No. 26-107

IN THE

Supreme Court of the United States

GARNELL WALLS,

Petitioner,

v.

PRINCE GEORGE'S COUNTY, MARYLAND, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF OF *AMICUS CURIAE* NEW YORK APARTMENT ASSOCIATION, INC. IN SUPPORT OF PETITIONER

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INTEREST OF THE AMICUS CURIAE

The New York Apartment Association, Inc. ("NYAA") respectfully submits this brief in support of the petition for a writ of certiorari of Garnell Walls.[1]

NYAA is a not-for-profit corporation organized under the laws of the State of New York and Section 501(c)(6) of the Internal Revenue Code.[2] As a coalition of property owners that provides most of the rent-regulated multifamily housing in the State of New York, NYAA advocates for laws and policy that improve housing quality and lower operating costs.[3] NYAA's stakeholders are subject to perhaps the most restrictive rent-regulatory regime in the United States and confront increasing government-mandated expenses without meaningful relief or remedy.[4]

NYAA and its stakeholders support petitioner's challenge to the judicial doctrine of prudential ripeness. Invocation of that doctrine prevents multifamily property

1. Under Rule 37.2 of the Rules of this Court, counsel for *amicus curiae* timely provided notice of intent to file this brief to all parties. Under Rule 37.6, no counsel for any party authored this brief in whole or in part, and no person or entity, other than *amicus curiae*, made any monetary contribution toward the funding of its preparation and submission.

2. *See* https://housingny.org/about.

3. *See* https://housingny.org/priorities.

4. *See* Shkury, S., "2019 Law That Created Housing Instability for NYC's Tenants, Landlords," May 21, 2026, https://www.forbes.com/sites/shimonshkury/2026/05/21/2019-law-that-created-housing-instability-for-nycs-tenants-landlords/.

owners from maintaining otherwise justiciable takings claims. For petitioner, prudential ripeness has been taken to an extreme: petitioner requests relief from the requirement imposed by the Fourth Circuit below that he exhaust all legislative remedies—that is, try to change the law—before his claims may fully ripen.[5] Most courts do not require property owners to engage in an "inherently political, legislative process" before bringing takings claims.[6] Nor should this one.

SUMMARY OF ARGUMENT

This petition is about access to justice. Prudential ripeness keeps the courthouse closed to petitioner and other litigants with justiciable takings claims based upon overreaching governmental acts and regulations. The discretionary doctrine thus impinges upon the "virtually unflagging" duty of courts to hear a case once the requirements of Article III have been met. *Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 77 (2013) ("Jurisdiction existing, this Court has cautioned, a federal court's 'obligation' to hear and decide a case is 'virtually unflagging.'"). Many courts have called prudential ripeness into doubt, as petitioner ably sets out.[7]

Prudential ripeness worsens the challenges facing NYAA's stakeholders. The doctrine permits lower-court

5. Petition for a Writ of Certiorari, *Garnell Walls v. Prince George's County, et al.*, No. 26-107 (U.S. Jul. 23, 2026) ("Cert. Pet'n"), at i.

6. *Id*. at 13.

7. *Id*. at 21-32.

judges to elect to dismiss justiciable takings claims when the judges determine that the claims might be more prudently heard later. Dismissal is often intended to force the claimant through every conceivable administrative process even if, as a matter of law, the injury is real, the claim is ripe, and the outcome of the administrative process is already known or foreseeable. *Pakdel v. City and Cnty. of San Francisco, California*, 594 U.S. 474, 478 (2021) ("The finality requirement is relatively modest. All a plaintiff must show is that 'there [is] no question . . . about how the "regulations at issue apply to the particular land in question."'") (citation omitted); *Palazzolo v. Rhode Island*, 533 U.S. 606, 620 (2001) (opining that once "the permissible uses of the property are known to a reasonable degree of certainty, a takings claim is likely to have ripened"). Prudential ripeness thus subordinates the supreme authority enshrined in Article III to discretionary determinations of lower-court judges and prejudices the rights of property owners, who must suffer greater injury while pursuing inapplicable, futile, or fictive administrative processes. That is denial of justice.

