

No. 25-5029

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

MELVA HARRIS AND ROBERTA KNIGHTEN,

Plaintiffs-Appellants,

v.

CITY OF LOS ANGELES,

Defendant-Appellee,

STRATEGIC ACTIONS FOR A JUST ECONOMY,

Intervenor-Defendant-Appellee.

On Appeal from the United States District Court for the
Central District of California
No. 5:24-cv-2679 (Bernal, J.)

**BRIEF OF *AMICI CURIAE* NATIONAL ASSOCIATION OF
REALTORS® *ET AL.* IN SUPPORT OF APPELLANTS**

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DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, *amici curiae* National Association of REALTORS®, California Association of REALTORS®, Greater Los Angeles REALTORS®, Southland Regional Association of REALTORS®, South Bay Association of REALTORS®, American Property Owners Alliance, National Multifamily Housing Council, and National Apartment Association have no parent corporations and no publicly held corporation owns 10% or more of their stock.

Dated: October 27, 2025

/s/ Brinton Lucas

Brinton Lucas

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INTEREST OF *AMICI CURIAE*¹

The National Association of REALTORS® (NAR) is a national trade association representing over 1.4 million members, including NAR’s institutes, societies, and councils involved in all aspects of the residential and commercial real estate industries. Members are residential and commercial brokers, salespeople, property managers, appraisers, counselors, and others engaged in the real estate industry. Members belong to one or more of the approximately 1,200 local and 54 state and territory associations of REALTORS®, and support private property rights, including the right to own, use, and transfer real property.

The California Association of REALTORS® is a statewide trade association dedicated to the preservation of real property rights. It has nearly 100 local member associations and approximately 180,000 REALTORS®, REALTOR®-Associates and affiliate members.

The Greater Los Angeles REALTORS® Association represents over 11,500 REALTOR® and affiliate members in the cities of Beverly Hills, Culver City, Los Angeles, Santa Monica, West Hollywood, and unincorporated areas of Los Angeles County.

¹ All parties have consented to the filing of this brief. Fed. R. App. P. 29(a)(2). No counsel for any party authored this brief in whole or in part, and no person other than *amici curiae*, their members, or their counsel contributed money that was intended to fund the preparation or submission of this brief. *Id.* 29(a)(4)(E).

The Southland Regional Association of REALTORS® is the voice for real estate in the San Fernando and Santa Clarita Valleys with nearly 11,000 members.

The South Bay Association of REALTORS® is a trade association for real estate professionals with over 5,000 REALTOR® members practicing in the South Bay area.

The American Property Owners Alliance is a nonpartisan, nonprofit organization created to protect and support property owners. Its mission is to educate property owners about federal issues, laws and policies; advocate for owners' rights and interests; and mobilize, when necessary, to secure those rights and interests.

The National Multifamily Housing Council (NMHC) is where rental housing providers and suppliers come together to help meet America's housing needs by creating inclusive and resilient communities where people build their lives. NMHC advocates for solutions to America's housing challenges, conducts rental-related research and promotes the desirability of rental living.

The National Apartment Association (NAA) serves as the leading voice and preeminent resource through advocacy, education, and collaboration on be-

half of the rental housing industry. As a federation of 141 state and local affiliates, NAA encompasses over 94,000 members representing more than 13 million apartment homes globally.

Amici are interested in this case because Los Angeles’s “fair market rent” eviction restriction harms their members’ right to exclude and therefore effects physical takings of private property. The plaintiffs in this case are owners of rental properties who seek a determination that the restriction effects uncompensated takings and that they are due fair compensation for the losses they have already incurred as a result. A decision in their favor would enable *amici*’s Los Angeles members to likewise seek just compensation.

INTRODUCTION

When property owners rent their dwellings to others, they expect to be paid in exchange. And the law has long permitted them to enforce the terms of this bargain; tenants who fail to timely pay rent may be evicted. Yet for the past five years, Los Angeles has tried to change the terms of the deal. During the pandemic, the City prohibited many owners from evicting tenants who failed to pay rent. And when that was over, the City doubled down by adopting permanent restrictions on evictions.

This case is about the City's so-called "fair market rent" (FMR) eviction restriction, which forbids property owners from evicting tenants for not paying rent as long as their past due bill does not exceed an arbitrary number set by the U.S. Department of Housing and Urban Development (HUD). L.A. Mun. Code § 151.09(A)(1). Like its pandemic predecessors, this restriction allows third parties to occupy Angelenos' residences without their permission at a cut-rate price.

The Takings Clause, which prohibits governments from commandeering private property without just compensation, should have provided the City's rental property owners with some measure of relief. The right to exclude is among "the most fundamental elements of property ownership," and preventing property owners "from evicting tenants who breach their leases intrudes" upon that right. *Alabama Ass'n of Realtors v. HHS*, 594 U.S. 758, 765 (2021) (*AAR*).

