this demolition option and a similar provision regarding business use are either unavailable to Petitioners or themselves effect takings. *Id.* 194a-98a.

(describing this and other limitations on owners' eviction rights).

The 2019 Amendments' sponsors acknowledged that these changes were designed to ensure that "rent-stabilized apartments remain stabilized," and that the new law created "the strongest tenant protections in history." App. 167a-70a. One sponsor argued that the amendments were appropriate because property does not "truly belong to" those who "have the monetary resources to purchase it and[] ... take it away from ... the collective." *Id.* 169a-70a.

B. The RSL's Effect on Petitioners' Property

Petitioners own small apartment buildings in New York City. Petitioners Dimos and Vasiliki Panagoulias purchased their 10-unit building in Long Island City shortly after immigrating from Greece in 1974. *Id.* 170a-71a. Their son, Petitioner Dino Panagoulias, grew up in the building, lives there with his family, and manages it in addition to his full-time job. The other Petitioners are small businesses that each own an apartment building in Manhattan. *Id.* 171a-72a.

The Complaint alleges that the RSL, as amended in 2019, transfers core property rights from Petitioners to their tenants. For example, Petitioners allege that the RSL vitiates their right to exclude by forcing them to renew leases even when they wish to use an apartment for other purposes. *Id.* 189a-193a.

Petitioners allege similar effects on their rights to occupy and use their property. The Panagoulias's

daughter and sister, Maria, wishes to return to the family's apartment building, and the Panagouliases wish to set aside an apartment for her use, but they cannot do so because of the RSL's restrictions. *Id.* 187a-88a. Even before the 2019 Amendments, the State denied Dino Panagoulias the ability to recover a two-bedroom apartment, in the building his family owns, for use as a family home, citing his failure to occupy a one-bedroom unit that had become vacant in the building but which did not suit his family's needs. *Id.* And because they own property through business entities, the owners of 74 Pinehurst, 141 Wadsworth, 177 Wadsworth, and Eighty Mulberry cannot reclaim *any* apartment for personal or family use. 9 NYCRR § 2424.4(a)(1). App. 188a.

The RSL has also caused Petitioners grievous financial harm. Before 2019, rent-stabilized apartment buildings were worth only about half as much as unregulated buildings. *Id.* 234a. Their value fell by another 20-40% after enactment of the 2019 Amendments—an aggregate reduction in value of 60-70%, which now jeopardizes Petitioners' ability to refinance their mortgages. *Id.* 202a, 234a, 238a-39a.

C. Procedural History

1. Petitioners filed suit in the U.S. District Court for the Eastern District of New York, alleging (among other things) that the RSL, as amended in 2019, inflicts physical and regulatory takings, both on its face and as applied to them. Unlike the contemporaneously-filed case *Community Housing Improvement Program v. City of New York*, No. 19-cv-4087 (E.D.N.Y. 2020), *aff'd*, 59 F.4th 540 (2d Cir. 2023)

("*CHIP*"), *pet. for cert. filed* No. 22-1095 (May 8, 2023), Petitioners did not challenge the RSL as it existed before those amendments.

In a single opinion addressing both this case and *CHIP*, the District Court dismissed Petitioners' claims under Rule 12(b)(6), with the exception of the as-applied regulatory-takings claims of 80 Mulberry and the Panagouliases. App. 54a. Petitioners dismissed those claims after the District Court denied their Rule 54(b) motion to certify a partial final judgment as to the remaining claims. *Id.* 59a.

2. The Second Circuit affirmed the dismissal of all claims. The court heard this case together with *CHIP* and resolved the cases in separate opinions issued on the same day.

Physical Takings. The Second Circuit concluded that the RSL does not effect a facial physical taking. App. 5a; *see also id.* 78a-82a. The court first held that the requirement that owners perpetually renew existing tenants' leases does not give rise to a physical appropriation under *Cedar Point*. That case distinguished between "regulations granting a right to invade property closed to the public," and restrictions on "a business generally open to the public." According to the Second Circuit, the RSL falls into the latter category, because owners "voluntarily invite third parties to use their properties" in the first instance. *Id.* 6a; *see also id.* 78a-79a. The court further reasoned that the RSL "does not compel landlords 'to refrain in perpetuity from terminating a tenancy'" under *Yee*, because owners can evict tenants who fail to pay rent or breach other material terms of their

leases. *Id.* 7a; *see also id.* 79a. The court ultimately concluded that *Loretto*, *Horne v. Dep't of Agric.*, 576 U.S. 350 (2015), and *Cedar Point* all are inapplicable because none of them "concerns a statute that regulates the landlord-tenant relationship." App. 81a; *see id.* 7a.

The Second Circuit likewise affirmed the dismissal of Petitioners' as-applied physical-takings claims, on the grounds that Petitioners have not "exhausted all the mechanisms contemplated by the RSL that would allow a landlord to evict current tenants." *Id.* 8a. The court did not identify any such mechanisms available to Petitioners, other than the possibility of eviction based on a tenant's breach.

Regulatory Takings. The Second Circuit also affirmed the District Court's dismissal of Petitioners' facial regulatory-takings claims. *Id.* 8a-9a, 82a-88a.

