No. 16-16130

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

TOUFIC AND EVA JISSER, AND THE
TOUFIC AND EVA JISSER REVOCABLE TRUST,

Plaintiffs - Appellants,

v.

CITY OF PALO ALTO,

Defendant - Appellee.

On Appeal from the United States District Court
for the Northern District of California, San Jose Division
Honorable Edward J. Davila, District Judge

APPELLANTS' OPENING BRIEF

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, Toufic Jisser, Eva Jisser, and the Toufic and Eva Jisser Revocable Trust, hereby state that they have no parent companies, subsidiaries, or affiliates that have issued shares to the public.

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JURISDICTIONAL STATEMENT

This appeal arises from the district court's June 24, 2016, judgment granting Appellee City of Palo Alto's Fed. R. Civ. Proc. 12(b)(1) motion to dismiss Plaintiffs' complaint for declaratory and injunctive relief. ER 2. The district court had jurisdiction over Plaintiffs' federal takings and unconstitutional conditions claims, brought under 42 U.S.C. § 1983, pursuant to 28 U.S.C. § 1331. It had supplemental jurisdiction over a state-law claim under 28 U.S.C. § 1367(a). Venue in the district court was proper under 28 U.S.C. 1391(e)(1), because the property that is the subject of the action is located within the district.

The district court issued a final order dismissing Plaintiffs' federal constitutional claims as "unripe for adjudication," ER 11, and declined to exercise its supplemental jurisdiction over the state-law claim, disposing of all claims. Plaintiffs filed a timely notice of appeal on June 27, 2016. ER 1. This Court has jurisdiction over the appeal pursuant to 28 U.S.C. § 1291.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Whether the district court erred in holding, contrary to this Court's precedent, that the prudential rule of ripeness established by *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*, 473 U.S. 172, 194-95 (1985), requires a plaintiff alleging a violation of the Fifth Amendment's Public

Use Clause to seek a remedy through available state procedures before the claim is ripe for adjudication in federal court.

2. Whether *Williamson County*'s prudential rule of ripeness, which requires some claimants seeking takings damages to pursue just compensation in state court before filing a claim for damages in federal court, is applicable to unconstitutional conditions claims seeking only prospective equitable relief to halt an imminent taking.

STATEMENT OF THE CASE

A. Introduction

The Jisser family[1] has owned and operated the Buena Vista Mobilehome Park in Palo Alto for more than thirty years. ER 12. Today, it is an aging park with few amenities, in need of substantial investments in sewer, electric, and other systems. ER 16. The Jissers would like to retire, close the business, and someday put their land on which they run the mobilehome park to another use. ER 13.

California law specifically protects the right of mobilehome park owners to withdraw their property from the rental market and regain exclusive possession of their land, subject to paying tenants the "reasonable costs of relocation" to a comparable mobilehome park. ER 17. When the Jissers applied for a permit, however,

[1] Plaintiff Toufic and Eva Jisser Revocable Trust owns the Buena Vista Mobilehome Park and the land on which it operates, which is the subject of this action; Plaintiffs Toufic and Eva Jisser are beneficiaries of the trust. Plaintiffs are collectively referred to variously as the "Jissers" or the "Jisser family."

the City applied its Mobilehome Park Conversion Ordinance ("Ordinance") to demand that the Jissers make an extraordinary "enhanced relocation" payment of an estimated $8 million to their tenants, as a condition of exiting the rental business and changing the use of their land. ER 5. The payment mandate bears little relationship to their tenants' "reasonable costs of relocation" and is disproportionate to any public impact of the mobilehome park's closure. ER 24-25. Moreover, the money is to be paid directly to the tenants, who may use it for any purpose whatsoever; there is no restriction that the funds be used for relocation or any housing expense. ER 26. In effect, the permit condition forces the Jissers to choose to submit either to an uncompensated taking of their right to the exclusive possession of their property, or to a taking of an extraordinary sum of their money for the private benefit of their tenants.

