No. 22-1130

IN THE

Supreme Court of the United States

74 PINEHURST LLC, *et al.*,

Petitioners,

v.

NEW YORK, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF IN OPPOSITION OF RESPONDENTS N.Y. TENANTS AND NEIGHBORS, COMMUNITY VOICES HEARD, AND THE COALITION FOR THE HOMELESS

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QUESTIONS PRESENTED

This case involves facial and as-applied challenges, under the Takings Clause, to certain provisions of New York's Rent Stabilization Law of 1969 and its attendant regulations (together, the "RSL"), as amended by the Housing Stability and Tenant Protection Act of 2019 (the "HSTPA"). The questions presented are:

1. Whether the United States Court of Appeals for the Second Circuit correctly held that Petitioners failed to adequately allege that the RSL, as amended by the HSTPA, effects, facially and as-applied, a *per se* physical taking by circumscribing the permissible grounds for evicting rent-stabilized tenants or refusing to renew their leases, because the RSL neither compels an owner to offer its property for rent nor prohibits a landlord in perpetuity from terminating a tenancy.

2. Whether the Second Circuit correctly affirmed the dismissal of Petitioners' regulatory taking claims because (i) Petitioners failed to adequately allege that there was no set of circumstances under which the RSL would be valid, as required to prevail on their facial claim; (ii) the as-applied challengers' claims were unripe because those Petitioners had failed to avail themselves of the remedial provisions of the RSL permitting them to apply for hardship exemptions; and (iii) those Petitioners'

allegations in any event failed to plausibly demonstrate the factors set forth in *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104, 124 (1978).

CORPORATE DISCLOSURE STATEMENT

Respondents N.Y. Tenants and Neighbors, Community Voices Heard, and the Coalition for the Homeless have no parent corporation, and no publicly held corporation owns 10% or more of the stock of any of these entities.

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INTRODUCTION

Petitioners are corporate entities and individuals who own multi-unit apartment buildings in New York City as investment properties, as well as the adult son of the two individuals, who lives in and manages the property owned by his parents. Petitioners seek this Court's review of a decision by a unanimous Second Circuit panel affirming the district court's dismissal of claims that New York's Rent Stabilization Law of 1969, the Emergency Tenant Protection Act of 1974, and their attendant regulations (together, the "RSL"), as amended by the Housing Stability and Tenant Protection Act of 2019 (the "HSTPA"), effect, facially and as applied to some Petitioners, unconstitutional physical and regulatory takings.[1]

The RSL, which applies to nearly one million apartments in New York City alone, has regulated rents and evictions across the state for *fifty years* and has repeatedly withstood takings challenges.[2] The

[1] Respondents N.Y. Tenants and Neighbors, Community Voices Heard, and the Coalition for the Homeless are non-profit tenant advocacy organizations that intervened below in defense of the RSL.

[2] See, e.g., *Cmty. Hous. Improvement Program v. City of New York*, 59 F.4th 540 (2d Cir. 2023), *petition for cert. filed*, No. 22-1095 (May 8, 2023); *Harmon v. Markus*, 412 F. App'x 420 (2d Cir.

unanimous decision below faithfully applied clear precedent and adds to this long line of decisions upholding the RSL.

The Petition should be denied because there is no conflict among the circuits regarding the applicable standard for Takings Clause challenges to rent regulations, the unanimous decision below comports with this Court's jurisprudence, and this case is a poor vehicle for addressing the parameters of the Takings Clause.

STATEMENT OF THE CASE

A. The Long History of Rent and Eviction Regulations in New York

For over a century, New Yorkers have benefited from federal, state, and local regulation of rents and

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2011); *W. 95 Hous. Corp. v. N.Y.C. Dep't of Hous. Pres. & Dev.*, 31 F. App'x 19 (2d Cir. 2002); *Fed. Home Loan Mortg. Corp. v. N.Y. State Div. of Hous. & Cmty. Renewal*, 83 F.3d 45 (2d Cir. 1996); *Rent Stabilization Ass'n of City of N.Y., Inc. v. Dinkins*, 5 F.3d 591 (2d Cir. 1993); *Greystone Hotel Co. v. City of New York*, 13 F. Supp. 2d 524 (S.D.N.Y. 1998), *aff'd*, 1999 U.S. App. LEXIS 14960 (2d Cir. June 23, 1999) (summary order); *Silberman v. Biderman*, 735 F. Supp. 1138 (E.D.N.Y. 1990); *Tonwal Realties, Inc. v. Beame*, 406 F. Supp. 363 (S.D.N.Y. 1976); *Somerset-Wilshire Apartments, Inc. v. Lindsay*, 304 F. Supp. 273 (S.D.N.Y. 1969).

evictions. This Court and others have repeatedly upheld those protections. Petitioners treat these regulations like a single statute whose provisions may be evaluated in one swoop, but the reality is far more complex.

In 1920, in response to severe housing shortages and rent shocks caused by World War I, the state legislature enacted the first rent-regulation laws for New York City. Pet. App. 64a–65a. The laws—which for ten years capped rent increases and prevented evictions without cause—were the subject of repeated lawsuits. *Id.* at 65a. This Court and the New York Court of Appeals repeatedly upheld their constitutionality.[3]

During and after World War II, rents and evictions in the New York City area (and elsewhere) were regulated by federal law: first the Emergency Price Control Act of 1942, and later the Housing and Rent Act

[3] See *Edgar A. Levy Leasing Co. v. Siegel*, 258 U.S. 242, 249–49 (1922); *Marcus Brown Holding Co. v. Feldman*, 256 U.S. 170, 198 (1921); *People ex rel. Durham Realty Corp. v. La Fetra*, 230 N.Y. 429, 444–46, *writ of error dismissed*, 257 U.S. 665 (1921).

of 1947. Pet. App. 65a–66a. This Court upheld both statutes against Takings Clause challenges.[4]

In 1950, authority to regulate residential rents in New York passed to the Temporary State Housing Rent Commission, Pet. App. 66a, whose regulations likewise were repeatedly upheld against constitutional attack.[5]

Pursuant to a 1962 delegation of authority, 23 N.Y. Unconsol. Laws § 8605, the New York City Council enacted the Rent Stabilization Law of 1969 (the "1969 RSL"), which initially applied to buildings with six or more units constructed between 1947 and 1969 and established New York City's Rent Guidelines Board to regulate annual rent increases for rent-stabilized apartments. See Pet. App. 66a, 175a; N.Y.C. Admin. Code § 26-504(a)(1). The 1969 RSL's regulations set the permissible grounds for evicting, or declining to renew the leases of, rent-stabilized tenants. See *The New York Rent Stabilization Law of 1969*, 70 Colum. L. Rev. 156, 173–74 (1970). One basis for eviction was the conversion of a rent-stabilized building to

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[4] See *Woods v. Cloyd W. Miller Co.*, 333 U.S. 138, 146 (1948); *Bowles v. Willingham*, 321 U.S. 503, 517 (1944).