For petitioner, the Fourth Circuit has ruled that he must "exhaust legislative remedies" before bringing suit.[8] NYAA supports jurisdictional ripeness for the same reasons that New York's Court of Appeals rejected legislative exhaustion in *In re Ward v. Bennett*, 79 N.Y.2d 394, 400-01 (1992) (internal citations omitted), where the court held that "the ripeness doctrine does not impose a threshold barrier requiring pursuit of all possible remedies that might be available through myriad government regulatory and legislative bodies" and,

8. *Id*. at i.

"[i]ndeed, we have said such a requirement might create a 'bureaucratic nightmare' and undue hardship[.]"

NYAA's stakeholders face a similar "bureaucratic nightmare" when applying for the remedy available to rent-stabilized property owners in New York City, a "hardship" adjustment from the maximum legal rent they otherwise may charge their tenants.[9] As explained below, hardship adjustments are remedies in name only. They are exceedingly difficult to obtain or otherwise insufficient to address the hardships imposed by the attendant rent regulations. No claimant should be forced to suffer more harm before having access to justice—yet this is precisely what prudential ripeness accomplishes.

Courts should not apply prudential ripeness to deny claimants access to justice by forcing them out of court when they already have justiciable claims. The Court should grant certiorari.

ARGUMENT

I. Prudential Ripeness Denies Owners with Justiciable Claims Their Day in Court

Prudential ripeness allows judges to deny owners their day in court by dismissing justiciable takings claims by fiat. This doctrine conflicts sharply with the longstanding objective in civil rights cases to "'throw open the doors of the United States courts' to individuals who [a]re threatened with, or who had suffered, the deprivation of constitutional rights," and to provide them "immediate access to the federal courts notwithstanding any provision

9. *See* 9 NYCRR 2522.4(c) and (d).

of state law to the contrary." *Patsy v. Bd. of Regents of State of Fla.*, 457 U.S. 496, 504 (1982). Prudential ripeness, however, countermands the "unflagging" duty of courts "to hear and decide a case" once jurisdiction obtains. *Sprint Commc'ns, Inc.*, 571 U.S. at 77 (*citing Cohens v. Virginia*, 19 U.S. 264, 403 (1821)); *Colorado River Water Conservation Dist. v. U.S.*, 424 U.S. 800, 817 (1976) (referring to "the virtually unflagging obligation of the federal courts to exercise the jurisdiction given them"); *Sprint Commc'ns, Inc.*, 571 U.S. at 77 ("Federal courts, it was early and famously said, have 'no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given.'").

This judicial engraftment onto jurisdictional standing analysis prejudices New York multifamily property owners—a class subjected to perhaps the most comprehensive and restrictive rent-regulatory regime in the United States[10]—by delaying or preventing adjudication of viable claims. *See Simmonds v. I.N.S.*, 326 F.3d 351, 357 (2d Cir. 2003) ("[W]hen a court declares that a case is not prudentially ripe, it means that the case will be *better* decided later and that the parties will not have constitutional rights undermined by the delay. 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.") (emphasis in original).

For petitioner, although "numerous courts have held that a property owner does not have to attempt legislative change to satisfy final decision ripeness[,]" the Fourth

10. *See* https://www.forbes.com/sites/shimonshkury/2026/05/21/2019-law-that-created-housing-instability-for-nycs-tenants-landlords/.

Circuit below held otherwise.[11] "Most courts"[12]—including New York's highest state court—have rejected legislative exhaustion, with the New York Court of Appeals, in *In re Ward*, opining on the prejudice that such a doctrine would entail:

> An aggrieved property owner could be effectively blocked from seeking meaningful judicial review of a confiscation claim until, for example, a change in governing law—a possibly excessively burdensome course of action, such as is presented in this case. Indeed, the relevant alternative relief here is available only through an elaborate demapping procedure, which is costly, cumbersome, lengthy and requires the final approval of the New York City Council, the ultimate legislative body of the City.
>
> Thus, we have no occasion to speculate whether the ripeness doctrine may be interposed to block judicial review in those circumstances where a final determination of one administrative agency may be readily remedied by resort to another administrative entity with concurrent

11. Cert. Pet'n at 13; *id.* at 1 ("Walls' regulatory takings claim under the federal and state constitutions was dismissed as unripe by the Fourth Circuit Court of Appeals. The court viewed ripeness as a prudential determination that is enforceable at the court's discretion and distinct from jurisdictional standing. To that end, it refused to hear Walls' constitutional claim unless Walls first goes to the County legislature and tries to change the law that caused the unconstitutional taking.").