B. Summary of Mobilehome Park Closure Regulations

California's Mobilehome Residency Law, Cal. Civ. Code § 798.56, protects the right of mobilehome park owners to close a mobilehome park and gain exclusive possession of their land. Under Cal. Gov't Code § 65863.7, local governments may require the property owner to "mitigate any adverse impact of the [park closure] on the ability of displaced mobilehome park residents to find adequate housing in a mobilehome park," so long as the conditions imposed do "not exceed the reasonable costs of relocation." *Id*. § 65863.7(e).

The City of Palo Alto adopted its Mobilehome Park Conversion Ordinance in 2001. ER 4. The Ordinance establishes procedures a mobilehome park owner must follow to obtain a permit to close a park, including the submission of a permit application supported by a "Relocation Impact Report" ("Report"). The Report must propose measures taken by the park owner to mitigate adverse impacts of the park closure on its residents. *Id.* The City then holds a hearing, upon deeming an application and Report complete, to determine whether the proposed mitigation measures are adequate. *Id*. If the City grants a permit to close the park, the property owner is required to return a "Certificate of Acceptance" form, which acknowledges and finalizes the City's decision. *Id*. "Any aggrieved person may" then appeal the hearing officer's decision to the full city council. ER 4-5.

C. Proceedings to Close the Mobilehome Park and the Payment Mandate

The Jissers submitted an application and supporting Report to close their mobilehome park to the City approximately four years ago, on November 9, 2012. ER 20. They filed five subsequent Reports between May 2013 and February 2014 in response to the City's demands for modifications, until the City accepted the final Report on February 20, 2014. *Id*.

The City held hearings on the closure permit application in May 2014, granting a conditional permit on September 30, 2014. *Id.* The permit mandates that the Jissers

pay "enhanced relocation assistance benefits" to their tenants, including (a) the purchase of each and every mobilehome in the park for an amount equal to 100% of the on-site value of the mobilehome; (b) a lump sum payment equal to 100% of the difference between average rents for apartments in Palo Alto and surrounding cities and the average rents for spaces in Buena Vista, for a period of 12 months; and (c) the payment of "start-up costs" to their tenants for first and last months' rent plus security deposit in alternative housing, as well as the tenants' actual moving costs. ER 5. This mandate requires the Jissers to pay a lump-sum of an estimated $8 million to their tenants or abandon the permit and be forced to continue operating the mobilehome park. *Id*. The actual sum of the payment mandate will be determined by an updated appraisal of the mobile homes and survey of average rents conducted at the Jissers' expense at such time as they may execute the permit.

A group of Buena Vista's tenants timely appealed the City's conditional approval to the city council, arguing that the payment mandate was too small. ER 5. The City denied that appeal and issued its final decision on May 26, 2015, imposing the payment mandate. *Id*.

D. The Jissers' Claims and the District Court's Ruling

Rather than execute the permit and submit to the payment mandate, the Jissers filed this action seeking a declaration that the City's exaction constitutes a taking in violation of the Public Use Clause of the Fifth Amendment and/or an unconstitutional

condition, and requesting equitable relief to halt the imminent taking. ER 6. The Jissers sought no compensation. *Id*.

Federal courts have jurisdiction to hear all cases arising under the Constitution, including the Takings Clause, pursuant to 28 U.S.C. § 1331. A Plaintiff need not exhaust administrative remedies before bringing their takings claims in federal court. *Patsy v. Fla. Bd. of Regents*, 457 U.S. 496, 516 (1982); *Williamson County*, 473 U.S. at 192-93. *Williamson County* created a limited exception to these general principles by establishing a requirement that takings claims founded on the just compensation clause be ripened by first pursuing "compensation through the procedures the State has provided." 473 U.S. at 194-95. ("[I]f a State provides an adequate procedure for seeking just compensation, the property owner cannot claim a violation of the Just Compensation Clause until it has used the procedure and been denied just compensation.").

The district court did not reach the merits of the Jissers' claims. On June 24, 2016, it granted the City's Fed. R. Civ. Proc. 12(b)(1) motion to dismiss on the grounds that the Jissers' claims were "not ripe for adjudication." ER 10. The court held that *Williamson County*'s "state procedures" rule applied to the Jissers' claims and required Plaintiffs to pursue a remedy in state court before filing in federal court. *Id*. This appeal followed.