[5] See *I.L.F.Y. Co. v. Temp. State Hous. Rent Comm'n*, 10 N.Y.2d 263, 268 (1961), *appeal dismissed*, 369 U.S. 795 (1962); *Teeval Co. v. Stern*, 301 N.Y. 346, 362, *cert. denied*, 340 U.S. 876 (1950).

cooperative ownership, which requires approval by the Attorney General and, in the 1970s, required the subscription of 35 percent of tenants. See *Richards v. Kaskel*, 32 N.Y.2d 524, 530 (1973). Multiple courts upheld the 1969 RSL's constitutionality.[6]

In a 1971 effort to spur housing construction and renovation, the state legislature enacted statutes requiring the deregulation of apartments upon vacancy, prohibiting New York City from subsequently regulating such apartments, and permitting owners of newly constructed buildings to opt into rent stabilization in exchange for a tax abatement. See generally *Hewlett Assocs. v. City of New York*, 57 N.Y.2d 356, 360 (1982); *La Guardia v. Cavanaugh*, 53 N.Y.2d 67, 73–74 (1981). The hoped-for construction and renovation did not materialize, however, and the state enacted the Emergency Tenant Protection Act of 1974 ("ETPA"),[7] which permitted New York City to expand, and surrounding municipalities to adopt, rent stabilization for buildings with six or more units constructed before 1974 that were not already regulated. See *La Guardia*, 53 N.Y.2d at 74–75. The ETPA may apply only in municipalities experiencing a housing emergency, as

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[6] See *8200 Realty Corp. v. Lindsay*, 27 N.Y.2d 124, 138 (1970); *Somerset-Wilshire Apartments*, 304 F. Supp. at 274–75.

[7] The Second Circuit mistakenly described the ETPA as having been enacted in 1971. See Pet. App. 13a–14a.

declared by the local legislative body. See *id.* at 75. The ETPA "nullified and terminated" the 1971 "experiment" in vacancy-based deregulation. *520 E. 81st St. Assocs. v. Lenox Hill Hosp.*, 38 N.Y.2d 525, 528 (1976).

In the 1980s, the state legislature designated the Division of Housing and Community Renewal ("DHCR") as the sole agency authorized to administer the RSL, and DHCR issued regulations extending the RSL's non-eviction protections to certain family members and close associates who resided with the tenant of record. See *Rent Stabilization Ass'n of N.Y.C., Inc. v. Higgins*, 83 N.Y.2d 156, 165–66 (1993). The New York Court of Appeals held that these successorship regulations did not create perpetual tenancies or otherwise effect unconstitutional takings. *Id.* at 171–75. This Court denied certiorari. 512 U.S. 1213 (1994).

The Second Circuit held that the RSL's rent restrictions did not effect unconstitutional takings by purportedly depriving some landlords of reasonable returns. See *Dinkins*, 5 F.3d at 594–95.

In 1993, the state legislature amended the RSL to permit, for the first time in twenty years, the deregulation of high-rent apartments that either became vacant or housed high-income tenants. See Pet. App. 14a; *Roberts v. Tishman Speyer Props. L.P.*, 13 N.Y.3d 270, 280–81 (2009). These deregulatory mechanisms remained in place until 2019.

The HSTPA was enacted on June 14, 2019, in response to the housing crisis that the state legislature found continues to exist in New York. See Pet. App. 24a, 67a. The HSTPA amended various provisions of the RSL and other laws affecting the landlord-tenant relationship, including by revising the amounts of permissible rent increases based on apartment or building improvements, repealing the statutory mechanisms for deregulating high-rent apartments upon vacancy or based on tenants' income, repealing statutory bases for increasing rents upon vacancy, and restricting landlords' ability to evict tenants or refuse renewal of leases to recover apartments for the landlord's personal use. Pet. App. 24a–25a. The HSTPA also permits municipalities statewide that are experiencing housing emergencies to opt into the RSL's protections. See 2019 N.Y. Laws ch. 36, part G.

B. The Reach of the RSL

The RSL protects tenants in nearly one million apartments in New York City—about half the city's rental housing stock. See Pet. App. 69a, 178a. One-fifth of these apartments house families living below the poverty line, and nearly two-thirds house families classified by the Department of Housing and Urban Development as low-income, very low-income, or extremely low-income. *Id.* at 69a. In recent years, approximately 175,000 rent-stabilized households were

unable to afford even a $25 increase in their monthly rent. *Id.* at 69a n.21.

In general, the RSL applies only to buildings constructed before 1974 that have six or more apartments, and only in municipalities whose local legislative bodies have declared, after public hearing, a housing emergency for a housing class with a vacancy rate of 5% or less.[8] See N.Y.C. Admin. Code § 26-504(b); 23 N.Y. Unconsol. Laws §§ 8623, 8625. The New York City Council last declared such an emergency in 2022. See N.Y.C. Admin. Code §§ 26-501, 26-502. Absent further legislative action, that emergency declaration will expire on April 1, 2024. *Id.* § 26-520. In addition, the emergency "must be declared at an end once the vacancy rate … exceeds five percent." 23 N.Y. Unconsol. Laws § 8623.

The RSL has established a Rent Guidelines Board ("RGB") for New York City.[9] Pet. App. 24a. It

[8] The RSL also applies to certain New York City apartments in buildings of six or more units constructed between 1947 and 1969 notwithstanding a declaration of emergency, see N.Y.C. Admin. Code § 26-504(a)(1), and to apartments in buildings receiving certain tax benefits, see *id.* § 26-504(c).

[9] The RSL also provides for the creation of an RGB for each county outside of New York City in which a municipality has opted into the RSL's protections by declaring a housing emergency. See 23 N.Y. Unconsol. Laws § 8624(a).

comprises members representing the interests of landlords, tenants, and the general public and is charged with determining the amount of permissible rent increases for rent-stabilized renewal leases. Pet. App. 66a (citing N.Y.C. Admin. Code § 26-510(a)). The RSL requires the RGB, when making its decision, to consider multiple factors: the economic condition of the housing market, certain costs for which landlords were responsible, the returns generated to landlords, the housing supply, and the cost of living. *Id.* (citing N.Y.C. Admin. Code § 26-510(b)).

Consistent with the RSL, a landlord generally may charge rents up to the RGB-set maximum,[10] may raise rents due to improvements, may apply for hardship exemptions from rent limits due to inadequate rental income, and must offer renewal leases to tenants and their lawful successors. See N.Y.C. Admin. Code § 26-511(c); 23 N.Y. Unconsol. Laws §§ 8626(d), 8630(a)-(b).

