No._____

In the Supreme Court of the United States

TEDFORD'S TENANCY, LLC,
Petitioner,

v.

CITY OF NEW YORK, ET AL.,
Respondents.

On Petition for a Writ of Certiorari to the New York Supreme Court, Appellate Division

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

There is a substantial split of authority about whether final decision ripeness is jurisdictional or prudential for Fifth Amendment regulatory takings claims. On the jurisdictional side are this Court's decisions in *Williamson County Regional Planning Commission v. Hamilton Bank* and *Horne v. Department of Agriculture*, plus the Third and Eighth Circuits. On the prudential side are this Court's decisions in *Lucas v. S.C. Coastal Council* and *Suitum v. Tahoe Regional Planning Agency*, and the Fourth, Fifth, Seventh, Ninth, and Tenth Circuits. The Federal and Second Circuits have intra-circuit splits and in the remaining Circuits, it is an open question. As a result, there is substantial uncertainty about what a property owner must plead for its constitutional claim to be heard on the merits.

Here, Petitioner's regulatory takings claim was dismissed at the pleadings stage on prudential ripeness grounds, despite plausibly alleging a concrete injury and an established government position.

The questions presented are:

1. When a property owner has sufficiently pled jurisdictional standing for a Fifth Amendment regulatory takings claim, may the court nonetheless dismiss the case on prudential ripeness grounds?

2. Whether a regulatory takings claim under the Fifth Amendment can be dismissed as prudentially unripe when a plaintiff is ineligible for administrative relief or such relief is facially incapable of altering the economic impact of the regulation?

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Petitioner Tedford's Tenancy, LLC, was the plaintiff-appellant in all proceedings below. Petitioner is a limited liability corporation organized under the laws of New York. It has no parent corporation and issues no shares.

Respondents the City of New York, the State of New York, the New York State Division of Housing and Community Renewal, the New York City Department of Environmental Protection, the New York City Housing Preservation Department, the New York City Department of Buildings, the New York City Department of Finance, Ruthanne Visnauskas, Lisa F. Garcia, Ahmed Tigani, Dina Levy, and Richard Lee, were the defendant-appellees in all proceedings below.[1]

[1] Pursuant to Supreme Court Rule 35.3, the following automatic substitutions were made for public officers sued in their official capacities: Lisa F. Garcia for Rohit T. Aggarwala; Dina Levy for Adolfo Carrion Jr.; Ahmed Tigani for Melanie E. La Rocca; and Richard Lee for Preston Niblack.

STATEMENT OF RELATED CASES

These proceedings are directly related to the above-captioned case under Rule 14.1(b)(iii):

Tedford's Tenancy, LLC v. City of New York, et al., No. 2055-499 (N.Y., February 17, 2026).

Tedford's Tenancy, LLC v. City of New York, et al., No. 2024-00601 (N.Y. App. Division, May 22, 2025).

Tedford's Tenancy, LLC v. City of New York, et al., No. 154082/2022 (N.Y. Supreme Court, November 13, 2023).

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PETITION FOR A WRIT OF CERTIORARI

Lynette Amico Ciner and Richard Ciner, the principals of Tedford's Tenancy, LLC, inherited a small, 100-year-old, mixed-use building in Manhattan. App. 17a. It has six rent-stabilized apartments and a ground floor commercial space. App. 25a. However, the Respondents' rent control laws have stripped the property of virtually all of its economic use. App. 22a.

The law restricts the rent to an amount that is substantially below market value; the presumptive legally permissible rent for all six units combined is $2,584 per month, or $430 per apartment, which is less than the market rent for a single studio apartment in the building's neighborhood. App. 26a-28a. It is not enough to cover the property's normal operating expenses. App. 19a. Moreover, the building needs an estimated $1 million in repairs, but the law only allows for nominal rent increases to cover the cost. App. 32a-34a. The Ciners are not eligible for any of the "hardship" exemptions to the rent control law and, even if they were, the maximum allowable increase would not make a dent. App. 34a-35a. With expenses always greater than the government-controlled income, the Ciners filed suit and alleged that the rent control laws, as applied, effected a regulatory taking contrary to the Fifth Amendment. App. 38a-40a.

The court below dismissed the Ciners' regulatory takings claim at the pleadings stage. Standing was uncontested. The scope of the law was known, the limit of the governments' discretion was known, and the owners alleged a classic pocketbook injury that was the direct product of the Respondents' rent control laws.[1] *See Tyler v. Hennepin Cnty.*, 598 U.S. 631, 636 (2023). Nonetheless, relying on federal law and prudential ripeness, the court below dismissed the Ciner's Fifth Amendment claim. App. 1a-3a. Bypassing the allegations of standing, it held that their regulatory takings claim could not be heard unless and until the Ciners apply for the "hardship" exemptions that they were ineligible to receive.

In issuing its decision, the court below joined the ongoing debate about whether final decision ripeness is jurisdictional and connected to standing and concrete injury; or instead, prudential, discretionary, and distinct from standing. For regulatory takings, standing and ripeness are seemingly interrelated. Standing ensures that the property owner has suffered a concrete injury, as opposed to one that is speculative, hypothetical, or contingent on future events. Ripeness for a Fifth Amendment takings claim requires a *de facto* final position by the government with respect to the regulation at issue and the property at issue. Accordingly, standing and ripeness are complementary, or even overlapping, requirements. Final decisions result in concrete takings injuries and standing; and conversely, the lack of a final decision means that the claimed injury is merely speculative and that no standing exists. *Ateres Bais Yaakov Academy of Rockland v. Town of Clarkstown*, 88 F.4th 344, 350 (2d Cir. 2023); *Ranco*

[1] The detailed allegations extended well beyond those required by New York's "liberal notice pleading standards," *Taxi Tours Inc. v. Go New York Tours, Inc.*, 41 N.Y.3d 991, 994-95 (2024); a standard that echoes Federal Rule of Civil Procedure 8. *Berk v. Choy*, 607 U.S. 187, 194 (2026) ("Rule 8 sets a ceiling on the information that plaintiffs can be required to provide about the merits of their claims").

Sand and Stone Corp. v. Vecchio, 124 A.D.3d 73, 81-82 (N.Y. App. 2014).

But that changes if ripeness is deemed prudential. The prudential designation means that the court can decline to hear a case for reasons that are judicially self-imposed, discretionary, and mutable. *Bennett v. Spear*, 520 U.S. 154, 162 (1997). And it disconnects final decision ripeness from jurisdictional standing. Under a prudential ripeness doctrine, even if the property owner has established a concrete injury and standing, the court may abdicate its duty to hear an undisputedly justiciable case and demand that the owner undertake additional procedural hurdles. That is what happened here.