The court concluded that Petitioners' as-applied regulatory claims are unripe because Petitioners did not apply for discretionary hardship exemptions. *Id.* 9a-11a. *But see id.* 216a-19a (alleging that the hardship exemptions are inapplicable). The court also held that the claims "fail on the merits" under *Penn Central*. App. 11a. The court concluded that Petitioners did not adequately plead economic impact because (among other things) even a 90% diminution in value does not support a regulatory taking. *Id.* 11a-12a. Plaintiffs could not plead interference with investment-backed expectations, the court held, because they took a "calculated risk" that the RSL could change in ways that harm their property rights. *Id.* 15a. And the character of the regulation could not

support a takings challenge because the RSL serves "important public interests." *Id.* 16a.

REASONS WHY THE PETITION SHOULD BE GRANTED

New York prohibits the owners of approximately one million apartments from terminating a tenancy at the conclusion of a lease. Jurisdictions across the country are enacting similar laws. The federal courts of appeals are split on whether such laws result in a taking. This Court should grant the petition both to clarify that laws requiring owners to continue tenancies over their objection can effect physical takings, and to provide lower courts much-needed guidance about how to assess regulatory-takings claims.

I. This Case Presents an Important Question Regarding Application of Physical-Takings Principles to Rental Property, on which Lower Courts Have Taken Conflicting Approaches.

The Second Circuit's holding here—that, under *Yee*, laws affecting a landlord-tenant relationship do not inflict physical takings so long as the owner may evict tenants for cause—is a serious and far-reaching error that warrants this Court's review. As other courts have concluded, *Yee* does not displace the traditional rules that apply in all other physical-takings cases, and thus does not justify the permissive framework applied by the Second Circuit here.

A. Lower Courts Have Split Regarding Whether Forced Continuation of a Tenancy Constitutes a Physical Taking.

The decision below squarely implicates a circuit split over whether housing regulations inflict physical takings by forcing a property owner to continue a tenancy, over the owner's objection, after the expiration of the parties' lease agreement. The Eighth Circuit and other courts have held that landlord-tenant cases are not exempt from the general principles articulated in *Loretto*, *Horne*, and *Cedar Point*, and that a law works a physical taking when it converts a voluntary fixed-term tenancy into an indefinite occupation terminable only at the tenant's option. The Second and Ninth Circuits have disagreed and held that *Yee* prescribes a special rule under which forced continuation of a tenancy is not a physical taking, so long as the owner retains a theoretical ability to recover the property based on the tenant's malfeasance.

1. The split of authority concerns the proper application of this Court's physical-takings precedents. Those precedents vindicate the "right to exclude," "'one of the most treasured' rights of property ownership." *Cedar Point*, 141 S. Ct. at 2072 (quoting *Loretto*, 458 U.S. at 435). In keeping with that status, the Court has repeatedly held that a law constitutes a *per se* taking of property if it forces owners to submit to physical occupation of their property. *See id.* at 2074; *Loretto*, 458 U.S. at 435. That bright-line rule applies regardless of "whether the action achieves an important public benefit or has only minimal economic impact on the owner." *Loretto*, 458 U.S. at 435.

Yee considered those principles with respect to laws that governed aspects of the landlord-tenant relationship. In *Yee*, mobile-home park owners asserted physical-takings challenges to regulations that limited their ability to terminate existing tenancies. 503 U.S. at 524. The Court concluded that the challenged regulations did not effect physical takings because the plaintiffs not only had "voluntarily rented their land to mobile home owners," but could "change the use of [their] land" by "evict[ing] [the] tenants" on "6 or 12 months' notice." *Id.* at 527-28. These characteristics meant that the government had not "*require[d]* the [plaintiffs] to submit to the physical occupation of [their] land." *Id.* at 527 (emphasis in original).

Yee warned, however, that a "different case would be presented were the statute, on its face or as applied, to compel a landowner over objection to rent his property or to refrain in perpetuity from terminating a tenancy." *Id* at 528. That conclusion echoed the Court's prior reservation in *FCC v. Florida Power Corp.* regarding whether a law would work a physical taking by forcing a property owner, "over objection, to enter into, renew, or refrain from terminating" a lease agreement. 480 U.S. 245, 251 n.6 (1987).

Since *Yee*, this Court has reinforced the impermissibility of any compelled deprivation of the right to exclude without just compensation. In *Cedar Point*, the Court held that a government-authorized appropriation of private property inflicts a physical taking even if it does not involve a "permanent and continuous" occupation. 141 S. Ct. at 2074. The Court thus concluded that a statute authorizing labor organizers to enter private farms for limited periods, without the

owners' consent, "constitute[d] a *per se* physical taking" because it "appropriate[d] for the enjoyment of third parties the owners' right to exclude." *Id.* at 2072, 2073, 2077-78.

2. The lower courts are divided regarding how those precedents apply to laws that grant tenants the right to continue a tenancy, over the owner's objection, after a voluntary lease agreement expires.

a. Some courts have read *Yee* broadly to create a special and particularly deferential rule for physical-takings challenges to laws that regulate rental housing. Under that special rule, an owner's voluntary decision to rent to the tenant in the first instance justifies a broad range of restrictions, including stripping the owner of the right to terminate the tenancy after the lease agreement expires. So long as the owner retains a theoretical ability to regain possession—even if the only means of doing is exclusively within the tenant's control—the government may require the owner to suffer an indefinite occupation of the property. The result is a regime in which laws granting tenure protections to tenants are immune from physical-takings challenges if there is *any* possibility, no matter how narrow or remote, that the owner could terminate the tenancy.