Indeed, the only two other circuits to consider limits on the right to evict nonpaying tenants have held that the Takings Clause requires the owners of the occupied properties be justly compensated. *Darby Devel. Co. v. United States*, 112 F.4th 1017, 1033 (Fed. Cir. 2024); *Heights Apartments, LLC v. Walz*, 30 F.4th 720, 733 (8th Cir. 2022). Yet by relying on an arbitrary number, the City’s FMR eviction restriction by definition does not provide the “fair market value” the Constitution demands. *United States v. Reynolds*, 397 U.S. 14, 16 (1970).

The district court nevertheless broke with this authority and rejected Plaintiffs’ physical takings claim. Relying on a terse, unpublished opinion of this Court, the district court reached the extraordinary conclusion that *no* law regulating the property owner-tenant relationship can ever effect a *per se* taking merely because the property owner “voluntarily rented” his residence. ER-13; *see GHP Mgmt. Corp. v. City of Los Angeles*, 2024 WL 2795190 (9th Cir. May 31, 2024). That means property owners can be compelled to lease out their properties in perpetuity even to tenants who do not pay any rent in return. So long as the owners can leave the rental market altogether—an option the City makes financially prohibitive in many cases—it does not matter that they “must for[g]o rental payments that would otherwise be due under the lease.” ER-13. In the district court’s view, property owners such as Plaintiffs—two women who each rent out two properties to help their families—are simply out of luck.

That cannot be right. Under the Takings Clause, Los Angeles’s property owners cannot be forced to host third parties for free—even if they agreed to lease their properties for a fee at some point in the past. Otherwise, their right to exclude would be nothing more than “an empty formality, subject to modification at the government’s pleasure.” *Cedar Point Nursery v. Hassid*, 594 U.S. 139, 158 (2021). And this problem is not going away anytime soon: It is now clear that eviction restrictions are not a pandemic-era relic, but a growing trend across the country, especially within this Circuit. This Court should reverse.

ARGUMENT

I. The “Fair Market Rent” Eviction Restriction Effects Physical Takings.

The City’s FMR eviction restriction deprives rental property owners of their right to exclude without providing just compensation. That is no less true merely because the owners chose at one point to enter the rental market.

A. The “fair market rent” eviction restriction intrudes upon property owners’ right to exclude.

1. 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*, 594 U.S. at 147. In doing so, it “saves individual property owners from bearing ‘public burdens which, in all fairness and justice, should be borne by the public as a whole.’” *Sheetz v. County of El Dorado*, 601 U.S. 267, 273-74 (2024).

A physical taking occurs not only when the government seizes property for itself, but also when it authorizes third parties to occupy the property of another. In the latter situation, a physical taking occurs because the government has deprived the property owner of his right to exclude—“one of the most essential sticks in the bundle of rights that are commonly characterized as property.” *Kaiser Aetna v. United States*, 444 U.S. 164, 176 (1979). The Supreme Court therefore “has long treated government-authorized physical invasions as takings requiring just compensation.” *Cedar Point*, 594 U.S. at 150.

In *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982), for instance, the Court held that a New York law requiring property owners to allow cable companies to install equipment on their properties effected a physical taking. The Court explained that, when a governmental action results in “a permanent physical occupation of property,” it qualifies as “a taking to the extent of the occupation, without regard to whether the action achieves an important public benefit or has only minimal economic impact on the owner.” *Id.* at 434-35. Because “[t]he power to exclude has traditionally been considered one of the most treasured strands in an owner’s bundle of property rights,” a *per se* taking occurs where a property owner has “no power to exclude the occupier from possession and use of the space.” *Id.* at 435.

More recently, the Court held in *Cedar Point* that a California law granting union organizers the right to invade and occupy growers' land for "three hours per day, 120 days per year" constituted a physical taking because it "appropriate[d] for the enjoyment of third parties the owners' right to exclude." 594 U.S. at 149. The Court declined to assess the law as a "use restriction[]" subject to the "fact-intensive" regulatory-takings test. *Id.* at 158. Instead, the Court emphasized that "appropriations of a right to invade are *per se* physical takings." *Id.* And that is so whether the "physical appropriation ... is permanent or temporary." *Id.* at 153.

2. Prohibitions on a property owner's ability to "evict[] tenants who breach their leases intrude[] on ... the right to exclude" and fall within the heartland of physical takings. *AAR*, 594 U.S. at 765. A property owner who leases his property does not grant the tenant access in perpetuity. Rather, the tenant's possessory rights are conditioned on the terms of the parties' lease, including the obligation to pay rent. *See Ellingson v. Walsh, O'Connor & Barneson*, 104 P.2d 507, 509 (Cal. 1940) (describing the obligation to pay rent as "incidental" to the "relationship of landlord and tenant"). A tenant who fails to pay rent forfeits his possessory interest and can be summarily evicted. When the government eliminates a property owner's ability to recover the property from a nonpaying tenant, it effectively appropriates the property for the tenant's ongoing use.

