No. 26-110

IN THE

Supreme Court of the United States

TEDFORD'S TENANCY, LLC,
Petitioner,

v.

CITY OF NEW YORK, NEW YORK, et al.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE DIVISION, SUPREME COURT OF NEW YORK, FIRST JUDICIAL DEPARTMENT

BRIEF IN OPPOSITION FOR STATE RESPONDENTS

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COUNTERSTATEMENT OF QUESTIONS PRESENTED

1. Whether petitioner's as-applied regulatory takings challenge to New York's Rent Stabilization Law is unripe due to petitioner's failure to pursue available exemptions from the law.

2. Whether petitioner has failed to allege that administrative relief would be futile where petitioner merely speculates that an exemption would not provide adequate relief.

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INTRODUCTION

For the past half century, New York State and New York City have administered the Rent Stabilization Law (RSL), which controls the pace of rent increases and governs the eviction of tenants for certain regulated apartments.[1] The RSL is a critical tool to combat the harms caused by rent profiteering in a tight housing market, including homelessness and economic instability. At the same time, the law ensures that property owners can earn a reasonable return.

Petitioner is the owner of a mixed-use apartment building in need of significant repairs after decades of neglect by petitioner and its former property manager. In this action, petitioner claims that the RSL has effected a regulatory taking as applied to its property because the law's limitations on rent increases supposedly will cause the property to operate at a loss after accounting for the expense of rehabilitating the property. New York Supreme Court, New York County dismissed plaintiff's claim as unripe because petitioner had not pursued administrative avenues for an exemption from the law, and alternatively concluded that the complaint failed to state a claim under *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104 (1978). Pet. App. 4a-13a. The Appellate Division, First Judicial Department affirmed (Pet. App. 1a-3a), and the New York Court of Appeals denied petitioner's motion for

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[1] This brief is submitted on behalf of respondents State of New York, Division of Housing and Community Renewal (the state agency that administers the RSL), and the Division's Commissioner RuthAnne Visnauskas. By agreement of the parties, the State of New York was dismissed from the action. The remaining respondents are separately represented.

leave to appeal that decision. Petitioner now seeks certiorari. The petition should be denied.

1. Petitioner chiefly asks this Court to review whether ripeness is a jurisdictional prerequisite for bringing a regulatory takings claim. But this case is a poor vehicle to consider that question for several reasons. First, petitioner never raised this issue below and, therefore, it was not addressed by the lower courts. This Court "ordinarily will not decide questions not raised or litigated in the lower courts." *City of Springfield v. Kibbe*, 480 U.S. 257, 259 (1987). Petitioner does not offer any reason to depart from that well-established practice here.

Second, the question is purely academic. Regardless of whether petitioner's claim was deemed unripe on prudential or jurisdictional grounds, dismissal was warranted under this Court's controlling precedents. In addition, petitioner does not challenge the First Department's alternative dismissal for failure to state a claim for relief. As a result, resolution of the jurisdictional nature of the final-decision inquiry will have no bearing on the outcome of petitioner's claim.

2. The questions presented by petitioner also do not warrant this Court's review because they involve the application of settled law and do not implicate a split in authority requiring this Court's intervention. Indeed, this Court recently affirmed the continued vitality of the requirement that a plaintiff at least seek a final decision from an administrative agency prior to bringing a takings challenge. In doing so, it emphasized that a court should not consider a regulatory takings claim where, as here, a plaintiff has not pursued administrative avenues for a variance, and questions remain about how the challenged regulation applies to the property in ques-

tion. *Pakdel v. City & County of San Francisco*, 594 U.S. 474, 478-80 (2021) (per curiam).

While petitioner points to some variation in the case law with respect to the "jurisdictional" or "prudential" label affixed to the ripeness inquiry, petitioner offers no compelling reason why that semantic dispute warrants this Court's review. Petitioner posits that if final-decision ripeness is deemed prudential, a dismissal on that basis would conflict with a federal court's obligation to hear a case once Article III jurisdiction is established. But that purported obligation of *federal* courts has no relevance here, where petitioner's claim was filed in *state* court.