12. *Id.* at 13-17.

> or efficacious, relevant jurisdiction over land development. Under our governing principles and precedents, the Wards' confiscation claim in this case is ripe.

79 N.Y.2d at 401 (internal citations omitted).

A doctrine that applies ripeness prudentially denies property owners that already have justiciable claims access to justice, harming both petitioner and NYAA stakeholders. Section II, *infra*, surveys New York City's rent-regulated housing market, including recent data reflecting the inability of owners to comply with New York's rent laws and cover operating costs. Section III, *infra*, focuses on hardship adjustments, how the process is unsound, with manifold barriers to both applicant eligibility and adjustment qualification, and is often incapable of lifting properties out of insolvency. Owners of rent-stabilized properties in New York City stand to suffer from the discretionary invocation of prudential ripeness and should be able to have their justiciable claims heard.

II. The State of New York City's Rent-Regulated Housing Market

Recent data strongly suggest that owners of rent-stabilized properties in New York City may have potentially meritorious takings claims based upon the application of the rent-stabilization laws to their properties.

The Rent Stabilization Law of 1969, the Emergency Tenant Protection Act of 1974, and the Housing Stability and Tenant Protection Act of 2019 (the "HSTPA") comprise the core statutory framework that governs New

York's rent-regulatory regime (collectively, the "RSL").[13] New York City's Rent Guidelines Board (the "RGB"), a nine-person body whose members are political appointees of the City's mayor, determines rent adjustments for the roughly one million dwelling units subject to the RSL in New York City.[14] The board meets annually to vote on lease guidelines for rent-stabilized apartments, and those guidelines then apply to all leases commencing between October 1 of that year and September 30 of the next year.[15] The RGB's most recent order, Order No. 58 of June 25, 2026, imposed a total rent freeze for all leases commencing between October 1, 2026 and September 30, 2027.[16] Under the RGB's Order No. 58, then, an owner who enters into a two-year rent-stabilized lease with a renter on September 30, 2027 cannot increase the rent for that apartment until September 30, 2029 at the earliest (assuming, of course, that the RGB lifts the freeze). This latest order is being challenged as a predetermined political act that violates the RGB's statutory mandate in contravention of affected owners' rights.[17]

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13. *See* N.Y.C. Admin. Code § 26-501 *et seq.*; N.Y. Unconsol. Law § 8621 *et seq.*; 2019 N.Y. Laws ch. 36.

14. *See* https://rentguidelinesboard.cityofnewyork.us/about/; https://rentguidelinesboard.cityofnewyork.us/about/board-staff/.

15. *See* https://rentguidelinesboard.cityofnewyork.us/rent-guidelines/explanation-of-the-rent-guidelines-process/.

16. *See* 2026-27 Apartment/Loft Order #58, https://rentguidelinesboard.cityofnewyork.us/2026-27-apartment-loft-order-58/.

17. *See* Fanelli, J. and Picciotto, R., "NYC Landlords Sue City Over Mamdani-Backed Rent Freeze," updated July 22, 2026, https://www.wsj.com/real-estate/new-york-city-rent-freeze-

Real-estate industry groups have expressed concerns about the inability of owners to pay for basic upkeep of properties while simultaneously complying with the RSL.[18] In 2024, the Real Estate Board of New York, together with an entity that merged into NYAA, released a study commissioned to examine HSTPA's effects since its enactment in 2019.[19] Prepared by the consulting firm HR&A,[20] the study "[a]nalyze[d] changes in building quality, reinvestment, vacancy, tenants, and city tax revenue."[21] Most of the property owners surveyed in the HR&A study held portfolios consisting chiefly of rent-stabilized units.[22]

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lawsuit-landlords-5467b881; Verified Article 78 Petition and Complaint, *Kenilworth Holdings LLC, et al. v. New York City Rent Guidelines Board*, N.Y. Sup. Ct. Index No. 85199/2026, https://iapps.courts.state.ny.us/nyscef/ViewDocument?docIndex=gh_PLUS_Orxe8WTxMCAnKBVRJiQ==.

