No. 24-487

In the Supreme Court of the United States

JAMES GARY COLLINS,

Petitioner,

v.

MONTEREY COUNTY, CALIFORNIA,

Respondent.

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

BRIEF IN OPPOSITION

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January 2, 2025 *Counsel for Respondent*

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QUESTIONS PRESENTED[1]

1. Can a "total taking" occur under *Lucas* where the plaintiff purchased for value real property subject to existing land use restrictions, and the parties agree that the property maintains broadly similar market value following the government action at issue?

2. Has intervening case law revived *Agins* and limited *Penn Central* to a balancing of public and private interests?

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[1] Petitioner's three questions presented each relate to his Takings Clause claims under *Lucas v. South Carolina Coastal* Council, 505 U.S. 1003 (1992) ("*Lucas*") and *Penn Central Transportation Co. v. New York* City, 438 U.S. 104 (1978) ("*Penn Central*"), as well as his theory regarding the ongoing vitality of *Agins v. City of Tiburon*, 447 U.S. 255 (1980) ("*Agins*"). Petitioner additionally criticizes the reasoning of the courts below with respect to the Substantive Due Process and Equal Protection claims alleged in his underlying complaint but fails to identify any issues presented in connection with these claims. Accordingly, Respondent County of Monterey ("County") focuses this Brief in Opposition solely on Petitioner's Takings claims.

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INTRODUCTION

The trial court and the Ninth Circuit emphatically rejected Petitioner's claims, which rely on his expansive interpretations of this Court's Takings jurisprudence. Without identifying a novel question or split in authority, Petitioner now asks the Court to grant certiorari based on his idiosyncratic readings of this Court's decisions. Because Petitioner's claims fail under existing precedent, and because the facts of this case, including that Petitioner purchased his property thirty years ago for value subject to the same land use restrictions that remain in place today, present little opportunity for reviewing those precedents, the Court should deny the Petition for Writ of Certiorari.

SUMMARY

A. Factual Background

This case concerns real property consisting of approximately twenty-one (21) acres of undeveloped land located at 83 Mount Devon Road in the Carmel Highlands area in the Coastal Zone of unincorporated Monterey County ("Property"). Pet.App.5a. Petitioner purchased the Property in 1994 with the understanding that it had been zoned for Resource Conservation Costal Zone ("RC(CZ)") uses since the adoption of the Carmel Area Land Use Plan by the County Board of Supervisors ("Board") in 1983. Pet. 2; Pet.App.5a, 7a. The Property remains subject to the same zoning to this day. Pet.App.6a-8a, 20a. The RC(CZ) zone has

never allowed for the construction of a single family home, but at all times has allowed for uses including but not limited to: resource-dependent educational and scientific research facilities; low intensity day use recreation such as trails, picnic areas, and boardwalks; restoration and management programs for fish, wildlife, and other physical resources; and public utility facilities such as pipelines, water tanks, and overhead utility extensions. *Id.* at 5a-6a. Petitioner never attempted to develop the Property for any allowable use.

Over twenty years after he purchased the Property, Petitioner applied to the County to change the zoning classification of the Property to a Watershed and Scenic Conservation, Special Treatment, Coastal Zone ("WSC/SpTr(CZ)"), which permits residential development. Pet.App.6a. The Board denied Petitioner's application without prejudice pending a judicial determination regarding the status of a Conservation and Scenic Easement ("Easement"). *Ibid.*

Petitioner initiated litigation over the Easement by filing a complaint in the Northern District of California. Pet.App.6a. After a bench trial concerning Plaintiff's quiet title cause of action regarding the Easement, the district court found that Easement had been terminated. *Id.* at 7a. The district court also concluded that Petitioner was aware of the RC(CV) zoning designation when he purchased the Property and that he was not a good faith purchaser for value. *Ibid*

Following the district court's decision, Petitioner reapplied to the Board for a change in zoning. Pet.App.7a.

On March 8, 2022, the Board adopted a resolution of intent to deny the application and, on April 19, 2022,

adopted the Resolution denying Petitioner's application. Pet.App.7a-8a.

This litigation ensued.

B. Proceedings Below

On April 27, 2022, Petitioner filed the underlying complaint.

On February 21, 2023, the County filed a motion for summary judgment.

On August 18, 2023, after additional briefing following the completion of expert discovery, the district court granted the County's motion for summary judgment and entered judgment in favor of the County. Pet.App.4a.

Petitioner timely appealed.

On June 12, 2024, the Ninth Circuit held oral argument on Petitioner's appeal. Pet.App.1a.

On June 30, the Ninth Circuit issued its memorandum denying Petitioner's appeal. Pet.App.1a-3a.

In its unpublished decision, the Ninth Circuit held that Petitioner's *Lucas* claim failed because "[h]is own expert appraised the property as having significant economic value" and further found that Petitioner "did not proffer evidence showing that any of the *Penn Central* factors weigh in his favor." Pet.App.2a-3a.