3. Finally, there is no need for this Court to "clarify" that a property owner is not required to seek an exemption where doing so would be "futile." This Court has long made clear that "federal ripeness rules do not require the submission of . . . futile applications" with state agencies. *Palazzolo v. Rhode Island*, 533 U.S. 606, 626 (2001). The courts of appeals likewise uniformly recognize such a rule.

In a straightforward application of this Court's precedents, the First Department correctly concluded that petitioner could not invoke futility merely by complaining about the burdensome nature of the exemption process, or by speculating that the process might not provide complete relief. Petitioner's new contention that it was ineligible for any exemption raises purely case- and fact-specific issues that were never argued below and, thus, are inappropriate for certiorari review.

STATEMENT

A. Legal Background

1. The history of rent regulation in New York State dates to at least World War II, when labor shortages and other wartime forces precipitated an acute housing crisis.[2] At issue here is the system of rent stabilization, which operates by limiting the amount by which property owners may increase rents each year and imposing certain restrictions on evictions.[3]

In 1969, New York City adopted the Rent Stabilization Law (codified as amended at N.Y. City Admin. Code § 26-501 et seq.). In 1974, the New York Legislature enacted the Emergency Tenant Protection Act of 1974 (ETPA), which was substantially similar to the City's 1969 law and extended the basic framework of rent stabilization to several additional counties. *See* Ch. 576, sec. 4, 1974 N.Y. Laws 1510, 1512-33 (reproduced as amended at N.Y. Unconsol. Law § 8621 et seq. (McKinney)); *La Guardia v. Cavanaugh*, 53 N.Y.2d 67, 74-76 (1981). As amended, the City's 1969 law and the ETPA provide the basic framework for the City's current rent stabilization system and are collectively referred to as the Rent Stabilization Law (RSL).[4]

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[2] N.Y. Div. of Hous. & Cmty. Renewal, *Rent Regulations After 50 Years: An Overview of New York State's Rent Regulated Housing* 3 (1993).

[3] By contrast, rent control directly sets rental rates for a relatively small number of covered units. Rent control is not at issue in this suit.

[4] The ETPA allows covered municipalities to adopt rent stabilization upon a "declaration of emergency" if the vacancy rate for certain housing accommodations falls below five percent. ETPA, ch. 576, sec. 4, § 3, 1974 N.Y. Laws at 1513 (Unconsol. Law § 8623).

(*continues on next page*)

Since its enactment, the RSL has aimed to ensure a fair and stable rental housing market in two basic ways.

First, the law controls the pace of rent increases for regulated apartments, while also ensuring that landlords can earn a reasonable rate of return. *See* RSL §§ 26-511, 26-512. To determine permissible rent adjustments in New York City, the Rent Guidelines Board—a nine-person body composed of representatives of property owners, tenants, and the public—annually determines the permissible percentage of rent increases for lease renewals. *See id.* § 26-510(a)-(b). The Board must consider the economic conditions property owners face, such as tax rates and maintenance costs, as well as conditions facing renters as a group, such as vacancy rates and the cost of living. *See id.* § 26-510(b). Accordingly, the authorized increases have shifted depending on changes in economic conditions.

To account for the unique financial circumstances of individual property owners, the RSL permits landlords to seek additional rent increases following apartment renovations or building improvements. *See* RSL § 26-511(c)(6), (13). And property owners who believe that the standard rent increases fail to afford them a reasonable income may apply for hardship exemptions permitting larger increases. *See id.* § 26-511(c)(6), (6-a); 9 N.Y.C.R.R. (RSC) § 2522.4(b)-(c).[5]

Upon the requisite emergency declaration, the ETPA's rent stabilization scheme applied to rental housing accommodations constructed before 1974 that contains six or more units. Property owners of newer buildings can also opt into rent stabilization for tax benefits. *See* N.Y. Real Prop. Tax Law § 421-a.

[5] State regulations implementing the RSL are codified in the Rent Stabilization Code (RSC).