18. *See* https://www.rebny.com/reports/hstpa-impacts-study/ ("Passed into law in 2019, HSTPA made significant changes to the rent regulation system that substantially curtailed the ability of property owners to pay for the upkeep of the property by increasing rents.").

19. *See* https://www.rsanyc.net/ ("RSA [*i.e.*, the Rent Stabilization Association] has now merged with CHIP. The new name is the New York Apartment Association (NYAA)[.]"); Feb. 28, 2024 HSTPA Impacts Study, https://assets.ctfassets.net/6zi14rd5umxw/xO37WLIbGl5oPaVJKy8EK/4b8d832d207d0c4c92f2d0df03e0bd27/HSTPA_Impacts_Study.pdf#toolbar=0 ("HR&A Study").

20. *See* https://hraadvisors.com/who-we-are/.

21. HR&A Study at 3.

22. *Id.* at 5.

The HR&A study shows an industry in distress:

- Vacancy Rates: Of those owners classified as "moderately rent stabilized," meaning that between 26% and 75% of their units were rent-stabilized, there was an 18% vacancy rate within portfolios consisting of less than eleven units.[23] Of those owners classified as "primarily rent stabilized," meaning that between 76% and 100% of their units were rent-stabilized, there was a 25% vacancy rate within portfolios consisting of less than eleven units.[24]

- Reasons for Continued Vacancies: 28% of respondents cited "economic infeasibility of unit improvements at the end of a long tenancy" as a reason for continued unit vacancies.[25] Among "moderately rent stabilized" owners with portfolios of eleven or more units, 48% selected this reason, while among "primarily rent stabilized" owners with similarly sized portfolios, 53% of respondents cited this reason.[26]

- Share of, and Change in, Building Expenses: According to the HR&A study, property taxes, fuel and energy, and insurance were the largest expenses for rent-stabilized

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23. *Id.* at 7.

24. *Id.*

25. *Id.* at 9.

26. *Id.*

housing stock.[27] Since 2019, these categories were among those that had increased the most.[28] During the decade preceding the study, insurance costs had increased at nearly twice the ten-year rate of any other expense category analyzed.[29]

- Major Capital Investments: 99% of units in portfolios of less than eleven units belonging to "primarily rent stabilized" owners are in need of major capital investments, as are 29% of such units in portfolios of more than eleven units.[30] Among "moderately rent stabilized" owners, 37% of units in portfolios of less than eleven units are in need of major capital investments, as are 18% of such units in portfolios of more than eleven units.[31] Since peaking in 2017, major capital investment filings by owners have been declining, with a 37% drop in such filings in 2023 compared to 2019.[32] The categories of investments most needed include energy efficiency modifications, boilers, roof and wall repair, and plumbing.[33]

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27. *Id.* at 11.

28. *Id.* at 12.

29. *Id.* at 13.

30. *Id.* at 15.

31. *Id.*

32. *Id.* at 16.

33. *Id.* at 17.

- Individual Apartment Improvements: 78% of units in portfolios of less than eleven units belonging to "primarily rent stabilized" owners are in need of individual apartment improvements, as are 25% of such units in portfolios of more than eleven units.[34] Among "moderately rent stabilized" owners, 39% of units in portfolios of less than eleven units are in need of individual apartment improvements, as are 45% of such units in portfolios of more than eleven units.[35] Individual apartment improvement filings have declined by 77% since 2019.[36] Kitchen and bathroom improvements are the most needed individual apartment improvements.[37]

- Tax Impacts: A building's net operating income ("NOI") is equal to a building's income less operating expenses, with NOI generally used as a basis for obtaining mortgage loans and for reinvestments in the property.[38] Property taxes are also assessed based on a building's NOI, and for every 1% drop in NOI across the City's rent-stabilized housing stock, such apartments

34. *Id*. at 18.