The RSL does not require any landlord to offer vacant apartments for rent and does not prohibit any

[10] Since the enactment of the HSTPA, when a landlord offers an apartment for a "preferential rent" that is lower than the RGB-set maximum, such preferential rent becomes the baseline for future RGB-permitted rent increases until that tenant vacates the unit. See generally *Burrows v. 75-25 153rd St., LLC*, 215 A.D.3d 105, 111 n.5 (1st Dep't 2023).

landlord from terminating a tenancy through statutorily permitted means. Landlords may perform background checks on prospective tenants, N.Y. Real Prop. Law § 238-a(1)(b), and evict unsatisfactory tenants for unsatisfactory behavior, 9 N.Y.C.R.R. § 2524.3. Without DHCR's approval, a landlord who is a natural person may recover an apartment for the personal use of the landlord or her immediate family upon a showing of immediate and compelling necessity. N.Y.C. Admin. Code § 26-511(c)(9)(b); 23 N.Y. Unconsol. Laws § 8630(a). Any landlord may, with DHCR approval and on the condition of paying relocation expenses, decline to renew a lease to withdraw a building from the rental market for business use, rehabilitation, demolition, or gut renovation. See 9 N.Y.C.R.R. § 2524.5; *Peckham v. Calogero*, 54 A.D.3d 27, 31–32 (1st Dep't 2008).

The RSL does not prevent an owner from selling a regulated building. Although there are other non-RSL provisions of New York law restricting the conversion of residential buildings to cooperative or condominium ownership, see N.Y. Gen. Bus. Law § 352-eee, 352-eeee, these provisions apply to all such conversions and are not limited to rent-stabilized buildings. They derive from broader anti-fraud restrictions on real-estate syndication offerings. See *id.* § 352-e.

C. District Court Proceedings

On November 14, 2019, Petitioners filed suit in the United States District Court for the Eastern District of New York, asserting six claims under 42 U.S.C. § 1983: that the RSL, as amended by the HSTPA, **(1)** effects a *per se* physical taking on its face, **(2)** effects a *per se* physical taking as applied to the properties of all Petitioners except 177 Wadsworth LLC, **(3)** effects a regulatory taking on its face, **(4)** effects a regulatory taking as applied to the properties of all Petitioners except 177 Wadsworth LLC, **(5)** impaired Petitioners' existing leases in violation of the Contracts Clause, and **(6)** violates due process. See Pet. App. 230a–246a. Among other remedies, Petitioners sought the nullification of the RSL, as amended by the HSTPA, in its entirety, including its enabling statutes and every statute and regulation it comprises. See *id.* at 246a–247a.

The district court on September 30, 2020, granted Respondents' motions to dismiss all of Petitioners' claims except those of Petitioners Eighty Mulberry Realty Corporation and the Panagouliases for as-applied regulatory takings. See *id.* at 54a.

First, the district court held that the RSL does not on its face effect a *per se* physical taking of regulated properties. See *id.* at 33a–35a. The court reasoned that the RSL does not deprive regulated owners of

their rights to possess title to their properties or dispose of them through sale, and its use restrictions do not amount to *per se* physical takings under this Court's and the Second Circuit's precedents. *Id.* at 34a. The court rejected Petitioners' argument that their ability to rent their properties was unconstitutionally conditioned on forfeiting the right to compensation for a taking, reasoning that "no physical taking has occurred in the first place." *Id.* at 34a–35a.

Second, the district court held that the as-applied claims for *per se* physical takings were not adequately pled because limitations on "'off ramps' from the RSL regime," even as amended by the HSTPA, do not deprive any Petitioners of the rights to own, possess, and dispose of their properties. *Id.* at 35a.

Third, the district court held that Petitioners failed to state a facial regulatory-taking claim under either of their two theories. See *id.* at 35a–44a. The district court held that, to prevail on a facial claim, a plaintiff "must demonstrate that 'no set of circumstances exists under which the [RSL] would be valid.'" *Id.* at 37a (quoting *United States v. Salerno*, 481 U.S. 739, 745 (1987)). The district court explained that Petitioners failed to meet this standard because their allegations of economic harm and interference with reasonable investment-backed expectations were insufficient to satisfy, on a facial basis, the "ad hoc" standard of *Penn Central Transportation Co. v. City of New*

York, 438 U.S. 104 (1978). See Pet. App. 38a–41a. And the district court rejected as premature Petitioners' argument that the RSL's post-breach remedies, which allow a court to consider a tenant's economic hardship, facially effect a regulatory taking under the rule proposed by the dissent in *Pennell v. City of San Jose*, 485 U.S. 1 (1988). See Pet. App. 41a–44a.

Fourth, the district court held that only two sets of Petitioners, Eighty Mulberry Realty Corporation and the Panagouliases, had plausibly alleged sufficient interference with their investment-backed expectations to survive dismissal. *Id.* at 45a. The district court reasoned that these Petitioners had purchased their properties "at the dawn of the rent-stabilized era." *Id.* at 46a. The district court dismissed the remaining as-applied claims because, by the time those Petitioners bought their properties, "the RSL had been amended multiple times, and a reasonable investor would have understood it could change again." *Id.* at 48a.

Fifth, the district court held that the RSL satisfies due process. See *id.* at 49a–51a.

Sixth, the district court held that the HSTPA did not violate Petitioners' rights under the Contracts Clause. See *id.* at 51a–54a.

After the district court denied Petitioners' motion for partial final judgment on the dismissed claims, *id.*

at 57a–58a, Petitioners Eighty Mulberry Realty Corporation and the Panagouliases voluntarily dismissed their surviving as-applied regulatory-takings claims with prejudice, *id.* at 59a, and the district court on March 5, 2021, entered final judgment on all of Petitioners' claims, *id.* at 60a.

D. Second Circuit Proceedings and the Instant Petition

Petitioners appealed the dismissal of only some of their claims,[11] and the Second Circuit affirmed. See *id.* at 1a–20a. Because "[m]any of the issues in this case are addressed in [the court's] opinion in *Community Housing*," the decision below "addresse[d] in detail only those issues that are unique to this case, namely [Petitioners'] claim that the RSL effects an as-applied physical and regulatory taking." *Id.* at 4a.

First, the court of appeals reiterated its holding from *Community Housing* that *Salerno* provides the governing "no set of circumstances" standard for a facial claim, and the court rejected as meritless Petitioners' argument that "subsequent cases … modified the standard for facial claims articulated in *Salerno*." Pet. App. 5a & n.1; see also *id.* at 72a.

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[11] Petitioners abandoned their Contracts Clause claims on appeal. See 2d Cir. Case No. 21-467, ECF No. 103, at 16 n.4.