The Second Circuit's decision in this case exemplifies this approach. Petitioners allege that the RSL appropriates their right to exclude by requiring them perpetually to renew leases with existing tenants or those tenants' successors. App. 192a-93a; *supra* pp. 4-8. The Second Circuit concluded that these allegations are insufficient to state a physical-takings claim.

App. 7a; *see also id.* 78a-82a. The court held that because Petitioners "*voluntarily* invite[d] third parties to use their properties," *Cedar Point* is inapplicable. *Id.* 6a. More broadly, the court found *Loretto*, *Horne*, and *Cedar Point* inapposite because "[n]one of them concerns a statute that regulates the landlord-tenant relationship." App. 81a. Instead, according to the court, under *Yee*, governments have "broad power to regulate housing conditions in general and the landlord-tenant relationship in particular without paying compensation." *Id.* 6a; *see also id.* 79a.

Although the Second Circuit acknowledged that a law requiring an owner "to refrain in perpetuity from terminating a tenancy" could constitute a taking under *Yee*, the court concluded that the RSL does not have that quality because owners may evict tenants "for failing to pay rent, creating a nuisance, violating provisions of the lease, or using the property for illegal purposes." *Id.* 79a. In other words, when the owner initially rents out property voluntarily, the government may grant the tenant the right to remain in the property indefinitely "so long as there is a possible route to an eviction," even if outside the owner's control. *Id.* 79a.

Other federal and state courts have similarly read *Yee* to foreclose takings challenges to laws that prevent owners from reclaiming possession of their properties following expiration of a lease. For example, the Ninth Circuit has relied on *Yee* to hold that laws prohibiting an owner from declining to continue the month-to-month lease of a "protected status" tenant do not effect physical takings, so long as the initial

rental was voluntary and the owner retained the ability to evict the tenant for certain prescribed causes, such as "for creating a nuisance, breaking the law, or failing to pay rent." *Kagan v. City of Los Angeles*, No. 21-55233, 2022 WL 16849064, at *1 (9th Cir. Nov. 10, 2022), *pet. for cert. filed*, No. 22-739 (U.S.). Indeed, the Ninth Circuit has generally treated *Yee* as foreclosing physical-takings challenges to laws that regulate "the landlord-tenant relationship." *Ballinger v. City of Oakland*, 24 F.4th 1287, 1293 n.2 (2022), *cert. denied*, 142 S. Ct. 2777. The decision below also closely tracks the reasoning New York State courts have used to conclude that the RSL does not effect a physical taking. *See Rent Stabilization Ass'n v. Higgins*, 630 N.E.2d 626, 632-33 (N.Y. 1993).[2]

b. Those decisions conflict with rulings of other courts that analyze landlord-tenant cases under ordinary physical-takings principles articulated in *Loretto* and *Cedar Point*. These courts hold that regulations

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[2] Lower courts have applied a similar reading of *Yee* to a broad range of housing laws. *See, e.g.*, *Pakdel v. City & County of San Francisco*, __ F. Supp. 3d __, 2022 WL 14813709, *5-6 (N.D. Cal. 2022) (law requiring owners to extend tenant lifetime lease as condition of converting unit to condominium not a physical taking because owners "*voluntarily* invited [the] tenant to occupy their" property); *Williams v. Alameda County*, No. 3:22-cv-1274, 2022 WL 17169833, at *9-12 (N.D. Cal. Nov. 22, 2022) (Under *Yee* and *Ballinger*, "laws governing the landlord-tenant relationship are not subject to a categorical per se takings analysis"); *Gallo v. District of Columbia*, 610 F. Supp. 3d 73, 87 (D.D.C. 2022) (*Yee*, rather than *Cedar Point*, governs because owner "invite[d]" holdover tenant onto the property in an initial, voluntary lease).

that force owners to continue a tenancy after the tenant's lease ends constitute physical takings. The fact that the tenancy began with a voluntary lease agreement is irrelevant under this analysis, because the taking occurs at the point of forced *continuation* of the tenancy past the agreed term of the lease.

The Eighth Circuit's recent decision in *Heights* illustrates this competing approach. There, the court addressed a physical-takings challenge to housing regulations that "forbade the nonrenewal and termination of ongoing leases." 30 F.4th at 733. The plaintiff, an owner of rental housing, alleged that the regulations "precluded" the owner "from exercising its right to exclude others and regain possession of its premises" and forced the owner "to accept the physical occupation of [its] property." *Id.* at 729, 733. The district court dismissed the suit based on the broad reading of *Yee* described above. *See Heights Apartments, LLC v. Walz*, 510 F. Supp. 3d 789, 812 (D. Minn. 2020). The Eighth Circuit reversed, concluding that *Cedar Point* "controlled" the analysis, and that allegations that the regulations "turned every lease ... into an indefinite lease, terminable only at the option of the tenant," were sufficient to plead a plausible physical-takings claim thereunder. 30 F.4th at 733.[3]

Heights is irreconcilable with the decision below and the other cases that rely on a broad reading of *Yee*. The Second Circuit treated *Yee* as controlling and distinguished *Cedar Point* and other physical-takings

[3] The Eighth Circuit subsequently denied rehearing in *Heights* over four judges' dissent. *See* 39 F.4th 479 (Colloton, J., dissenting).

decisions as irrelevant. App. 7a, 81a. By contrast, the Eighth Circuit treated *Cedar Point* as controlling, while distinguishing *Yee* on the ground that the law there did not "compe[l]" owners "to continue leasing the property past the leases' termination." 30 F.4th at 733; *see also Cwynar v. City & County of San Francisco*, 90 Cal. App. 4th 637, 655-59 (2001).