Inconsistent decisions from this Court have cast doubt on whether final decision ripeness is jurisdictional or prudential. In two decisions, this Court linked final decision ripeness to jurisdictional standing.[2] Conversely, in two other decisions, this Court deemed final decision ripeness to be prudential and discretionary.[3] As a result, the lower courts are both fiercely divided and utterly confused. The Third Circuit, the Eighth Circuit, and Nevada have declared ripeness to be jurisdictional for takings cases.[4] The Fourth, Fifth, Seventh, Ninth and Tenth Circuits have declared it to be prudential.[5] An Eleventh Circuit decision declared ripeness to be jurisdictional

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[2] *Williamson Cnty. Reg'l Plan. Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172, 193 (1985); *Horne v. Dep't of Agric.*, 569 U.S. 513, 525 (2013).

[3] *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1013 (1992); *Suitum v. Tahoe Reg'l Plan. Agency*, 520 U.S. 725, 733 (1997).

[4] *See infra* at 22.

[5] *See infra* at 23-25.

and then decided the case on prudential grounds and California and Iowa courts have done the same.[6] The Federal Circuit and Second Circuit have issued inconsistent intra-circuit decisions.[7] And in the Sixth Circuit, it remains an open question.[8]

Only this Court can resolve whether final decision ripeness is jurisdictional or prudential for Fifth Amendment cases. In addition to the numerous splits of authority, there are also outstanding questions about whether a prudential ripeness doctrine that allows the court to dismiss justiciable cases can be squared with the court's unflagging obligation to decide justiciable cases. *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 125-26 (2014). The reconciliation of competing decisions further includes whether the prudential designation in *Lucas* and *Suitum* may be best understood as a non-precedential, drive-by statement, *see Wilkins v. United States*, 598 U.S. 152, 160-61 (2023), that was inadvertently caught up in the Court's efforts to weaken the questionable state court exhaustion requirement that *Knick v. Township of Scott* ultimately abrogated. 588 U.S. 180, 204 (2019).

Until then, whether a property owner will be allowed to argue a Fifth Amendment regulatory takings claim depends not just on the facts of the case, but on where the property owner lives and what version of ripeness the local jurisdiction happens to favor. *See Hanna v. Plumer*, 380 U.S. 460, 462 (1965) (granting certiorari "[b]ecause of the threat to the goal of uniformity of federal procedure"). Those property

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[6] *See infra* at 26-27.

[7] *See infra* at 25-26.

[8] *See infra* at 22-23.

owners subject to a court's discretionary prudential power can be compelled to do more, show more, and endure more than other civil rights litigants simply for the opportunity to have their constitutional claims decided on the merits. *See Roman Cath. Bishop of Springfield v. City of Springfield*, 724 F.3d 78, 91-92 (1st Cir. 2013) (contrasting prudential ripeness rules for regulatory takings claimants versus other civil rights claims, such as free exercise of religion); *Lamar Co., LLC v. Lexington-Fayette Urb. Cnty. Gov't*, No. 5:21-043, 2021 WL 2697127, at *5 (E.D. Ky. June 30, 2021) (contrasting "relaxed" ripeness requirements for First Amendment claims to stringent ripeness requirements for Fifth Amendment takings claims); 13B Wright & Miller, *Fed. Prac. & Proc.* § 3532.1.1 (3d ed.) ("A special category of ripeness doctrine surrounds claims arising from government takings of property.").

It unfairly prejudices a property owner's access to courts and reduces property rights to the "poor relation" of the Bill of Rights. *Dolan v. City of Tigard*, 512 U.S. 374, 392 (1994); *see also Lynch v. Household Fin. Corp.*, 405 U.S. 538, 552 (1972) ("The right to enjoy property without unlawful deprivation, no less than the right to speak or the right to travel, is in truth, a 'personal' right, . . . That rights in property are basic civil rights has long been recognized."); Michael M. Berger, *Supreme Bait & Switch: The Ripeness Ruse in Regulatory Takings*, 3 Wash. U. J.L. & Pol'y 99, 131 n.136 (2000) (decrying "a huge and unjustified difference between land use ripeness cases and all other ripeness cases.").

The decision below exemplifies this widespread problem. Even under the most expansive definition of ripeness, Tedford's Tenancy's regulatory takings action was justiciable. Property owners bear only a "relatively modest" burden to demonstrate that the "initial decisionmaker" has staked out a "final" position. *Pakdel v. City & Cnty. of San Franciso*, 594 U.S. 474, 478 (2021). It is a *de facto* determination about "how the regulations at issue apply to the particular land in question." *Ibid.* (internal citations omitted). Yet, many lower courts, including the court below, continue to misinterpret ripeness to demand exhaustion even though the effect of the regulation is plausibly alleged, fulfilling the finality requirement. *See Hikma Pharm. USA Inc. v. Amarin Pharma, Inc.*, 146 S. Ct. 1391, 1399 (2026) (a claim "that is plausible on its face" proceeds to discovery). Allowing dismissal under these circumstances creates an improper hurdle that serves only to nullify the protections of the Fifth Amendment. *See* Michael K. Whitman, *The Ripeness Doctrine in the Land-Use Context: The Municipality's Ally and the Landowner's Nemesis*, 29 Urb. Law. 13, 39 (1997) ("a plaintiff property owner should not be required to waste his time and resources in order to obtain an adverse decision that it can prove would have been made if subsequent application were made").

Certiorari should be granted.

OPINIONS BELOW

The decision of the New York Supreme Court (App. 4a-13a) is unpublished but available at *Tedford's Tenancy, LLC v. City of New York*, No. 154082/2022, 2023 WL 7493254, 2023 N.Y. Misc. LEXIS 19084 (N.Y. Sup. Ct. Nov. 13, 2023). The New York Appellate Division's decision (App. 1a-3a) is published at *Tedford's Tenancy, LLC v. City of New York*, 238 A.D.3d 624 (N.Y. App. Div. 2026). The decision of the

New York Court of Appeals denying review (App. 14a) is unpublished but available at *Tedford's Tenancy, LLC v. City of New York*, 44 N.Y.3d 911 (2026).

JURISDICTION

This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a). The New York Supreme Court, Appellate Division entered Judgment on May 22, 2025. The New York Court of Appeals denied review on February 17, 2026. Petitioner obtained an extension to file this Petition to and including June 30, 2026. *See* No. 25A-1159.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the U.S. Constitution provides in relevant part, "nor shall private property be taken for public use, without just compensation."

STATEMENT OF THE CASE

A. Tedford's Tenancy's property

Petitioner Tedford's Tenancy LLC (Tedford's) owns a century-old, multi-family, mixed use building located at 294 Third Avenue in Manhattan. App. 5a. The principal owners are Lynette Amico Ciner and Richard Ciner and the property has been in Lynette's family since the 1940s. App. 25a. She grew up in the building, it is where her parents first met, and it has incalculable sentimental value. App. 17a-18a.

In 2020, Tedford's took control of the building's day-to-day operations. App. 26a. Prior to that, it was managed by a ground lessee. *Ibid.* The Ciners intend to restore the building to its former glory, move back to New York, and take up residence in one of the building's apartments. App. 17a-19a.

