No. 23-1148

IN THE

Supreme Court of the United States

G-MAX MANAGEMENT, INC., *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 AND COMMUNITY VOICES HEARD

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QUESTIONS PRESENTED

This case involves facial and as-applied challenges under the Takings Clause to the validity of New York's Rent Stabilization Law of 1969 and Emergency Tenant Protection Act of 1974, as amended by the Housing Stability and Tenant Protection Act of 2019, and their attendant codes, rules, and regulations (together, the "RSL"). 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 effects, facially or as-applied, a per se physical taking by circumscribing landlords' permissible grounds for evicting rent-stabilized tenants or refusing to renew their leases, while leaving open multiple avenues for landlords to reclaim possession and use of their property.

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) Petitioners' as-applied claims were unripe because they failed to avail themselves of the remedial provisions of the RSL permitting them to apply for hardship

exemptions from rent limits; and (iii) Petitioners 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).

3. Whether, despite procedural defects in Petitioners' case, including a lack of standing for the overbroad relief they sought, the Court should overturn the longstanding *Penn Central* standard governing the determination of whether a use restriction effects a taking, which this Court has repeatedly reaffirmed in *Cedar Point Nursery v. Hassid*, 594 U.S. 139, 148 (2021), and other cases over the past nearly fifty years.

CORPORATE DISCLOSURE STATEMENT

Respondents N.Y. Tenants and Neighbors and Community Voices Heard 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 one pair of individuals and ten corporate entities that own multi-unit apartment buildings in New York City as investment properties. Petitioners seek this Court's review of a summary order by a unanimous Second Circuit panel—which was controlled by a prior panel's decisions in *Community Housing Improvement Program v. City of New York*, 59 F.4th 540 (2d Cir.), *cert. denied*, 144 S. Ct. 264 (2023), and *74 Pinehurst LLC v. New York*, 59 F.4th 557 (2d Cir. 2023), *cert. denied*, No. 22-1130, 2024 WL 674658 (U.S. Feb. 20, 2024)—affirming the district court's dismissal of claims that New York's Rent Stabilization Law of 1969 and Emergency Tenant Protection Act of 1974, as amended by the Housing Stability and Tenant Protection Act of 2019, and their attendant regulations (together, the "RSL") effect, facially and as applied, unconstitutional physical and regulatory takings.[1]

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[1] Respondents N.Y. Tenants and Neighbors and Community Voices Heard ("CVH") are non-profit tenant advocacy organizations that intervened below in defense of the RSL. A related certiorari petition by another group of landlords and landlord associations challenging the same decision below, which resolved appeals in separate but related cases, is pending. *Bldg. & Realty Inst. Westchester & Putnam Counties, Inc. v. New York* ("*BRI*"), No. 23-1220 (filed May 15, 2024). The respondents in *BRI*, including CVH, waived their right to respond to that petition.

The RSL, which applies to nearly one million apartments in New York City alone, has (with various amendments) regulated rents and evictions for *fifty years* and has repeatedly been upheld against takings challenges.[2] The unanimous Second Circuit's faithful application of clear precedent in its summary order below is the latest in this long line of decisions upholding the RSL.

This Court declined to review three prior petitions raising substantially similar, if not identical, issues. *See Cmty. Hous.*, 144 S. Ct. 264; *74 Pinehurst*, 2024 WL 674658; *335-7 LLC v. City of New York*, No. 22-1170, 2023 WL 2291511 (2d Cir. Mar. 1, 2023), *cert denied*, 2024 WL 674658 (U.S. Feb. 20, 2024). As in those cases, because there is no conflict among the

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[2] *See, e.g.*, *Cmty. Hous.*, 59 F.4th 540; *74 Pinehurst*, 59 F.4th 557; *335-7 LLC*, 2023 WL 2291511; *Harmon v. Markus*, 412 F. App'x 420 (2d Cir. 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); *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); *Rent Stabilization Ass'n of City of N.Y., Inc. v. Dinkins*, 5 F.3d 591 (2d Cir. 1993); *Rent Stabilization Ass'n of N.Y.C., Inc. v. Higgins*, 83 N.Y.2d 156 (1993), *cert denied*, 512 U.S. 1213 (1994); *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); *8200 Realty Corp. v. Lindsay*, 27 N.Y.2d 124, 129 (1970); *Somerset-Wilshire Apartments, Inc. v. Lindsay*, 304 F. Supp. 273 (S.D.N.Y. 1969).

circuits regarding the applicable standard for analyzing challenges to rent regulations under the Takings Clause, the unanimous decision below is fully consistent with this Court's Takings Clause jurisprudence, and this case is a poor vehicle for addressing the parameters of the Takings Clause, the Petition should be denied.

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 evictions. This Court and others have repeatedly upheld those protections. Petitioners treat the RSL's "patchwork" of laws and regulations as though they were a single statute whose provisions may be evaluated in one swoop, but the reality is far more complex. *La Guardia v. Cavanaugh*, 53 N.Y.2d 67, 70 (1981).