Second, the RSL requires landlords to offer most existing tenants the opportunity to enter into a renewal lease when the existing lease expires. *See* RSL § 26-511(c)(9); RSC § 2523.5(a). But landlords may evict tenants for nonpayment of rent, committing a nuisance, using the apartment for illegal purposes, and unreasonably refusing the owner access to the apartment, among other grounds. *See* RSC §§ 2524.2, 2524.3. And when a tenant vacates a regulated apartment, landlords may choose their next tenant—subject to a limited exemption for succession rights—and perform background checks on all prospective tenants. *See* N.Y. Real Prop. Law §§ 227-f(1), 238-a(1)(b). An owner may also request identification of all persons living in regulated units on an annual basis. *See* RSC §§ 2520.6(o), 2523.5(e).

An owner wishing to exit the rental market entirely has several options under the RSL. For example, owners may (subject to certain conditions) reclaim a single unit or occupy any number of vacant units for personal use, *see* RSL § 26-511(c)(9)(b), use the building for their own business, RSC § 2524.5(a)(1)(i), demolish the rental building, *id.* § 2524.5(a)(2), or sell the building outright. An owner may also exit rent regulation but remain in the rental market by rehabilitating a substandard or seriously deteriorated building. *Id.* § 2520.11(e).

3. Since 1974, the Legislature has repeatedly reenacted the RSL to preserve its core elements: regulations on the rate of rent increases and limitations on evictions. Over time, the Legislature has amended the law in response to changing political and economic circumstances.

For example, in 1993 and 2003, the Legislature responded to requests from property owners to allow deregulation of certain high-rent units with high-income

tenants and gave landlords greater ability to increase rents upon renewal or vacancy. *See* Ch. 253, §§ 5-7, 1993 N.Y. Laws 2667, 2669-72; Ch. 82, § 4, 2003 N.Y. Laws 2605, 2608. In 2011 and 2015, however, the Legislature responded to reports of ongoing abuses of vacancy increases and deregulation and reduced the amounts by which landlords could increase rent following renovations and improvements and raised the rent and income thresholds for deregulation. *See* Ch. 97, pt. B, §§ 12, 16, 35-36, 2011 N.Y. Laws 787, 807-09, 817-18; Ch. 20, pt. A, §§ 10, 16, 29, 2015 N.Y. Laws 29, 33-34, 36, 41-42.

In 2019, the Legislature enacted the Housing Stability and Tenant Protection Act (HSTPA), which further responded to concerns about tenant harassment and displacement. Among other things, the HSTPA eliminated the RSL provisions authorizing deregulation of certain high-rent apartments, limited certain rent increases upon renewal, and narrowed the provisions allowing evictions for personal use.[6] *See* Ch. 36, pt. D, § 5, 2019 N.Y. Laws 134, 138 (repealing RSL §§ 26-504.1, 26-504.2, 26-504.3); RSL § 26-511(c)(9)(b), (14).

B. Procedural History

1. Since 2006, petitioner has owned a mixed-use, New York City apartment building with units subject to the RSL. The property was managed by a third party until July 2020, when petitioner assumed management

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[6] This Court denied certiorari in five separate cases raising Takings Clause and Due Process Clause challenges to the HSTPA. *See Building & Realty Inst. of Westchester & Putnam Cntys., Inc. v. New York*, 145 S. Ct. 563 (2024); *G-Max Mgmt., Inc. v. New York*, 145 S. Ct. 561 (2024); *74 Pinehurst LLC v. New York*, 146 S. Ct. 540 (2024) (decided together with *335-7 LLC v. City of New York*, No. 22-1170); *Community Hous. Improvement Program v. City of New York*, 144 S. Ct. 264 (2023).

responsibilities for the building. Upon doing so, petitioner discovered that the property was in a state of serious disrepair due to a decades-long failure to perform basic maintenance on the property. Pet. App. 5a-6a. Petitioner initiated a lawsuit against the property manager, alleging that it caused extensive damage to the property through years of neglect, and artificially depressed rents by offering discounted "sweetheart" subleases to certain subtenants. *See* Compl., *Tedford's Tenancy, LLC v. Horizons Investors Corp.* ¶¶ 83-123, No. 653393/2023 (Sup. Ct. N.Y. County July 13, 2023), NYSCEF No. 1.