Second, the court of appeals held, as it had in *Community Housing*, that Petitioners failed to adequately allege that the RSL effects a *per se* physical taking in all of its applications. See *id.* at 7a, 78a–79a. The court reasoned that, because Petitioners "*voluntarily* invite[d] third parties to use their properties, regulations of those properties are 'readily distinguishable' from those that compel invasions of properties closed to the public." *Id.* at 6a (quoting *Cedar Point Nursery v. Hassid*, 141 S. Ct. 2063, 2077 (2021)). The court further reasoned that "the RSL does not compel landlords 'to refrain in perpetuity from terminating a tenancy'" because the RSL "sets forth several bases on which a landlord may terminate a tenant's lease." *Id.* at 7a (quoting *Yee v. City of Escondido*, 503 U.S. 519, 528 (1992), and citing 9 N.Y.C.R.R. § 2524.3); see also *id.* at 79a–80a.

Third, the court of appeals held that Petitioners' as-applied physical taking claims were properly dismissed. *Id.* at 7a. The court reasoned that no Petitioner alleged "that the RSL forces them to place their properties into the regulated housing market, and it is well-settled that once an owner 'decides to rent his land to tenants, the government … may require the landowner to accept tenants he does not like.'" *Id.* (quoting *Yee*, 503 U.S. at 526–28, and citing *Heart of Atl. Motel Inc. v. United States*, 379 U.S. 241, 259–60 (1964)). The court of appeals further reasoned that

none of the Petitioners raising as-applied claims alleged that they had "exhausted all the mechanisms contemplated by the RSL that would allow a landlord to evict current tenants." *Id.* at 8a.

Fourth, the court of appeals held that Petitioners' "facial regulatory taking claim fails for the same reason as did the facial regulatory taking claim in *Community Housing*: it fails plausibly to allege that 'no set of circumstances exists under which the [RSL] would be valid.'" *Id.* at 9a (quoting *Rent Stabilization Ass'n*, 5 F.3d at 595); see also *id.* at 82a–88a. The court reasoned that "[t]he economic impact of the RSL on the various landlords cannot be ascertained on a collective basis, as it necessarily varies among properties." *Id.* at 9a.

Fifth, the court of appeals held that Petitioners' as-applied regulatory taking claims were "unripe because [Petitioners] failed to avail themselves of the remedial provisions in the RSL that permitted them to apply for hardship exemptions." *Id.* at 9a–10a. The court further held that, in any event, Petitioners "failed to sufficiently allege that the *Penn Central* factors establish that, as applied to them, the RSL is unconstitutional." *Id.* at 11a. The court reasoned that (1) Petitioners failed to plausibly allege economic impacts from the RSL of the magnitude required to satisfy *Penn Central*; (2) Petitioners failed to demonstrate reasonable expectations that the RSL's use

restrictions would not adversely affect them when they purchased their properties in the 2000s; and (3) the RSL, as amended by the HSTPA, does not have the character of a taking. See *id.* at 11a–17a. And the court of appeals noted that the fatal defects in Petitioners' as-applied claims independently doomed their facial claim. *Id.* at 17a n.6.

Sixth, the court of appeals rejected, as it had in *Community Housing*, Petitioners' due process claim. *Id.* at 17a–18a.

Petitioners seek this Court's review only as to the Second Circuit's rejection of their facial claims for physical and regulatory takings; the as-applied claims of Petitioners 74 Pinehurst LLC, 141 Wadsworth LLC, Eighty Mulberry Realty Corporation, and the Panagouliases for physical takings; and the as-applied claims of Petitioners 74 Pinehurst LLC and 141 Wadsworth LLC for regulatory takings. See Pet. i, 9–11. Petitioners do not seek review of the Second Circuit's rejection of their due process claim.

REASONS FOR DENYING THE PETITION

Petitioners argue that the RSL's regulation of the bases on which landlords may evict rent-stabilized tenants or decline to renew their leases effect, facially and as applied to all but one Petitioner, *per se* physical takings under *Cedar Point Nursery v. Hassid*, 141 S.

Ct. 2063 (2021), and *Heights Apartments, LLC v. Walz*, 30 F.4th 720 (8th Cir. 2022). Because the decision below is consistent with *Cedar Point* and does not conflict with *Heights Apartments*, review is unwarranted.

Petitioners also argue that the decision below either misapplied the regulatory-taking standard set forth in *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104, 124 (1978), or, in the alternative, that this Court should overhaul or discard the *Penn Central* standard. Because the Second Circuit faithfully applied the *Penn Central* standard to Petitioners' facial and as-applied regulatory-taking claims, and this Court has repeatedly reaffirmed the *Penn Central* standard, including in *Cedar Point*, review is unwarranted.

Moreover, this case is a particularly bad vehicle to address any Takings Clause questions purportedly raised by the RSL. Petitioners seek overbroad relief invalidating New York's entire rent-stabilization regime based on a handful of provisions and without identifying a concrete and particularized injury fairly traceable to any provision. Their facial challenges conflate several statutes and fail to establish that there is no circumstance under which any of those statutes would be valid. To the extent Petitioners even have standing to challenge provisions of the RSL, their claims are unripe because they have not attempted to

use the RSL's available options for relief. Petitioners' effort to invalidate a municipal regulation that has evolved—at times in favor of landlords and at times in favor of tenants—in response to more than a century of changing local economic conditions should be rejected.

I. The Second Circuit's Physical Takings Analysis Does Not Warrant Review

"When the government physically acquires private property for a public use, the Takings Clause imposes a clear and categorical obligation to provide the owner with just compensation." *Cedar Point*, 141 S. Ct. at 2071. "When the government, rather than appropriating private property for itself or a third party, instead imposes regulations that restrict an owner's ability to use his own property, a different standard applies." *Id.* The Second Circuit held, based on the "well settled" and "long line of consistent authority" from this Court, that the RSL does not, facially or as applied, effect a categorical physical taking. Pet. App. 6a–7a; see also *id.* at 79a. The decision below does not create a conflict with any other circuits, and it is correct.

A. The Decision Below Does Not Conflict with Any Other Circuit

Petitioners try to manufacture a split between the Second and Ninth Circuits, on the one hand, and the

Eighth Circuit, on the other. They pretend that the Second Circuit below and the Ninth Circuit in *Kagan v. City of Los Angeles*, 2022 WL 16849064 (9th Cir. Nov. 10, 2022), upheld "laws that prevent owners from reclaiming possession of their properties following expiration of a lease." Pet. 15–16. From this premise, Petitioners conclude that their "physical-takings claims would have been allowed to proceed if they were brought in the Eighth Circuit" because *Heights Apartments, LLC v. Walz*, 30 F.4th 720 (8th Cir. 2022), purportedly "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." Pet. 2. Petitioners are wrong for numerous reasons.

Petitioners mischaracterize the rent regulations below and at issue in *Kagan*. See Pet. 14–16. Far from "prevent[ing] owners from reclaiming possession of their properties following expiration of a lease," Pet. 15, the RSL and the rent regulation in *Kagan* provide numerous means for an owner to do so. Under the RSL, a landlord may evict a tenant who does not pay rent, violates the lease, commits a nuisance, or uses the apartment for unlawful purposes.[12] 9 N.Y.C.R.R.