SUMMARY OF ARGUMENT

This case challenges the City of Palo Alto's mandate that the Jisser family pay an estimated $8 million directly to the tenants of their mobilehome park as a condition of receiving a permit to change the use of the land on which they operate the park. The Jissers challenged the payment mandate on two federal constitutional grounds.

First, the City's payment mandate violates the Public Use Clause of the Fifth Amendment because the cash transfer allows tenants to spend the money on any private purpose whatsoever and is not limited to relocation or other housing expenses. ER 26. Under applicable law, the government may not take money or other property solely for a private purpose. *Kelo v. City of New London*, 545 U.S. 469, 477 (2005). Second, the payment mandate is an unconstitutional condition, in violation of the principles set out in *Nollan v. California Coastal Comm'n*, 483 U.S. 825 (1987), *Dolan v. City of Tigard*, 512 U.S. 374 (1994), and *Koontz v. St. Johns River Water Mgmt. Dist.*, 133 S. Ct. 2586 (2013), because it does not mitigate and is not proportionate to public impacts caused by the Jissers' withdrawal of their property from the rental market. ER 24-25. The Jissers sought equitable relief to invalidate the condition and stop the taking before any money was transferred to their tenants.

The district court held that the Jissers' case was "not ripe for federal adjudication" because they did not previously "pursue any remedy through state

procedures" pursuant to the rule of *Williamson County*. ER 10. That decision is in error on multiple counts.

First, *Williamson County*'s state procedures rule is not applicable to cases arising under the Public Use Clause. Second, the state procedures rule does not apply to cases involving the taking of money, like the one here. Third, the state procedures rule does not apply to cases in which claimants properly seek equitable relief to prevent a taking from occurring rather than seeking post-takings damages. Finally, the state procedures rule is prudential, not jurisdictional, and considerations of fairness and judicial economy support waiving the requirement in this case, even if it was otherwise applicable (which it is not).

STANDARD OF REVIEW

Whether a case is ripe for adjudication is a question of law that this Court reviews de novo. *See Sierra Forest Legacy v. Sherman*, 646 F.3d 1611, 1176 (9th Cir. 2011). A district court's decision to dismiss a complaint for lack of subject matter jurisdiction is also reviewed de novo. *Hacienda Valley Mobile Estates v. City of Morgan Hill*, 353 F.3d 651, 654 (9th Cir. 2003).

ARGUMENT

I

OVERVIEW OF *WILLIAMSON COUNTY*'S RIPENESS DOCTRINE

In *Williamson County*, the U.S. Supreme Court held that a federal regulatory takings claim is not ripe unless "the government entity charged with implementing the regulations has reached a final decision regarding the application of the regulations to the property at issue."[2] *Williamson County*, 473 U.S. at 186. Further, the Court observed that a "violation of the Just Compensation Clause" is ripe only after the property owner first seeks "compensation through the procedures the State has provided for doing so." *Id*. at 194-95. *Williamson County*'s state procedures requirement has a simple rationale. A predicate of the claim that one's property has been taken without just compensation is a demonstration that one has been denied damages for the taking. In order "[t]o establish that the state failed to offer just compensation, a landowner must seek and be denied compensation through state procedures." *Austin v. City & County of Honolulu*, 840 F.2d 678, 680 (9th Cir. 1988) (citing *Williamson County*, 473 U.S. at 195).

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[2] The payment mandate at issue here was imposed by the City's final decision to conditionally approve the Jissers' permit and there is no question they have met *Williamson County*'s "finality" rule. *See* ER 8 (Order at 6, n.3).

Even in the context of regulatory takings claims, the state procedures rule is not jurisdictional. The Supreme Court refers to the rule as a "prudential requirement." *Suitum v. Tahoe Regional Planning Agency*, 520 U.S. 725, 733-34 (1997). Since four Supreme Court justices urged its reconsideration in *San Remo Hotel, L.P. v. City & County of San Francisco*, 545 U.S. 323, 348-52 (2005) (Rehnquist, J., concurring), lower courts, including this Court, have often exercised discretion to waive the rule where it would cause unfairness or a waste of court or party resources. *See Guggenheim v. City of Goleta*, 638 F.3d 1111, 1116-18 (9th Cir. 2010) (en banc); *Town of Nags Head v. Toloczko*, 728 F.3d 391, 399 (4th Cir. 2013).

