NO. _____

In the Supreme Court of the United States

ANDREA LEA, in her official capacity as Auditor of the State of Arkansas,

Petitioner,

v.

UNITED STATES and JAKE LATURNER, Treasurer of the State of Kansas,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Federal Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the federal statute, regulations, and contractual provisions governing the transfer and redemption of United States Savings Bonds preempt the State of Arkansas from obtaining ownership of matured but unredeemed bonds through a statute providing for the escheat of title to the State.

2. Whether the federal statute, regulations, and contractual provisions governing the transfer and redemption of United States Savings Bonds require the United States Department of the Treasury to redeem matured savings bonds that are owned by a State pursuant to a valid judgment of escheatment but that the State cannot identify by serial number without Treasury's assistance.

3. Whether the interpretation of federal law adopted by the Federal Circuit below results in an uncompensated taking of property in violation of the Fifth Amendment's Takings Clause.

RELATED PROCEEDINGS

Petitioner's suit is one of 11 suits against the United States in the Court of Federal Claims related to Respondent's refusal to redeem savings bonds to States that own them pursuant to judgments of escheatment. One of those suits was brought by Respondent LaTurner, Treasurer of the State of Kansas, *LaTurner v. United States*, United States Court of Federal Claims, Docket No. 13-cv-1011, and was consolidated with Petitioner's suit on appeal by the Federal Circuit. The nine other suits, which remain pending in the Court of Federal Claims, are:

Atwater v. United States, United States Court of Federal Claims, No. 1:16-cv-1482 (Florida);

Ball v. United States, United States Court of Federal Claims, No. 1:16-cv-221 (Kentucky);

Fitch v. United States, United States Court of Federal Claims, No. 1:16-cv-231 (Mississippi);

Fitzgerald v. United States, United States Court of Federal Claims, No. 1:19-cv-678 (Iowa);

Kennedy v. United States, United States Court of Federal Claims, No. 1:15-cv-1365 (Louisiana);

Loftis v. United States, United States Court of Federal Claims, No. 1:16-cv-451 (South Carolina);

Sattgast v. United States, United States Court of Federal Claims, No. 1:15-cv-1364 (South Dakota);

Williams v. United States, United States Court of Federal Claims, No. 1:16-cv-1021 (Ohio);

Zoeller v. United States, United States Court of Federal Claims, No. 1:16-cv-699 (Indiana).

PARTIES TO THE PROCEEDING

Petitioner Andrea Lea, in her official capacity as Auditor of the State of Arkansas, was the plaintiff in the Court of Federal Claims proceedings and an appellee in the Court of Appeals. Respondent United States of America was the defendant in the Court of Federal Claims proceedings and the appellant in the Court of Appeals. Respondent Jake LaTurner, Treasurer of the State of Kansas, was an appellee in the Court of Appeals and the plaintiff in a related action before the Court of Federal Claims that was consolidated with Petitioner's action by the Federal Circuit on appeal. Respondent LaTurner's predecessor in office, Ron Estes, was initially named as a Plaintiff in that related action, but Respondent LaTurner was substituted in his place on May 12, 2017, pursuant to R. CT. FED. CL. 25(d).

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The United States Department of the Treasury currently has in its possession over $26 billion in the form of proceeds from 72 million matured but unclaimed United States savings bonds. These bonds have matured—in many cases, several decades ago—but for whatever reason, they were never redeemed by their owners. Rather than affirmatively seeking out the owners of these unclaimed bonds, Treasury has simply retained the proceeds of these unredeemed bonds, indefinitely, for the use and enjoyment of the United States.

States have long had in place abandoned property, or "escheatment," laws that vest the Government with temporary ownership or control over property that has been abandoned—like these unclaimed savings bonds—while the States work to reunite the property with its former owner. In 2015, Petitioner Andrea Lea, Auditor of the State of Arkansas, obtained a judgment of escheatment vesting the State with title to the abandoned savings bonds last held by its residents, allowing Petitioner to work towards reuniting those bonds with their original owners. Under federal law and Treasury's regulations—as interpreted by the Third Circuit in *Treasurer of New Jersey v. United States Department of the Treasury*, 684 F.3d 382 (3d Cir. 2012), and as long interpreted *by Treasury itself*—this valid judicial proceeding transferred title to the bonds in question to Arkansas. *See* 31 C.F.R. § 315.20(b) (2015). That is because, as the Solicitor General represented to this Court on behalf of Treasury in 2013, Treasury's "regulations [allow] a third party [to] obtain[ ]

ownership of [a] bond through valid judicial proceedings. 31 C.F.R. 315.20(b) . . . . Accordingly, the Department has long advised the States that to receive payment on a U.S. savings bond a State must complete an escheat proceeding that satisfies due process and that awards title to the bond to the State, substituting the State for the original bondholder as the lawful owner." App.175–76a.

