No. 17-809

In the Supreme Court of the United States

SUSAN STANFORD, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the courts below correctly rejected petitioner's "judicial-takings" claim.

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OPINION BELOW

The opinion of the United States Court of Federal Claims (Pet. App. 3-13) is reported at 125 Fed. Cl. 570.

JURISDICTION

The judgment of the court of appeals (Pet. App. 1-2) was entered on July 19, 2017. On October 6, 2017, the Chief Justice extended the time within which to file a petition for a writ of certiorari to and including December 1, 2017, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. a. From 1975 to 2013, petitioner was married to Robert Allen Stanford, a banker who perpetrated a multi-billion-dollar fraud on investors. Pet. App. 4-8; see *United States* v. *Stanford*, 805 F.3d 557, 563-564 (5th Cir. 2015), cert. denied, 137 S. Ct. 491 (2016). In

2009, the Securities and Exchange Commission (SEC) filed a civil enforcement action against Mr. Stanford in the United States District Court for the Northern District of Texas. *SEC* v. *Stanford Int'l Bank, Ltd.*, No. 09-cv-298 (Feb. 17, 2009). On the SEC's motion, the district court issued a temporary restraining order freezing the assets of Mr. Stanford and his companies. Pet. App. 4-5. The court also appointed a receiver to "prevent waste and dissipation of" Mr. Stanford's assets. *Id.* at 5, 28-43. The court assumed exclusive jurisdiction and took possession of the receivership estate. *Ibid.*

Petitioner intervened in the enforcement action, claiming that she was the "one-half owner of the assets" in the receivership estate by virtue of her marriage to Mr. Stanford. Pet. App. 6. Petitioner filed numerous pleadings, including an objection to the receiver's sale of certain assets. See 09-cv-298 Docket entry (Docket entry) No. 895 (N.D. Tex. Dec. 3, 2009); Docket entry No. 1021 (Feb. 19, 2010); Docket entry No. 1048 (Mar. 26, 2010). The district court ordered the receiver to sequester half the proceeds from the disputed sales until petitioner's claims could be resolved. Docket entry No. 1317 (Apr. 8, 2011).

b. The receiver in the SEC enforcement action filed a complaint against petitioner, alleging that she had received fraudulent transfers of assets from Mr. Stanford and his companies. Pet. App. 6. Petitioner settled that claim by entering into an agreement stating that she "release[d] and discharge[d]" the receiver and the receivership estate

> from any and all claims, causes of action, suits, rights, disputes, liabilities costs, expenses, damages,

> or demands, arising prior to the date of this Agreement, known or unknown, foreseen or unforeseen, contingent or vested, arising by subrogation, assignment, reimbursement, operation of law, or otherwise, relating to, arising out of, or in any way connected with . . . all . . . properties or assets of the Receivership Estates, or the Stanford Entities.

Id. at 6-7. The district court approved the settlement agreement and dismissed the receiver's claims against petitioner. *Id.* at 7.

c. The district court subsequently determined that the receivership estate contained "no funds that were not tainted by" Mr. Stanford's "Ponzi scheme." Docket entry No. 1699, at 90 (Sept. 11, 2012). The court explained that "the evidence [was] simply overwhelming that" the receivership estate did not contain "even a nickel that wasn't effectively stolen from the Stanford investors." *Id.* at 88.

2. Separately, federal prosecutors charged Mr. Stanford with numerous crimes. A jury found him guilty of more than a dozen fraud-related counts. Pet. App. 47. The district court sentenced him to 110 years in prison and ordered him to forfeit $5.9 billion. *Id.* at 47, 56; see *Stanford*, 805 F.3d at 563-565.

Based on this criminal conviction, the SEC obtained a partial grant of summary judgment in the civil enforcement case. Pet. App. 7. The district court ordered disgorgement of the fraudulent proceeds and imposed a $5.9 billion penalty on Mr. Stanford. *Ibid.*

A few weeks later, petitioner and Mr. Stanford were divorced. Pet. App. 8. The divorce decree awarded petitioner one-half of "any remaining community property * * * not under the control of the" receiver. *Ibid.* (emphases omitted).