In May 2022, petitioner commenced an action in Supreme Court, New York County, naming as defendants the State of New York, the Division of Housing and Community Renewal (DHCR) and its commissioner RuthAnne Visnauskas, the City of New York, along with several New York City officials and agencies. As relevant here, petitioner claims that the expenses needed to operate and rehabilitate the property exceed the rental income that it is able to receive under the RSL. Petitioner alleges that the RSL amounts to a regulatory taking of its property in violation of the Fifth Amendment and seeks declaratory relief, injunctive relief, and damages. Pet. App. 6a.

2. Supreme Court granted respondents' motion to dismiss the complaint. Pet. App. 4a-13a. First, the court concluded that petitioner's regulatory takings claim is unripe because it never sought to avail itself of available administrative exemptions. Pet. App. 9a-10a. Second, and in the alternative, the court held that petitioner failed to allege a taking under the fact-intensive inquiry mandated by *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104 (1978). *See* Pet. App. 10a-13a.

The Appellate Division, First Judicial Department affirmed. First, the court rejected petitioner's as-applied regulatory takings claim as unripe. Relying on this Court's decision in *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985), the court explained that petitioner had not sought a hardship exemption that could have allowed it to increase rents above levels that the RSL generally permits—including an exemption available to owners whose operating expenses exceed rental income under the RSL guidelines. Pet. App. 1a-2a. The court further rejected plaintiff's argument that applying for such an exemption would be futile, as petitioner had not shown that it had personally experienced any repetitive or unfair procedures indicating that relief was unavailable. *See* Pet. App. 2a.

The court also agreed that petitioner's complaint failed to state a regulatory takings claim. The court explained that that petitioner had not alleged facts demonstrating that the RSL had deprived the property of all economically beneficial use, noting that petitioner still receives residential and commercial rental income from the property and retains a reversionary interest in it. Pet. App. 2a. The court also determined that petitioner failed to allege that the RSL ran contrary to its reasonable investment-backed expectations given petitioner acquired the building decades after it first became subject to the RSL and with knowledge that it would be subject to extensive and evolving regulation. And the court further concluded that the RSL does not have the character of a taking but rather serves important public interests. Pet. App. 3a.

The Court of Appeals denied petitioner's motion for leave to appeal (*see* Pet. App. 14a), and this petition followed.

REASONS FOR DENYING THE PETITION

I. PETITIONER'S CHALLENGE TO THE STATE COURTS' RIPENESS DETERMINATION DOES NOT MERIT THIS COURT'S REVIEW.

Petitioner principally asks this Court to resolve whether, in a regulatory takings case, ripeness is a prudential or jurisdictional requirement. This case is a poor vehicle to address that question because petitioner never raised any argument below concerning the prudential or jurisdictional nature of the ripeness inquiry, and the lower courts did not address the issue. In addition, the question is academic because the answer has no bearing on the ultimate disposition of petitioner's claim. In any event, the First Department correctly rejected petitioner's claim as unripe, and petitioner identifies no relevant split in authority or other compelling reason to review that determination.

A. This Case Is a Poor Vehicle to Address Whether and When Ripeness Is a Jurisdictional Consideration.

For several threshold reasons, this case is not well-suited to address petitioner's question concerning the jurisdictional nature of the ripeness inquiry in regulatory takings cases.

1. As an initial matter, the issue is unpreserved. It is well-established that this Court "ordinarily will not decide questions not raised or litigated in the lower courts." *City of Springfield v. Kibbe*, 480 U.S. 257, 259 (1987); *see also CRST Van Expedited, Inc. v. Equal Emp. Opportunity Comm'n*, 578 U.S. 419, 435 (2016) ("It is not the Court's usual practice to adjudicate either legal or predicate factual questions in the first instance."). That rule derives from the fact that the Constitution

generally "allows this Court to exercise only 'appellate jurisdiction,' not 'original jurisdiction.'" *Food & Drug Admin. v. R. J. Reynolds Vapor Co.*, 606 U.S. 226, 231 n.2 (2025) (quoting *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 147 (1803)); *see* U.S. Const. art. III, § 2, cl. 2; *Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005). And it promotes important functions—like ensuring there is adequate percolation in the lower courts before an issue is resolved by this Court,[7] and preserving "the appropriate relationship of this Court to state courts," *Illinois v. Gates*, 462 U.S. 213, 221 (1983) (quotation marks omitted).

