

No. \_\_\_\_\_

IN THE SUPREME COURT OF THE UNITED STATES

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CAMILLO M. SANTOMERO AND DENISE C.R. SANTOMERO,  
*Petitioners*

v.

TOWN OF BEDFORD, NEW YORK, ET AL.,

\_\_\_\_\_  
***APPLICATION FOR AN EXTENSION OF TIME TO FILE A PETITION FOR  
WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF  
NEW YORK, APPELLATE DIVISION: SECOND JUDICIAL DEPARTMENT***  
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To the Honorable Sonia Sotomayor, Associate Justice of the United States and  
Circuit Justice for the Second Circuit:

Pursuant to 28 U.S.C. § 2101(c) and Rules 13.5, 22, and 30.2 of this Court,  
Petitioners Camillo M. Santomero and Denise C.R. Santomero respectfully request a  
30-day extension of the time, to and including Friday, January 13, 2023, in which to  
file a petition for a writ of certiorari in this Court. The New York Supreme Court,  
Appellate Division entered judgment on April 20, 2022. A copy of the Appellate  
Division’s opinion and order is attached as Exhibit 1. The New York Court of Appeals  
denied leave to appeal on September 15, 2022, and a copy of the New York Court of  
Appeals’ order is attached as Exhibit 2. This Court’s jurisdiction would be invoked  
under 28 U.S.C. § 1257(a). Without an extension, Petitioners’ time to petition for writ

of certiorari would expire on Wednesday, December 14, 2022. This application is being filed more than 10 days before that date.

This case presents an important question about the scope of the protection that the Due Process Clause affords to real property interests.

Petitioners own real property situated in the Town of Bedford, New York (the “Town”). Pursuant to Chapter 71 of the Town Code, the Town regulates the alteration and demolition of buildings deemed to have “historic” character. In 2017, after years of unevenly enforcing a prior historic-preservation law, the Town enacted a new graduated system of regulations. Professional consultants retained by the Town prepared a survey placing homes into one of three categories: “Individually Significant,” “Contributing,” and “Other Historic Resource (Unregulated).” Petitioners’ home received a designation of “Individually Significant,” also called a “Tier 1” designation, meaning that it was subjected to the most onerous historic-preservation regulations. The Town’s 2017 law attached and incorporated the consultants’ survey of properties. Under the 2017 law, owners of Tier 1 properties, including Petitioners, must apply to the Town’s Historic Building Preservation Commission for approval before making any significant alteration to their property.

Petitioners brought suit, challenging, as relevant here, the lack of process they were afforded before the Town designated their home as a Tier 1 property for which alteration and demolition require Town approval. The Supreme Court of New York, Westchester County, issued an opinion and order ruling that the enactment of the 2017 Historic Building Preservation Law violated the Due Process Clause of the

Fourteenth Amendment.<sup>1</sup> The Supreme Court held that “the 2017 Law restricts property rights by, among other things, creating a permit review process for owners seeking to make significant alterations to their historic homes.” Ex. 3 at 8. But, despite imposing onerous restrictions on established property interests, it was “undisputed that the owners of \* \* \* properties already listed on the Survey were not afforded \* \* \* an individual hearing as to the merits of their [property’s] inclusion on the Survey.” Ex. 3 at 8. The New York Supreme Court thus remanded to the Town for individualized hearings, allowing Petitioners an opportunity to challenge the historic designation of their property.

The Town appealed, and the Appellate Division reversed. Relying on precedent from the New York Court of Appeals, the Appellate Division concluded that Petitioners had not shown that they have a constitutionally protected property interest “implicated” by the enactment of the 2017 Historic Building Preservation Law. Ex. 1 at 2. The Appellate Division thus remanded to the New York Supreme Court with instructions to enter judgment “declaring that the enactment of the 2017 [historic-preservation] law did not violate procedural due process.” Ex. 1 at 3. Petitioners sought leave to appeal in the New York Court of Appeals, but the Court of Appeals denied leave. Ex. 2.

Throughout this litigation, Petitioners have sought basic due process protections for their interest in their family home—a quintessential real property interest that qualifies as “property” protected by the Due Process Clause. The Town

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<sup>1</sup> A copy of that ruling is attached as Exhibit 3.

enacted a law that implicates well-established property rights by imposing onerous restrictions on Petitioners' ability to alter, renovate, or demolish their home. The New York courts' holding that the federal Due Process guarantee does not extend to a real property interest in one's home is a remarkable departure from this Court's cases and decisions of other courts. See *Washington ex rel. Seattle Title Tr. Co. v. Roberge*, 278 U.S. 116, 121 (1928) ("The right of [a landowner] to devote its land to any legitimate use is properly within the protection of the Constitution."); accord *Harris v. Cnty. of Riverside*, 904 F.2d 497, 502-503 (9th Cir. 1990) (property owner "entitled to constitutional procedural due process before [municipality] deprived him of [a] property interest" by changing classification of real property to require application before particular use); *Nasierowski Bros. Inv. Co. v. City of Sterling Heights*, 949 F.2d 890, 896 (6th Cir. 1991) (similar).

Undersigned counsel is working diligently, but respectfully submits that the additional time is necessary to complete an analysis of this case to assist Petitioners in deciding whether to file a petition for a writ of certiorari. Undersigned counsel of record was recently engaged for the first time at the certiorari stage. Despite diligent efforts, substantial work remains to complete review of the record and relevant legal authorities informing the analysis of the New York courts. This review is needed to inform Petitioners' decision about whether to seek certiorari, and, if so, to ensure that issues addressed in the petition are adequately presented for this Court's review.

Undersigned counsel of record has also faced numerous overlapping deadlines in other matters before this Court, during the time for preparation of a petition for

writ of certiorari in this case. Among other things, undersigned counsel was involved in preparing a brief in opposition filed on November 7, 2022 in this Court's case 22-115, is counsel of record responsible for preparing a brief in opposition filed on November 18, 2022 in this Court's case 22-256, and is counsel of record preparing a petition for writ of certiorari from a decision of the U.S. Court of Appeals for the Eleventh Circuit, due on December 22, 2022.

Wherefore, Petitioners respectfully request that an order be entered extending the time to file a petition for writ of certiorari up to and including Friday, January 13, 2023.

Respectfully submitted,



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November 23, 2022