In 1920, in response to severe housing shortages and rent shocks caused by World War I, the New York state legislature enacted the first rent-regulation laws for New York City. *Cmty. Hous.*, 59 F.4th at 544.[3] The

[3] In its summary affirmance below, the Second Circuit wrote "primarily for the parties," "assume[d] a familiarity with the facts," and noted "that a majority of the issues" on appeal were

laws—which capped rent increases and prevented evictions without cause for ten years—were "the subject of ongoing litigation." *Id.* This Court and the New York Court of Appeals repeatedly upheld their constitutionality.[4]

During and after World War II, tenancies in the New York City area were regulated by federal law: first the Emergency Price Control Act of 1942, which froze rents at 1943 levels and restricted the permissible grounds for eviction, and later the Housing and Rent Act of 1947, which exempted new buildings from regulation but left in place controls for existing buildings. *See id.* at 545. This Court upheld both statutes (and their attendant rent and eviction regulations) against Takings Clause challenges.[5]

In 1950, authority to regulate residential rents in New York passed to the Temporary State Housing Rent Commission, whose regulations continued to

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controlled by the Second Circuit's prior decisions in *Community Housing* and *74 Pinehurst*. Pet. App. 5. This Court denied the petitions for writs of certiorari in both cases. *Supra*, p. 2.

[4] *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).

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

govern "rent levels and legal grounds for evictions," *id.*, and likewise were repeatedly upheld against constitutional attack.[6]

Pursuant to a 1962 statute delegating rent-regulation authority to large cities, 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 a Rent Guidelines Board ("RGB") to regulate annual rent increases for rent-stabilized apartments in the city. *See* Pet. App. 22–23, 150–51. The 1969 RSL's regulations set the permissible grounds for evicting, or declining to renew the leases of, rent-stabilized tenants. *See* Pet. App. 23; *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 condominium ("condo") or cooperative ("co-op") ownership, which required 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); *Parkchester Apts. Co. v. Lefkowitz*, 51 A.D.2d 277, 279 (1st

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[6] *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).

Dep't 1976), *aff'd*, 41 N.Y.2d 987 (1977). Multiple courts upheld the 1969 RSL's constitutionality.[7]

As part of 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*, 53 N.Y.2d at 73.

The hoped-for construction and renovation did not materialize, however, and the state enacted the Emergency Tenant Protection Act of 1974 ("ETPA"), which "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). The ETPA "is not a rent and eviction regulating law" but rather "an enabling act." *La Guardia*, 53 N.Y.2d at 74. Initially, it permitted New York City and municipalities in the three surrounding counties to opt into rent and eviction regulations for buildings with six or more units constructed before 1974 that were not already

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[7] *See 8200 Realty Corp.*, 27 N.Y.2d at 129; *Somerset-Wilshire Apartments*, 304 F. Supp. at 274.

regulated. *Id.* at 74–75; Pet. App. 23–24. Thirty-nine municipalities in those three counties have done so.[8]

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 of a tenant of record who resided with the tenant of record in a regulated apartment. *See Higgins*, 83 N.Y.2d at 165. The New York Court of Appeals squarely rejected the argument that these successorship regulations created perpetual tenancies or otherwise effected unconstitutional physical or regulatory takings. *Id.* at 171–75. This Court denied certiorari. 512 U.S. 1213.

In addition, the Second Circuit rejected the argument that the RSL's rent restrictions effected unconstitutional takings by purportedly depriving some landlords of reasonable returns. *See Dinkins*, 5 F.3d 591 at 594–95.

In 1993, the state legislature amended the RSL to permit the deregulation of high-rent apartments that either became vacant or housed high-income tenants. *See* 1993 N.Y. Laws, ch. 253, *discussed in Roberts v.*

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[8] *See* Office of Rent Administration (ORA), https://hcr.ny.gov/office-rent-administration-ora (last visited June 24, 2024).

Tishman Speyer Props. L.P., 13 N.Y.3d 270, 280–81 (2009). These deregulatory mechanisms were more limited than the blanket "vacancy decontrol" in place from 1971 to 1974. *Cf. La Guardia*, 53 N.Y.2d at 73–74. Over the ensuing decades, the State continued adjusting the permissible rent increases for improvements, thresholds for deregulation of an apartment, and bases for converting apartments or buildings to non-rental use. *See* Pet. App. 97. The RSL's core pillars—limiting rent increases and the grounds for eviction or non-renewal—have remained in place.

The Housing Stability and Tenant Protection Act of 2019 ("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. 26; *Cmty. Hous.*, 59 F.4th at 545–46. The HSTPA amended various provisions of the RSL and other laws affecting the landlord-tenant relationship. Among other changes, the HSTPA revised the amounts of permissible rent increases based on apartment or building improvements,[9] repealed the statutory mechanisms for deregulating high-rent apartments upon vacancy or based on tenants' income, repealed statutory bases for increasing rents upon vacancy, and further restricted landlords' ability to evict tenants or refuse

[9] The state budget enacted on April 20, 2024, doubled, and in some cases more than tripled, the recoverable costs for apartment improvements. *See* 2024 N.Y. Laws, ch. 56, part FF, § 1.

renewal of leases to recover apartments for the landlord's personal use. Pet. App. 24–25. The HSTPA also permits municipalities statewide that are experiencing a housing emergency to opt into the RSL's protections.[10] Pet. App. 26.

B. The Reach of the RSL

The RSL protects tenants in nearly one million apartments in New York City, or about half the city's rental housing stock. Pet. App. 9; *Cmty. Hous.*, 59 F.4th at 555. 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. *Cmty. Hous.*, 59 F.4th at 546. In recent years, approximately 175,000 households in rent-stabilized housing were unable to afford even a $25 increase in their monthly rent. *Id.* at 547 n.21.