Critically, petitioner never advanced any argument below that the ripeness of its regulatory takings claim should be assessed under a prudential rather than jurisdictional lens. Nor did petitioner suggest in any way that the viability of its claim hinged on the particular label ascribed to the court's ripeness inquiry. Instead, with respect to finality, petitioner solely argued that applying for an RSL exemption would be futile.[8] For that reason, the First Department did not opine on the

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[7] *See, e.g.*, *McCray v. New York*, 461 U.S. 961, 963 (1983) (Stevens, J., respecting denial of petitions for writs of certiorari).

[8] *See* Br. for Pl.-Appellant at 17-22, *Tedford's Tenancy, LLC v. City of New York*, 238 A.D.3d 624 (1st Dep't 2024) (No. 2024-00601), NYSCEF No. 6 (2024 WL 5701598); Reply Br. for Pl.-Appellant at 3-12, *Tedford's Tenancy, LLC*, NYSCEF No. 17 (2025 WL 1485437).

In addition, petitioner alternatively argued that this Court's decision in *Knick v. Township of Scott*, 588 U.S. 180 (2019), supposedly eliminated any such requirement to establish ripeness. *See* Br. for Pl.-Appellant at 22-24, *Tedford's Tenancy, LLC*; Reply Br. for Pl.-Appellant at 11-12, *Tedford's Tenancy, LLC*. Petitioner has subsequently abandoned that argument. *See* Pet. 28 (acknowledging that the *Knick* decision "left final decision ripeness . . . in place").

question of whether its ripeness holding was grounded in jurisdictional or prudential considerations.

Because certiorari review is unavailable as to issues that were "neither raised before nor considered by" the courts below, the petition can, and should, be denied on that basis alone. *See Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 147 n.2 (1970).

2. The petition also suffers from a separate, fatal defect: Petitioner's question respecting ripeness is purely academic because the courts below found, in the alternative, that petitioner failed to state a regulatory takings claim on the merits. Petitioner does not challenge that alternative basis for dismissal here, and, therefore, this Court's determination as to whether ripeness is prudential or jurisdictional would have no bearing on the outcome of this case.

Petitioner vaguely suggests that the pleading defects in its claim might somehow be cured through a future amendment of its complaint. *See* Pet. 13 n.15. But even assuming amendment is still an option, no artful pleading will change the court's legal determination that New York's rent stabilization laws could not have disrupted petitioner's reasonable investment-backed expectations, when petitioner acquired its property in 2006—decades after the property first became subject to the RSL. *See* Pet. App. 3a, 5a, 12a. *See also Arkansas Game & Fish Comm'n v. United States*, 568 U.S. 23, 38 (2012); *Concrete Pipe & Prods. of Cal., Inc. v. Construction Laborers Pension Tr. for S. Cal.*, 508 U.S. 602, 645 (1993). Nor can petitioner plead around the undisputed fact that it continues to derive rental income from the property,

and retains a reversionary interest in it.[9] *See* Pet. App. 2a-3a, 11a-12a. "[M]ere diminution in the value of property, however serious, is insufficient to demonstrate a taking." *See Concrete Pipe*, 508 U.S. at 645.

In short, resolution of petitioner's question will have no bearing on the ultimate disposition of this case. While the doctrinal role of ripeness in regulatory takings challenges "may present an intellectually interesting" question, it is not this Court's role "to satisfy a scholarly interest in such issues." *Rice v. Sioux City Mem'l Park Cemetery*, 349 U.S. 70, 74 (1955); *see also Montana v. Imlay*, 506 U.S. 5, 6 (1992) (Stevens, J., concurring) (certiorari should be denied where outcome will be the same "no matter which party might prevail in this Court").

B. The State Courts Correctly Dismissed the Petition As Unripe.

In any event, the First Department correctly applied settled law to reject petitioner's regulatory takings claim as unripe, and there is no relevant split in appellate authority warranting this Court's review.