Moreover, each of the factors that led the Second Circuit to conclude below that Petitioners have not stated physical-takings claims was also present in *Heights*: the law pertained to the "landlord-tenant relationship"; the owner had initially rented the property out voluntarily; and the owner retained the ability to evict tenants for certain causes. *Id.* But the Eighth Circuit nevertheless held that the challengers had stated a physical-takings claim, and did not suggest that any of these factors was even relevant to its analysis.

This Court should grant certiorari to resolve that conflict and clarify that housing laws are not exempt from the traditional physical-takings principles set forth in *Loretto* and *Cedar Point*.

B. The Decision Below Is Incorrect.

By affirming the dismissal of petitioners' physical-takings claims, the Second Circuit placed itself on the wrong side of this split.

1. Under ordinary physical-takings doctrine, the RSL's lease-renewal provisions deprive owners of the right to exclude and "appropriat[e]" that right "for the enjoyment of third parties," *Cedar Point*, 141 S. Ct.

at 2072, by compelling owners to enter into renewal leases when they would rather use the property for other purposes. This Court has repeatedly recognized that laws that compel property owners to submit to the physical occupation of their property by third parties effect per se takings. *See, e.g.*, *id.* at 2074; *Loretto*, 458 U.S. at 426; *see also Fresh Pond Shopping Ctr., Inc. v. Callahan*, 464 U.S. 875, 876-77 (1983) (Rehnquist, J., dissenting) (questioning how ordinance that imposed indefinite tenancy, terminable only by tenant, could be reconciled with *Loretto*).

No one disputes that, without the RSL, owners could terminate a tenancy at the conclusion of a fixed-term lease agreement. *See, e.g.*, *Kennedy v. City of New York*, 89 N.E. 360, 361 (N.Y. 1909) (tenant "who holds over after the expiration of" lease "may be treated … as a trespasser" and ejected on that basis); N.Y. Real Prop. L. § 232-c (authorizing removal of holdover tenants). And no one disputes that the RSL takes that right from Petitioners. The merits analysis here is thus just as straightforward as in *Cedar Point*. *See* 141 S. Ct. at 2076.

The RSL's forced-renewal provision would inflict physical takings, moreover, *regardless* of whether owners could escape the compelled occupation by using their property for purposes other than rent-stabilized rental housing. *See Horne*, 576 U.S. at 364-66 (rejecting argument that raisin growers could escape raisin-reserve expropriation by growing other crops or selling their grapes as table grapes or for wine production); *Loretto*, 458 U.S. at 439 n.17 (rejecting the argument that "a landlord could avoid the requirements ... by ceasing to rent the building to tenants"

because "a landlord's ability to rent his property may not be conditioned on his forfeiting the right to compensation for a physical occupation").

The Second Circuit compounded these errors by seeking to justify the forced occupation of Petitioners' property on the ground that rent-stabilized apartments are "generally open to the public." App. 77a (quoting *Cedar Point*, 141 S. Ct. at 2076-77). The court distinguished New York's law from the statute in *Cedar Point* by contending that the latter involved "'property closed to the public,'" while the RSL governs property that "[l]andlords voluntarily invited third parties to use." *Id.* 78a (quoting *Cedar Point*, 141 S. Ct. at 2077). That contention distorts *Cedar Point*'s reasoning beyond recognition. *Cedar Point* carved out an exception for "business[es] generally open to the public," such as the shopping mall in *PruneYard Shopping Center v. Robins*, 447 U.S. 74 (1980), which "welcom[ed] some 25,000 patrons a day." 141 S. Ct. at 2076-77. Privately owned apartments do not remotely resemble open-air shopping malls; like the land in *Cedar Point*, they are *closed* to everyone other than the owner or lessee. The Second Circuit's strained, incorrect invocation of the "open to the public" exception underscores the need for this Court's review.[4]

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[4] The Second Circuit's reliance on the principle that owners who voluntarily rent their property must "accept tenants [they] do[] not like" was misplaced. App. 7a, 77a. Petitioners do not challenge that principle. They argue only that they voluntarily rented their properties *for a specific term* and are now compelled

2. In concluding otherwise, the Second Circuit read too much into *Yee*. The decision below interpreted *Yee* to mean that once an owner voluntarily rents out property, the government can require the owner to keep renting to that tenant (and a broad range of successors) indefinitely without inflicting a physical taking, because the government is only regulating the "landlord-tenant relationship[]." App. 7a. But the renewal requirement does not "regulate" a landlord-tenant relationship—it conjures one into being when it would not otherwise exist. *See Cedar Point*, 141 S. Ct. at 2075 (rejecting similar defense of California access regulation). That dynamic is particularly evident with respect to successor tenants, who owners have not invited onto the property and with whom owners have no prior contractual relationship. *See* App. 189a-91a.

Loretto—which also arose from requirements New York City imposed on owners of rental apartment buildings—belies any suggestion that ordinary physical-takings principles are irrelevant or apply with reduced force once a property is used for residential rentals. *See* 458 U.S. at 439 n.17. As the Court recently underscored in *Alabama Association of Realtors v. HHS*, 141 S. Ct. 2485, 2489 (2021), the fact that an owner voluntary leases an apartment does not abrogate the owner's right to exclude.