[12] Petitioners complain that N.Y. Real Prop. Law § 753 "authorizes courts to stay [an] eviction for a full year *after* determining that the tenant breached." Pet. 6. But § 753 is not part of the RSL

§ 2524.3. A landlord may also **(1)** decline to renew a lease if the owner or an immediate family member has an immediate and compelling need to occupy the apartment, N.Y.C. Admin. Code § 26-511(c)(9)(b); **(2)** withdraw an apartment from the rental market for "use in connection with a business which he or she owns and operates," 9 N.Y.C.R.R. § 2524.5(a)(1)(i); **(3)** decline to renew a lease if the apartment is not the tenant's primary residence, *id.* § 2524.4(c); **(4)** demolish or gut renovate a building (with payment of relocation expenses), *id.* § 2524.5(a)(2), (3); *Peckham*, 54 A.D.3d at 31–32; **(5)** withdraw a building from the rental market because of a safety hazard that would cost more than the building's worth to repair, 9 N.Y.C.R.R. § 2524.5(a)(1)(ii); **(6)** convert (through sale) rental apartment buildings to condominiums or cooperatives with purchase agreements from at least fifty-one percent of tenants, HSTPA Part N (codified at N.Y. Gen. Bus. L. § 352-eeee); or **(7)** elect not to offer a regulated apartment for rent upon vacancy. Likewise, in *Kagan*, the rent regulation at issue "allow[ed] at-fault evictions, such as evictions for creating a nuisance, breaking the law, or failing to pay rent, and grants landlords the right to end a protected

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and extends to *any* eviction. § 753(1). Petitioners also ignore that a stay is permitted only if the holdover tenant deposits the necessary rent, and is not permitted if the holdover tenant is objectionable or breached the lease. *Id.* § 753(2)-(4).

tenancy by removing the entire property from the rental market with one year's notice." *Kagan*, 2022 WL 16849064, at *1 (citations omitted). Thus, under both laws, owners retained ample means to stop inviting occupation—i.e., to stop being a landlord.

Although the Eighth Circuit in *Heights* upheld a physical-takings claim, the different outcomes do not reflect the existence of a conflict among the circuits, but rather the vast differences between the statutes at issue. *Heights* concerned a COVID-19 eviction moratorium banning virtually all evictions—including for rent non-payment or other material lease breaches. *Heights*, 30 F.4th at 725. The Eighth Circuit thus held that the state engaged in a physical taking by "forc[ing] landlords to accept the physical occupation of their property regardless of whether tenants provided compensation." *Id.* at 733. As noted above, neither the RSL nor the law in *Kagan* imposes such a requirement, in addition to providing numerous other avenues to end a tenancy.

Thus, nothing in the decision below conflicts with the Eighth Circuit's ruling that the state may not force a landlord to permit a tenant to occupy a space rent-free or after a tenant has materially violated the terms of their lease. The Eight Circuit concluded the law at issue in *Heights* went far beyond the bounds permitted by this Court's precedent. The RSL (and the

law in *Kagan*) does not. There is no conflict among the circuits, much less a conflict justifying review.

B. The Decision Below Is Correct

"The government effects a physical taking only where it *requires* the landowner to submit to the physical occupation of his land." *Yee v. City of Escondido*, 503 U.S. 519, 527 (1992) (emphasis in original). No landlord is compelled by the RSL to offer a vacant unit for rent. Petitioners cannot, and do not, contest that all regulated landlords voluntarily invited tenants onto their properties in the first place. Rather, Petitioners argue that "the RSL's lease-renewal provisions deprive owners of the right to exclude and appropriates that right for the enjoyment of third parties by compelling owners to enter into renewal leases when they would rather use the property for other purposes." Pet. 18–19 (cleaned up). Petitioners conclude that the Second Circuit, in holding that the RSL does not appropriate the right to exclude, misapplied this Court's right to exclude jurisprudence. Such a call for error correction is no basis for granting review, see Sup. Ct. R. 10, and, in any event, Petitioners are wrong.

The Second Circuit's decision fully comports with this Court's precedent. In *Yee*, this Court rejected a challenge to a rent regulation under which landlords could refuse to renew a lease only if they changed the

use of their property. Explaining that "[t]he government effects a physical taking only where it *requires* the landowner to submit to the physical occupation of his land," the Court noted that "[p]etitioners' tenants were invited by petitioners, not forced upon them by the government." *Yee*, 503 U.S. at 527–28. Although the landlords argued that changing the use of their property was "in practice a kind of gauntlet," the Court held that the difficulty of running such a gauntlet was of "no occasion" to the case "[b]ecause petitioners d[id] not claim to have run that gauntlet." *Id.* at 528 (internal quotation marks omitted).

Petitioners' argument in this case is the same one that *Yee* rejected. Landlords may refuse to renew a lease for numerous reasons under the RSL, including to reclaim a unit for personal use or the use of their family, to change the use of the building from rental to another commercial purpose for the landlord, to demolish, gut, or renovate the property—at which point the landlord can even build new, unregulated apartments—to remove the property from the rental market if there is a safety hazard that would cost more than the building is worth to repair, and to remove a tenant who has breached his or her lease. See *supra*

pp. 17–19.[13] No Petitioner has availed itself of any of these options, nor do any allege that they wish to stop inviting physical occupation by offering their apartments for rent. Petitioners' abstract complaint that the options are too onerous, Pet. 6 n.1,[14] fails under *Yee* because "this case provides no occasion to consider how the procedure has been applied to petitioners' property," 503 U.S. at 528.

Consistent with *Yee*, the Second Circuit rejected Petitioners' argument that the RSL "inflict[s] physical takings" as a condition of participating in the residential rental market, Pet. 19, reasoning that "no physical taking has occurred in the first place," Pet. App. 81a n.24 (quoting *id.* at 35a); see also *Yee*, 503 U.S. at 532 (rejecting identical argument "because there has

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[13] Petitioners' claim that they have "no control over *any* of the grounds" for eviction or non-renewal, Pet. 22–23, is both false, see *supra* pp. 17–19, and constitutionally irrelevant.

[14] Although Petitioners now claim that non-party Maria Panagoulias "wishes to return to the family's apartment building, and the Panagouliases wish to set aside an apartment for her use," Pet. 7–8, their Complaint alleged only that Maria Panagoulias "has considered occupying a rent-stabilized unit in her family's building in Long Island City, New York, and remains interested in doing so," Pet. App. 187a–188a. Regardless, the Pangouliases could have sought to recover that apartment for family use, in addition to numerous other options available to them, but chose not to do so. See *supra* pp. 17–19.

simply been no compelled physical occupation giving rise to a right to compensation that petitioners could have forfeited").