1. This Court has recently reaffirmed that a court should not entertain a regulatory takings claim "before the government has reached a 'final' decision." *See Pakdel v. City & County of San Francisco*, 594 U.S. 474, 475 (2021) (per curiam) (quoting *Suitum v. Tahoe Reg'l Plan.*

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[9] As explained below, petitioner's claim that the RSL has forced petitioner to operate the rental property at a net loss (*see* Pet. 1, 9, 11) is belied by petitioner's own court submissions and relies on the erroneous and unsupported assumption that petitioner will not be eligible to recoup any repair costs or otherwise increase rents via an exemption. *See* Br. for State Resp'ts at 19 n.10, 27, *Tedford's Tenancy, LLC*, 238 A.D.3d 624 (No. 2024-00601), NYSCEF No. 13 (2025 WL 1485436).

Agency, 520 U.S. 725, 737 (1997)); *see id.* at 478-80. To demonstrate such finality, this Court explained, there must be "no question . . . about how the regulations at issue apply to the particular land in question." *Id.* at 478 (quotation marks omitted). If instead "avenues still remain for the government to clarify or change its decision"—including administrative procedures that would allow the plaintiff to seek a variance from the regulation—the claim is not ripe and should be dismissed. *Id.* at 480; *see also Knick*, 588 U.S. at 187-88 (no finality where developer may obtain a variance); *Williamson Cnty. Reg'l Plan. Comm'n*, 473 U.S. at 193-94 (same).

The First Department's decision reflects a straightforward application of these well-established principles of finality. As the court reasoned, petitioner has not applied for an available hardship exemption that may allow it to charge rents "above the ordinary regulated rates" set out in the RSL. Pet. App. 2a. As a result, respondents cannot be said to have "'reached a final decision regarding the application of the regulations to the property at issue.'" Pet. App. 1a (quoting *Williamson Cnty. Reg'l Plan. Comm'n*, 473 U.S. at 186).

2. There is no conflict of authority with respect to the appropriate resolution of a regulatory takings claim under such circumstances. Indeed, following this Court's decision in *Pakdel*, the courts of appeals have uniformly acknowledged that dismissal is required for lack of ripeness where, as here, a plaintiff has failed to pursue an available exemption from the challenged regulation, or contingencies remain as to the regulation's application to the property in question.[10]

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[10] *See, e.g.*, *SW Nashville EB Owner, LLC v. Metropolitan Gov't of Nashville & Davidson Cnty.*, 187 F.4th 807, 813-14 (6th Cir.

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3. While petitioner points out that there is some deviation in the case law with respect to the "jurisdictional" or "prudential" label assigned to the ripeness inquiry (*see* Pet. 3, 21-27), petitioner fails to offer any persuasive reason why this semantic discrepancy warrants the Court's attention. Petitioner speculates that if the ripeness inquiry is deemed prudential, Congress might one day modify or abrogate the requirement altogether. Pet. 18. But Congress has not made any attempt to alter the requirement, and there is no indication that it has plans to do so in the future. This remote contingency has no relevance to the present litigation, and thus does not provide a basis for granting certiorari.

Petitioner otherwise argues that "substantial tension" exists between the concept of prudential ripeness on the one hand, and a federal court's "'virtually unflagging'" obligation to hear a dispute once federal jurisdiction is established on the other hand. *See* Pet. 18-19 (quoting *Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 77 (2013)). But the latter principle is rooted in the jurisdiction granted to federal courts under Article III of the U.S. Constitution. *See Cohens v. Virginia*, 19