Petitioner sought rehearing En Banc, which was denied in an order dated July 30, 2024. Pet. 1.

Petitioner timely filed his Petition for Writ of Certiorari with this Court, with Respondent's Brief in Opposition due December 2, 2024.

Respondent requested and obtained an extension of time to file its Opposition until January 2, 2025.

REASONS FOR DENYING CERTIORARI

I. The District Court Properly Applied Well-Settled Law.

"A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." U.S. Sup. Ct. R. 10. Because the court below correctly articulated and applied well-trodden rules of law in upholding the district court's grant of summary judgment including the *Penn Central* factors, the *Lucas* total takings framework, and Substantive Due Process and Equal Protection standards under the Fifth and Fourteenth Amendments, review should not be granted in this case. Pet.App.2a-3a. Seeking to present a stronger basis for his Petition, Petitioner reframes his arguments as an opportunity for the Court to revisit established precedents. Pet. 21-39. However, Petitioner's legal theories are unconvincing, and the underlying facts make Petitioner's case ill-suited for the broad reconsideration of established law he seeks on review.

II. The Facts are Inconsonant with Petitioner's Arguments.

Petitioner's three questions presented relate to his claims under the Takings Clause. Pet. 21, 24, 29. However, this is not a classic Takings claim. While the County chose to oppose Petitioner's claims as plead within the context of the County's underlying summary

judgment motion and the appellate process, the facts show that the County never took any property rights whatsoever from Petitioner. In fact, Petitioner's claims solely arise out of the County's denial of his request for re-zoning, made close to thirty years following his purchase of the Property subject to the same zoning. Pet.App.6a. Set within the context that Petitioner purchased the Property with full knowledge that he could not build a single-family house and that the Property retains significant economic value, Petitioner's claim boils down to sour grapes: he failed to obtain a windfall by successfully rezoning the Property. Pet. App.7a. That is not a Taking.

III. There is no Circuit Split Regarding *Lucas*.

Petitioner justifies his request for review by manufacturing a dispute over the definition of a "total taking" under *Lucas*. Petitioner frames this dispute as a conflict as to whether a property can "be left with no value even if the regulation in question deprives the property of all economically beneficial uses." Pet. 21. As he did below however, Petitioner defines "economically beneficial uses" in reference to the conclusion of his expert Dr. Froke "that the Allowed Uses would be unlikely to ever generate income in excess of costs," a definition of economic value that would upend existing Takings law by guaranteeing property owners the opportunity to make a profit. *Id.*

While superficially resembling *Lucas*, under Petitioner's test, a total taking would occur whenever entitled uses are not profitable (i.e., generating "income in excess of costs"). Pet. 21. Under this standard, which is plainly not the law, any owner of real property without a profitable use, such as the owner of a single-family home that could not be rented for a profit, could

allege a taking under *Lucas* and ask the government for compensation after unsuccessfully seeking a more lucrative zoning designation. Petitioner fails to cite a single case adopting this novel theory, which does not warrant the review of this Court.

In opposing the County's motion for summary judgment, Petitioner was required to proffer a triable issue of fact supporting his claim that the County's denial of his rezoning application left him *no* economically beneficial or productive use of his property to overcome summary judgment. *See Lucas*, 505 U.S. at 1015-1019; *see, e.g.*, *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Reg'l Planning Agency*, 535 U.S. 302, 332 (2002) (affirming that "the categorical rule in *Lucas* was carved out for the 'extraordinary case' in which a regulation permanently deprives property of all value"); *Palazzolo v. Rhode Island*, 533 U.S. 606, 631-632 (2001) (holding "that petitioner's entire parcel serves as the basis for his takings claim, and, so framed, the total deprivation argument fails" where petitioner retained limited development opportunities on remaining portions of the property.) Economically beneficial use in the context of a categorical takings claim is almost always described in terms of property values. *See Lucas*, 505 U.S. at 1019 fn.8 (contrasting total taking with situation where property loses 95% of value while noting "Takings law is full of these 'all-or-nothing' situations.") *Lucas* itself involved an unusual situation where the defendant entity waved its argument that the property at issue had no economic value subject to applicable regulations. *Lucas*, 505 U.S. at 1022 fn. 9 (noting that the trial court's finding that the properties at issue were valueless "was the premise of the petition for certiorari, and since it was not challenged

in the brief in opposition we decline to entertain the argument in respondent's brief on the merits.") Because Petitioner conceded that the Property maintains economic value, his *Lucas* claim fails under existing law and does not merit review. Pet.App.2a.

IV. *Penn Central* is Well-Established Law.

Similarly, Petitioner seeks to drum up a significant federal question by asking the Court to find that *Penn Central* was overruled in part by *Palazzolo*. Under *Penn Central*, courts balance the following factors: (1) "the economic impact of the regulation on the claimant"; (2) the extent of the regulation's interference with "investment-backed expectations"; and (3) "the character of the government action." *Penn Central*, *supra*, 438 U.S. at 124. Petitioner asserts that *Palazzolo* implicitly overruled *Penn Central*'s "investment-backed expectations" prong by holding that transfer of title does not defeat a Takings claim. This is wrong.