II

WILLIAMSON COUNTY'S RIPENESS RULES DO NOT APPLY TO PUBLIC USE CLAUSE CLAIMS

The City's payment mandate violates the Public Use Clause of the Fifth Amendment because it requires a direct transfer of cash from the Jissers to their tenants with no limit on "how the funds are spent by tenants," allowing money to be "used for any private purpose whatsoever." ER 26. According to the City's final permit decision, the tenants have no duty to use the money for relocation or any housing purpose at all. *Id*. As a consequence, the private benefits accruing to tenants from the mandated payments far outweigh any conceivable public benefit. *Id*. The Supreme Court's leading Public Use Clause case forbids "taking [property] for the

purpose of conferring a private benefit on a particular private party," *Kelo v. City of New London*, 545 U.S. at 477, and counsels that "[a] court . . . should strike down a taking that . . . is intended to favor a particular private party, with only incidental or pretextual public benefits" as a violation of the clause. *Id*. at 491 (Kennedy, J., concurring). The Jissers have therefore set out a plausible Public Use claim under *Kelo*.

The district court did not reach the merits of the Public Use Clause claim, however, dismissing it as "unripe for adjudication" because the Jissers did not first seek a remedy using state procedures under the rule of *Williamson County*. ER 11. The dismissal is in error for two reasons.

First, this Court's precedent holds that *Williamson County*'s ripeness requirement does not apply to Public Use Clause claims. *Armendariz v. Penman*, 75 F.3d 1311, n.5 (9th Cir. 1996) (en banc) ("Because a 'private taking' cannot be constitutional even if compensated, a plaintiff alleging such a taking would not need to seek compensation in state proceedings before filing a federal takings claim under the rule of *Williamson County*.") (overruled on other grounds by *Crown Point Dev., Inc. v. City of Sun Valley*, 506 F.3d 851, 856-57 (9th Cir. 2007)). Other federal courts of appeal have reached the same conclusion. *See Carole Media LLC v. New Jersey Transit Corp*., 550 F.3d 302, 308 (3d Cir. 2008) (same); *Rumber v. District of Columbia*, 487 F.3d 941, 944 (D.C. Cir. 2007) (same); *Montgomery v. Carter County*,

226 F.3d 758, 767 (6th Cir. 2000) (same); *Samaad v. City of Dallas*, 940 F.2d 925, 936-37 (5th Cir. 1991) (same).

Second, the logic underlying *Williamson County*'s state procedures rule does not support its application to a Public Use Clause claim. The rule is premised on the fact that the "Fifth Amendment does not proscribe the taking of property; it proscribes taking without just compensation." *Williamson County*, 473 U.S. at 194. A takings claim for compensation is therefore sometimes not ripe in federal court until the claimant has first pursued and failed to receive compensation using available "state procedures." Unlike a claim seeking compensation for a valid taking, however, the Jissers' Public Use Clause claim is that the City's payment mandate is impermissible. "[I]f a government action is found to be impermissible—for instance because it fails to meet the 'public use' requirement . . . that is the end of the inquiry. No amount of compensation can authorize such action" and injunctive relief to restrain the taking is appropriate. *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 543 (2005). The Jissers' Public Use Clause claim is therefore not subject to *Williamson County*'s state procedures rule, according to both this Court's precedent and the logic on which the rule is based. Because the claim is ripe, the district court's judgment must be reversed.