Tedford's property is subject to the New York Rent Stabilization Law of 1969, the Emergency Tenant Protection Act of 1974, and subsequent amendments including the 2019 Housing Stability and Tenant Protection Act (collectively, the "RSL"). App. 32a-33a, 38a. These laws substantially restrict Tedford's ability to increase residential rents. App. 32a.

The building has six units: a mix of one- and two-bedroom apartments with monthly rents of $200, $600, $600, $700, $900, and $2,150, respectively.[9] App. 26a. The current residential rent roll is $5,150 per month, an average of $859 per month per apartment. *Ibid.* However, upon analysis, Tedford's discovered that its rental rates were higher than the RSL allows, which is a total of $2,584 per month, or

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[9] There is also a market rate commercial unit on the ground floor. App. 25a.

$430 per apartment.[10] App. 27a. Either way, it is substantially below the market rates in this Gramercy neighborhood, where the average rent for a studio apartment is $3,500; a one-bedroom apartment is $4,200; and a two-bedroom apartment is $5,275. App. 28a.

Because of the RSL, Tedford's legal income of $121,008[11] is not enough to satisfy its total annual expenses of $127,100.[12] App. 19a-20a, 27a-30a. Moreover, those expenses do not include debt service, necessary maintenance, or improvements. App. 19a-20a. Tedford's building is also over 100 years old, plagued by constant leaks, and requires remediation for both lead paint and asbestos. App. 30a-31a. The fire escape must be altered, a sprinkler system must be added, and numerous other repairs and improvements are needed. App. 30a-32a. Tedford's complaint alleged that the cost of repairing and modernizing the building exceeds $1 million. App. 32a.

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[10] All six apartments are presumed to be rent-stabilized, there being no documentation to suggest otherwise. App. 26a.

[11] Annual income is calculated as the legally required rent stabilized income of $2,584 per month x 12, plus the market rate commercial income of $7,500 per month x 12. App. 27a.

[12] As pled in Tedford's complaint, the yearly costs are: $70,000 in property taxes, $15,000 for the water bill, $18,000 for heating, $8,000 for superintendent costs, $9,000 for management fees, $5,000 for insurance, and $1,500 for electricity. App. 19a, 28a-30a.

B. New York's rent control regime as applied to the property

Annual rent increases for residential units under the control of the RSL are determined by the New York City Rent Guidelines Board. App. 33a. Over the last ten years, it has limited increases to a yearly average of 1.275%, which is 50% below inflation for that same time period. *Ibid.*

The RSL allows for additional rent increases under two different hardship exemptions: the comparative hardship exemption, and the alternate hardship exemption. App. 9a, 34a-35a. "Comparative hardship" means "as compared to the owner's average net income from 1968-1970."[13] It is a remnant of when the rent control law was first enacted and has not been updated in the half century since then. Tedford's does not have financial documents from fifty-six years ago and for that reason, is ineligible for the comparative hardship exemption. App. 34a-35a. Tedford's pending property tax challenges also make it ineligible for either the comparative or alternate hardship.[14] App. 35a. Yet even if Tedford's was

[13] 9 NYCRR § 2522.4 (b)(1) (NYC RSC); *see also* https://rules.cityofnewyork.us/wp-content/uploads/2025/06/fact-sheet-39-06-2019.pdf?ref=vitalcitynyc.org.

[14] *See* Form RTP-45A "Alternative Hardship Rent Increase Qualification Form," available at https://hcr.ny.gov/system/files/documents/2022/08/rtp-45-alternative-hardship-application_0.pdf (visited May 26, 2026) (if there is a pending real estate objection, "STOP. You do not qualify for an Alternative Hardship increase at this time."); Daniel Finkelstein & Lucas A. Ferrara, *Landlord and Tenant Practice in New York* § 11:301 (West's N.Y. Prac. Series) (property owner must demonstrate, among other things, "that all legal objections to any real-estate taxes and

eligible, the maximum allowable rent increase under both hardship exceptions is capped at 6%. *Ibid.* Because the current rent is greater than the legally allowable rent, App. 26a-27a, and would be adjusted downward if the Ciners submit an application, a 6% increase would still leave the rent roll far below its current rate. App. 34a.

With respect to the $1 million in repairs that are needed, App. 32a, the RSL only allows for minimal rent increases to offset the cost. For improvements to individual apartments, the maximum allowable increase for Tedford's property would be $89 per apartment per month for a total of $3,214 annually. App. 33a. Rent increases for major capital improvements are limited to 2% of legal rent over the course of thirty years. App. 33a-34a. Taking into account financing costs and inflation, Tedford's expenses would be millions of dollars more than the increased rent that it could collect. App. 34a.

Consequently, under the RSL, Tedford's multi-family property has little to no economic use. App. 22a, 35a, 38a-40a. Its necessary expenses will always outstrip its income and the RSL does not allow for the income to be increased to any meaningful degree. Indeed, the building has so little value that private lenders and the Respondent City Department of Housing Preservation and Development rejected it as collateral for loans. App. 20a, 37a.

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water and sewer charges for the governing time-period have been resolved") (citing DHCR Form OCH (Sug. 1992)); App. 29a, Compl. ¶ 69 ("There has been no resolution of the 2021 tax proceeding to date.").

C. Proceedings below

Tedford's filed suit in New York State Supreme Court. App. 15a-44a. It alleged an as-applied regulatory taking under the Fifth Amendment based on the deprivation of the building's use and value under the RSL. App. 38a-40a. It sought just compensation, declaratory relief, and injunctive relief. App. 43a.

Tedford's sought a temporary restraining order to prevent the government's collection of real estate taxes and other municipal charges that Tedford's could not afford to pay as a direct result of the RSL. App. 6a. The Government cross-moved for dismissal of the complaint alleging that the constitutional claim was unripe and that Tedford's failed to state a viable cause of action. App. 7a.

The trial court granted the Governments' motion to dismiss. Notwithstanding the allegations in the complaint, which must be taken as true, the court held that Tedford's "failed to apply for such a hardship exemption under either category. In light of this failure, no final determination has been made, rendering this action not ripe for disposition." App. 9a. It also held that even crediting Tedford's allegations of standing, App. 9a-10a, "the time and expense to wade through a complex process" is an "obligation" and "[n]either does the fact that plaintiff may not ultimately obtain any relief by proceeding through the proscribed administrative process . . . render the requirement that they apply futile." App. 10a.