Palazzolo solely holds that a change in title is not fatal to a claim under the Takings Clause, which in *Palazzolo* referenced the transfer of property from a defunct corporation to a shareholder. Subsequent to *Palazzolo*, this Court has continued to apply the *Penn Central* test and has indicated that "[p]rimary among those factors are [t]he economic impact of the regulation on the claimant and, particularly, the extent to which the regulation has interfered with distinct investment-backed expectations." *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 538–39 (2005) (internal quotations omitted); *see also Tahoe-Sierra*, *supra*, 535 U.S. 302; *Murr v. Wisconsin*, 582 U.S. 383, 384 (2017).

Moreover, even if this Court had inclination to reconsider *Penn Central*, this case is a poor vehicle. Unlike *Palazzolo*, where regulations promulgated prior to change in title allowed a "special exception" for developments serving "a compelling public purpose which provides benefits to the public as a whole as opposed to individual or private interests," Petitioner purchased his property subject to zoning that barred construction of a single-family home without exception. *Palazzolo*, *supra*, 533 U.S. at 615; *see* Pet.App.5a-6a. Because "[a]property owner has an actionable Fifth Amendment takings claim when the government takes his property without paying for it," *Knick v. Twp. of Scott, Pennsylvania*, 588 U.S. 180, 185 (2019), any Takings claim regarding the underlying zoning accrued in 1983 with the adoption of the Carmel Area Land Use Plan, well outside the applicable statute of limitations. *See Colony Cove Properties, LLC v. City of Carson*, 640 F.3d 948, 955-956 (applying a two-year statute of limitations to a facial takings claim). This situation is distinguishable from *Palazzolo*, in which the denial at issue was based on a discretionary standard. Accordingly, to allow Petitioner to pursue a Takings claim would not only force the Court to reexamine *Penn Central*, but would functionally eliminate any statute of limitations for regulatory Takings claims by allowing subsequent purchasers to assert facial challenges to the zoning of properties long subject to land use restrictions. Because reconsidering *Penn Central* through the lens of this case would also require reconsideration of prudential limits on Takings claims and create massive and unpredictable new exposure to Takings challenges for land use authorities, the Court should not grant review of this question.

V. Petitioner Waived his Third Question Presented.

In his third question presented, Petitioner asks the Court to address *Penn Central*'s "character of government action" prong, referencing the Court's decisions in *Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244 (2024); *Cedar Point Nursery v. Hasid*, 594 U.S. 139 (2021); *Sheetz v. County of El Dorado*, 601 U.S. 267 (2024); and *Lingle*. Pet. 29. In conjunction with his claim that *Palazzolo* abrogated the investment-backed expectations prong of *Penn Central*, Petitioner reads these authorities as reviving *Agins* after *Lingle* held that its "substantially advances" formula was not a valid stand-alone Takings test. Pet. 29-39. Under *Agins*, "[t]he application of a general zoning law to particular property effects a taking if the ordinance does not substantially advance legitimate state interests . . . or denies an owner economically viable use of his land." *Agins*, *supra*, 447 U.S. at 260.

Petitioner did not cite any of these cases in the Court below for the propositions asserted. Petitioner did not cite *Loper*, *Cedar Point* or *Sheetz* at all, and solely cited *Lingle* in support of a different argument. Because Petitioner failed to make any similar argument or cite these authorities in the court below, his arguments should be deemed waived for purposes of review.

Moreover, Petitioner's legal analysis is unconvincing. In *Lingle*, the Court rejected the *Agins* formula as an independent Takings test for numerous reasons, most pertinently that *Agins* illogically focused the Takings inquiry on the effectiveness of government regulation rather than its impact on property interests. *Lingle*, *supra*, 544 U.S. 528, 543 (stating that the "notion

that such a regulation . . . 'takes' private property for public use merely by virtue of its ineffectiveness or foolishness is untenable.") It is unclear how any of the cases cited by Petitioner can be read to re-elevate this test, which commingles Takings and Due Process concepts, back to the forefront of Takings analysis.

The *Nollan/Dolan* test discussed in *Sheetz* addressed permit fees not at issue in this case. *Loper*, which abrogated the *Chevron* doctrine, concerned the deference that courts owe to agency interpretations of federal law, and is not relevant to this case, which concerns the actions of an elected local government body. *Cedar Point* addressed physical takings not at issue in this case. None of these precedents is obviously relevant Petitioner's claim that *Penn Central*'s "character of government action" prong has covertly been supplanted by *Agins*. Petitioner's theory does not merit further review.

CONCLUSION

The Court should deny the Petition for Writ of Certiorari.

Respectfully submitted,

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