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to suffer occupancy by the tenant and the tenant's successors *indefinitely*. That deprivation of Petitioners' rights to occupy and exclude has nothing to do with laws prohibiting discrimination on the basis of protected characteristics.

The Second Circuit also disregarded key limits on *Yee*'s holding. The premise that the mobile-home park owners could terminate tenancies by changing the use of their land was critical to the Court's holding. 503 U.S. at 528. Indeed, the Court underscored that point by citing Justice Rehnquist's dissent in *Fresh Pond*, 464 U.S. at 877, and *Florida Power*, 480 U.S. at 251 n.6. Petitioners alleged that this is the "different case" reserved by *Yee* and *Florida Power* because the RSL prevents them from regaining possession and control of their properties once a regulated tenancy is in place. App. 182a-83a, 187a, 193a, 197a-98a. And *Cedar Point* makes clear that the scenario described in the *Yee* and *Florida Power* reservations constitutes a physical taking. *See* 141 S. Ct. at 2072-74.

The Second Circuit avoided that issue by concluding that the RSL "does not compel landlords 'to refrain in perpetuity from terminating a tenancy'" because owners retain the ability to evict tenants for malfeasance (such as breaching the lease or using the property for illegal purposes). App. 7a (quoting *Yee*, 503 U.S. at 528). But *Yee* referred to the ease with which an owner could *choose* to exit the rental market by electing to use his land for another purpose, not whether the owner *might* someday be able to evict *some* tenants for reasons outside the owner's control. Indeed, the laws at issue in *Yee* also gave owners the ability to evict tenants for certain specified causes, Cal. Civ. Code § 798.56 (1988), but that fact rightly played no part in the Court's analysis. While the Second Circuit faulted Petitioners for not "exhaust[ing] all the mechanisms contemplated by the RSL that would allow [them] to evict current tenants," App. 8a, it did not identify any what "mechanisms" Petitioners

could have used—unsurprisingly, since Petitioners have no control over *any* of the grounds cited in the decision below.

3. Properly read, *Yee* neither requires nor supports the decision below. If it did, *Yee* would be at odds with this Court's subsequent physical-takings cases.

As noted above, *Horne* rejected the argument that the owner's voluntary choice to "participate in the [regulated] market" insulates a regulation from the standard physical-takings analysis. 576 U.S. at 365. The *Horne* dissent invoked *Yee* for the proposition that "the Government may condition the ability to offer goods in the market on the giving-up of certain property interests without effecting a *per se* taking," *id.* at 384 (Sotomayor, J., dissenting), but the majority disagreed. The Eighth Circuit has thus properly questioned whether *Yee*'s "voluntariness rationale" remains good law in light of *Horne*. *307, 712, 2103 & 3151 LLC v. City of Minneapolis*, 27 F.4th 1377, 1381-83 (8th Cir. 2022).

A broad reading of *Yee* is likewise at odds with *Cedar Point*, which identified three scenarios that justify a departure from ordinary physical-takings principles, but did not include the landlord-tenant relationship on that list. *See* 141 S. Ct. at 2078-80; *Gallo*, 610 F. Supp. 3d at 88 n.6 (noting that "portions of *Cedar Point* appear to conflict with *Yee*"). Moreover, while *Yee* relied on the owners' ability to "change the use of [their] land" as a reason for concluding that there was no physical taking, *see* 503 U.S. at 528, that factor played no role in *Cedar Point*'s analysis. The petitioner in *Cedar Point* could have prevented labor

organizers from entering its property by converting the property to some other use not subject to California's statute, but the Court nevertheless ruled in the petitioner's favor.

If *Yee* supported the decision below, which it does not, it should be modified or overruled given the inconsistencies between its reasoning and the Court's subsequent rulings in *Horne* and *Cedar Point*.

II. The Second Circuit's Regulatory-Takings Holding Also Warrants Review.

The Second Circuit also affirmed the dismissal of Petitioners' facial and as-applied regulatory-takings claims. That holding not only conflicts with decisions of other circuits, but it confirms Judge Bibas's recent observation that "regulatory-takings doctrine is a mess." *Nekrilov v. City of Jersey City*, 45 F.4th 662, 681 (3d Cir. 2022) (Bibas, J., concurring). The Court should review these claims to correct the Second Circuit's errors and to provide guidance to lower courts.

A. The Decision Below Conflicts with Other Circuit Court Decisions and Adds to the Confusion Regarding the *Penn Central* Test.

A regulatory taking occurs when a "regulation goes too far," *Penn. Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922) and "forc[es] some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole," *Penn Central*, 438 U.S. at 123-24 (quotation marks omitted). This Court has instructed lower courts to determine whether a

regulation has gone too far by conducting "essentially ad hoc, factual inquiries" involving consideration of at least three factors. *Id.* But "nobody—not States, not property owners, not courts, nor juries—has any idea how to apply this standardless standard." *Bridge Aina Le'a*, 141 S. Ct. at 731 (Thomas, J., dissenting from denial of certiorari).

1. Under *Penn Central*, courts consider "the economic impact of the regulation on the claimant," "the extent to which the regulation has interfered with distinct investment-backed expectations," and "the character of the governmental action." *Penn Central*, 438 U.S. at 124. To further complicate matters, these three factors are not exclusive. Courts must instead consider "all of the relevant circumstances in particular cases." *Tahoe-Sierra Pres. Council v. Tahoe Regional Planning Agency*, 535 U.S. 302, 334 (2002).