Tedford's appealed and the Appellate Division affirmed. The court did not address Tedford's standing or concrete injury, focusing entirely on the question of ripeness. App. 1a-3a. It acknowledged Tedford's argument "that it did not pursue a hardship exemption because to do so was futile, overly burdensome, and would offer de minimis relief." App. 2a. Nonetheless, the court's starting point was that the application for a hardship exception was a prerequisite. *Ibid.* Therefore, Tedford's assertions of futility and de minimis relief "fail[] for an as-applied takings claim when the landlord has not personally experienced repetitive or unfair procedures." *Ibid.* It affirmed the dismissal, relying on *Church of St. Paul & St. Andrew v. Barwick*, 67 N.Y.2d 510, 518 (1986), a prudential ripeness case which, in turn, relied on federal law.[15] *Ibid.*

In *Church of St. Paul & St. Andrew*, the property owner alleged that the local Landmarks Law was an unconstitutional regulatory taking. 67 N.Y.2d at 513. The plaintiff's claim met the necessary standing requirements. *Id.* at 514. Regardless, the court held the takings claim to be unripe because the plaintiff did not first pursue "various ameliorative provisions."

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[15] The court below also stated that Tedford's failed to allege sufficient facts to support a Fifth Amendment taking. App. 2a-3a. However, because that is curable through the filing of an amended complaint, Tedford's can "obtain effectual relief on remand." *National Rifle Ass'n of Am. v. Vullo*, 602 U.S. 175, 186 n.3 (2024) (internal quotations omitted), and this Court need not engage with the Appellate Division's alternate ruling when the lower court can equally do so. *Id.* at 186. In addition, after the Appellate Division held that it lacked the ability to decide the case, it is questionable whether it had the power to proceed further and issue its alternate finding. *See Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 101 (1998) ("Hypothetical jurisdiction produces nothing more than a hypothetical judgment—which comes to the same thing as an advisory opinion, disapproved by this Court from the beginning.").

Ibid. Relying on this Court's two-part prudential ripeness test in *Abbott Laboratories v. Gardner*, 387 U.S. 136, 149 (1967), the owner had to show, first, that the "the issues tendered are appropriate for judicial resolution" and second, that a hardship to the parties would result if judicial relief is denied. *Id.* at 519 (quoting *Toilet Goods Ass'n, Inc. v. Gardner*, 387 U.S. 158, 162 (1967), and *Abbott Labs*).

Both the Appellate Division and the trial court relied primarily upon federal law to reach their respective determinations regarding ripeness. App. 1a-2a; 8a-10a. This sufficiently raises a federal question subject to this Court's review. *Michigan v. Long*, 463 U.S. 1032, 1040-41 (1983) (State court decisions are reviewable by this Court when the "decision fairly appears to rest primarily on federal law, or to be interwoven with the federal law, and when the adequacy and independence of any possible state law ground is not clear from the face of the opinion."); *Florida v. Powell*, 559 U.S. 50, 58-59 (2010) (same); *see also Palazzolo v. Rhode Island*, 533 U.S. 606, 625 (2001) (resolving Fifth Amendment issues when the state court decided the case under federal law).

Tedford's sought leave to appeal before the New York State Court of Appeals, which was denied. App. 14a.

REASONS FOR GRANTING THE PETITION

I. This Court Should Resolve the Conflict Between Jurisdictional Standing and Prudential Ripeness in Takings Cases

A. This Court's conflicting decisions about ripeness

For regulatory takings claims under the Fifth Amendment, property owners must establish standing and final decision ripeness regardless of whether the case is brought in federal or state court.[16] Standing and ripeness both originate from the same constitutional limitation that courts can only adjudicate "case[s] or controvers[ies]," *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 335 (2006), and they "boil down to the same question" of whether the plaintiff properly alleged an injury. *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 128 n.8 (2007); *Ass'n for a Better Long Island, Inc. v. N.Y. State Dep't of Env't Conservation*, 23 N.Y.3d 1, 6, 9 (2014) (equating standing and ripeness).

With respect to standing, the owner must show (i) an injury-in-fact, (ii) a causal connection between the injury and the conduct complained of, and (iii) and redressability. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992). The injury-in-fact must be "concrete, particularized, and actual or imminent." *First Choice Women's Res. Ctrs., Inc. v. Davenport*, 146 S. Ct. 1114, 1122 (2026); *Stevens v. New York State Div. of Crim. Just. Servs.*, 40 N.Y.3d 505, 515 (2023) ("The injury-in-fact requirement necessitates a showing that the

[16] The underlying takings claims are treated the same under either federal or state law. *Fifth Ave. Coach Lines, Inc. v. City of New York*, 11 N.Y.2d 342, 347 (1962).

party has an actual legal stake in the matter being adjudicated and has suffered a cognizable harm that is . . . sufficiently concrete and particularized"). Conversely, "conjectural or hypo-thetical" injuries are insufficient. *Dep't of Educ. v. Brown*, 600 U.S. 551, 561 (2023) (quoting *Lujan*, 504 U.S. at 560); *Stevens*, 40 N.Y.3d at 515 (the injury must not be "tenuous, ephemeral, or conjectural").

With respect to ripeness, under the Fifth Amendment the government is liable for regulations that have gone "too far." *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922) ("while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking."). Accordingly, the property owner must plausibly plead that the government has committed to a *de facto* final position, *Pakdel*, 594 U.S. at 479, so that the court knows "how far the regulation goes." *MacDonald, Sommer & Frates v. Yolo Cnty.*, 477 U.S. 340, 348 (1986).[17] Final decision ripeness is a modest requirement that reflects the limits of the regulation as applied to the property and it does not demand administrative exhaustion. *Pakdel*, 594 U.S. at 480; *see also Church of St. Paul*, 67 N.Y.2d at 521 (delineating the difference between finality and exhaustion consistent with *Williamson County*).

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[17] New York courts, including the court below, App. 1a-2a, consistently rely on federal precedent with respect to ripeness determinations in takings cases. *Town of Orangetown v. Magee*, 88 N.Y.2d 41, 50-51 (1996); *Ward v. Bennett*, 79 N.Y.2d 394, 399-400 (1992); *de St. Aubin v. Flacke*, 68 N.Y.2d 66, 75 (1986); *Church of St. Paul*, 67 N.Y.2d at 518; *Real Estate Bd. of N.Y., Inc. v. City of New York*, 165 A.D.3d 1, 9 n.4 (N.Y. App. 2018) (federal precedent is persuasive authority).

For Fifth Amendment takings cases, final decision ripeness is complementary of, or even duplicative of, standing. If there is a final decision, then the claimed injury-in-fact is concrete and particularized. And if there is no final decision, then the injury is merely speculative or hypothetical. In multiple cases, this Court has equated final decision ripeness with standing and concrete injury. *See, e.g.*, *Williamson Cnty.*, 473 U.S. at 193 ("the finality requirement is concerned with whether the initial decisionmaker has arrived at a definitive position on the issue that inflicts an actual, concrete injury"); *Horne*, 569 U.S. at 525 (final decision ripeness is based on whether the owner had been injured by the government's action and suffered a concrete injury).