Petitioners erroneously argue that the Second Circuit's decision contravened *Cedar Point*. But *Cedar Point* "evaluated a regulation granting labor organizations the 'right to take access' to an agricultural employer's property for up to 120 days a year to solicit support for unionization." Pet. App. 77a (quoting *Cedar Point*, 141 S. Ct. at 2069). That regulation "granted a right to invade the grower's property." *Id.* Such "regulations granting a right to invade property closed to the public" are "readily distinguishable" from regulations—like the RSL—limiting "how a business generally open to the public may treat individuals on the premises." *Cedar Point*, 141 S. Ct. at 2077. And Petitioners' contention that "[p]rivately owned apartments" are not "business[es] generally open to the public," Pet. 14, is both wrong—any property offered for rent becomes open to members of the public to occupy as tenants[15]—and misses the point. "[I]t is the

[15] A tenant has "the sole and exclusive right to undisturbed possession," *Camatron Sewing Mach., Inc. v. F.M. Ring Assocs, Inc.*, 179 A.D.2d 165, 168 (1st Dep't 1992), and a landlord has "no right to enter upon the demised premises, and take possession, to the exclusion of the tenant," *Smith v. Kerr*, 108 N.Y. 31, 34–35 (1888). Tenants are also entitled to invite additional members of the public to live with or visit them. See N.Y. Real Prop. Law

invitation," not the number of people that access the property, "that makes the difference." *FCC v. Fla. Power Corp.*, 480 U.S. 245, 252 (1987). Whereas labor organizers were never invited onto the property in *Cedar Point*, the entire point of being a landlord is to invite tenant occupation.

Finally, Petitioners argue incorrectly that *Yee* espoused a "voluntariness rationale" that was subsequently overruled. Pet. 23. *Yee* recognizes the commonsense point that, because "[t]he government effects a physical taking only where it *requires* the landowner to submit to the physical occupation of his land," and the very purpose of being a landlord is to "voluntarily open … property to occupation by others," there is no taking when a landlord rents property. 503 U.S. at 527, 531. As Petitioners concede, moreover, there is no constitutional right to discriminate among tenants. See Pet. 20 n.4.

II. The Second Circuit's Regulatory Takings Analysis Also Does Not Warrant Review

"To determine whether a use restriction effects a taking, this Court has generally applied the flexible test developed in *Penn Central*." *Cedar Point*, 141 S.

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§ 235-f(2)-(4); *Fed. Waste Paper Corp. v. Garment Ctr. Capitol*, 268 A.D. 230, 234 (1st Dep't 1944), *aff'd*, 294 N.Y. 714 (1945); accord Restatement (Second) of Torts § 189 (1965).

Ct. at 2072. "Primary among those factors are '[t]he economic impact of the regulation on the claimant and, particularly, the extent to which the regulation has interfered with distinct investment-backed expectations.'" *Lingle v. Chevron U.S.A. Inc.,* 544 U.S. 528, 538–39 (2005) (quoting *Penn Cent.*, 438 U.S. at 124). "In addition, the 'character of the governmental action'—for instance whether it amounts to a physical invasion or instead merely affects property interests through 'some public program adjusting the benefits and burdens of economic life to promote the common good'—may be relevant in discerning whether a taking has occurred." *Id.* at 539 (quoting *Penn Cent.*, 438 U.S. at 124).

Although this Court has for decades consistently applied the *Penn Central* standard,[16] and although *Cedar Point* reaffirmed its vitality, 141 S. Ct. at 2072, Petitioners nonetheless seek to use this case as a vehicle to "overhaul[] or discard[]" the standard because

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[16] E.g., *Murr v. Wisconsin,* 582 U.S. 383, 393, 405 (2017); *Ark. Game & Fish Comm'n v. United States*, 568 U.S. 23, 37 (2012); *Tahoe-Sierra*, 535 U.S. at 342; *Palazzolo*, 533 U.S. at 632; *Babbitt v. Youpee*, 519 U.S. 234, 243 & n.3 (1997); *Hodel v. Irving*, 481 U.S. 704, 713–14 (1987); *Connolly v. Pension Ben. Guar. Corp.*, 475 U.S. 211, 224–25 (1986); *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1005 (1984); *PruneYard Shopping Ctr. v. Robins*, 447 U.S. 74, 83 & n.7 (1980); *Andrus v. Allard*, 444 U.S. 51, 65 (1979).

they failed to satisfy it, Pet. 31. But Petitioners fail to establish any circuit conflict as to any of the *Penn Central* factors, and the Second Circuit faithfully applied this Court's precedents, so there is no good reason for review.

A. The Decision Below Does Not Conflict with Any Other Circuit

Petitioners argue that the Second Circuit's application of the *Penn Central* factors in the decision below conflicts with the law in other circuits. Pet. 26–29. But Petitioners attack an imagined decision that the Second Circuit did not write.

First, Petitioners ignore the Second Circuit's holding that their "facial regulatory taking claim fails for the same reason as did the facial regulatory taking claim in *Community Housing*" because "[t]he economic impact of the RSL on the various landlords cannot be ascertained on a collective basis, as it necessarily varies among properties," and "[i]t is not possible to generalize as to who was harmed, when, and to what extent." Pet. App. 9a. Petitioners do not identify any decision from any other court even remotely suggesting that the *Penn Central* standard could be satisfied on a facial basis as to a 50-year-old regulatory regime governing nearly a million apartments.

Second, Petitioners also ignore the Second Circuit's holding that the as-applied challengers' failure to seek available hardship exemptions prevented the court from "assess[ing] whether the RSL does, in fact, lead to a gross positive or negative economic impact on them." Pet. App. 13a. Petitioners do not point to any circuit split regarding this Court's repeated "admonition that 'the constitutionality of statutes ought not be decided except in an actual factual setting that makes such a decision necessary.'" *Pennell v. City of San Jose*, 485 U.S. 1, 10 (1988) (quoting *Hodel v. Va. Surface Mining & Reclamation Assn., Inc.*, 452 U.S. 264, 294–95 (1981)).