Despite previously recognizing States as the rightful owner of such bonds, when Petitioner requested redemption of the bonds the State of Arkansas now owns, Treasury refused. Suddenly, Respondent took the position that its regulations *do not* allow the transfer of title in savings bonds pursuant to escheatment, and that Arkansas accordingly *was not* the lawful owner of the bonds. Petitioner brought suit, and the Court of Federal Claims granted her partial summary judgment, concluding that Arkansas is the rightful owner of the bonds in question. But a panel of the Federal Circuit reversed. Judge Dyk, writing for the court, adopted Treasury's newfound interpretation of its regulatory scheme and concluded that Arkansas's escheatment law is accordingly preempted. In the alternative, the panel held that even if Arkansas does own the bonds, it can never redeem them because it does not know their serial numbers—information that is held only by Treasury itself, and that Treasury has refused to share.

The panel's holding gives the Federal Circuit's blessing to an extraordinary bait-and-switch by Treasury, sanctioning the Government's repudiation of *six decades* worth of representations about the

authority of States to take title to abandoned bonds through escheat, for no apparent reason other than Respondent's desire to keep the proceeds of those long-unredeemed bonds for its own use. Respondents' 13th-hour maneuvering is strikingly similar to the sort of egregious government conduct this Court has previously intervened to curb. This Court only recently stepped in to reverse a Federal Circuit decision authorizing the Government to break faith with health insurers who had participated in the Affordable Care Act's "Risk Corridors" program. *Maine Cmty. Health Options v. United States*, --- U.S. ---, 2020 WL 1978706 (Apr. 27, 2020). Nor did it sit idly by in *United States v. Winstar Corp.*, 518 U.S. 839 (1996), or *Eastern Enterprises v. Apfel*, 524 U.S. 498 (1998), when the federal Government sought to rake in hundreds of millions of dollars through similar bait-and-switch shenanigans. So too here, the Court should act to prevent the Government from helping itself to a multi-billion-dollar windfall in savings-bond proceeds.

The panel's decision conflicts with established preemption principles and adopts an interpretation of Respondent's regulations that is flatly contrary to their plain text, the interpretation adopted by the Third Circuit in *Treasurer of New Jersey*, and the interpretation *adopted and adhered to by Treasury itself for over sixty years*. The result is that the court below has given its blessing to a *$26 billion* regulatory money-grab. Such an extraordinary outcome should not stand without the review of this Court.

OPINIONS BELOW

The order of the Court of Appeals directing judgment for Respondent is reported at 933 F.3d 1354

and reproduced at App.1a. The order of the United States Court of Federal Claims granting Petitioner partial summary judgment is reported at 132 Fed. Cl. 705 and reproduced at App.23a. The order of the Court of Federal Claims certifying its partial summary judgment for interlocutory appeal is not reported in the Federal Claims reporter but is available at 2017 WL 5929229 and reproduced at App.58a.

JURISDICTION

The Court of Appeals issued its judgment on August 13, 2019. It denied Petitioner's timely petition for rehearing en banc on December 11, 2019. Chief Justice Roberts extended the time within which to file a petition for writ of certiorari to May 8, 2020, on March 2, 2020. No. 19A957. The Chief Justice further extended the time within which to file a petition for writ of certiorari to 150 days after the denial of the petition for rehearing, or May 9, 2020, on March 19, 2020. The May 9 deadline is automatically extended to May 11 under Sup. Ct. R. 30(1). This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS INVOLVED

The relevant portions of Amendment V to the United States Constitution, Title 31 of the United States Code, Title 18 of the Arkansas Code, and Title 31 of the Code of Federal Regulations are reproduced in the Appendix beginning at App.89a.

STATEMENT

I. THE UNITED STATES SAVINGS BOND PROGRAM

Since 1935, Congress has authorized Treasury to "issue savings bonds and savings certificates of the

United States Government." 31 U.S.C. § 3105(a). Each bond "is a contract between the United States and the bond's owner." *Treasurer of New Jersey*, 684 F.3d at 387. Like most federal operations, the savings bond program operates against the backdrop of state law. Congress has enacted no preemption provision expressly displacing state law in this area. And while federal law authorizes Treasury to prescribe regulations setting the terms and conditions of savings bonds, those regulations, too, generally assume the continued existence of—rather than preempt—background rules of state law. As relevant in this case, while Treasury has exercised its delegated authority to establish "restrictions on [the] transfer" of savings bonds and "conditions governing their redemption," 31 U.S.C. § 3105(c)(3)–(4), its regulations (at all times relevant to this litigation) required it to recognize a transfer of title to a savings bond "established by valid, judicial proceedings" under State law. 31 C.F.R. § 315.20(b) (2015).[1]

Because most savings bonds bear long maturities, they are often misplaced or forgotten before they mature. Respondent's regulations do not provide for affirmatively locating or notifying their owners about these matured bonds. As a result, there are an estimated $26 billion worth of United States savings

[1] On December 24, 2015, Treasury amended 31 C.F.R. Part 315 to provide that a state judgment of escheatment does not amount to a "valid, judicial proceeding" capable of legally transferring title to a savings bond under Section 315.20. Regulations Governing United States Savings Bonds, 80 Fed. Reg. 80,258, 80,262 (Dec. 24, 2015). As Respondent does not dispute, this amendment, which postdates the events relevant to this case, does not apply to Arkansas's claims.