In general, the RSL applies only to buildings constructed before 1974 that have six or more

[10] The City of Kingston's July 2022 decision to opt into rent stabilization was upheld on appeal. *Hudson Valley Prop. Owners Ass'n Inc. v. City of Kingston*, 208 N.Y.S.3d 322 (App. Div. 2024). The City of Newburgh's December 2023 declaration of a housing emergency was invalidated due to errors in its methodology for calculating the rental vacancy rate. *Chadwick Gardens Assocs., LLC v. City of Newburgh*, 208 N.Y.S.3d 487 (N.Y. Sup. Ct. 2024).

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.[11] *See* N.Y.C. Admin. Code § 26-504(b); N.Y. Unconsol. Laws §§ 8623, 8625. The New York City Council last declared such an emergency in March 2024. *See* N.Y.C. Admin. Code §§ 26-501, 26-502. Absent further legislative action, that emergency declaration will expire on April 1, 2027. *Id.* § 26-520; *see also* N.Y. Unconsol. Laws § 8603 (requiring a new determination of emergency at least every three years following a survey of the supply of housing accommodations). In addition, the emergency "must be declared at an end once the vacancy rate … exceeds five percent." N.Y. Unconsol. Laws § 8623.

The RSL established a Rent Guidelines Board ("RGB") for New York City, which 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-

[11] 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); N.Y. Real. Prop. Tax Law § 421-a.

stabilized renewal leases.[12] *See* Pet. App. 24; *Cmty. Hous.*, 59 F.4th at 545 (citing N.Y.C. Admin. Code § 26-510(a)). The RGB must, when making its decision, 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. *Cmty. Hous.*, 59 F.4th at 545 (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;[13] may raise rents due to improvements; may apply for hardship exemptions from rent limits if the landlord is unable to maintain a consistent average rental income or if the gross rental income does not exceed the landlord's annual operating expenses by at least five percent of the gross rent; and must grant tenants and their lawful successors the opportunity to renew their leases,

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[12] 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 determining the existence of a housing emergency. *See* Pet. App. 24, 152–53; N.Y. Unconsol. Laws § 8624(a).

[13] Since the 2019 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).

subject to exceptions described below. *See* N.Y.C. Admin. Code § 26-511(c); 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 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 one 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); N.Y. Unconsol. Laws § 8630(a). Any landlord also 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 or to demolish the building. *See* 9 N.Y.C.R.R. § 2524.5.

The RSL does not prevent an owner from selling a regulated building. Although other non-RSL provisions of New York law place conditions on the conversion of residential buildings to co-op or condo ownership, *see* N.Y. Gen. Bus. Law §§ 352-eeee (New York City), 352-eee (surrounding counties), 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 January 23, 2020, Petitioners filed suit in the Southern District of New York, alleging that the RSL, as amended by the HSTPA, **(1)** effects a *per se* physical taking on its face and as applied to Petitioners' properties, **(2)** effects a regulatory taking on its face and as applied to Petitioners' properties, **(3)** violates substantive due process, **(4)** violates equal protection, **(5)** violates the Contracts Clause of the U.S. Constitution, and **(6)** violates the Fair Housing Act ("FHA"). *See* Pet. App. 205–22. Among other remedies, Petitioners sought the nullification of the HSTPA in its entirety. Pet. App. 222–23.

The district court on September 14, 2021, granted Respondents' motions to dismiss all of Petitioners' claims. Pet. App. 129.

First, the district court held that the RSL on its face "does not compel physical occupation" and thus does not effect a *per se* physical taking of all regulated properties. Pet. App. 63. The court reasoned that, "while the HSTPA may have added certain hurdles to the conversion of rental properties, the HSTPA does not on its face require [Petitioners] to rent their properties; that was a choice of their own making." Pet.

App. 64. The district court rejected Petitioners' argument "that property conversions are 'no longer feasible' under the HSTPA" because Petitioners "offer[ed] no specific allegations to support that they have attempted such conversions." Pet. App. 65.

Second, for similar reasons, and because Petitioners Ordway and Guerrieri abandoned the eviction proceedings that would have ripened their claims, the district court held that Petitioners failed to plead any as-applied physical takings. *See* Pet. App. 66–82.

Third, the district court held that Petitioners failed to plead that the RSL effects a regulatory taking under the *Penn Central* standard either on its face or as applied to any Petitioner's property. *See id.* at 82–102. Importantly, the district court held that Petitioners' "as-applied regulatory taking claims are not ripe because the property owners have not tried to take advantage of available hardship exemptions" to rent limits. Pet. App. 101.

The district court also held that the State of New York and its officers enjoyed sovereign immunity from suit, Pet. App. 43–44; Petitioners lacked standing to bring FHA claims, Pet. App. 55–56; and Petitioners failed to adequately plead any violations of substantive due process, Pet. App. 103–16, equal protection, Pet. App. 116–18, or the Contracts Clause, Pet. App. 118–29.

Although the district court's dismissal was without prejudice, Pet. App. 129, Petitioners declined to amend their complaint and asked the court to deem its decision final, *G-Max Mgmt., Inc. v. New York*, No. 20-cv-634 (S.D.N.Y. Sept. 28, 2021), ECF No. 108.