2026); *Walls v. Prince George's Cnty.*, No. 25-1121, 2026 WL 497988, at *4 (4th Cir. Feb. 23, 2026), *cert. pet. docketed*, No. 26-107 (July 23, 2026); *Dillow v. Treasurer of Pa.*, No. 24-2004, 2025 WL 2813596, at *2-3 (3rd Cir. Oct. 3, 2025); *Chosen Consulting, LLC v. Town Council*, 148 F.4th 451, 459-60 (7th Cir. 2025); *Doyle v. United States*, No. 2023-1735, 2024 WL 5154019, at *5-6 (Fed. Cir. Dec. 18, 2024), *cert. denied*, 145 S. Ct. 2704 (2025); *Mendelson v. San Mateo Cnty.*, No. 23-15494, 2024 WL 3518319, at *1-2 (9th Cir. July 24, 2024); *74 Pinehurst LLC v. New York*, 59 F.4th 557, 565-66 (2d Cir. 2023), *cert. denied*, 146 S. Ct. 540 (2024); *Haney v. Town of Mashpee*, 70 F.4th 12, 20-22 (1st Cir. 2023), *cert. denied*, 144 S. Ct. 564 (2024); *Beach v. City of Galveston*, No. 21-40321, 2022 WL 996432, at *2-3 (5th Cir. 2022) (per curiam); *North Mill St., LLC v. City of Aspen*, 6 F.4th 1216, 1225-26, 1229-30 (10th Cir. 2021).

U.S. (6 Wheat.) 264, 404 (1821) ("We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given."). The obligations that Article III imposes on federal courts have no relevance to petitioner's claim, which was filed in New York state court. As a result, this supposed "tension" is not germane here.

In any event, this Court has long recognized that ripeness principles in the takings context are "drawn *both* from Article III limitations on judicial power *and* from prudential reasons for refusing to exercise jurisdiction." *Reno v. Catholic Soc. Servs., Inc.*, 509 U.S. 43, 57 n.18 (1993) (emphasis added); *National Park Hospitality Ass'n v. Department of Interior*, 538 U.S. 803, 808 (2003); *Suitum v. Tahoe Reg'l Plan. Agency*, 520 U.S. 725, 734 n.7 (1997); *see also* 13B Charles Alan Wright et al., *Federal Practice & Procedure* § 3532.1 (3d ed. updated Apr. 2026) (Westlaw) ("the dual origins of ripeness doctrine are clear"). Indeed, *Pakdel* unequivocally confirmed as much when the Court observed that the requirement is meant to "ensure[] that a plaintiff has *actually been injured* by the Government's action." 594 U.S. at 479 (emphasis added; quotation marks omitted). In other words, a lack of finality implies a lack of Article III jurisdiction.

II. THE STATE COURTS' FUTILITY DETERMINATION DOES NOT MERIT THIS COURT'S REVIEW.

Petitioner likewise offers no persuasive reason to review the lower courts' fact-specific rejection of petitioner's futility argument. *See* Pet. 29-33.

1. As an initial matter, there is no reason for this Court to "clarify" that a property owner does not need to pursue a "futile" proceeding to ripen its claim. Pet. 29. This Court has long recognized that "ripeness rules do not require the submission of . . . futile applications" to state agencies. *Palazzolo v. Rhode Island*, 533 U.S. 606, 626 (2001). Indeed, as this Court recently clarified, "nothing more than *de facto* finality is necessary" before a regulatory takings claim becomes ripe. *Pakdel*, 594 U.S. at 479. Under this standard, the plaintiff must pursue available "administrative procedures" that would allow "the government to clarify or change its decision," *id.* at 480—unless it is clear that "the government is committed to a position," *id.* at 479, and no questions remain as to "how the regulations at issue apply to the property in question," *id.* at 478 (quotation marks omitted).

The courts of appeals likewise invariably recognize that a plaintiff has no need to seek a variance when doing so would be "futile" or "pointless."[11] Petitioner's

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[11] *Murphy v. New Milford Zoning Comm'n*, 402 F.3d 342, 349 (2d Cir. 2004) (quotation marks omitted); *see, e.g.*, *Maron v. Chief Fin. Officer*, 136 F.4th 1322, 1332-33 (11th Cir. 2025); *Haney*, 70 F.4th at 20-22; *North Mill St., LLC*, 6 F.4th at 1225-26, 1230; *Acorn Land, LLC v. Baltimore Cnty.*, 402 F. App'x 809, 814-15 (4th Cir. 2010) (per curiam); *County Concrete Corp. v. Town of Roxbury*, 442 F.3d 159, 167 (3d Cir. 2006); *Anaheim Gardens v. United States*, 444 F.3d 1309, 1315-17 (Fed. Cir. 2006); *Daniels v. Area Plan Comm'n*, 306 F.3d 445, 456 (7th Cir. 2002); *Bannum, Inc. v. City of*