3. In 2015, more than three years after she released her claims against the receiver, petitioner filed suit against the United States in the United States Court of Federal Claims (CFC). Pet. App. 8. She alleged that the district court's order appointing the receiver in the SEC enforcement action had effected a taking of her marital property, and that she was therefore entitled to just compensation. *Ibid.* Petitioner argued that the "United States . . . had no right to appoint a receiver and/or seize the assets in question," because the "assets taken and sold by the United States were community assets," half of which belonged to petitioner under her divorce decree. *Id.* at 8-9 (quoting Compl. ¶¶ 8-9) (brackets omitted). Petitioner accordingly contended that the government was constitutionally required to compensate her for half the value of the receivership estate—at least $12 billion. *Ibid.*

The CFC held that it lacked jurisdiction to consider petitioner's takings claim. Pet. App. 12-13. The court explained that resolving that claim would require the CFC to "ascertain whether the SEC had authority to seek and obtain receivership," which would "necessarily require[] a review of the * * * propriety of the [district court's] decision to appoint a receiver." *Id.* at 12. The court concluded that it could not adjudicate such a claim because it "does not have jurisdiction to adjudicate the enforcement authority of the SEC nor the decisions of a United States District Court." *Ibid.* (citing *Allustiarte* v. *United States*, 256 F.3d 1349, 1352 (Fed. Cir.), cert. denied, 534 U.S. 1042 (2001), and *Vereda, Ltda.* v. *United States*, 271 F.3d 1367, 1375 (Fed. Cir. 2001)).

The CFC further held that, even if it had jurisdiction to review petitioner's takings claim, the claim would fail on the merits because petitioner had "no cognizable

property interest" in the receivership estate. Pet. App. 12. The court explained that, in her settlement with the receiver, petitioner had expressly "released 'all claims[] [or] causes of action' against the Receiver * * * 'relating to, arising out of, or in any way connected with . . . all the properties or assets of the'" receivership estate. *Id.* at 12-13 (citation omitted; brackets in original).

4. After briefing and argument, the court of appeals summarily affirmed. Pet. App. 1-2; see Fed. Cir. R. 36 (2016).

ARGUMENT

Petitioner contends (Pet. 6-11) that the district court in the SEC enforcement action effected a judicial taking of her property when it appointed a receiver to conserve assets held by her then-husband. The court of appeals correctly affirmed the CFC's dismissal of petitioner's suit. Petitioner lacked any cognizable property interest in the receivership assets, which were beyond the scope of her divorce decree and tainted by Mr. Stanford's fraud. In her settlement with the receiver, moreover, petitioner released any interest in the receivership assets. And in any event, because the CFC lacked jurisdiction to review the rulings made by the district court in the SEC enforcement suit, the CFC's dismissal of this separate action would be correct even if the district court's appointment of a receiver had been improper. Further review is not warranted.

1. The Fifth Amendment states that "private property" shall not "be taken for public use, without just compensation." U.S. Const. Amend. V. A successful takings claim thus requires the assertion of a "cognizable property interest." Pet. App. 12; see, *e.g.*, *Ruckelshaus* v. *Monsanto Co.*, 467 U.S. 986, 1000-1004 (1984) (discussing cognizable property interests); cf. *Stop the*

Beach Renourishment, Inc. v. *Florida Dep't of Envtl. Prot.*, 560 U.S. 702, 733 (2010) (requiring takings plaintiffs to show "established property rights"). For at least three independent reasons, petitioner failed to satisfy that threshold requirement.

a. Petitioner contends (Pet. 4) that, under Texas community-property law, she possessed a one-half interest in the receivership assets. But the spouses' divorce decree awarded petitioner a one-half interest only in "community property of the parties *not under the control* of the * * * receiver." Pet. App. 8 (citation omitted). Petitioner's claim that she held an interest in the receivership assets thus fails on its own terms.

b. Petitioner had no cognizable property interest in the receivership assets because they consisted exclusively of proceeds tainted by Mr. Stanford's fraud. The district court found that the receivership estate did not contain "even a nickel that wasn't effectively stolen from the Stanford investors." Docket entry No. 1699, at 88. Petitioner cannot plausibly assert a cognizable community-property interest in the proceeds of fraud. See, *e.g.*, *United States* v. *Martinez*, 228 F.3d 587, 589-590 (5th Cir. 2000).