Unsurprisingly, the only two circuits to address the constitutionality of restrictions on evictions for material breaches in published opinions have found that those limits effected uncompensated physical takings. To start, the Eighth Circuit held in *Heights* that a Minnesota executive order caused a physical taking when it prohibited property owners from evicting tenants that materially breached their lease obligations unless the tenants were “seriously endanger[ing] the safety of other residents’ or engag[ing] in illicit activity.” 30 F.4th at 724. Effectively, the executive order “turned every lease in Minnesota into an indefinite lease, terminable only at the option of the tenant.” *Id.* at 733. It thus was far different from an ordinary “rent control[]” law that “neither deprived landlords of their right to evict nor compelled landlords to continue leasing the property past the leases’ termination.” *Id.* The order therefore “deprived” property owners of their “right to exclude existing tenants without compensation” and gave rise to a “*per se* physical takings claim under *Cedar Point*.” *Id.*

The Federal Circuit reached a similar conclusion in *Darby* with respect to the CDC’s pandemic-era eviction moratorium. 112 F.4th at 1033. By removing property owners’ “ability to evict non-rent-paying tenants,” the CDC’s edict “resulted in [a] ‘government-authorized invasion, occupation, or appropriation’” of property that closely resembled the appropriation at issue in *Cedar Point*. *Id.* at

1034. The Federal Circuit further noted that it would be absurd if “forcing property owners to occasionally let union organizers on their property” was a physical taking but the far more significant burden of “forcing them to house non-rent paying tenants (by removing their ability to evict)” was not. *Id.* at 1035.

3. Los Angeles’s “fair market rent” eviction restriction permits an even greater intrusion on a property owner’s right to exclude than these pandemic eviction moratoria. The latter eventually expired, so property owners could evict tenants who never caught up on their bills. *See* 85 Fed. Reg. 55,292, 55,294 (Sep. 4, 2020); Minnesota Eviction Moratorium Phaseout Info & FAQ, HOME LINE (Oct. 12, 2021).

The City’s FMR eviction restriction, by contrast, puts all the power in the tenants’ hands. It prohibits evictions of tenants who have “failed to pay rent to which the [owner] is entitled” so long as the past due bill does not go above whatever HUD concludes is a “month of fair market rent for the Los Angeles metro area ... for an equivalent sized rental unit” for a given year. L.A. Mun. Code § 151.09(A)(1). Because this number is far higher than the amount Los Angeles lets owners charge for rent-controlled units, it is not difficult for a tenant to serially underpay while keeping the total past-due bill below what HUD sets as the cap. And if the tenant has a rent-controlled unit, the property owner cannot even count on an eviction when the lease term expires. *See id.* § 151.09.

By preventing property owners from evicting tenants who breach their leases, the FMR eviction restriction denies them the right to exclude. As such, it is just as much a physical taking as the California access regulation in *Cedar Point* or the COVID eviction moratoria in *Heights* and *Darby*. It thus triggers the “simple, *per se* rule” governing physical appropriations: “The government must pay for what it takes.” *Cedar Point*, 594 U.S. at 148. And because the FMR eviction restriction deprives owners of “the fair market value” of their residences, it cannot be enforced. *Horne v. Dep’t of Agric.*, 576 U.S. 350, 370 (2015).

B. Property owners do not lose their rights merely by entering the rental market.

Precedent is clear: laws like the FMR eviction restriction effect physical takings because they prevent property owners from exercising their right to exclude. Yet the district court concluded otherwise based on an overreading of two Supreme Court decisions upholding certain rent-control regimes—*Yee v. City of Escondido*, 503 U.S. 519 (1992), and *FCC v. Florida Power Corp.*, 480 U.S. 245 (1987). *See* ER-13. The district court read those cases to permit any law compelling property owners to “for[g]o rental payments that would otherwise be due under the lease” on the ground that they once “voluntarily” chose to rent the land. *Id.* That is, if property owners ever agree to rent to tenants, the government can require continued occupation far beyond the terms of the parties’ lease. An owner’s only recourse is to “leave” the rental “market” altogether. ER-13.

The Takings Clause is more robust than that. Property owners do not lose their right to exclude just because they welcomed tenants onto their property at some point in time. And it is no answer to say they can just quit renting.

1. Time and again, the Supreme Court has warned that the government cannot condition a property owner's right to operate in the market on acquiescence to an unwanted physical taking. In *Loretto*, for instance, the cable company suggested that Ms. Loretto could not protest the installation of equipment on her property because she had voluntarily chosen to rent it out. 458 U.S. at 438-39. According to the company, if she disliked that New York was requiring an additional physical occupation by a third party to benefit her tenants, she could opt out by "ceasing to rent the building to tenants" at all. *Id.* at 439 n.17.