III

WILLIAMSON COUNTY'S "STATE PROCEDURES" RULE IS NOT APPLICABLE TO CASES SEEKING EQUITABLE RELIEF TO HALT AN UNCONSTITUTIONAL MONETARY EXACTION

A. The Jissers Raise a Viable Unconstitutional Exaction Claim

The crux of the Jissers' second takings claim is that the City unconstitutionally conditioned their right to withdraw their mobilehome park from the rental market on the payment of a monetary exaction unrelated to the impact of that withdrawal. The Jissers have a right to go out of the mobilehome park business and enjoy the exclusive possession of their property—a right recognized by, e.g., *Kaiser Aetna v. United States*, 444 U.S. 164, 176 (1979), *Yee v. City of Escondido*, 503 U.S. 519, 528 (1992), and the California Mobilehome Residency Law. *See* ER 17. The Jissers also have a property right in their money. *See, e.g.*, *Koontz*, 133 S. Ct. at 2600. The city has burdened those rights by demanding the payment of an estimated $8 million in "enhanced relocation benefits" to tenants, without which a permit to close the mobilehome park will be denied and the tenants will continue to occupy the property. ER 5. A demand for money in exchange for a permit to change the use of property that does not mitigate and is not proportionate to public impacts caused by the change violates the unconstitutional conditions doctrine set out in *Nollan*, 483 U.S. at 836-37, *Dolan*, 512 U.S. at 388-92, and *Koontz*, 133 S. Ct. at 2594-95. The Jissers' complaint

established a plausible claim that the City's payment mandate lacks the required connection to the impact of their mobilehome park closure.

B. Contrary to the Lower Court's Decision, the Exactions Claim Is Ripe Without a State-court Damages Proceeding

As with the Jisser's public use claim, the district court dismissed the unconstitutional conditions claim as unripe under *Williamson County* because the Jissers did not first submit to the taking and then pursue compensation using state procedures. ER 10. The court erred because *Williamson County*'s "state procedures" rule is not applicable to cases seeking equitable relief to halt an unconstitutional monetary exaction. Moreover, even if *Williamson County* technically applies, the court should have exercised its prudential discretion to decide the claim now.

1. The "State Procedures" Rule Does Not Apply to Money Takings Cases

Unlike Takings claims that "burden[] real or physical property," challenges to an unconstitutional demand for money are ripe without a prior damages suit. *Eastern Enters. v. Apfel*, 524 U.S. 498, 521 (1998) (no suit for compensation necessary to challenge a demand by government for "a direct transfer of funds") (quotation and citation omitted). This makes sense, as it would "entail an utterly pointless set of activities" to require a plaintiff to submit to an unconstitutional demand for money and then go seek one-for-one dollar reimbursement in just compensation for the taking. *Id.* (quotation and citation omitted). When government takes a discrete fund of money,

but the transfer of money has not yet occurred, a suit for compensation is "not available," and therefore, a request for an injunction is proper. *Id.* at 520; *Student Loan Mktg. Ass'n v. Riley*, 104 F.3d 397, 401 (D.C. Cir. 1997) (same).

This is why the Supreme Court, Ninth Circuit, and other federal courts have refused to apply *Williamson County*'s state procedures rule where claimants' takings claims centered on a challenge to a demand that the claimant pay a discrete fund of money to the government or individuals. *See Brown v. Legal Found. of Wash.*, 538 U.S. 216, 228-29 (2003) (case ripe without prior damages suit); *Washington Legal Found. v. Legal Found. of Washington*, 271 F.3d 835, 850 (9th Cir. 2001) (same); *Garcia-Rubiera v. Calderon*, 570 F.3d 443, 454 (1st Cir. 2009) (challenge to a direct appropriation of funds not subject to *Williamson County* state procedures rule); *Asociacion De Subscripcion Conjunta Del Seguro De Responsabilidad Obligatorio v. Flores Galarza*, 484 F.3d 1, 19-20 (1st Cir. 2007) (same); *In re Chateaugay Corp.*, 53 F.3d 478, 493 (2d Cir. 1995) (same); *Transohio Sav. Bank v. Director, Office of Thrift Supervision*, 967 F.2d 598, 613 (D.C. Cir. 1992) (same); *Levin v. City & Cty. of San Francisco*, 71 F. Supp. 3d 1072, 1079 (N.D. Cal. 2014) (same); *White Oak Realty v. U.S. Army Corp. of Eng'rs*, No. 13-4761, 2016 WL 355485, at *1 (E.D. La. Jan. 28, 2016) (same).