Third, Petitioners mischaracterize how the Second Circuit analyzed the economic impact of the RSL on the as-applied challengers, 74 Pinehurst LLC and 141 Wadsworth LLC.[17] While Petitioners contend that the Second Circuit applied "a rigid rule" for assessing economic impact, Pet. 26, the court actually held that the "as-applied challengers ha[d] not plausibly alleged that the economic impact factor tilts in their favor," Pet. App. 12a. Petitioners argue that the court should have aggregated, as they do, the alleged pre-2019 disparities between the average values of regulated and unregulated buildings with the alleged post-2019

[17] The other Petitioners either did not assert as-applied claims or abandoned them. See Pet. App. 11a n.2.

effects of the HSTPA on the values of the two buildings owned by the as-applied challengers. See Pet. 8, 26, 29; Pet. App. 198a. But Petitioners "did not challenge the RSL as it existed before [the 2019] amendments," Pet. 9, so only post-2019 changes in value are relevant to their claims. Regardless, to the extent "rent-stabilized apartment buildings were worth only about half as much as unregulated buildings" before 2019, *id.*, the as-applied challengers received that discount when they purchased their buildings in 2003 and 2008, Pet. App. 171a. Petitioners are simply mistaken in arguing that the Second Circuit "insiste[d] on a near-total destruction of value" to satisfy the economic-impact factor. Pet. 26.[18]

The cases cited by Petitioners (at 26–27) are not to the contrary. In *Heights*, the Eighth Circuit held that executive orders prohibiting evictions "even for tenants who materially violated a lease term … or failed to pay rent" plausibly effected a regulatory taking by "depriv[ing the landlord] of receiving rental income and managing its property according to the leases'

[18] Petitioners contend that the Second Circuit "departed from" the law in other circuits by requiring allegations of lost revenues or profits, Pet. 27 n.5, but the Second Circuit held, consistent with the law in other circuits, that "loss of profit—much less loss of a reasonable return—alone [cannot] constitute a taking," Pet. App. 12a (quoting *Park Ave. Tower Assocs. v. City of New York*, 746 F.2d 135, 139 (2d Cir. 1984)).

terms and Minnesota law." 30 F.4th at 725, 734. But the RSL expressly permits any landlord to evict a tenant for non-payment of rent or material breach of the lease. See 9 N.Y.C.R.R. §§ 2524.1(a), 2524.3(a). In *Yancey v. United States*, 915 F.2d 1534 (Fed. Cir. 1990), the court held that there is no "automatic numerical barrier" to pleading a regulatory taking and that a quarantine causing a 77% diminution in the value of a farmer's turkey stock supported a taking claim. *Id.* at 1539–41. Here, the Second Circuit did not apply any numerical barrier, and Petitioners alleged that the HSTPA caused only "20 to 40 percent" diminution in their property values. Pet. App. 198a.

Fourth, Petitioners contend that the Second Circuit applied a "categorical rule" precluding the showing of "reasonable investment-backed expectations" in a regulated field. Pet. 27. In reality, the decision below is grounded in the facts of this case. Because the as-applied challengers, 141 Wadsworth LLC and 74 Pinehurst LLC, purchased their properties in 2003 and 2008, respectively, Pet. App. 171a, the "key question" posed by the Second Circuit was whether either of them "could have expected," at the time of purchase, for "the RSL to include the type of restrictions they now claim constitute a taking," *id.* at 13a. Based on the decades of changes to the RSL, some favoring landlords and others favoring tenants, the Second Circuit concluded "that the investment-backed

expectations factor fail[ed] to support the as-applied regulatory takings challenge." *Id.* at 15a.

Petitioners' cited cases (at 27–28) are either factually inapposite, see *Heights*, 30 F.4th at 734 ("[A]s the district court noted, no landlord could have reasonably expected regulations of the duration and extent present in the [executive orders]."); *Heights Apartments, LLC v. Walz*, 510 F. Supp. 3d 789, 813 (D. Minn. 2020) ("[N]o reasonable landlord could have expected a once-in-a-century pandemic and the ensuing restrictions on evictions."); *Cienega Gardens v. United States*, 331 F.3d 1319, 1346–49 (Fed. Cir. 2003) (finding that owners who entered into federally backed mortgage agreements expressly entitling them to prepay their mortgages after twenty years and thereby exit the attendant federal program reasonably expected not to have that right nullified by the federal government), or turned on the separate legal issue of whether the plaintiff held a cognizable property interest in the first place, see *Andrews, Tr. of Gloria M. Andrews Tr. v. City of Mentor*, 11 F.4th 462, 473 (6th Cir. 2021); *Air Pegasus of D.C., Inc. v. United States*, 424 F.3d 1206, 1219 (Fed. Cir. 2005).

Fifth, Petitioners' argument that the Second Circuit's character analysis conflicts with *Cienega Gardens* and *Heights*, Pet. 28–29, cannot be squared with the significant differences between the RSL and the governmental actions at issue in those cases. Unlike

the blanket eviction moratorium at issue in *Heights*, the RSL "sets forth several bases on which a landlord may terminate a tenant's lease, such as for failing to pay rent" or "violating the lease." Pet. App. 7a; see also *id.* at 79a. And the RSL bears no resemblance to the federal housing program at issue in *Cienega Gardens*, in which owners entered into forty-year mortgage agreements that, pursuant to a federal program, expressly required them to provide low-income housing for the duration of the mortgages and expressly permitted them to prepay those mortgages after twenty years. *Cienega Gardens*, 331 F.3d at 1330. At no point has the RSL granted landlords such "contractual rights to prepay their mortgages and thereby exit the housing program[]." *Id.* at 1340. Nor has the legislature here "nullif[ied]" landlords' exit options. *Id.* at 1327. The RSL expressly permits landlords to lawfully exit the residential rental market and no longer be subject to rent stabilization. See Pet. App. 82a, 125a–126a, 151a–153a, 156a–162a.

The decision below thus does not conflict with any other circuit's application of the *Penn Central* test.

B. The Decision Below Is Correct

Unable to establish a circuit split, Petitioners argue that the decision below is incorrect. See Pet. 29–34. But mere error correction is not among the "compelling reasons" for granting certiorari. Sup. Ct. R. 10.

In any event, the decision below faithfully applied this Court's regulatory taking precedents.

First, the Second Circuit correctly held that Petitioners' facial takings claims failed to "establish that no set of circumstances exists under which the [RSL] would be valid," Pet. App. 5a (quoting *Salerno*, 481 U.S. at 745), and failed to allege the collective harms necessary for the court to "engage in [the] essentially ad hoc, factual inquiries" required by this Court's precedents, *id.* at 8a–9a (quoting *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Plan. Agency*, 535 U.S. 302, 326 (2002)).[19]

Second, the decision below correctly applied this Court's precedents to hold that the as-applied challengers' failure to seek hardship exemptions from rent limits rendered their claims unripe. See *id.* at 10a–11a (citing *Pakdel v. City and County of San Francisco*, 141 S. Ct. 2226, 2231 (2021); *Suitium v. Tahoe Regional Planning Agency*, 520 U.S. 725, 739 (1997)). Petitioners bare assertions that the exemptions are "*de facto* unavailable," Pet. App. 217a, and "rarely granted," Pet. 33, do not ripen their claims. Petitioners attempt to change the subject to the RSL's

[19] Although Petitioners argued below that "subsequent cases … modified" the *Salerno* standard, *id.* at 5a n.1, they have abandoned that argument by not raising it here.

restrictions on denying renewal leases and reclaiming apartments for personal use, Pet. 33–34, but those provisions are not material to the economic impact of the RSL. Moreover, renewal leases have always been required, see *supra* p. 4, and the as-applied challengers' inability to qualify for personal-use evictions "because they own property through business entities," Pet. 8, is a problem of their own making.