D. Second Circuit Proceedings and the Instant Petition

Petitioners appealed, and the Second Circuit affirmed in a summary order noting that the "majority of the issues" raised by Petitioners "are controlled by" the Second Circuit's earlier decisions in *Community Housing* and *74 Pinehurst*. Pet. App. 5.

First, the Court of Appeals held, pursuant to *Community Housing*, that Petitioners failed to adequately allege that the RSL effects a physical or regulatory taking in all of its applications. Pet. App. 6–7, 8–10.

Second, the Court of Appeals held that Petitioners, like those in *74 Pinehurst*, had failed to adequately allege that the RSL effects as-applied physical takings, as required under this Court's decision in *Yee v. City of Escondido*, 503 U.S. 519 (1992). *See* Pet. App. 7–8. The court reasoned that Petitioners' failure to attempt to use options available under the RSL to evict tenants or decline to renew leases made it impossible to assess Petitioners' as-applied claims. Pet. App. 8.

Third, the Court of Appeals held, as it had in *74 Pinehurst*, that Petitioners' failure to seek available hardship exemptions from rent limits left their as-applied regulatory-taking claims unripe. Pet. App. 10–11. The court rejected Petitioners' argument that applying for hardship exemptions would be futile and held that, even on the merits, Petitioners failed to plausibly allege as-applied regulatory takings because each of the *Penn Central* factors weighed against them. Pet. App. 11–12.

The Court of Appeals also held that Petitioners failed to state claims under the Due Process or Contracts Clause, and it affirmed the State of New York's sovereign immunity from suit. Pet. App. 12–16.

Petitioners seek this Court's review only as to the dismissal of their claims for physical and regulatory takings. Pet. i. Petitioners do not seek review as to their dismissed claims under the Due Process Clause, Equal Protection Clause, Contracts Clause, or FHA.

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 effects, facially and as applied to them, *per se* physical takings under *Cedar Point Nursery v. Hassid*, 141 S. Ct. 2063 (2021), *Yee v. City of Escondido*, 503 U.S. 519 (1992),

and *Heights Apartments, LLC v. Walz*, 30 F.4th 720 (8th Cir. 2022). Because the decision below is consistent with *Cedar Point*, is required by *Yee*, and does not conflict with the Eighth Circuit's decision in *Heights Apartments* or any other circuit precedent, review is unwarranted.

Petitioners also argue that the decision below either misapplied the regulatory-taking standard set forth in *Penn Central*, or, in the alternative, that this Court should overrule *Penn Central*. 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, like *Community Housing*, *74 Pinehurst*, and *335-7 LLC*, this case is an ill-suited 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 any concrete and particularized injury fairly traceable to any of the RSL's provisions. Their facial challenges conflate several statutes and fail to establish that there is no circumstance under which any of those statutes would be valid. Petitioners lack standing to challenge provisions of the RSL, and their claims are unripe because they have not attempted to

use the RSL's available options for relief. Petitioners' effort to invalidate a set of statutes and regulations 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-Taking 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, Pet. App. 6–7, that Petitioners' facial physical-taking claim is foreclosed by *Community Housing*, which held that no provision of the RSL either compels a physical occupation or compels a landlord to refrain in perpetuity from terminating a tenancy, 59 F.4th at 551–52. The Second Circuit further held, Pet. App. 7–8, that Petitioners' as-applied physical-taking claim is foreclosed by *74 Pinehurst*, which held that landlords could not prevail where they had not "exhausted all the mechanisms

contemplated by the RSL that would allow a landlord to evict current tenants," 59 F.4th at 564. 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 Circuits

For their physical-taking claim, Petitioners try to manufacture a split with only one other circuit. They argue that the Eighth Circuit, in *Heights Apartments, LLC v. Walz*, 30 F.4th 720 (8th Cir. 2022), "concluded that a law authorizing lease renewal against a landlord's wishes gives rise to a *per se* physical taking even where, as here, landlords retain a possible route to eviction." Pet. 14. Petitioners are wrong.

Although the Eighth Circuit in *Heights* upheld a physical-taking 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—with no end date. *Heights*, 30 F.4th at 725. The Eighth Circuit held that the indefinite moratorium effected a physical taking by depriving landlords of their "right to exclude existing tenants without compensation." *Id.* at 733.

The RSL imposes no such eviction ban. 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. 9 N.Y.C.R.R. § 2524.3. A landlord may also decline to renew a lease and evict a holdover tenant **(1)** 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); 9 N.Y.C.R.R. § 2524.4(a); **(2)** if the apartment is not the tenant's primary residence, 9 N.Y.C.R.R. § 2524.4(c); **(3)** to withdraw an apartment from the rental market for "use in connection with a business which he or she owns and operates," *id.* § 2524.5(a)(1)(i); **(3)** to withdraw an apartment from the rental market because of a safety hazard that would cost more than the structure's assessed value to repair, *id.* § 2524.5(a)(1)(ii); **(4)** to demolish a building (with payment of relocation expenses), *id.* § 2524.5(a)(2); or **(5)** to convert (through sale) a building to co-ops or condos with purchase agreements from at least fifty-one percent of tenants, HSTPA Part N (codified at N.Y. Gen. Bus. L. § 352-eeee). And a landlord may elect not to offer a regulated apartment for rent upon vacancy.