The result has been a "veritable mess." *Blackburn v. Dare County*, 58 F.4th 807, 813 (4th Cir. 2023). *Penn Central*'s shapeless "know-it-when-you-see it test" generates "starkly different outcomes" across cases and often leads to decisions upholding significant incursions on private property rights. *Bridge Aina Le'a*, 141 S. Ct. at 731-32 (Thomas, J., dissenting from denial of certiorari). "[S]cholars from all points on the ideological spectrum have criticized *Penn Central* and its vaunted factors because the case offers virtually no guidance to anyone" about when a taking has occurred. Michael M. Berger, *Whither Regulatory Takings?*, 51 Urb. Law. 171, 182 & n.66 (2021); Steven J. Eagle, *The Four-Factor Penn Central Regulatory Takings Test*, 118 Penn. St. L. Rev. 601, 602 (2014) (*Penn Central* "doctrine has become a compilation of

moving parts that are neither individually coherent nor collectively compatible").

2. The decision below conflicts with the decisions of other circuits on each of the three *Penn Central* factors, and demonstrates that *Penn Central* does "not provid[e] courts with a 'workable standard.'" *Bridge Aina Le'a*, 141 S. Ct. at 731 (Thomas, J., dissenting from denial of certiorari).

First, the Second Circuit's holding that Petitioners did not plead a sufficiently significant economic impact deepens an existing circuit split.

The Second Circuit held that Petitioners' allegation of a 60-70% diminution in the value of their property failed to adequately plead that the RSL had an adverse economic impact, given "the legion of cases that have upheld regulations" involving up to 90% reductions in value. App. 11a-12a. (cleaned up). The Second Circuit's insistence on a near-total destruction of value aligns with the Ninth Circuit's "observ[ation] that diminution in property value … ranging from 75% to 92.5% does not constitute a taking." *Colony Cove Props., LLC v. City of Carson*, 888 F.3d 445, 450 (9th Cir. 2018).

But other circuits have eschewed such a rigid rule. In *Heights*, the Eighth Circuit held that allegations that an eviction moratorium deprived an owner of rental income sufficed to plead the *Penn Central* economic-impact factor, without requiring any allegations that quantified their losses in detail or that the moratorium deprived their properties of nearly all value. 30 F.4th at 734. Likewise, in the

Federal Circuit, there is no "automatic numerical barrier preventing compensation, as a matter of law, in cases involving a smaller percentage diminution in value." *Yancey v. United States*, 915 F.2d 1534, 1541 (Fed. Cir. 1990).[5]

Second, the Second Circuit's holding that Petitioners lacked reasonable investment-backed expectations conflicts with decisions of the Sixth, Eighth, and Federal Circuits.

The Second Circuit concluded that Petitioners lacked reasonable investment-backed expectations because the "City's rental housing market ... has been subject to an ever-evolving scheme of rent regulation," and "a reasonable investor would have understood it could change again." App. 9a. Indeed, the Court concluded, "[g]iven the RSL's ever-changing requirements *no property owner* could reasonably expect the continuation of any particular combination of RSL provisions." *Id.* at 85a (emphasis added); *see also id.* at 9a.

That categorical rule conflicts with decisions of other courts, which have held that although extensive or unstable regulation may be relevant to investment-

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[5] The Second Circuit also faulted petitioners for not alleging with specificity the RSL's impact on their revenue and profit. App. 12a. In so doing, the court departed from the "vast majority of takings jurisprudence," which analyzes *Penn Central*'s economic-impact prong not by looking to "lost profits but [to] lost value of the taken property." *Rose Acre Farms, Inc. v. United States*, 559 F.3d 1260, 1268 (Fed. Cir. 2009); *see also Colony Cove*, 888 F.3d at 451.

backed expectations, "that does not mean that all regulatory changes are reasonably foreseeable or that regulated businesses can have no reasonable investment-backed expectations whatsoever." *Cienega*, 331 F.3d at 1350; *see also Heights*, 30 F.4th at 734; *Andrews, Tr. of Gloria M. Andrews Tr. v. City of Mentor, Ohio*, 11 F.4th 462, 472 (6th Cir. 2021); *Air Pegasus of D.C., Inc. v. United States*, 424 F.3d 1206, 1219 (Fed. Cir. 2005). As these conflicting decisions demonstrate, lower courts have struggled to apply the "reasonable investment-backed expectations" factor. *See Philip Morris, Inc. v. Reilly*, 312 F.3d 24, 37 (1st Cir. 2002) (noting the "paucity of clear landmarks that can be used to navigate" this factor).

Third, the Second Circuit's holding that the RSL cannot effect takings, based on the character of the law, is contrary to decisions of the Eighth and Federal Circuits.

The Second Circuit focused on whether the law was enacted to promote "public health, safety, and general welfare," while treating as immaterial that the law seeks to achieve these goals by uniquely and exclusively burdening owners of rental property. App. 16a; *see also id.* at 86a-87a.

That analysis conflicts with decisions of other circuits, which have held that this is "the kind of expense-shifting to a few persons that amounts to a taking," especially "where, as here, the alternative was for all taxpayers to shoulder the burden." *Cienega*, 331 F.3d at 1338-39; *Heights*, 30 F.4th at 734-35 (discussing with approval arguments that eviction moratoria "were not ... broadly beneficial, and

they improperly imposed the public cost of fighting homelessness on a subset of the population: rental property owners"); *Guggenheim v. City of Goleta*, 638 F.3d 1111, 1132-33 (9th Cir. 2010) (en banc) (Bea, J., dissenting) (housing ordinance's selective burdens on park owners "weigh[ed] heavily in favor of finding a regulatory taking").