In this case, the City requires a lump-sum payment from the Jissers to their tenants as a condition of the permit to close the mobilehome park. That payment

mandate does not contemplate compensation. The Jissers can and do seek equitable relief to invalidate the unconstitutional condition and halt the taking before it occurs. A claimant challenging a prospective money taking need not submit to the taking and only then seek dollar-for-dollar reimbursement in a suit for compensation.

2. The "State Procedures" Rule Does Not Apply to Cases That Properly Seek Only Equitable Relief

By its nature, the state procedures rule does not apply to cases in which the Fifth Amendment's Just Compensation Clause is not at issue. That includes cases, like this one, that seek exclusively equitable relief. *See San Remo Hotel*, 545 U.S. at 345-46 (takings claims that "request[] relief distinct from the provision of just compensation" are ripe without first seeking damages in state court); *Yee*, 503 U.S. at 533-34 (same). *See also Brown*, 538 U.S. at 228-29 (injunctive relief sought to prevent a taking of money); *Eastern Enters.*, 524 U.S. at 538 ("the Coal Act's allocation of liability to Eastern violates the Takings Clause, and [] should be enjoined"); *Duke Power Co. v. Carolina Environmental Study Group, Inc.*, 438 U.S. 59, 71 n.15 (1978) (Declaratory relief "allows individuals threatened with a taking to seek a declaration of the constitutionality of the disputed governmental action before potentially uncompensable damages are sustained.").

Money takings cases properly seek equitable relief. *Garcia-Rubiera*, 570 F.3d at 454; *In re Chateaugay Corp.*, 53 F.3d at 493. Injunctive relief is particularly

appropriate in an unconstitutional conditions challenge like that brought by the Jissers. Up to now, no money has changed hands and the injury is not complete; the purpose of the suit is to remove the unconstitutional condition to halt the imminent taking. Both the Ninth Circuit and other federal courts have allowed suits for injunctive relief to prevent a taking where just compensation was not available or inadequate. *See Washington Legal Found.*, 271 F.3d at 851; *Dennis Melancon, Inc. v. City of New Orleans*, 703 F.3d 262, 278-80 (5th Cir. 2012); *Levin*, 71 F. Supp. 3d at 1074; *White Oak Realty*, 2016 WL 355485, at *5. *See also* Scott Woodward, *The Remedy for a "Nollan/Dolan Unconstitutional Conditions Violation,"* 38 Vt. L. Rev. 701, 714-15 (2014) ("In general, the remedy for an unconstitutional conditions violation is invalidation of the condition" rather than compensation, and collecting cases from federal and state courts applying *Nollan/Dolan/Koontz*).

Moreover, the nature of the City's payment mandate in this case makes equitable relief the only adequate remedy. The City commanded the Jissers to pay money directly to their tenants, not to the City itself. "Because Plaintiffs are required to pay those amounts to a party other than the government, they would be unable to seek repayment" through a suit for just compensation if the exaction was ultimately found to be a taking. *White Oak Realty*, 2016 WL 355485, at *4. This places the Jissers in precisely the situation as the plaintiffs in *Eastern Enterprises*, where the plaintiff coal company challenged a payment mandate imposed by a federal statute.

The mandate required the company to pay money directly to a non-government third party, to be used to pay insurance premiums for retired workers. 524 U.S. at 513. The Supreme Court held that a claim for compensation was unnecessary because "the Declaratory Judgment Act 'allows individuals threatened with a taking to seek a declaration of the constitutionality of the disputed governmental action before potentially uncompensable damages are sustained.'" *Id*. at 521 (quoting *Duke Power*, 438 U.S. at 71 n.15). For the same reasons, equitable relief is available to the Jissers here on their monetary exaction claims and *Williamson County* is inapplicable. *Id.*