Thus, nothing in the decision below conflicts with the Eighth Circuit's ruling that the government may not force a landlord to permit a tenant to indefinitely occupy a space rent-free or after a tenant has

materially violated the terms of their lease. The Eighth Circuit concluded the law at issue in *Heights* was categorically different from the regulations of landlord-tenant relationships, like the RSL, that have long been permitted by this Court's precedent. Accordingly, a district court in the Eighth Circuit subsequently upheld a rent-stabilization ordinance similar to the RSL based on the reasoning in *Community Housing*, notwithstanding the status of *Heights* as binding precedent. *See Woodstone Ltd. P'ship v. City of Saint Paul*, 674 F. Supp. 3d 571, 600 (D. Minn. 2023). There is, therefore, 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*, 503 U.S. at 527 (emphasis in original). No landlord is compelled by the RSL to offer a vacant unit for rent.[14] Petitioners cannot, and do not, contest that all regulated landlords

[14] Petitioners argue, in fact, that numerous landlords are leaving their units vacant instead of renting to tenants. Pet. 30. But as reports have found, long-term vacancy rates have not changed in recent years. *See* David Brand, *Empty Rent-Stabilized Units in NYC Decreased This Year, as 'Warehousing' Debate Rages*, City Limits (Nov. 17, 2022), http://bit.ly/47yOjY8.

voluntarily invited tenants onto their properties in the first place.

Nor have any Petitioners "alleged that they have exhausted all the mechanisms contemplated by the RSL that would allow a landlord to evict current tenants." Pet. App. 8 (quoting *74 Pinehurst*, 59 F.4th at 564). Petitioners Ordway and Guerrieri alleged that they merely began eviction proceedings against one tenant but abandoned them before any ruling.[15] *See* Pet. App. 191–92 ¶¶ 172–73. And even they continue to offer five other units in their building for rent, albeit at market rates. *See* Pet. App. 147, 189 ¶¶ 31, 168. Clearly, Petitioners' gripe is not with the presence of tenants on their properties but with the rents they may charge such tenants. But this Court unequivocally held in *Yee* that "[w]hen a landowner decides to rent his land to tenants, the government may place ceilings on the rents the landowner can charge or require the landowner to accept tenants he does not like without automatically having to pay compensation." 503 U.S. at 529 (citations omitted); *see also Pennell v. City of San Jose*, 485 U.S. 1, 12 n.6 (1988) (reiterating "that 'statutes regulating the

[15] As discussed in Part III, *infra*, Petitioners Ordway and Guerrieri commenced a new action in 2022 seeking to void the prior discontinuance of their eviction proceedings and claiming that the HSTPA's limits on recovering an apartment for personal use do not apply to them.

economic relations of landlords and tenants are not *per se* takings'" (quoting *FCC v. Fla. Power Corp.*, 480 U.S. 245, 252 (1987))).

Petitioners argue that the Second Circuit "insist[ed] on evaluating a physical taking based on an owner's original decision to enter the rental market," Pet. 17,[16] but the decision below did not turn solely on this fact. It also considered the RSL's "available methods to either exit the rental market or evict tenants" and Petitioners' failure to exercise them. Pet. App. 8. To the extent that Petitioners' physical-taking theory is that the RSL purportedly forces them to continue renting their properties, the decision below rightly pointed out the RSL's exit ramps and Petitioners' failure to even attempt to use them.

Petitioners' suggestion that the Takings Clause requires grounds for eviction that are not "beyond [landlords'] control, such as if a tenant fails to pay rent or commits illegal acts," Pet. 17, has no basis in this Court's jurisprudence. In any event, the RSL permits a landlord to refuse to renew a lease for numerous reasons, 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 the building—at which point the

[16] Petitioners purchased their regulated properties between 1995 and 2018. *See* Pet. App. 144–48 ¶¶ 22–33.

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* p. 12. All of these choices are within a landlord's control.

Petitioners admit that the RSL provides avenues they could use to end tenancies. *See* Pet. 6, 10, 11, 17. Petitioners argue only that these options are "not feasible," Pet. 10; too "narrow," Pet. 15; or "remote and theoretical," Pet. 18, and thus should excuse their failure to attempt any of them. But this Court already rejected such an argument in *Yee*. There, the landlords argued that changing the use of their property "was in practice a kind of gauntlet," but 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." *Yee*, 503 U.S. at 528 (internal quotation marks omitted). So too here. No Petitioner besides Ordway and Guerrieri has alleged that it wants to stop renting its property, and even they have not followed through on any effort to do so.

Petitioners contend that the decision below contravened *Cedar Point*. *See* Pet. 15–16, 18. 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." *Cmty. Hous.*, 59 F.4th at

551 (quoting *Cedar Point*, 141 S. Ct. at 2069). 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. Whereas labor organizers were never invited onto the employer's property in *Cedar Point*, the entire point of being a landlord is to invite tenant occupation.