The Court saw that threat to the Takings Clause for what it was. It explained that a property owner's "ability to rent his property may not be conditioned on his forfeiting the right to compensation for a physical occupation." *Id.* After all, a contrary rule would permit the government to circumvent the strictures of the Takings Clause whenever an owner opened his property to third parties. For example, the government could seize some "apartments as permanent government offices" for free merely because the owner had chosen to rent to private individuals. *Id.* But "[t]he right of a property owner to exclude a stranger's physical occupation of his land cannot be so easily manipulated." *Id.*

Likewise, in *Horne*, the Court rejected the government’s argument that a regulation requisitioning a percentage of a raisin grower’s crop was “not a taking because raisin growers voluntarily cho[se] to participate in the raisin market.” 576 U.S. at 365. The right to participate in a market, although “subject to reasonable government regulation,” cannot be held “hostage” by the government, “to be ransomed by the waiver of constitutional protection.” *Id.* at 366.

2. By the same token, “just because tenants (or other occupiers of property) were at one point ‘invited’ does not mean that their continued, government-compelled occupation cannot, under any circumstances, be treated as a physical taking.” *Darby*, 112 F.4th at 1036. Property owners who voluntarily agree to one physical occupation of their property still suffer a taking when the government mandates an additional, uncompensated physical occupation. The Supreme Court essentially made this point in *Dolan v. City of Tigard*, 512 U.S. 374 (1994), where it rejected the city’s attempt to condition approval of retail development on a permanent recreational easement and the construction of public pathway across the property. *Id.* at 396. Though the store owner planned to invite “members of the public to her property,” she was still entitled to “control the time and manner in which they enter[ed].” *Id.* Likewise, the fact that property owners in *Cedar Point* invited their employees onto their land did not mean they were required to also host union organizers at the government’s behest. 594 U.S. at 162.

Courts of appeals have reached similar conclusions. For instance, the Federal Circuit held that the Border Patrol committed a permanent physical taking by installing underground motion-detecting sensors on land adjacent to the Mexican border—even though the property owner had previously granted it “a twenty-foot-wide easement” along the border “to monitor and respond to illegal alien activity.” *Otay Mesa Property v. L.P. v. United States*, 670 F.3d 1358, 1360-61 (Fed. Cir. 2012). Similarly, to avoid Takings Clause problems, this Court and several sister circuits have declined to read a federal law as requiring apartment buildings to allow cable companies access simply because they had granted private “easements ... to other cable providers.” *Cable Ariz. Corp. v. Coxcom, Inc.*, 261 F.3d 871, 876-77 & n.5 (9th Cir. 2001). “[S]ignificant constitutional problems” would arise if the government “appropriate[d] the right to exclude” by mandating “the permanent physical presence of a franchised cable company inside private apartment buildings against the express wishes of the property owner” merely because the owner had “selectively” permitted access by a different cable company. *Cable Holdings of Georgia, Inc. v. McNeil Real Estate Fund VI, Ltd.*, 953 F.2d 600, 605 (11th Cir. 1992); see *TCI of North Dakota, Inc. v. Schriock Holding Co.*, 11 F.3d 812, 815 (8th Cir. 1993); *Media Gen. Cable of Fairfax, Inc. v. Sequoyah Condominium Council of Co-Owners*, 991 F.2d 1169, 1175 (4th Cir. 1993); *Cable Invs., Inc. v. Woolley*, 867 F.2d 151, 159-60 (3d Cir. 1989).

So too here. Los Angeles property owners voluntarily agreed to lease their property to tenants who complied with the terms of their lease, including paying rent on time. But that does not justify Los Angeles's mandate that they accept an *additional* physical occupation by tenants who have violated the terms of their lease. And forcing them to leave the rental market in order to enjoy their property rights is not a valid alternative.

In fact, it often is not even an available one. To reclaim a property for non-rental use, its owner must pay the tenant a “relocation fee” that can range in the tens of thousands of dollars. L.A. Mun. Code § 151.30(E); *see* ER-9. And if any tenant has lived in the property for a decade or more and is at least 62 years old or disabled, the owner must wait a year to reclaim the property and then remove *all* units from the rental market and pay relocation fees to *all* tenants. L.A. Mun. Code §§ 151.09(A)(10), (G), 151.23(B), 151.30(D); *see* ER-9-10.

3. Contrary to the district court's belief, neither *Florida Power* nor *Yee* permits such a scheme. Those cases had no occasion to weigh in on the constitutionality of eviction restrictions like the one here, so they cannot sweep as broadly as the district court thought. *See Darby*, 112 F.4th at 1035 & n.17; *Heights*, 30 F.4th at 733.