Finally, the district court wrongly assumed that *Williamson County* requires all as-applied claims to first seek a remedy in state court, ER 10, when in fact the precedent shows only that all as-applied claims that hinge on just compensation must do so. The court acknowledged that "exceptions to *Williamson* may be justified in the context of a facial takings challenge," but held that "the same cannot be said for as-applied claims." *Id.* In drawing that conclusion, the court relied on regulatory takings cases and cases involving rent control, in which property owners sought compensation or in which the Ninth Circuit determined that damages rather than equitable relief was the appropriate remedy. *Id.* Those cases have no force on an unconstitutional conditions case, as here, in which compensation is inadequate or not available. The Jissers sought equitable relief, "distinct from the provision of 'just compensation,'"

San Remo Hotel, 545 U.S. at 345-46, because (unlike the cases cited by the district court) it is the appropriate relief for their unconstitutional conditions challenge.

3. Prudence Counsels Waiving the "State Procedures" Rule Even If Applicable

Williamson County presents a prudential rule of ripeness, not a jurisdictional bar. *See Guggenheim*, 638 F.3d at 1117-18. Prudential ripeness determinations weigh factors such as the "fitness of the issues for judicial decision and the hardship of the parties of withholding court consideration." *Thomas v. Anchorage Equal Rights Comm'n*, 220 F.3d 1134, 1141 (9th Cir. 1999) (quoting *Abbott Labs v. Gardner*, 387 U.S. 136, 149 (1967)). It is sometimes prudent for a court to "stay [] its hand" in the "interests of judicial economy" until the conclusion of another proceeding to ensure that the challenged governmental action is "sufficiently final" or concrete. *See, e.g.*, *Toca Producers v. F.E.R.C.*, 411 F.3d 262, 266 (D.C. Cir. 2005). But prudential considerations weigh entirely in favor of waiving *Williamson County*'s state procedures rule here.

There is no question that the Jissers' Public Use Clause claim is ripe according to this Court's precedent. *See supra* Section II. Prudence counsels hearing both the Public Use Clause and unconstitutional conditions claims together to avoid "piecemeal litigation." *MacDonald, Sommer & Frates v. Yolo Cty.*, 477 U.S. 340, 350 n.7 (1986). Forcing the Jissers to pay up to $8 million to their tenants and then

requiring them to pursue the "utterly pointless" (and likely impossible) remedy of damages in state court, only to have them then return to federal court, likewise subjects them to "piecemeal litigation or otherwise unfair procedures," *San Remo Hotel*, 545 U.S. at 346 (citation omitted).

Moreover, it would be a "a waste of the parties' and the courts' resources," *Guggenheim*, 638 F.3d at 1118, because the state court litigation will not ultimately make the case any more fit for review than it is today. The City's permit condition is final, ER 5, and does not contemplate compensation (and the City resists it). Under the well-settled body of unconstitutional conditions law, the standards for adjudicating the Jissers' claim are clear and state court litigation of that claim cannot make the controversy any more concrete. Applying *Williamson County*'s state procedures rule in this case would cause the very hardships and inefficiencies that prudential ripeness rules are intended to avoid. Therefore, the state procedures rule should be waived. *See Toloczko*, 728 F.3d at 399 ("This is a proper case to exercise our discretion to suspend the state-litigation requirement of *Williamson County*. In the interests of fairness and judicial economy, we will not impose further rounds of litigation on the [plaintiffs]."); *Levin*, 71 F. Supp. 3d at 1079 (prudential considerations make it appropriate to adjudicate *Nollan/Dolan* claim challenging monetary exaction).

CONCLUSION

For the reasons stated above, this Court should reverse the judgment below, find Plaintiffs' Public Use Clause and unconstitutional conditions claims ripe for adjudication, and remand the case to the district court for further proceedings.

DATED: October 31, 2016.

Respectfully submitted,

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LAWRENCE G. SALZMAN
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By s/ Lawrence G. Salzman
LAWRENCE G. SALZMAN

Counsel for Plaintiffs - Appellants

STATEMENT OF RELATED CASES

Plaintiffs-Appellants are aware of no related cases within the meaning of Circuit Rule 28-2.6.

DATED: October 31, 2016.

s/ Lawrence G. Salzman
LAWRENCE G. SALZMAN

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