Petitioners cite *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982), for the proposition that the RSL's eviction restrictions are equivalent to "stringing a cable across property," Pet. 16, but *Loretto* expressly reaffirmed this Court's repeated admonition "that States have broad power to regulate housing conditions in general and the landlord-tenant relationship in particular without paying compensation for all economic injuries that such regulation entails," 458 U.S. at 440. And unlike the law that was challenged in *Loretto*, the RSL does not in any way affect "[t]he fact of ownership" by landlords over regulated buildings. *Id.* at 440 n.19. Finally, the cable in *Loretto* was not invited by the building owners; here, every landlord, including Petitioners, invited tenants to occupy their properties. "[I]t is the invitation … that makes the difference." *Fla. Power*, 480 U.S. at 252.

II. The Second Circuit's Regulatory-Taking Analysis Does Not Warrant Review

A. The Decision Below Is Correct

Unable to conjure a circuit split concerning regulatory takings, Petitioners argue that the decision below is incorrect. *See* Pet. 19–22. 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, as in *Community Housing*, Petitioners' facial takings claims failed to "establish that no set of circumstances exists under which the [RSL] would be valid," Pet. App. 6 (quoting *United States v. Salerno*, 481 U.S. 739, 745 (1987)), and failed to allege the collective harms necessary for the court to engage in the "ad hoc, factual inquir[y]" required by this Court's precedents, Pet. App. 9 (quoting *Penn Cent.*, 438 U.S. at 124). Petitioners do not meaningfully address this deficiency.

Petitioners' facial challenges to the RSL are especially unsuited for adjudication by this Court. To succeed, Petitioners cannot surmount *Salerno*'s "no set of circumstances" burden because, as set forth *supra*, pp. 8–12, 20–23, there are abundant circumstances in which the RSL does not even colorably raise

constitutional questions. Nor have Petitioners 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. 9–10. With a statute as nuanced and complex as the RSL, a facial challenge presents a burden Petitioners cannot meet and would require this Court to exhaustively review every application of the RSL, rendering it a poor and unworkable vehicle for review of any constitutional question.

Such an outcome makes sense. Facial challenges are a tool to ensure that lawmakers do not over-generalize in ways that grossly exceed the bounds of their authority; the RSL is a well-considered, detailed regulatory scheme that implicates a variety of state laws that evolved through the political process since "the World War I era," Pet. 3, to respond with specificity to shifting municipal conditions. As set forth *supra*, pp. 3–12, 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.[17] Sometimes those changes have favored landlords; other times they have favored tenants. *See, e.g.*, Pet. App. 64 ("In the 1970s, the threshold [of tenant approval for [condo/co-op] conversion was 35%, and prior to the HSTPA it was 15%."); Pet. App. 127 ("By limiting [preferential-rent] increases to the approved percentage, the HSTPA merely restores the law as it existed prior to 2003."). Petitioners' attempt "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).

Second, the decision below correctly held that, as in *74 Pinehurst*, Petitioners' failure to seek available hardship exemptions from rent limits left their as-applied claims unripe for judicial review. *See* Pet. App. 10–11. The Second Circuit correctly rejected Petitioners' arguments that the available variances were "one-offs" or "no longer feasible" as insufficient speculation.

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[17] Petitioners' assertion that other jurisdictions—including California, Oregon, and Massachusetts—"are advancing rent and eviction controls," Pet. 30, ignores that rent and eviction regulations have existed in these jurisdictions repeatedly over the decades, *see, e.g.*, *Birkenfeld v. City of Berkeley*, 17 Cal. 3d 129, 137–38 (1976); *Thunderbird Mobile Club, LLC v. City of Wilsonville*, 234 Or. App. 457 (2010); *Russell v. Treasurer & Receiver Gen.*, 331 Mass. 501, 509 (1954); *Rent Limit Fixed in 301 New Areas*, N.Y. Times (Apr. 29, 1942), nyti.ms/3YEmLN0.

Id. Petitioners do not address this jurisdictional defect at all.

Third, even assuming that Petitioners' as-applied claims were ripe, the decision below correctly held that Petitioners failed to adequately plead facts to satisfy the *Penn Central Standard*. Pet. App. 11–12.

Petitioners argue that they "described economic harms" caused by the HSTPA, Pet. 21, but all of the allegations they cite concern generalized speculation about the law's "aggregate effect," which the Second Circuit found insufficient to plead the economic-effect factor on an as-applied basis, Pet. App. 11 (quoting Petitioners' brief below); *see* Pet. App.164–65 ¶¶ 91–92 (alleging the law's "aggregate effect" and "a recent *Crain's* article" about "the stock price of New York Community Bancorp"); Pet. App. 172 ¶ 119 (speculating about effects on "owners (such as Plaintiffs) whose properties are subject to rent control or stabilization"); Pet. App. 208 ¶ 224 (alleging, without any factual basis, that the HSTPA "dramatically devalue[ed]" Petitioners' properties and rendered them "unprofitable" and "economically unviable").

Petitioners claim that the decision below "gave short shrift" to their investment-backed expectations, Pet. 22, but the Second Circuit correctly held, as it had in *74 Pinehurst*, that Petitioners' alleged expectations were "not plausible," Pet. App. 12; *see also 74*

Pinehurst, 59 F.4th at 567 (holding that any reasonable investor "would have anticipated their rental properties would be subject to regulations, and that those regulations in the RSL could change yet again"). Petitioners claim that some of them "could not have foreseen" the HSTPA's changes when they "invested considerable sums in their properties," Pet. 22, but they cite allegations concerning Petitioners who purchased their buildings in 2012 and 2018, *see* Pet. App. 189 ¶ 169 (purchase in 2018); Pet. App. 193, 195, 197, 198 ¶¶ 178, 183, 188, 193 (purchases in 2012). All Petitioners had access to decades of regulatory history to consult when choosing to purchase rent-stabilized buildings, *see supra* pp. 5–8, which history would signal to any reasonable person that further regulation of rent-regulated property was foreseeable.