When the Supreme Court decided *Florida Power* and *Yee* over 30 years ago, laws ostensibly aimed at helping tenants took one of two forms. *First*, rent-control provisions capped the annual increase an owner could charge. *See generally* Baar, *Guidelines for Drafting Rent Control Laws: Lessons of a Decade*, 35 RUTGERS L. REV. 723 (1983). *Second*, these were “always ... accompanied by some form of eviction control[] which require[d] ‘good cause’ in order to bring an eviction action.” *Id.* at 833. So-called “good cause” eviction restrictions prevented a property owner from terminating on a whim a lease he had voluntarily entered, but they “uniform[ly]” permitted evictions for lease-breaking, including “failure to pay the rent.” *Id.* As far as *amici* are aware, no jurisdiction prohibited a property owner from evicting nonpaying tenants until the COVID-19 pandemic.

It therefore would have been surprising if *Florida Power* or *Yee* had blessed the constitutionality of a type of eviction restriction that would not surface until several decades later. And indeed, they did not. *Florida Power* addressed a run-of-the-mill rent-control law, which merely authorized the FCC “to review the rents charged by public utility landlords who ha[d] voluntarily entered into leases with cable company tenants renting space on utility poles.” 480 U.S. at 251-52. So in remarking that “statutes regulating the economic relations of landlords and tenants are not *per se* takings,” the Court was at most referring to rent-control regulations like the one at issue there, not laws requiring property owners

“to permit permanent occupation of their property.” 480 U.S. at 251-52; *see* ER-13. In fact, the Court specifically warned that it was not deciding whether forcing “utilities, over objection, to enter into, renew, or refrain from terminating pole attachment agreements” would be a physical taking. *Id.* at 251 n.6.

For its part, *Yee* addressed the interaction between rent-control regimes and the “good cause” eviction restrictions discussed above. In that case, a group of trailer-park owners brought a physical takings challenge to an Escondido ordinance prohibiting them from raising rents without the approval of the city council. 503 U.S. at 524-26. In doing so, they disclaimed any intent to “challenge rent controls as such.” Pet. Br. 10, *Yee* (No. 90-1947), 1991 WL 936997 (*Yee* Br.); *see Yee*, 503 U.S. at 526 (“Petitioners do not claim that the ordinary rent control statutes regulating housing throughout the country violate the Takings Clause.”). Instead, the park owners crafted a physical-takings theory based on the interaction between the Escondido ordinance and California’s Mobilehome Residency Law—a statute they did not challenge. The Mobilehome Residency Law contained “good cause” provisions. *See* Cal. Civ. Code Ann. § 798.56 (1991). It also provided various protections for the tenant’s property right in his mobile home, including requiring park owners to provide sufficient notice before an eviction, *id.* § 798.55(a), and allowing the tenant to choose a buyer without undue interference from the park owner, *id.* §§ 798.73-74.

The park owners objected that the combination of capping rents, requiring cause for evictions, and letting tenants choose their buyer cost them money. Rent-controlled lots were highly valuable, and the park owners would like to sell “such interests at the market price.” *Yee* Br. 10. Instead, tenants could “occupy the property in perpetuity” so long as they complied with their lease requirements. *Id.* at 9. And they could choose their successors. Those “who want[ed] to become tenants” often “bid tens of thousands of dollars more than the market value of the mobilehome coaches” to secure the “future rent savings” that came with a rent-controlled lot. *Id.* at 7, 10. In effect, this “transfer[red] valuable, marketable property rights from the property owner to tenants.” *Id.* at 7.

The Supreme Court rejected this physical-takings theory because on “the face of the statute” the park owners still possessed the right to exclude. 503 U.S. at 528. Notably, California’s Mobilehome Residency Law permitted park owners to evict mobile home owners who violated the parties’ “rental agreement,” including by failing to pay rent. Cal. Civ. Code § 798.56 (1991). The park owner could also “change the use of his land” and “evict his tenants”—even without cause—as long as he provided “6 or 12 months notice.” 503 U.S. at 528. While the park owners objected that the process for changing the use of their land was “in practice ‘a kind of gauntlet,’” they did “not claim to have run that gauntlet.” *Id.*

Because the park owners retained the ability to evict for good cause, their tenants' occupation was consensual in a very real way. The owners had "voluntarily rented their land to mobile home owners," and they had chosen the terms of the rental agreements that controlled when eviction would be for good cause. *Id.* at 527. They did not suffer a "physical invasion" merely because they were bound to the terms of those agreements. *Id.* at 528. The scheme in *Yee* thus "neither deprived landlords of their right to evict nor compelled landlords to continue leasing the property past the leases' termination." *Heights*, 30 F.4th at 733.

This case is dramatically different. In *Yee*, the park owners were unhappy that California law bound them to the terms of leases they had voluntarily entered because they could not make as much money as they would have liked. Here, by contrast, Plaintiffs object that the City will not let them enforce the lease they voluntarily entered into and instead requires them to suffer an uncompensated invasion of property. And *Yee* made clear it was not deciding a case involving "an unwanted physical occupation of ... property" beyond the terms of the parties' lease. 503 U.S. at 532. Indeed, it went out of its way to caution that a "different case would be presented were the statute, on its face or as applied, to compel a landowner over objection to rent his property or to refrain in perpetuity from terminating a tenancy." *Id.* at 528; *see Darby*, 112 F.4th at 1035 ("[T]he laws at issue in *Yee* expressly *permitted* eviction for nonpayment of rent").