c. Even if petitioner could show that she once possessed an interest in the receivership assets, she relinquished that interest when she agreed to release "any and all claims, causes of action, suits, rights * * * known or unknown, foreseen or unforeseen, contingent or vested * * * relating to, arising out of, or in any way connected with" the receivership estate. Pet. App. 6-7; see *id.* at 12-13. Petitioner contends (Pet. 9-10) that her waiver of claims against the receiver does not bar her takings claim against the United States. But other than

her purported interest in the receivership assets, petitioner does not identify any property that the United States could be said to have taken. Cf. Pet. App. 8 (noting that petitioner's complaint attributed the receiver's conduct to the United States).

2. In any event, the court of appeals correctly affirmed the CFC's decision that it lacked jurisdiction over petitioner's takings claim, because adjudicating that claim would have required the CFC to review the decision of the Article III district court. Pet. App. 2, 12; accord *Petro-Hunt, L.L.C.* v. *United States*, 862 F.3d 1370, 1385-1386 (Fed. Cir. 2017), petition for cert. pending, No. 17-1090 (filed Feb. 1, 2018).

a. This Court has never held that a judicial decision effected a taking of property, and no court has ever held that a federal-court decision produced such a result. As petitioner observes (Pet. 6), this Court in *Stop the Beach* considered whether a state-court decision redefining state-law property rights could give rise to a takings claim. 560 U.S. at 707. The Court did not resolve that question. Four members of the Court indicated that a takings claims may arise from a state-court decision under some circumstances, see *id.* at 713-715 (plurality opinion), but the Court resolved the case on the unanimous ground that no taking had occurred because the plaintiffs had no "established property rights" in the property allegedly taken, *id.* at 733 (majority opinion); see *ibid.* (Kennedy, J., concurring in part and concurring in the judgment); *id.* at 742 (Breyer, J., concurring in part and concurring in the judgment). As explained above, petitioner here likewise lacked any established property rights in the property allegedly taken. This case accordingly would not be a suitable vehicle to address the possibility of judicial-takings claims.

b. This case, moreover, arises in a markedly different jurisdictional posture than did *Stop the Beach*. In that case, Florida landowners alleged that a state law had unconstitutionally taken their beachfront property. 560 U.S. at 711 (majority opinion). The Florida Supreme Court ultimately rejected that claim based on the court's interpretation of Florida law. *Id.* at 712. The landowners then sought rehearing in the Florida Supreme Court, contending that the court's decision itself had effected a taking under the United States Constitution. *Ibid.* When the Florida Supreme Court denied rehearing, this Court granted a petition for a writ of certiorari to review the constitutional claim. *Ibid.*

Here, by contrast, petitioner intervened in the SEC's civil enforcement action in the United States District Court for the Northern District of Texas. In that enforcement suit, petitioner filed numerous motions objecting to the receiver's sale of assets over which she claimed partial ownership. Pet. App. 6; see Docket entry Nos. 895, 1021, 1048. She did not contend in those proceedings, however, that denial of her motions would give rise to a Fifth Amendment taking of her property.

If petitioner was dissatisfied with the district court's rulings in the enforcement suit, the obvious means of contesting those rulings would have been through an appeal to the Fifth Circuit. See, *e.g.*, *SEC* v. *Safety Fin. Serv., Inc.*, 674 F.2d 368 (5th Cir. 1982); Pet. App. 8-9. But petitioner did not pursue any such appeal from the district court's resolution of her motions or its ultimate disposition of the case. Rather, petitioner settled her claims against the receiver and then, years later, filed a separate lawsuit in the CFC collaterally attacking the district court's appointment of the receiver as an alleged taking of her property. See Pet. App. 12.