35. *Id*.

36. *Id*. at 19.

37. *Id*. at 20.

38. *Id*. at 22.

> will generate $67.3 million less in property taxes.[39] By the early 2030s, the HR&A study predicts a 40% to 60% reduction in NOI across all rent-stabilized units.[40] The City's property tax revenue likewise could fall $1.3 billion to $2 billion annually.[41]

Property owners subject to the RSL increasingly struggle to afford necessary building expenses and operating costs. Aggrieved owners should be able to pursue takings claims when such claims arise. Yet prudential ripeness has forced some to pursue a futile remedy first, as set forth below.

III. The RSL's "Hardship" Rent Adjustment Is Practically Bound to Fail and, Even When Obtained, Deprives Properties of Beneficial Economic Use

In the zero-percent rent-increase market in New York City, owners with takings claims can either go to court and risk dismissal by prudential ripeness, or first pursue a hardship adjustment to temporarily increase the maximum legal rent they may charge their rent-stabilized tenants.[42] In theory, these adjustments protect owners with properties the RSL would otherwise render insolvent. In reality, the hardship application process results in two equally prejudicial outcomes: either the

39. *Id.*

40. *Id.*

41. *Id.*

42. *See* 9 NYCRR 2522.4(c) and (d).

owner's attempt to qualify for an adjustment fails due to procedural obstacles, or, if successful, the available rent increase is too small (and too late) to help. Hardship adjustments are thus as ineffectual as administering medicine to the dead.

A. The RSL's Comparative and Alternative Hardship Adjustments

The RSL's hardship adjustments purport to remedy the confiscatory effects of rent stabilization. They do not. The threshold adjustment, comparative hardship, examines the state of affairs that existed nearly sixty years ago, between 1968 and 1970.[43] To qualify for comparative hardship, an owner must prove that the "gross rental income" for the subject property "is insufficient to yield to the owner an average annual net income . . . for the three-year period ending on or within six months of the date of the filing of the owner's application, equal to the annual average net income of the property for" either: (i) "the period 1968-1970;" (ii) "the first three years of operation, if the building was completed after 1968;" or (iii) "the first three fiscal years after a transfer of title to a new owner who acquired title to the building as a result of a bona fide sale of the entire building" where the new owner, despite diligence, has been unable to obtain 1968-70 records and "submits financial data for not less than six years of continuous and uninterrupted operation of the property under his or her ownership."[44]

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43. *See* 9 NYCRR 2522.4(c).

44. 9 NYCRR 2522.4(c)(1).

The alternative hardship adjustment ostensibly acknowledges the difficulty of gathering records that either do not exist or are otherwise unattainable. To qualify, "owners of buildings . . . acquired by the same owner or a related entity owned by the same principals three years prior to the date of application" may apply for an adjustment where "such guidelines increases are not sufficient to enable the owner to maintain an annual gross rent income collectible for such building which exceeds the annual operating expenses of such building by a sum equal to at least five percent of such annual gross rent income collectible[.]"[45] That is, the building's annual operating expenses must comprise more than 95% of its gross (not net) rental income. This is effective insolvency.

If successful, an owner that eventually qualifies for either of these adjustments may be entitled to a maximum rent increase of 6%.[46] But, in an inflationary and rising-cost environment, the temporary adjustment would not remedy the financial distress by keeping rent revenue a razor's breadth from the effective insolvency required for the adjustment to be granted.

B. Hardship Adjustments Are Nearly Unattainable and Provide Insufficient Relief Even If Obtained

Hardship adjustments do not serve their purported aim. They are unduly burdensome to obtain and, even if secured, allow for a rent increase so small that it traps properties in insolvency.

45. 9 NYCRR 2522.4(d).

46. *See* 9 NYCRR 2522.4(c)(3)(i) and (d)(2)(i).