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cherry-picked precedents are not to the contrary. *See* Pet. 30-31. The property owners in those cases were not forced to comply with "never-ending" procedures to ripen their claims, as petitioner erroneously contends. *See* Pet. 32-33. Instead, in each of those cases, a variance was available that could have offered relief to the property owner, and no final decision had been rendered. *See Haney v. Town of Mashpee*, 70 F.4th 12, 21 (1st Cir. 2023) (claim not ripe where variance could be obtained upon approval of bridge construction); *Ralson v. County of San Mateo*, No. 21-16489, 2022 WL 16570800, at *2 (9th Cir. 2022) (claim not ripe where plaintiff did not seek a development permit and no decision rendered by relevant decision-maker); *Beach v. City of Galveston*, No. 21-40321, 2022 WL 996432, at *3 (5th Cir. 2022) (per curiam) (claim not ripe where plaintiff did not seek a specific use permit to operate a multifamily dwelling). Thus, in each of those cases, it could not be said that the government had "committed to a position." *See Pakdel*, 594 U.S. at 478-79.

The same considerations compelled the dismissal of petitioner's takings claim here. In line with this Court's precedents, the First Department correctly rejected petitioner's speculative arguments that it might not obtain meaningful relief via an exemption—where petitioner did not even attempt to avail itself of exemption procedures or seek a final determination as to how the RSL amendments will apply to petitioner's property. *See* Pet. 2a.

Louisville, 958 F.2d 1354, 1363 (6th Cir. 1992); *Samaad v. City of Dallas*, 940 F.2d 925, 933-34 (5th Cir. 1991); *Del Monte Dunes at Monterey, Ltd. v. City of Monterey*, 920 F.2d 1496, 1501 (9th Cir. 1990).

2. Petitioner's argument that it was "ineligible" for a hardship exemption is misplaced for several reasons. *See* Pet. 2, 10, 30. First, petitioner did not advance that argument below.[12] As a result, the First Department did not address petitioner's eligibility, and the issue is unpreserved for certiorari review. *See, e.g.*, *Kibbe*, 480 U.S. at 259; *see also Meyer v. Holley*, 537 U.S. 280, 292 (2003); *Singleton v. Wulff*, 428 U.S. 106, 120 (1976).

Petitioner is wrong about its exemption eligibility in any event. As the trial court explained, petitioner may obtain an "alternative hardship exemption" under the RSL—which allows for a rent increase when regulated rates "'are not sufficient to enable the owner to maintain an annual gross rent income . . . exceed[ing] the annual operating expenses of such building.'" Pet. App. 9a (quoting 9 N.Y.C.R.R. § 2522.4(c)).

To the extent petitioner now takes issue with that determination on the grounds that a pending tax dispute presently disqualifies petitioner from seeking an exemption (*see* Pet. 10), that argument raises case- and fact-specific issues that are unfit for review by this Court. *See United States v. Johnston*, 268 U.S. 220, 227 (1925) ("We do not grant a certiorari to review evidence and discuss specific facts."). If anything, petitioner's admission that it may someday become eligible for a hardship exemption once its tax dispute is resolved simply confirms that petitioner's takings claim is not yet ripe.[13] *See, e.g.*, *Thomas v. Union Carbide Agric.*

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[12] *See* Br. for Pl.-Appellant at 17-22; Reply Br. for Pl.-Appellant at 3-9.

[13] Relatedly, to the degree petitioner complains that a hardship rent increase is capped at six percent annually (Pet. 11), that argument ignores the fact that additional rent increases may be applied

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Prods. Co., 473 U.S. 568, 580 (1985) (claim involving "contingent future events" not ripe for review (quotation marks omitted)).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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in subsequent years until the full awarded increase is achieved, *see* RSC § 2522.4(c)(3)(i), (d)(2)(i). *See* Br. for State Resp'ts at 15, *Tedford's Tenancy, LLC*.