Confirming the point, two members of the *Yee* majority elsewhere indicated that they would find a physical taking under such circumstances. Nearly a decade before *Yee*, then-Justice Rehnquist agreed that a physical taking had occurred when an ordinance limiting the grounds for eviction operated to prevent a property owner from “possess[ing] the property” “until the tenant decide[d] to leave of his own volition.” *Fresh Pond Shopping Ctr., Inc. v. Callahan*, 464 U.S. 875, 877 (1983) (dissenting from dismissal). And just last year, Justice Thomas, joined by Justice Gorsuch, explained that *Yee* did not undercut the fact that “an eviction moratorium would plainly seem to interfere with a landlord’s right to exclude.” *GHP Mgmt. Corp. v. City of Los Angeles*, 145 S. Ct. 2615, 2616-17 (2025) (dissenting from denial of certiorari). All this only underscores that nothing in *Yee* compels the district court’s anemic view of the Takings Clause.

II. This Case Is Significantly Important to Property Owners Nationwide.

While any physical taking harms a property owner, this case in particular warrants serious attention. The FMR eviction restriction is just one of many recent measures transferring the financial burden of housing Los Angeles’s residents to property owners, and the City continues to debate adding more. And Los Angeles is not alone: Since COVID-19, other municipalities across the country and within this Circuit have restricted evictions for nonpayment of rent.

These are not harmless gestures. As the Supreme Court recently noted, “many landlords have modest means,” and eviction restrictions can put them “at risk of irreparable harm by depriving them of rent payments with no guarantee of eventual recovery.” *AAR*, 594 U.S. at 765. So while this Court has resolved challenges to pandemic-era eviction moratoria in unpublished opinions, it should use this case to set a precedent that property owners are entitled to relief.

A. Los Angeles’s eviction restrictions have harmed property owners.

Resolving this case is critical to L.A. property owners, who have been struggling under the burden of the City’s various eviction restrictions. At the start of the pandemic, Los Angeles—like many other jurisdictions—imposed a moratorium on evictions for nonpayment of rent. L.A., Cal., Ordinances 186,585, 186,606 (2020). It also prohibited property owners from raising rent on rent-controlled units, precluding them from keeping pace with inflation. L.A. Mun. Code § 151.32. The City did not lift the eviction moratorium until 2023, after unemployment hit record lows and wages surged. *See Gould & DeCourcy, Fastest Wage Growth Over the Last Four Years Among Historically Disadvantaged Groups*, ECON. POL’Y INST. (Mar. 21, 2024). The rent freeze remained in place for another year—outlasting measures in every other major American city. Kramon, *L.A. Tenants Welcomed the Rent Freeze, But Landlords Are Tired of Restrictions*, L.A. TIMES (Aug. 23, 2023).

By that point, tenants had racked up quite the bill. A national survey estimated that property owners’ “year-over-year rental revenues fell by as much as 20 percent during the early months of the pandemic.” De la Campa & Reina, *Landlords’ Rental Businesses Before and After the COVID-19 Pandemic: Evidence from a National Cross-Site Survey*, 59 J. HOUS. ECON. 1, 6 (2023). And by Summer 2023, the City estimated 137,000 renters owed a staggering \$451 million in overdue rental payments. Bach, *LA’s First Deadline for Pandemic Back Rent Has Arrived*, THE REAL DEAL (Aug. 1, 2023). Owners also reported that solvent tenants were using money that should have paid rent for vacations, such as trips “to Paris and Hawaii” or a “cruise to Mexico.” Roher, *Small Landlords Say LA Eviction Moratorium Limbo Is a Financial Disaster*, NBC L.A. (Nov. 21, 2022).

Conversely, the City’s pandemic measures pushed many property owners “to the brink of financial ruin.” *Id.* For many individual owners, property-related expenses consume over half of their property income, and they do not have the resources to withstand prolonged periods without rent. For example, Greta Arceneaux, an 81-year-old woman who used a five-unit rental complex to help her family out of poverty, told reporters that her retirement went “down the tubes” when her tenants fell \$15,000 behind on rent. Vesoulis, *How Eviction Moratoriums Are Hurting Small Landlords—and Why That’s Bad for the Future of Affordable Housing*, TIME (June 11, 2020).

Another L.A. resident, Ky Trang Ho, who held four properties as “investments for retirement,” reported that she had to “buy[] stuff from the ‘day of expiration shelf at the store” because her tenants were \$70,000 behind on rent. Roher, *supra*. And a national survey concluded that “nearly one in ten” property owners missed mortgage payments on their properties, “call[ing] into question the future financial viability of these properties.” De la Campa & Reina, *supra*, at 11; see NAA, *Breaking Down One Dollar of Rent: 2023* (noting that on average, \$0.54 of every dollar in rent in California goes to the property owner’s mortgage payments).