Petitioners contend that the RSL has the character of a taking because, in their view, the law is "counterproductive" and an improper means to achieve "affordable housing." Pet. 19–20. But this Court has unanimously held that a "means-ends test" such as counterproductivity has no place in the Takings Clause analysis. *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 542 (2005). Petitioners' passing effort (at 22) to revive Justice Scalia's dissent in *Pennell* ignores both that the *Pennell* majority reaffirmed states' "broad power to regulate … the landlord-tenant relationship," 485 U.S. at 12 n.6 (quoting *Loretto*, 458 U.S.

at 440), and that Justice Scalia would have applied a means-ends test, 485 U.S. at 15, that was squarely rejected by *Lingle*, 544 U.S. at 542–43.

B. This Court Need Not Revisit, and Has Repeatedly Reaffirmed, *Penn Central*

Because Petitioners cannot demonstrate that the Second Circuit's application of the *Penn Central* standard to their facial or as-applied claims conflicts with any decisions of any other circuit or departed from this Court's precedents, Petitioners request that the Court change the law. *See* Pet. 22–25. It should not.

Petitioners claim that "*Penn Central* was never meant to be a definitive legal interpretation of the Takings Clause," Pet. 23, but this Court has repeatedly held otherwise, *see, e.g.*, *Cedar Point*, 594 U.S. at 148 ("To determine whether a use restriction effects a taking, this Court has generally applied the flexible test developed in *Penn Central* ...."); *Murr v. Wisconsin*, 582 U.S. 383, 393 (2017) (similar); *Lingle*, 544 U.S. at 538 (similar). Petitioners state that the *Penn Central* standard is "unworkable," Pet. 23, 24, but this

Court has consistently applied it to claims of non-categorical takings for decades.[18]

Petitioners' contention that the *Penn Central* standard is a mere "rubber stamp for confiscatory government policies," Pet. 3, is belied by cases—including those cited by Petitioners in their briefing below—that have applied the standard to find compensable takings were sufficiently pled.[19]

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[18] *E.g.*, *Murr*, 582 U.S. at 405; *Ark. Game & Fish Comm'n v. United States*, 568 U.S. 23, 37 (2012); *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Reg'l Planning Agency*, 535 U.S. 302, 342 (2002); *Palazzolo v. Rhode Island*, 533 U.S. 606, 632 (2001); *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).

[19] *See* Appellants' Br. 32, 39, *G-Max Mgmt., Inc. v. New York*, No. 21-2448 (2d Cir. Nov. 18, 2021), ECF No. 56 (citing *Cienega Gardens v. United States*, 331 F.3d 1319, 1339 (Fed. Cir. 2003); *Petworth Holdings, LLC v. Bowser*, 308 F. Supp. 3d 347, 357–58 (D.D.C. 2018)); *Quebedeaux v. United States*, 112 Fed. Cl. 317, 325 (2013) (denying motion to dismiss); *see also Tahoe-Sierra*, 535 U.S. at 334 ("[I]f petitioners had challenged the application of the moratoria to their individual parcels, instead of making a facial challenge, some of them might have prevailed under a *Penn Central* analysis."); *FBT Everett Realty, LLC v. Mass. Gaming Comm'n*, 489 Mass. 702, 717 (2022) ("When all three *Penn*

Petitioners contend that that the *Penn Central* standard is "out of step with this Court's constitutional jurisprudence" and argue the Court should refashion it to accord with the "original understanding" of the Takings Clause. Pet. 24–25 (citing *Nekrilov v. City of Jersey City*, 45 F.4th 662, 686–87 (3d Cir. 2022) (Bibas, J., concurring)). "Before the 20th century," however, "the Takings Clause was understood to be limited to physical appropriations of property," *Cedar Point*, 141 S. Ct. at 2071, which have not occurred here, *supra* pp. 20–24, so the refashioning that Petitioners seek would not help them win this case.[20]

Petitioners' contention (at 25) that "reliance interests are weak" for the *Penn Central* standard is contradicted by the decades of cases faithfully applying it to use restrictions. *See supra*, note 18.

Central factors are considered and balanced, therefore, we cannot say that the [government] is entitled to judgment as a matter of law on the available record.").

[20] Petitioners repeatedly cite (at 24, 25, 29) Justice Thomas's dissent from the denial of certiorari in *Bridge Aina Le'a, LLC v. Hawaii Land Use Commission*, but Justice Thomas expressly noted that there may be "no such thing as a regulatory taking." 141 S. Ct. 731, 731–32 (2021).