The CFC correctly held that it lacked jurisdiction to entertain such a suit. The CFC is an Article I tribunal that Congress created to resolve specified monetary disputes, including certain takings claims, against the United States. 28 U.S.C. 171, 1491(a)(1); see *Eastern Enters.* v. *Apfel*, 524 U.S. 498, 520 (1998) (plurality opinion). As an Article I body, the CFC has no power to review the merits decision of an Article III court. Article III courts render binding judgments in cases or controversies "subject to review only by superior courts in the Article III hierarchy." *Plaut* v. *Spendthrift Farm, Inc.*, 514 U.S. 211, 218-219 (1995). As relevant here, district court decisions are reviewable in Article III federal courts of appeals, 28 U.S.C. 1291, and no statute purports to authorize the Article I CFC to review those decisions, see 28 U.S.C. 1491-1509 (defining the CFC's jurisdiction).

To adjudicate petitioner's takings claim, the CFC would have been required to evaluate the district court's conduct and ultimate disposition of the SEC enforcement suit. See Pet. App. 12. Petitioner asked the CFC "to adjudicate whether the SEC's assertion of jurisdiction over her by seeking and obtaining the receivership worked a taking of her property." *Ibid.* (citation and internal quotation marks omitted). Resolving that claim would have required the court to review (1) the SEC's authority to seek the receivership, (2) the propriety of the district court's decision to grant the request, and (3) the decisions of the district court concerning the actions of the receiver, over whom the court retained jurisdiction. As explained above, the CFC lacks jurisdiction to review those decisions. *Ibid.*; see *Petro-Hunt*, 862 F.3d at 1385.

c. Petitioner contends (Pet. 7) that, "[i]f the Takings Clause applies to judicial takings, a forum must exist in which such claims may be presented." But even if that assertion were correct, petitioner offers no reason why the CFC should be viewed as the proper forum. As noted above, petitioner's argument that the district court's decisions involving the receiver effected judicial takings could have been raised in a motion for reconsideration in the SEC enforcement suit, or in an appeal to the Fifth Circuit. Indeed, the plurality in *Stop the Beach* contemplated that takings claims based on state-court decisions would be raised through appellate review of the challenged decisions themselves, rather than through collateral attacks in other courts. 560 U.S. at 726; but see *id.* at 740 (Kennedy, J., concurring in part and concurring in the judgment) (explaining potential difficulties with this approach). And although a claim for compensation under the Tucker Act, 28 U.S.C. 1491(a)(1), is ordinarily a necessary predicate to a successful takings claim against the United States, Article III courts may enjoin a taking in unusual situations where "Congress could not have contemplated that the Treasury would compensate" a party for the alleged taking. *Eastern Enters.*, 524 U.S. at 521 (plurality opinion); see *Horne* v. *Department of Agric.*, 569 U.S. 513, 527 (2013).

If a particular seizure of property by a court-appointed receiver ever effected a Fifth Amendment taking, petitioner identifies no reason to believe that Congress would want the federal treasury to compensate the owner of that property, rather than having the receiver's action enjoined or vacated on appeal. See *Eastern Enters.*, 524 U.S. at 521 (plurality opinion). Instead, petitioner contends (Pet. 8-9) that Fifth Circuit review

of the district court's conduct of the SEC enforcement suit would have been too "limited" and deferential to afford a "meaningful opportunity to be heard." That objection sounds in due process, not takings. And in any event, petitioner received significant process, as shown by the district court's consideration of her numerous motions objecting to certain sales by the receiver before she entered a settlement releasing her interests. See Docket entry Nos. 895, 1021, 1048. Petitioner thus seeks to collaterally attack the receiver's actions while retaining the benefits of her settlement. The courts below correctly rejected that effort.

Taken to its logical conclusion, moreover, petitioner's theory would allow the CFC to review a takings claim alleging that a decision of this Court—for example, a decision overruling a precedent that affects property rights—entitles the losing party to compensation from the federal treasury. Petitioner cites no authority supporting that anomalous result, which is just one of numerous "difficulties that should be considered before accepting the theory that a judicial decision" may "constitute[] a violation of the Takings Clause." *Stop the Beach*, 560 U.S. at 734 (Kennedy, J., concurring in part and concurring in the judgment). Given the undeveloped nature of petitioner's argument and the numerous threshold grounds on which her claim could be denied, this case is not a suitable vehicle for reviewing the possibility of federal judicial takings.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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