Then, just as Los Angeles’s pandemic measures were winding down and property owners finally had some hope of recovering past-due rent, the City adopted both the FMR eviction restriction here *and* mandated that property owners tell their tenants how to underpay rent and acquire free counsel to fight eviction proceedings. See City of Los Angeles Renter Protections Notice (Oct. 1, 2025). Property owners report that it can cost over \$20,000 in legal fees to evict a tenant who has stopped paying rent. See Kamali, *I Believe in Tenants’ Rights. But L.A. Is Pushing Out Small Landlords Like Me*, L.A. TIMES (Jan. 16, 2024). These ordinances have made the Los Angeles rental market intolerable for many property owners who still do not recoup enough in rental payments to cover costs and struggle to evict delinquent tenants.

And the threat of additional eviction restrictions is always looming on the horizon. For example, the Los Angeles County Board of Supervisors is currently debating a ban on evictions of residents affected by the government's immigration enforcement. Lin & Vives, *L.A. County Declares State of Emergency to Fight Against ICE Immigration Raids*, L.A. TIMES (Oct. 15, 2025). Seeing the writing on the wall, an increasing number of individual owners have chosen to sell their properties to large investment firms rather than watch their retirement savings take a hit. See Jackson, *A Delinquent Tenant's Paradise*, CITY J. (Mar. 28, 2023).

This case illustrates the problem. Plaintiffs, who have owned small rental properties for decades, both have had tenants fail to pay their full rent on time even though the rental payments were substantially below market. ER-65-68. The threshold for eviction was more than three times the monthly rent of Ms. Knighten's tenant and nearly double that owed by Ms. Harris's tenant. *Id.* So it was quite simple for both tenants to stay under the limit, leaving Plaintiffs with no way to reclaim their property. In the meantime, both Plaintiffs suffered severe financial hardship. Ms. Knighten did not recoup enough in rental payments "to make continued ownership sustainable," and Ms. Harris "exhaust[ed] her savings to cover her expenses," while living "paycheck-to-paycheck." *Id.* So like many other L.A. rental property owners, they opted to sell some of their properties rather than continue to take a loss. *Id.*

By hurting Los Angeles's property owners, the FMR eviction restriction also hurts the City's tenants. Los Angeles already suffers from a shortage of rental housing. *See* Neighborhood Data for Social Change, *Housing Supply* (2025). In 2023, researchers calculated that there were only 3,770 homes for every 10,000 Californians. Christopher, *California Is Losing Population and Building New Houses. When Will Home Prices Come Down?*, CAL MATTERS (May 15, 2023). Estimates suggest that "more than 3 million new houses and apartments would need to be constructed" across the Golden State to keep up with demand. Chiland, *Can LA Build Its Way Out of Its Housing Crisis?*, CURBED (June 14, 2018). If property owners are forced to exit the market altogether, the housing crisis will only worsen.

And those hardy property owners who stay in the market may be less inclined to rent to individuals with less than stellar credit scores. Kramon, *supra*. Any red flags in a credit score might suggest that the applicant would fall behind on rental payments and, with an eviction restriction in place, the owner would have to simply eat that loss. *Id.* Of course, a stricter credit requirement harms the very tenants the City ostensibly intends to protect, including gig workers, contractors, and artists with unsteady incomes. Zuo, *L.A.'s Rental Landscape Is Dire. It Could Get Worse*, RAND (Feb. 13, 2024).

Eviction restrictions also harm the quality of rental units in which tenants dwell, “affecting their health and well-being.” De la Campa & Reina, *supra*, at 18. When property owners do not have enough cash on hand to make ends meet, they may not be able to conduct necessary repairs or upgrades to their properties. One individual L.A. property owner “found he had to forgo roof, plumbing and electrical repairs” due to a pandemic eviction moratorium. Kramon, *supra*. Another could barely afford to pay \$30,000 to eliminate mold and had to “dig into her own pockets.” *Id.* All told, one survey determined almost a third of property owners nationwide delayed repairs. De la Campa & Reina, *supra*, at 11.

B. The problem does not stop at Los Angeles’s boundaries.

Los Angeles is not the only city that has recently adopted permanent restrictions on evictions for nonpayment of rent. Berkeley and Oakland have embraced the same “fair market rent” eviction restriction as the one here, and the District of Columbia now prohibits property owners from evicting tenants owing under \$600 in overdue rent. Berkeley Rent Board, *Just Cause & Other Local Requirements*; City of Oakland, *Understanding Evictions in Oakland*; Gomez, *D.C. Bans Evictions Over Unpaid Rent of Less Than \$600*, DCIST (Mar. 1, 2022). For its part, San Diego has preemptively forbidden evictions for nonpayment of rent during any local state of emergency, and last year adopted a moratorium on evictions in areas affected by flooding. San Diego Ordinance Nos. 10887, 10936.