B. The Decision Below Is Incorrect.

The Court should grant the petition and hold that Petitioners have stated regulatory takings claims. In so doing, the Court could clarify how to apply the *Penn Central* test, or it could replace that unworkable test with one that hews more closely to the constitutional text.

1. Petitioners have stated a claim under a proper application of *Penn Central*.

First, Petitioners adequately plead economic impact. Petitioners allege that the RSL has diminished the value of their property by a cumulative total of 60-70%, and that other rent-stabilized housing has been similarly affected. App. 198a, 234a, 236a, 238a. Those allegations—which amount to billions of dollars of reduced property values across New York City—should not be treated as so insignificant that Petitioners' claims fail as a matter of law at the pleading stage.

Second, Petitioners sufficiently allege that the RSL interferes with their reasonable investment-backed expectations. The Second Circuit's conclusion—that investors should have anticipated the

amendments to the RSL because they should have understood that the law could be changed at any time—cannot be reconciled with this Court's decision in *Palazzolo v. Rhode Island*, 533 U.S. 606 (2001). There, the Court permitted an owner who bought property already subject to a restriction to challenge that restriction under the Takings Clause. *Id.* at 629-30; *id.* at 634 (O'Connor, J., concurring). This Court has also recognized that even businesses in intensively regulated industries can form reasonable investment-backed expectations about their property rights. *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1004-14 (1984).

Third, Petitioners adequately allege that the RSL has the character of a taking. *Penn Central* explains that a taking "may more readily be found when the interference with property can be characterized as a physical invasion by government, than when interference arises from some public program adjusting the benefits and burdens of economic life to promote the common good." 436 U.S. at 124 (citation omitted). Petitioners plainly allege an interference with their property that can be "characterized as a physical invasion" because they allege that the RSL requires them to allow tenants to occupy their property indefinitely, even when Petitioners would rather put the property to other uses. *E.g.*, App. 192a-93a.

Petitioners also adequately allege that the RSL "forc[es] [them] to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." *Armstrong v. United States*, 364 U.S. 40, 49 (1960). Indeed, the New York Court of Appeals has described the RSL as providing "a public assistance

benefit" "conferred by the government" but "paid for" by regulated "private owners of real property." *Monteverde v. Pereira*, 22 N.E.3d 1012, 1016-17 (N.Y. 2014). Thus, like the "hardship tenant" provision in *Pennell v. San Jose*, the RSL "singles out" and "disproportionately burden[s]" those individuals who happen to own rent-stabilized apartments and selectively imposes on them the cost of funding what is effectively an off-the-books public-housing program. 485 U.S. 1, 21-22 (1988) (Scalia, J., concurring in part and dissenting in part). While that arrangement may be "politically attractive," it is fundamentally unfair to "mak[e] one citizen pay, in some fashion other than taxes, to remedy a social problem that is none of his creation." *Id.* at 23.

The Second Circuit dismissed as irrelevant the impact that the RSL has on Petitioners' property rights. App. 16a ("The fact that the RSL affects landlords unevenly is of no moment."). The court considered it determinative that the law was enacted to promote "public health, safety, and general welfare," because "courts are not in the business of second-guessing legislative determinations." *Id.* But in applying *Penn Central*, courts cannot consider only whether a law "substantially advances a legitimate state interest," because that "reveals nothing about the magnitude or character of the burden a particular regulation imposes upon private property rights." *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 542-43 (2005).

2. If Petitioners' claims cannot survive a motion to dismiss under the *Penn Central* test, then that test should be overhauled or discarded. The argument for

stare decisis is weak: *Penn Central* has "not provided courts with a 'workable standard.," *Bridge Aina Le'a*, 141 S. Ct. at 731 (Thomas, J., dissenting from denial of certiorari), and it is not grounded "in the Constitution as it was originally understood," *Murr v. Wisconsin*, 582 U.S. 383, 419 (2017) (Thomas, J., dissenting).

A regulatory-takings test grounded in the Constitution would not require a near-total diminution in the value of the property because "the degree of economic impact should not affect whether a government has taken private property. It should only affect the amount of compensation due in the event of a taking." John E. Fee, *The Takings Clause as a Comparative Right*, 76 S. Cal. L. Rev. 1003, 1034 (2003). Nor should investment-backed expectations play such a critical role in the analysis. Rather, "we should be deeply suspicious of the phrase 'investment-backed expectations' because it is not possible to identify even the paradigmatic case of its use." Richard A. Epstein, Lucas v. South Carolina Coastal Council*: A Tangled Web of Expectations*, 45 Stan. L. Rev. 1369, 1370 (1993). Neither of these *Penn Central* factors is grounded in the Constitution. *See Nekrilov*, 45 F.4th at 683-85 (Bibas, J., concurring) (noting that economic-impact and investment-backed-expectations factors are "hard to square with the Constitution's text and history").