However, this Court has also said the exact opposite and characterized ripeness as a "prudential" doctrine for takings claims. In *Suitum*, the Court explained that final decision ripeness is reviewed "under prudential ripeness principles" and it is an "independent prudential hurdle." 520 U.S. at 733; *id.* at 734 and n.7 (ripeness is "drawn both from Article III limitations on judicial power and from prudential reasons for refusing to exercise jurisdiction") (citing *Reno v. Cath. Social Servs., Inc.,* 509 U.S. 43, 57, n.18 (1993)).[18] It did the same in *Lucas*, 505 U.S. at 1012-13 ("That there is a discretionary special permit procedure . . . goes only to the prudential ripeness of Lucas's challenge, and for the reasons discussed we do

[18] *Suitum* also held that the *Abbott Laboratories*' two-prong "fitness for review" ripeness test was "not on point" for takings cases but otherwise stated that ripeness was prudential. 520 U.S. at 744 (discussing *Abbott Labs.*, 387 U.S. at 148-53).

not think it prudent to apply that prudential requirement here.").

The distinction between the two is extraordinarily important because prudential considerations are separate from "the immutable requirements of Article III." *Bennett*, 520 U.S. at 162. While they "bear on the question of standing," they are "self-imposed limits" on the exercise of jurisdiction that can be freely modified or abrogated by the legislature. *Ibid.*; *United States v. Windsor*, 570 U.S. 744, 757 (2013) (prudential limitations are separate from standing and "essentially matters of judicial self-governance."); *Warth v. Seldin,* 422 U.S. 490, 500 (1975) (prudential standing "apart from Art. III's minimum requirements, serve to limit the role of the courts in resolving public disputes."). As one federal court explained, "when a court declares that a case is not prudentially ripe, it means that the case will be *better* decided later . . . It does not mean that the case is not a real or concrete dispute affecting cognizable current concerns of the parties within the meaning of Article III." *Simmonds v. I.N.S.*, 326 F.3d 351, 357 (2d Cir. 2003); *Variscite NY Four, LLC v. N.Y. State Cannabis Control Bd.*, 152 F.4th 47, 58 (2d Cir. 2025) (same); *A.C.L.U. v. Nat'l Sec. Agency*, 493 F.3d 644, 677 (6th Cir. 2007) ("prudential principles are 'limits' on standing, they do not themselves create jurisdiction; they exist only to remove jurisdiction where the Article III standing requirements are otherwise satisfied.").

Jurisdictional standing and prudential ripeness are therefore in substantial tension with each other. Once jurisdiction is established, "a federal court's obligation to hear and decide a case is virtually unflagging." *Sprint Commc'ns, Inc. v. Jacobs*, 571

U.S. 69, 77 (2013) (internal citations and quotations omitted); *Kline v. Burke Constr. Co.*, 260 U.S. 226, 234 (1922) (when a party properly invokes federal jurisdiction, the court is "bound to take the case and proceed to judgment"); *Bd. of Comm'rs v. Aspinwall*, 65 U.S. (24 How.) 376, 385 (1861) ("[N]o court, having proper jurisdiction and process to compel the satisfaction of its own judgments, can be justified in turning its suitors over to another tribunal to obtain justice.").

That well-established judicial duty cannot be easily reconciled with a prudential doctrine that gives the court the discretionary power to refuse to decide a justiciable case. In other words, it is unclear how a court can be obligated to decide a case for which it has jurisdiction; and at the same time, have the discretionary prudential power to refuse to decide a case for which it has jurisdiction. One of these two rules must ultimately yield to the other.

This Court has repeatedly acknowledged the doctrinal divide. *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 167 (2014) (prudential ripeness "is in some tension with our recent reaffirmation of the principle that a federal court's obligation to hear and decide cases within its jurisdiction is virtually unflagging."); *Lexmark Int'l, Inc.*, 572 U.S. at 125-26 (same); *see also Grocery Mfrs. Ass'n v. E.P.A.*, 693 F.3d 169, 185 (D.C. Cir. 2012) (Kavanaugh, J., dissenting) (stating in the context of a Clean Air case that "the majority opinion here concludes that prudential standing is jurisdictional. The majority opinion thus creates a deep and important circuit split on this important issue."). And at least one federal judge has sharply questioned whether prudential ripeness should exist at all. D.C. Circuit Court of Appeals

Judge Henderson explained that “ripeness is a solution in search of a problem and a needlessly muddied area of justiciability.” *Indus. Energy Consumers of Am. v. FERC*, 125 F.4th 1156, 1163 (D.C. Cir. 2025) (Henderson, J., concurring). “Insofar as ripeness traces its lineage to Article III, it has become absorbed by standing. Insofar as ripeness rests on prudential considerations, it infringes on our constitutional duty to adjudicate a proper case or controversy.” *Ibid.*

Commentators also argue that the prudential ripeness doctrine finds little support in the language and history of Article III. “Its ‘tortured constitutional discourse’ has been characterized, among other things, as permeated with ‘doctrinal confusion,’ ‘hopelessly incoherent and subject to manipulation,’ a ‘pointless constraint on the courts,’ and driven by substantive or normative assessments masquerading as threshold jurisdictional inquiries.” S. Todd Brown, *The Story of Prudential Standing*, 42 Hastings Const. L.Q. 95, 97 (2014) (internal citations omitted); Erwin Chemerinsky, *A Unified Approach to Justiciability*, 22 Conn. L. Rev. 677, 692 (1990) (the distinction between constitutional and prudential requirements was judicially created and “of quite recent origin.”). As with the abrogated state court exhaustion requirement, the justifications for prudential ripeness “are suspect, while its impact on takings plaintiffs is dramatic.” *San Remo Hotel, L.P. v. City and Cnty. of San Francisco*, 545 U.S. 323, 352 (2005) (Rehnquist, C.J., concurring in the judgment).

B. Lower courts conflict in their approach to final decision ripeness in as-applied regulatory takings cases

This Court has not conclusively determined whether final decision ripeness under the Fifth Amendment is jurisdictional or prudential. Consequently, federal courts, and the state courts that rely on federal cases,[19] have been left with extraordinary uncertainty, with *Williamson County* and *Horne* on the side of jurisdictional ripeness; *Suitum* and *Lucas* on the side of prudential ripeness; and unresolved tension between jurisdictional standing and prudential ripeness. *See, e.g.*, *N.H. Lottery Comm'n v. Rosen*, 986 F.3d 38, 52 n.8 (1st Cir. 2021) ("The Supreme Court has expressed doubt about whether the doctrine of prudential ripeness is consistent with the settled principle that a federal court has a 'virtually unflagging' obligation to hear and decide cases within its jurisdiction"); *Fowler v. Guerin*, 899 F.3d 1112, 1116 n.1 (9th Cir. 2018) ("prudential ripeness is a disfavored judge-made doctrine" that is in tension with obligation to hear justiciable cases and "[t]he Court has not yet had occasion to 'resolve the continuing vitality of the prudential ripeness doc-trine.' "); *see also Seattle Pac. Univ. v. Ferguson*, 104 F.4th 50, 66 (9th Cir. 2024)

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[19] *See, e.g.*, *Howlett ex rel. Howlett v. Rose*, 496 U.S. 356, 376 (1990) ("a state court entertaining a § 1983 action must adhere to [the federal courts'] interpretation" of Section 1983); *Felder v. Casey*, 487 U.S. 131, 146-49 (1988) (states must not erect barriers to the vindication of federal rights); *Warne v. Hall*, 373 P.3d 588, 593 (Colo. 2016) ("Far from a novel concept, the prevailing policy in this country has been to favor procedural uniformity between state and federal court practice virtually since the founding of our Union.").