Local governments also have begun to adopt eviction bans that subject property owners to seasonal takings each year. Take a San Francisco ordinance, which forbids evictions “during the school year” if one of the tenants is a child or “educator” (or has a custodial or familial relationship with one). San Francisco Admin. Code § 37.9. And “educators” include not just teachers, but classroom aides, cafeteria workers, security guards, and administrative staff as well. *Id.* Given that San Francisco’s school year runs from mid-August to mid-June, the city’s property owners could easily find themselves unable to collect a single dollar from their properties for 10 months at a time. *See id.*

This is not a Bay Area aberration. Both Seattle and Tacoma have adopted similar prohibitions on school-year evictions. Tacoma Mun. Code § 1.100.060; Seattle Mun. Code § 25.205.110. While in theory limited to the school year, such laws can force property owners “to provide housing without compensation for over a year at a time.” McKenney, *As Affordable Housing Crumbles, Reconsider School Year Eviction Bans*, FIX HOMELESSNESS (Oct. 2, 2024). Last year in Tacoma, for instance, after some tenants stopped paying rent in May, the property owner began eviction proceedings in July and secured judgment in late August. *Id.* But with the onset of the school year, the tenants could live rent-free “until June 23, 2025.” *Id.*

Both cities also prohibit evictions during winter months. *See* Tacoma Mun. Code § 1.100.060 (November 1 to April 1); Seattle, *Defenses to Eviction* (December 1 to March 1). To the city government, winter may be just a blip in the long life of a fee-simple estate. But to a property owner, owing several months of mortgage payments while collecting zero rent could be a life-altering crisis.

C. Reversal will benefit property owners around the country.

As the number of eviction restrictions across the country grows, so does the importance of this Court applying the Takings Clause correctly. When this Court reviewed COVID-era eviction moratoria, it disposed of the cases in unpublished opinions, perhaps assuming that the pandemic emergency measures would not reoccur. *See GHP*, 2024 WL 2795190; *Bols v. Newsom*, 2024 WL 208141 (9th Cir. Jan. 19, 2024); *El Papel, LLC v. Seattle*, 2023 WL 7040314 (9th Cir. Oct. 26, 2023). But this case is evidence enough that the question whether cities can require property owners to host nonpaying tenants demands a published answer. And if the aforementioned restrictions are any indication, several more cases may be right behind it.

Setting the precedent that property owners cannot be forced to host nonpaying tenants without compensation would also help resolve a split in authority. As discussed, the only on-point published circuit precedent has vindicated property owners' rights. *See Darby*, 112 F.4th at 1034; *Heights*, 30 F.4th at 733.

But to this point, this Court has diverged from its sister circuits in unpublished opinions, and several district courts have followed suit. *See GHP Mgmt. Corp.*, 2024 WL 2795190; *Bols*, 2024 WL 208141; *El Papel*, 2023 WL 7040314.² To avoid “leaving in place confusion on [this] significant issue,” this Court should issue a published opinion aligning itself with the Eighth and Federal Circuits. *GHP Mgmt.*, 145 S. Ct. at 2617 (2025) (Thomas, J., dissenting from the denial of certiorari).

CONCLUSION

The Court should reverse the judgment below.

October 27, 2025

Respectfully submitted,

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² *See, e.g., Farhoud v. Brown*, 2022 WL 326092 (D. Or. Feb. 3, 2022); *Jevons v. Inslee*, 561 F. Supp. 3d 1082 (E.D. Wash. 2022); *S. Cal. Rental Hous. Ass’n v. Cnty. of San Diego*, 550 F. Supp. 3d 853 (S.D. Cal. 2021); *Gallo v. District of Columbia*, 2022 WL 2208934 (D.D.C. June 21, 2022); *Elmsford Apt. Assocs., LLC v. Cuomo*, 469 F. Supp. 3d 148 (S.D.N.Y. 2020); *Auracle Homes, LLC v. Lamont*, 478 F. Supp. 3d 199 (D. Conn. 2020); *see also Gonzales v. Inslee*, 535 P.3d 864 (Wash. 2023).

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 29(a)(4)-(5) and 32(g)(1) and Ninth Circuit Rule 32-1(a), I certify that the foregoing brief contains 6,694 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f), as counted using the word-count function on Microsoft Word 365 software.

This brief further complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5)-(6) because this brief has been prepared in a proportionately spaced typeface, 14-point Calisto MT.

Dated: October 27, 2025

Respectfully submitted,

/s/ Brinton Lucas

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CERTIFICATE OF SERVICE

I hereby certify that on October 27, I caused the foregoing brief to be electronically filed with the Clerk of the Court for the U.S. Court of Appeals for the Ninth Circuit via the CM/ECF system. I further certify that service on all parties' counsel will be accomplished by the CM/ECF system.

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