The RGB's website contains a guide that illustrates the problems with the hardship process.[47] The RGB's guide proclaims—correctly—that "[a] rent regulation system that required owners to maintain artificially reduced rents in the face of chronic operating losses would be viewed as confiscatory" and, as a result, that "[n]early every rent regulation system allows for some type of rent adjustment to remedy such situations."[48] The RGB's guide details certain procedural obstacles in qualifying for either comparative or alternative hardship. Adjustments can be denied if the owner fails to prove, among other things, that: (i) the rate of return on the owner's equity is less than 8.5%; (ii) the owner has owned the property for at least three years; (iii) no prior hardship application has been granted for at least three years; and (iv) the owner has resolved all legal objections to any real estate taxes and water and sewer charges.[49] These procedural requirements lock many owners out of qualifying for an adjustment at the gate.

Data reflect that most owners have given up applying for hardship adjustments. "According to a 1989 report on hardship increases," the RGB's guide relates, "'[ ]from 1984-1988 inclusive, 128 alternative hardship applications were reviewed[,] . . . 92 were denied, 1 was approved,

47. *See* Collins, T., "An Introduction to the New York City Rent Guidelines Board and the Rent Stabilization System," November 2025, https://rentguidelinesboard.cityofnewyork.us/wp-content/uploads/2025/11/Intro_2025.pdf ("RGB Guide").

48. *Id*. at 80.

49. *Id*.

33 were pending and 2 were withdrawn.'"[50] "Eleven comparative hardship applications were reviewed[,]" "[t]en were reported as 'denied for being incomplete' and one was pending."[51] Recent trends suggest that things have gotten much worse. "Little has changed in the past 36 years," according to the RGB's guide, with "[t]he approval rate of hardship applications remain[ing] almost non-existent, and the number of applications received annually continu[ing] to be very low."[52] There were no hardship applications granted in either 2023 or 2024, and only three applications filed in 2024.[53] As of 2026, hardship adjustments are effectively a dead letter.

C. The Hardship Process Arguably Violates Due Process and Confirms a Taking

Prudential ripeness forces owners to go through the motions of a futile hardship application process before their justiciable claims can be heard. These courts consign owners to futility and delay; there is no justification for this. New York's hardship application process is therefore not rationally related to any legitimate government interest, raising due process concerns. *See Washington v. Glucksberg*, 521 U.S. 702, 728 (1997).

The hardship application process also deprives owners of economically beneficial use of their properties and interferes with reasonable investment-backed

50. *Id*. at 81.

51. *Id*.

52. *Id*.

53. *Id*. at 81-82.

expectations. In so doing, owners are effectively compelled to submit to a taking. *Palazzolo*, 533 U.S. at 617 (opining that, "whether a particular government action goes too far and effects a regulatory taking" depends in part on whether a regulation "'denies all economically beneficial or productive use of land'" and, "[w]here a regulation places limitations on land that fall short of eliminating all economically beneficial use, a taking nonetheless may have occurred, depending on a complex of factors including the regulation's economic effect on the landowner, the extent to which the regulation interferes with reasonable investment-backed expectations, and the character of the government action") (*citing Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104 (1978)). Courts should not be allowed to further harm takings plaintiffs while deferring their claims on prudential ripeness grounds.

CONCLUSION

NYAA supports the petition and requests that certiorari be granted. Owners of rent-stabilized properties in New York stand to be denied access to justice—as petitioner has been—if the invocation of the judicial doctrine of prudential ripeness is permitted to stand. By granting the petition, the Court would have the opportunity to dispense with the infirm construction of ripeness as prudential, vindicate Article III's supremacy over the arbitrary discretion of lower-court judges, and affirm the principle that owners need not consent to a taking as a consequence of complying with the law. *Pakdel*, 594 U.S. at 478-79 ("The finality requirement is relatively modest. All a plaintiff must show is that 'there [is] no question . . . about how the "regulations at issue apply to the particular land in question."' . . . . [N]othing more than *de facto* finality is necessary.") (citation omitted); *Palazzolo*, 533 U.S. at 620 ("While a landowner must give a land-use authority an opportunity to exercise its discretion, once it becomes clear that the agency lacks the discretion to permit any development, or the permissible uses of the property are known to a reasonable degree of certainty, a takings claim is likely to have ripened.").

In sum, the Court respectfully should grant certiorari.

Respectfully submitted,

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