Under any test that *is* grounded in the Constitution, Petitioners' allegations are sufficient to state a claim. Petitioners plead how the RSL authorizes the government to take private property by interfering with property owners' rights to exclude, occupy, and

control their property, and how it presses the property into public use by allowing others to reside there. Petitioners thus adequately allege that the RSL is the "functional equivalent of a 'practical ouster of [the owner's] possession'" of their property. *Murr*, 582 U.S. at 419 (Thomas, J., dissenting) (quoting *Transp. Co. v. Chicago*, 99 U.S. 635, 642 (1879)). That is sufficient to state a regulatory takings claim under the original public meaning of the Takings Clause. *See Nekrilov*, 45 F.4th at 683-85 (Bibas, J., concurring).

3. The Second Circuit's ripeness analysis was incorrect and thus does not prevent the Court from reaching the merits of the regulatory-takings claim. The Second Circuit faulted Petitioners for not seeking "hardship exemptions" before filing suit. App. 9a-11a. But Petitioners did not need to exhaust these administrative remedies because those remedies are incapable of addressing Petitioners' injuries.

Petitioners allege that they are categorically ineligible for one of the two hardship programs. *Id.* 217a. As to the other program, the only relief available is a rarely granted dispensation to increase modestly the rent charged for a unit. *Id.* 216a, 219a. That limited remedy does not address the most significant harms that the RSL inflicts on Petitioners: it cannot affect Petitioners' obligation to renew tenancies they wish to terminate, grant Petitioners the ability to reclaim units for personal and family use, or allow Petitioners to put regulated apartments to other uses. *Id.* 219a. Exhaustion is thus futile and unnecessary. *See Shalala v. Ill. Council on Long Term Care, Inc.*, 529 U.S. 1, 13 (2000); *McCarthy v. Madigan*, 503 U.S. 140, 147-48 (1992). Regardless, Petitioners' regulatory-

takings claims are ripe because it is clear how the RSL applies to Petitioners' properties. *See Pakdel v. City & County of San Francisco*, 141 S. Ct. 2226 (2021) (per curiam). There is no dispute that the RSL compels Petitioners to renew tenants' leases over objection and burdens Petitioners' property rights in the other ways discussed above.

III. This Case Is an Excellent Vehicle to Address These Important Issues.

The question of how the Takings Clause applies to regulations like the RSL has enormous implications not only for Petitioners, but for New York City, the nation's largest rental market. Because New York City has approximately one million rent-stabilized apartments, the RSL dispossesses countless owners of their rights to occupy, use, and exclude others from their properties. The RSL likewise inflicts comparably severe economic harms, slashing the value of rent-stabilized properties and reducing the supply of—and thus increasing rents for—market-rate apartments. *See* App. 219a-23a.

Nor are these issues of purely local significance. In misdirected reaction to concerns about housing affordability, lawmakers in multiple states and municipalities have enacted new or tightened existing regulations that effectively conscript privately owned apartments to serve as affordable housing. *See* Will

Parker, *Rent-Control Measures Are Back as Home Rents Reach New Highs*, Wall St. J. (Mar. 13, 2022).[6]

Like the RSL, many of these laws go well beyond regulating monthly rents and effectively grant tenants the right to occupy an apartment indefinitely, over the owner's objection. These so-called "good-cause" or "just-cause" eviction laws provide that once an owner enters into an initial, voluntary lease agreement, the owner must continue to rent to that tenant after the lease expires, subject to narrow exceptions. *See, e.g.*, Cal. Civ. Code § 1946.2; D.C. Code § 42-3505.01; Or. Stat. § 90.427; H. No. 4216, 193d Gen. Ct. (Mass. 2023) (proposed Boston regulation). New York is considering similar legislation that, by giving tenants the "basic right[] to renew an expiring lease" and stringently capping the amount by which an owner can increase the rent, would effectively extend the RSL's compelled occupancy and rent-cap mandates to all rental apartments statewide. S. 305, 2023-24 Leg. Sess. (N.Y. 2023). The White House has likewise advocated for national "just- or good-cause eviction protections that require a justified cause to evict a tenant." White House, *Blueprint for a Renters Bill of Rights* 16 (2023).[7] Proponents of such measures will surely justify them by pointing to the Second Circuit's conclusion that laws regulating the "landlord-tenant relationship" are practically immune from takings challenge, if the decision below is allowed to stand.

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[6] https://www.wsj.com/articles/rent-control-measures-are-back-as-home-rents-reach-new-highs-11647180001.

[7] https://www.whitehouse.gov/wp-content/uploads/2023/01/White-House-Blueprint-for-a-Renters-Bill-of-Rights-1.pdf.

This case is an excellent vehicle for the Court to consider how the Takings Clause applies to laws that compel owners to continue renting out property against their will. Petitioners' physical- and regulatory-takings claims were pressed and passed on below in reasoned opinions by both the District Court and the Second Circuit. These issues arise from a final judgment below. Petitioners have also raised as-applied (in addition to facial) challenges, thus providing a concrete factual context for the Court's review of these constitutional issues and obviating the need to address threshold questions about the standard of review for facial claims. *Cf.* App. 72a-75a.

CONCLUSION

Lower courts have adopted a series of special, atextual rules that eviscerate the Takings Clause's protections in the landlord-tenant context. The decision below exacerbates that problem and deepens several circuit splits in the process. Although this Court reaffirmed a bright-line rule for physical takings in *Cedar Point*, the decision below deems that rule inapplicable to a vast range of housing regulations. And while *Penn Central* prescribes a flexible test for regulatory-takings claims, the decision below applies rigid principles that prevent such claims from making it past a motion to dismiss. Only this Court's intervention can correct these recurring and highly consequential errors. The Court should grant the petition.

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