(noting in a First Amendment case "that the Supreme Court in dictum has questioned the 'continued vitality' of prudential ripeness doctrine . . . The Court appears to have walked up to the line but stopped short of abrogating the doctrine."). Overall, there are numerous splits about what ripeness means and on what side of line it belongs.

1. Ripeness is jurisdictional. The Third Circuit deems ripeness to be jurisdictional in takings cases. *Dillow v. Treasurer of Pennsylvania*, No. 24-2004, 2025 WL 2813596, at *2 (3d Cir. Oct. 3, 2025) (ripeness is an element of Article III jurisdiction). The Eighth Circuit and Nevada Supreme Court do so as well. *Snaza v. City of Saint Paul*, 548 F.3d 1178, 1182 (8th Cir. 2008) (ripeness is jurisdictional with respect to takings claims); *City of Las Vegas v. 180 Land Co., LLC*, 546 P.3d 1239, 1250 (Nev. 2024) (if a takings claim isn't ripe, the court exceeds its jurisdiction by allowing the claim to proceed) (citing *McDonald*, *Palazzolo*, and *Williamson County*).

The Sixth Circuit is undecided but leans toward the jurisdictional side. As it explained, "[w]hether that ripeness argument can square with [*Knick v. Township of Scott*] is an open question in our circuit." *Hendershot v. Stanton*, 162 F.4th 625, 628 n.1 (6th Cir. 2025) (also noting the federal circuit split between *Knellinger v. Young*, 134 F.4th 1034, 1044 (10th Cir. 2025), and *Maron v. Chief Fin. Officer of Fla.*, 136 F.4th 1322, 1332-33 (11th Cir. 2025), with *Dillow*, 2025 WL 2813596, at *2-3.

However, in several cases, the court has been reticent to apply the prudential ripeness doctrine. In *Miller v. City of Wickliffe*, although not a regulatory takings case, ripeness turned on whether the plaintiff had applied for a particular land use permit. 852 F.3d 497, 501 (6th Cir. 2017). The court noted that this Court in *Lexmark* and *Driehaus*, and the Sixth Circuit in *Kiser*, cast doubt on prudential standing and consequently, "we are hesitant to ground our decision in prudential-standing principles." *Id.* at 503, n.2 (citing *Lexmark,* 572 U.S. at 125-26, *Driehaus*, 573 U.S. at 167, and *Kiser v. Reitz*, 765 F.3d 601, 606-07 (6th Cir. 2014)).[20] *See also F.P. Dev., LLC v. Charter Twp. of Canton*, 16 F.4th 198, 203 (6th Cir. 2021) (in the context of a regulatory takings action, "we do not think it prudent to apply the doctrine of prudential ripeness sua sponte here. F.P. has standing under Article III, and the status of the prudential ripeness doctrine is uncertain"); *Cath. Healthcare Int'l, Inc. v. Genoa Charter Twp.*, 82 F.4th 442, 445-48 (6th Cir. 2023) (ripeness was determined by concrete injury and the plaintiff was not required to show that it has complied with the administrative process).

2. <u>Ripeness is prudential</u>. The Fourth, Fifth and Seventh Circuits hold that ripeness is prudential and distinct from standing. *Washlefske v. Winston*, 234 F.3d 179, 182 (4th Cir. 2000) ("ripeness in this context does not refer to Article III's case or controversy requirement for that is plainly satisfied here. . . . Rather, the question is one of prudential ripeness—whether we *should* exercise federal jurisdiction.") (citing *Suitum*, 520 U.S. at 733 n.7); *Money v. City of San Marcos*, No. 24-50187, 2025 WL 429980, at *3 (5th Cir. Feb. 7, 2025) (the finality requirement is a

[20] "*Lexmark*, *Driehaus*, and *Kiser* do not affirmatively state that the prudential-standing doctrine is dead, and we cannot predict its future. But, in view of the question, we choose to rely on a more solid foundation for deciding the case—namely, constitutional-standing principles." *Ibid.*

prudential ripeness determination); *Kolton v. Frerichs*, 869 F.3d 532, 534 (7th Cir. 2017), as amended (Nov. 9, 2017) (ripeness in a takings case is prudential and waivable).

The Ninth Circuit similarly emphasizes the prudential aspect. *See, e.g.*, *Rancho de Calistoga v. City of Calistoga*, 800 F.3d 1083, 1089 (9th Cir. 2015) ("ripeness requirements are prudential rather than jurisdictional, meaning that they are formulated by the court rather than stemming from Article III"); *Twitter, Inc. v. Paxton*, 26 F.4th 1119, 1123 (9th Cir. 2022) (in the context of a First Amendment case, holding that the fixed standard of constitutional ripeness applies "less stringently" when constitutional rights are asserted but simultaneously reasoning that prudential ripeness is "amplified" when constitutional rights are asserted).

But at the same time, the Ninth Circuit has also strongly questioned prudential ripeness, calling it a disfavored doctrine that is in tension with the court's obligation to decide justiciable cases. *Fowler*, 899 F.3d at 1116 n.1; *see also Nat'l Cmty. Reinvestment Coal. v. Off. of Comptroller of Currency,* No. 4:20-CV-04186-KAW, 2021 WL 4932548, at *8 (N.D. Cal. Jan. 29, 2021) (in an Administrative Procedure Act case, noting that the Ninth Circuit considers prudential ripeness to be "a disfavored judge-made doctrine" and "declin[ing] to address prudential ripeness when constitutional ripeness is satisfied.") (citation omitted).

The Tenth Circuit acknowledged the tension between jurisdictional and prudential ripeness and declared it to be prudential in deference to *Lucas*, *Suitum*, and *Horne*. *See N. Mill Street, LLC v. City of*

Aspen, 6 F.4th 1216, 1227-29 (10th Cir. 2021) (holding that although the takings claim was ripe under Article III and the owner had standing, it was "not prudentially ripe," and the case must be dismissed). The tumult that preceded this decision is noteworthy. The Tenth Circuit had been struggling for years with respect to this issue and intra-circuit splits were rampant. *Id.* at 1228 (citing to the jurisdictional ripeness cases of *Bateman v. City of West Bountiful*, 89 F.3d 704, 706 (10th Cir. 1996); *SK Finance SA v. La Plata Cnty., Bd. of Cnty. Comm'rs*, 126 F.3d 1272, 1275-76 (10th Cir. 1997); and the prudential ripeness cases of *B. Willis, C.P.A., Inc. v. BNSF Railway Corp.*, 531 F.3d 1282, 1299 n.20 (10th Cir. 2008); *Alto Eldorado P'ship v. Cnty. of Santa Fe*, 634 F.3d 1170, 1179-80 (10th Cir. 2011) (citations omitted).