Third, the Second Circuit correctly held that the as-applied challengers failed to satisfy the *Penn Central* standard. Pet. App. 11a. As discussed above, see *supra* pp. 26–27, the Complaint did not adequately allege economic impact on the as-applied challengers' properties. Petitioners argue (at 30) that the Second Circuit's analysis of investment-backed expectations "cannot be reconciled with" *Palazzolo v. Rhode Island*, 533 U.S. 606 (2001), but *Palazzolo*'s controlling concurrence held that "the timing of the regulation's enactment relative to the acquisition of title is []material," *Tahoe-Sierra*, 535 U.S. at 336 (quoting *Palazzolo*, 533 U.S. at 633 (O'Connor, J., concurring)). Petitioners' passing effort (at 31) to revive Justice Scalia's *Pennell* dissent ignores that it applied the "substantially advance[s]" test, 485 U.S. at 15, that was later unanimously foreclosed by *Lingle*, 544 U.S. at 542–43.

Having failed to allege a claim under *Penn Central*, Petitioners urge the Court to discard *Penn Central*

altogether. Their claim that "[t]he argument for stare decisis is weak" as to the *Penn Central* standard, Pet. 31–32, overlooks decades of this Court's consistent application of the standard.[20] And Petitioners' reliance on the original understanding of the Takings Clause, Pet. 32, does not help them because, "[b]efore the 20th century, the Takings Clause was understood to be limited to physical appropriations of property," *Cedar Point*, 141 S. Ct. at 2071.

III. The Case Is a Poor Vehicle for Addressing the Parameters of the Takings Clause

Petitioners seek overbroad relief for the narrow "injuries" they allege, manufacturing a legal controversy out of political disagreements. The Petition does not identify what relief Petitioners are seeking at this stage, but below, Petitioners sought wholesale invalidation of the RSL. Pet. App. 247a. As set forth above, see *supra* pp. 7–9, the RSL comprises a wide variety of provisions regarding rent increases, evictions, renewals, and changes in use of buildings—including numerous landlord-friendly provisions. Yet Petitioners' asserted injuries are solely a desire to reclaim apartments for personal use—which would be a basis to challenge, at most, one provision of the RSL—and a general allegation of "grievous financial harm," Pet.

[20] See *supra*, note 16.

8, which is far too general to establish standing to challenge every provision of the RSL. "[A] plaintiff must demonstrate standing separately for each form of relief sought," but Petitioners attempt no such showing as to each aspect of the RSL. *DaimlerChrysler v. Cuno*, 547 U.S. 332, 352 (2006) (quoting *Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 185 (2000)).

Petitioners' allegations are also insufficiently particularized for standing. For example, although the as-applied challengers have made vague, "generalized" claims that the RSL requires "below-market rates" and "preferential rents" or "jeopardizes" their ability to obtain future mortgages, none of these allegations rises to the level of a concrete injury but instead provides only speculation. Pet. App. 12a; see *DaimlerChrysler*, 547 U.S. at 346. At most, Petitioners provide general claims of the effect of the RSL on market conditions but no specific details of the law's effect on the value of their own properties, or any particular property at all. See Pet. 8, 29. Their Complaint is littered with allegations about "the approximate value per square foot of a rent-stabilized apartment building" but nothing about the value of their own properties. Pet. App. 234a.

Each Petitioners' claim that they cannot recover a property for personal use likewise fails on standing grounds, because each alleged injury is self-inflicted.

See *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 418 (2013). Several Petitioners failed to comply with the RSL's procedural requirements for reclaiming rental properties for personal use. See Pet. 8; Pet. App. 187a–188a. Other Petitioners are business entities asserting only injuries to their equity owners, who are not even property owners subject to the RSL. See Pet. 8. These Petitioners' claims that their owners cannot reclaim apartments for personal use are based entirely on the owners' decision to hold their properties through corporate entities. See *id.*

Petitioners' case is not even ripe, which means Petitioners could achieve relief without any judicial intervention, much less review by this Court. Pet. App. 9a–11a. The Petitioners who raise as-applied claims have not exhausted their means to end existing tenancies or raise rents. They could have applied (and still may apply) for hardship exemptions under a variety of provisions of state and city law. See N.Y.C. Admin. Code § 26-511(c)(6)-(6a); 23 N.Y. Unconsol. Laws § 8626(d)(4)-(5). Petitioners previously asserted various reasons that hardship exemptions are "*de facto* unavailable for many properties subject to a mortgage," Pet. App. 217a, but this claim is based on speculation about landlords in general rather than Petitioners in particular, see, e.g., *id.* at 217a (alleging that "apartments seldom generate less net income than in 1970"); *id.* at 219a ("On information and

belief, the restrictions on the comparative and alternative hardship processes result in few applications being filed, and even fewer being granted."). Under these circumstances, Petitioners' as-applied claims are unripe and inappropriate for judicial review, particularly by this Court.

Petitioners' facial challenge to the RSL is also unsuited for adjudication by this Court. To succeed, Petitioners would have to "establish that no set of circumstances exists under which the [RSL] would be valid." *Salerno*, 481 U.S. at 745. Petitioners cannot surmount this burden because, as set forth above, see *supra* pp. 8–9, 17–20, there are abundant circumstances in which even Petitioners cannot dispute the RSL does not even colorably raise constitutional questions under Petitioners' view of takings jurisprudence. Nor have they disputed the Second Circuit's recognition that the different circumstances of different landlords—such as those who acquired properties before the RSL took effect and those who did so after the RSL had been repeatedly amended—frustrate a facial takings analysis. See Pet. App. 14a. This facial challenge presents a burden Petitioners cannot meet and demands that this Court exhaustively review every application of the RSL, rendering it a poor and unworkable vehicle for review of any constitutional question.

More generally, a local housing scheme that implicates a variety of state laws that evolved through the

political process over 100 years to manage shifting municipal conditions is a poor case for review. As set forth above, see *supra* pp. 2–9, rent stabilization in New York is governed by a patchwork of statutes that have been repeatedly amended and supplemented in the push-and-pull of politics and in light of legislative findings regarding economic conditions in New York City and New York State. Sometimes those changes have favored landlords; other times they have favored tenants. The Petitioners' attempt to "to short circuit the democratic process" through a facial challenge should be rejected. *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 451 (2008). As the Petition concedes, forthcoming legislation may further amend the RSL. Pet. 35.

Finally, Petitioners note that other rent-stabilization laws are purportedly evolving nationwide. If other states adopt statutes similar to the RSL, and those laws are then challenged as takings, other circuits will have the opportunity to address the issues presented here and either coalesce around the Second Circuit's decision or reach differing conclusions. If a conflict among the circuits emerges, this Court can then consider whether its review is appropriate. At this time, however, review is unwarranted.

* * *

CONCLUSION

The Petition for a writ of certiorari should be denied.

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