III. The Case Is a Poor Vehicle to Address the Parameters of the Takings Clause

Petitioners seek overbroad relief for the narrow "injuries" they allege, attempting to manufacture a legal controversy out of generalized political disagreements. As Petitioners told the Second Circuit, their complaint sought "declaratory and injunctive relief striking the HSTPA (but not New York's rent-stabilization regime generally) *in its entirety* and returning the underlying laws to their pre-June 2019 state." Appellants' Br., *G-Max*, No. 21-2448 (2d Cir. Nov. 18, 2021), ECF No. 56 (emphasis added); *see also* Pet. App. 222–26 (prayer for relief). But the HSTPA comprised fifteen parts, only some of which concerned rent-stabilization laws affecting New York City landlords, *see generally* 2019 N.Y. Laws, ch. 36, and Petitioners' challenges are limited to a handful of "specific regulations," Pet. 3, 29. "[A] plaintiff must demonstrate standing separately for each form of relief sought," but Petitioners attempt no such showing as to each and every aspect of the HSTPA. *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 also lack standing to challenge the RSL's successorship rights, *see* Pet. 6, 28, because those rights were promulgated in the 1980s and were not affected by the HSTPA, *see supra* p. 6, so

Petitioners' concerns would not be redressed by the relief that they seek. *E.g.*, *Haaland v. Brackeen*, 599 U.S. 255, 291–93 (2023). Even if Petitioners had standing to challenge the successorship rules, their decades-long delay in doing so would bar such claims. *E.g.*, *City of Sherrill v. Oneida Indian Nation of N.Y.*, 544 U.S. 197, 217 (2005).

Petitioners' allegations are also insufficiently particularized to establish standing. For example, although Petitioners have made vague, generalized claims about the RSL's "aggregate" economic effect on regulated properties, Pet. App. 164, 176 ¶¶ 91, 127, including "devaluation," Pet. App. 172 ¶ 119, "unprofitab[ility]," Pet. App. 208 ¶ 224, and "economic[] unviab[ility]," *id.*, none of these allegations rises to the level of a concrete injury but instead provides only speculation. *See* Pet. App. 11; *DaimlerChrysler*, 547 U.S. at 346. At most, Petitioners make general claims about the effect of the RSL on market conditions, without specific details of the law's effect on the value of their own properties. *See* Pet. 5–10.

Petitioners' claims that none of them can convert their building (through sale) to co-op or condo use or evict a tenant to recover an apartment for personal use likewise fail on standing grounds, because each alleged injury is self-inflicted. *See Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 418 (2013). Petitioners contend that they "believed their buildings were suitable

for conversion" and "anticipated carrying out such conversions," Pet. 10, but none made any effort to satisfy the requirements for doing so, which apply to all residential rentals, whether rent-stabilized or not, *see supra* pp. 12–13.

No Petitioner except Ordway and Guerrieri even attempted to comply with the RSL's procedural requirements for reclaiming an apartment for personal use, and even their attempts fell short. *See* Pet. 10, 11, 16; Pet. App. 190–92 ¶¶ 171–73. Ordway and Guerrieri contend that the HSTPA's enactment in 2019 forced them to voluntarily discontinue a prior eviction proceeding against the tenant in their last remaining rent-stabilized unit and that they "cannot recover their own property for their personal use." Pet. 9–10. But Petitioners fail to disclose to this Court, as they failed to inform the Second Circuit, that Ordway and Guerrieri commenced a new action against the same tenant in 2022—while the appeal below was pending. *See* Fed. R. App. P. 28(j) Letter, *G-Max*, No. 21-2448 (2d Cir. May 3, 2022), ECF No. 105. In their new action, Ordway and Guerrieri claim that the HSTPA's personal-use amendments cannot be applied to them and thus their prior stipulation of discontinuance should be deemed null and void.[21] *See id.* Even setting

[21] The Kings County Supreme Court has ordered Petitioners Ordway and Guerrieri to file a note of issue, which certifies readiness

aside Petitioners' lack of candor, Ordway and Guerrieri have effectively admitted that they lack standing to challenge the HSTPA's amendments to the personal-use exemption by claiming that the amendments do not apply to them.

Petitioners' case is not ripe because Petitioners could achieve relief without any judicial intervention, much less review by this Court. *See* Pet. App. 8, 10–11. Petitioners could have applied (and still may apply) for hardship exemptions under a variety of provisions of state and city law. *See supra* p. 10. Petitioners have alleged (though the Petition does not argue) that the hardship exemptions are rarely granted and insufficient, *see* Pet. App. 200–04 ¶¶ 197–207, but this claim is based on pure speculation because they have not applied.[22] Under these circumstances, Petitioners'

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for trial, by August 2, 2024. *See Ordway v. Carlin*, Index No. 502855/2022 (N.Y. Sup. Ct. July 10, 2023), ECF No. 11. It is long established that this Court may take judicial notice of state-court decisions. *E.g.*, *Pennington v. Gibson*, 57 U.S. 65, 81 (1853).

[22] While Petitioners claim they were injured by the HSTPA's "elimination of rent increases upon vacancy and limits on recoverable spending for improvements," Pet. 10, the state budget enacted two days after the Petition was filed doubled the amount of recoverable spending for improvements on all apartments and more than tripled the amount of recoverable spending for apartments that have been vacant since 2022, *see* 2024 N.Y. Laws, ch. 56, part FF, § 1(1)(B). Thus, Petitioners' claim that "property

as-applied claims are unripe and inappropriate for judicial review, particularly by this Court.

* * *

owners can increase rents only in the amount of $15,000 per apartment over a 15-year period" is no longer true. Pet. 8.

CONCLUSION

The Petition for a writ of certiorari should be denied.

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