3. <u>The intra-circuit splits</u>. The Federal Circuit is divided. It has held that ripeness in takings cases is jurisdictional, *Martin v. United States*, 894 F.3d 1356, 1360 (Fed. Cir. 2018), and that ripeness is prudential, *McGuire v. United States*, 707 F.3d 1351, 1358 (Fed. Cir. 2013). The court explained its dilemma: "Opinions from the Supreme Court, as well as our own, show that it can be difficult to distinguish between ripeness cases that involve jurisdictional inquiries and those that turn instead on prudential concerns." *Doyle v. United States*, No. 2023-1735, 2024 WL 5154019, at *3 (Fed. Cir. Dec. 18, 2024) (citing *Suitum*, 520 U.S. at 733 n.7).

The Second Circuit also has an intra-circuit split. It has held that ripeness is prudential and discretionary; and also, that it is jurisdictional and mandatory. *Compare Vandor, Inc. v. Militello*, 301 F.3d 37, 38-39 (2d Cir. 2002) ("We are obliged to consider the ripeness question before reaching the merits of Vandor's claims because ripeness is jurisdictional[.]"); *with Sherman v. Town of Chester*, 752 F.3d 554, 561 (2d Cir. 2014) ("Because *Williamson County* [ripeness] is a prudential rather than a jurisdictional rule, we may determine that in some instances, the rule should not apply and we still have the power to decide the case.") (citation omitted).

4. Some courts are just confused. In a recent Fifth Amendment takings case, the Eleventh Circuit held that ripeness is jurisdictional. *Maron v. Chief Fin. Officer of Fla.*, 136 F.4th 1322, 1329 (11th Cir. 2025) ("standing, ripeness, and sovereign immunity . . . are jurisdictional issues."). Nonetheless, after determining that the owner had sufficiently alleged standing, *id.* at 1331, the court proceeded to evaluate ripeness pursuant to the two-part prudential ripeness test that this Court in *Suitum* said was inapplicable to takings actions. *Id.* at 1332; *see Suitum*, 520 U.S. at 744;[21] *compare Busse v. Lee Cnty.*, 317 Fed. App'x 968, 972 (11th Cir. 2009) (ripeness is a matter of subject matter jurisdiction). Iowa's high court did the same. *Iowa Coal Min. Co. v. Monroe Cnty.*, 555 N.W.2d 418, 432 (Iowa 1996). Similarly, the California Supreme Court deemed ripeness to be a prudential doctrine, while simultaneously stating that ripeness only applies when the government is "invested with great discretion, which it has not yet

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[21] The Eleventh Circuit and the New York Court of Appeals, *Church of St. Paul*, 67 N.Y.2d at 510, are not the only ones to mistakenly apply the two-part ripeness test (i.e., fitness for review and hardship to the parties) that *Suitum* deemed inapplicable. The Ninth Circuit has as well, *Manufactured Home Communities Inc. v. City of San Jose*, 420 F.3d 1022, 1033 (9th Cir. 2005), which amplifies the need to this Court to clarify what ripeness means and whether it is jurisdictional or prudential.

even been asked to exercise," which equally reflects standing and the lack of a concrete injury. *Landgate, Inc. v. Cal. Coastal Comm'n*, 17 Cal. 4th 1006, 1038 (1998).

C. Certiorari is warranted to resolve the conflict

Certiorari should be granted to resolve the persistent confusion and multiple splits in the lower courts regarding whether final decision ripeness is jurisdictional or prudential. It is a critical question of justiciability for Fifth Amendment takings claims that only this Court can resolve. The adequate, consistent, and uniform protection of fundamental property rights is dependent on a clear understanding of what a property owner must show for its constitutional claim to be heard.

The determination includes whether the characterization of final decision ripeness as prudential in *Lucas* and *Suitum* was precedential or non-precedential. If it was merely a "drive-by" reference, it is to be given no effect. *See, e.g.*, *Wilkins*, 598 U.S. at 160 (statements that lack analysis and that are immaterial to the outcome are understood to be "a drive-by jurisdictional ruling that receives no precedential effect."); *Steel Co.*, 523 U.S. at 91 (if the jurisdictional designation made "no substantive difference" to the decision, "drive-by jurisdictional rulings of this sort . . . have no precedential effect").

In other contexts, this Court has readily clarified when certain prudential requirements were improper or needed to be extinguished. *Lexmark*, 572 U.S. at 127 & n.3 (reviewing instances where "what we have previously classified as an aspect of 'prudential standing' but for which, upon closer inspection, we have found that label inapt.") (citing *Lujan*, 504 U.S. at 573-74; *Lance v. Coffman*, 549 U.S. 437, 439 (2007) (per curiam); *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 344-46 (2006); *Dep't of Labor v. Triplett,* 494 U.S. 715, 721 n.** (1990); *Valley Forge Christian Coll. v. Ams. United for Separation of Church and State, Inc.*, 454 U.S. 464, 475 (1982)); *see also Arbaugh v. Y&H Corp.*, 546 U.S. 500, 510 (2006) ("Jurisdiction . . . is a word of many, too many, meanings. [The Supreme] Court, no less than other courts, has sometimes been profligate in its use of the term.") (internal citations omitted).

To that end, in *Knick*, this Court explained that final decision ripeness was not the intended target for the prudential designation: "[B]ecause of its shaky foundations, the state-litigation requirement has been a rule in search of a justification for over 30 years. We eventually abandoned the view that the requirement is an element of a takings claim and recast it as a 'prudential' ripeness rule.'" *Knick*, 588 U.S. at 204; *see Arrigoni Enters., LLC v. Town of Durham*, 136 S. Ct. 1409, 1411 (2016) (Thomas, J., dissenting from denial of certiorari) ("[W]e should reconsider *Williamson County* because our attempts to ameliorate the effects of its state-litigation rule have spawned only more confusion in the lower courts. As early as 1992, the Court began to recast the state-litigation rule as a 'prudential' rather than jurisdictional requirement.").

Knick left final decision ripeness, and its prudential moniker in place, because neither were at issue. *Knick*, 588 U.S. at 188. Nonetheless, *Knick*'s reasoning suggests that the prudential classification for final decision ripeness was merely a non-precedential "drive by" statement. That view is supported by *Pakdel*, which, two years after *Knick* was decided, re-coupled final decision ripeness to standing and concrete injury. 594 U.S. at 479 ("this [ripeness] requirement ensures that a plaintiff has actually been injured by the Government's action and is not prematurely suing over a hypothetical harm"); *see also Horne*, 569 U.S. at 525 (limiting its designation of prudential ripeness to the state court exhaustion requirement).

II. Certiorari Should Be Granted to Clarify That Property Owners Do Not Need to Pursue Futile Administrative Proceedings

A takings claim may proceed once the government's regulatory position is known. *Pakdel*, 594 U.S. at 478 (the claim is ripe when there is no question about how the regulations apply); *Palazzolo*, 533 U.S. at 620 (the case is ripe when "the permissible uses of the property are known to a reasonable degree of certainty[.]"). Ripeness does not demand that property owners jump through immaterial administrative hoops as perquisite to having their constitutional claims resolved. *Pakdel*, 594 U.S. at 479 ("Nothing more than *de facto* finality is necessary."); *Lucas*, 505 U.S. at 1012 n.3 (the submission of development plans was unnecessary for ripeness because "such a submission would have been pointless" in the face of the Council's categorical statement that no building permit would be issued).

Nonetheless, many courts, including the court below, continue to improperly insist on different forms of exhaustion before allowing a property owner's takings claim to be heard. In some cases, the court demands that the property owner undertake futile administrative acts. In others, it insists that property owners pursue remedial measures that may mitigate the government's unconstitutional actions but not eliminate them.

In this case, the court below required both. It compelled Tedford's to spend time and money pursuing an administrative procedure for which it was ineligible under the express terms of the relevant statutes. App. 34a-35a. Moreover, even if Tedford's was eligible, the nominal rent increase would not affect whether the rent control laws were constitutional or unconstitutional. *Ibid.* Yet the court required Tedford's to undertake this meaningless process simply for the sake of enduring it. App. 2a (in order for a claim to be ripe, Tedford's must "personally experience[] repetitive or unfair procedures"). Tedford's situation is far from unique. Rather than looking to whether the government's position is clear, many courts force property owners to do more, just because the government holds out Lucy's football. *Bowen v. Hood*, 202 F.3d 1211, 1222 (9th Cir. 2000) (applying criteria without a "consistent, coherent manner" resembles "a game of Lucy and the football from the world of Charles Schulz."). For example:

In *Haney v. Town of Mashpee*, 70 F.4th 12 (1st Cir. 2023), the First Circuit held a takings challenge unripe despite two variance denials from the Town Board that precluded the owner from building a single-family home. Despite *Pakdel*'s insistence that the finality burden is "modest," 594 U.S. at 478-79, the First Circuit faulted the property owner for not seeking approval from a different body for a separate matter related to the proposed construction of the house. *See Haney*, 70 F.4th at 21-22. Regardless of the Town's two denials, the First Circuit required the property owner to jump through still more administrative hoops before an entirely different government agency, before it could "ripen" a takings claim against the Town. *Ibid.* An explicit, final "no" on the variance requests was not good enough.

The Fifth Circuit, in *Beach v. City of Galveston,* relied on older circuit precedent to hold that a property owner waived his takings claim by failing to appeal the loss of the property's grandfather status (which had allowed a previous multi-family development on the land) and by failing to reapply after his application for a special use permit was denied by the city council. No. 21-40321, 2022 WL 996432, at *3 (5th Cir. Apr. 4, 2022). Just as in *Pakdel*, neither of these failures were relevant to the City's final decision. The City had committed to a position but regardless, the Fifth Circuit required compliance with an administrative appeals process that amounted to a request for reconsideration to the city council.

Similarly, in *Ralston v. Cnty. of San Mateo,* the Ninth Circuit failed to apply *Pakdel*'s "*de facto* finality" standard, demanding that a property owner present a futile application for a Coastal Development Permit to build a single-family home when applicable law required denial and the county planning director, in consultation with county counsel, confirmed that no home could be built. No. 21-16489, 2022 WL 16570800, at *2 (9th Cir. Nov. 1, 2022); *id.*, Excerpts of Record at 12-21 (9th Cir. Jan. 7, 2022). This result conflicts with *Pakdel* as well as a long line of this Court's precedent confirming that property owners need not file applications for their own sake. *See, e.g.*, *Palazzolo*, 533 U.S. at 620; *Suitum*, 520 U.S. at 739 (agency made a final decision by determining that the subject was within a Stream Environment Zone that permitted no development).

Property owners with constitutional takings claims are entitled to better treatment than this "hamster wheel" approach to ripeness. *Blanchette v. Conn. Gen. Ins. Corps.*, 419 U.S. 102, 143 & n.29 (1974) ("where the inevitability of the operation of a statute against certain individuals is patent," a particular future contingency was "irrelevant to the existence of a justiciable controversy"). But through courts' frequent bypassing of *Pakdel*, prudential ripeness has become a tool to force property owners to endure never-ending administrative processes. *See Sherman*, 752 F.3d at 562-63 (town "engaged in a war of attrition" after repeatedly changing the zoning laws, rejecting landowner's proposals, and forcing him to spend millions of dollars over the course of ten years); *City of Sherman v. Wayne*, 266 S.W.3d 34, 42 (Tex. Ct. App. 2008) ("[W]e are mindful that government can use [the] ripeness requirement to whipsaw a landowner. Ripening a regulatory-takings claim thus becomes a costly game of 'Mother, May I,' in which the landowner is allowed to take only small steps forwards and backwards until exhausted.") (citation omitted).

The effect is well known to numerous courts which decry the "shell game" and "shifting goal post" manipulations incentivized by these improper demands for futile exhaustion. *See Donnelly v. Maryland*, 602 F. Supp. 3d 836, 842 (D. Md. 2022) ("As Plaintiffs see things, the protracted history of the County's and State's maneuvers seems to be little more than a governmental shell game."); *State ex rel. AWMS Water Sols., L.L.C. v. Mertz*, 162 Ohio St. 3d 400, 410 (2020) (declining to allow the state to "create moving targets" and thereby defeat ripeness). So long as government can point to a hypothetical approval, even an ultimately pointless one, it can evade entirely the requirements of just compensation until the landowner simply gives up. *See Vill. Green at Sayville, LLC v. Town of Islip*, 43 F.4th 287, 297 (2d Cir. 2022) (ripeness does not depend on property owners' engaging in a years-long back-and-forth dialogue with a governmental entity that plainly forbids a proposed project).

When the government is accused of unconstitutionally interfering with an owner's property rights, the court's deference to governmental demands for additional administrative process bypasses the judiciary's primary purpose to resolve constitutional questions. *Marbury v. Madison*, 5 U.S. 137, 178 (1803) (determining whether government action "be in opposition to the constitution" is "the very essence of judicial duty."). For all civil rights actions, including property rights, the goal is not to prematurely bar the doors shut but to "to throw open the doors of the United States courts to individuals who were threatened with, or who had suffered, the deprivation of constitutional rights." *Patsy v. Bd. of Regents of State of Fla.*, 457 U.S. 496, 504 (1982) (referencing Section 1 of the Civil Rights Act of 1871, the precursor to Section 1983).

CONCLUSION

This Court should grant the petition.

Respectfully submitted,

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