bonds nationwide that have matured—many, several decades ago—but have never been redeemed. *See* United States Department of the Treasury, Bureau of the Fiscal Service, *Statistical Report of Matured, Unredeemed Savings Bonds and Notes* (Jan. 23, 2020), *available at* https://goo.gl/LoEjzY. Based on population, Petitioner estimates that about $242 million worth of unredeemed savings bonds correspond with owners whose last known addresses are in Arkansas

II. ESCHEATMENT OF UNCLAIMED PROPERTY

Like most States, Arkansas has long had a general "escheat" statute providing that property that is abandoned in the State is to be reported and delivered into the custody of the State, until such time as its owner comes forward to claim it. ARK. CODE § 18-28-201–231. Escheatment statutes provide two valuable public benefits. First, they serve to protect the rights of missing owners—because unlike the finder of abandoned property, States like Arkansas have both the dedicated resources and the solemn responsibility to locate the missing property owners and reunite them with their property. Second, escheatment statutes like Arkansas's also benefit the citizens and taxpayers of the State. Until unclaimed property is returned to its rightful owner, that property is held in safekeeping by Arkansas and may be used for the public good.

Arkansas's general escheatment statute establishes what is known as a "custody" escheat regime: property that has escheated to the State is merely held by the State for safekeeping until its rightful owner comes forward to claim it. *See, e.g.*, *id.*

§ 18-28-210(b). Before the mid-twentieth century, by contrast, most States had traditional "title" escheat regimes. Under this more traditional type of escheat, when abandoned property escheats to the State, the State takes *title* to the property, not simply possession or custody of it. This distinction between "title" and "custody" escheatment is a critical one, because in a series of determinations, statements, and correspondence dating back to at least 1952, Treasury historically took the position that while its regulations do not require it to recognize a state court escheatment proceeding that merely transfers *custody* over abandoned savings bonds to the State, a judicial judgment of *title* escheatment constitutes a "valid judicial proceeding" that transfers ownership of the bonds in question to the State pursuant to Section 315.20(b) of its regulations. *See infra*, at pp. 14–20.

In 2012, the Third Circuit confirmed this interpretation. In *Treasurer of New Jersey*, that court rebuffed an attempt by several States to redeem abandoned savings bonds they had claimed through their custody escheatment statutes. But in doing so, the Court emphasized that "States, may obtain ownership of the bonds—and consequently the right to redemption—through 'valid[ ] judicial proceedings,' 31 C.F.R. § 315.20(b)," so long as they obtained "title to [ ] the funds at issue under their unclaimed property acts," not merely custody. 684 F.3d at 412–13.

III. ESCHEATMENT OF SAVINGS BONDS IN ARKANSAS

Recognizing the distinction Respondent itself had established between title and custody escheatment, in 2015 Arkansas amended its Abandoned Property Act to provide for *title* escheatment of United States

savings bonds abandoned in the State. The new Section 18-28-231 of the Arkansas Code provides that Savings Bonds last held or owing in the State are deemed abandoned five years after maturity and escheat to the State two years after that. ARK. CODE § 18-28-231(a)–(b). The statute authorizes Petitioner, Auditor Lea, to "file a civil action for escheatment of the United States savings bond," *id.* § 18-28-231(c)(1), giving notice by publication to anyone with an interest in the abandoned bonds, *id.* §§ 18-28-231(d), 16-3-101 *et seq.*; ARK. R. CIV. P. 4(f). If no one comes forward to claim the abandoned bonds, the court shall then enter judgment declaring that "[a]ll property rights and legal title to and ownership of the United States savings bond . . . are vested solely in the state." ARK. CODE § 18-28-231(e)(2).

Pursuant to this statute, on October 16, 2015, Auditor Lea filed a complaint in Arkansas Circuit Court seeking escheatment of certain bonds deemed abandoned under that provision.[2] Petitioner was unable to ascertain the identity or location of the persons interested in the bonds; Treasury itself is the only entity that has that information, and despite several requests by Petitioner, it refused to share it with her. App.137a. Accordingly, Petitioner effected service on those unknown individuals through publication, as authorized in Rule 4(f) of the Arkansas Rules of Civil Procedure. On November 20, 2015, an

[2] The action sought escheatment only of abandoned bonds for which the State does not possess a corresponding physical bond certificate—so-called "absent bonds." Auditor Lea has worked separately with Treasury to redeem a number of abandoned bonds that the State physically possesses.

Arkansas Circuit Court entered a final judgment of escheatment holding that all right and title to those bonds had vested in the State. App.120a.

On November 25, Auditor Lea wrote to Respondent to formally request redemption of the bonds. App.140a. In the alternative, Petitioner requested Respondent's assistance in identifying the serial numbers of the abandoned bonds Arkansas now owned. App.141–42a. Petitioner included a certified copy of the November 20 Judgment of Escheatment, and although she does not possess the physical bond certificates for the bonds, she provided sufficient information to enable Treasury to identify the bonds. *Id.* On January 28, 2016, however, Respondent denied Arkansas's redemption request. App.143a.

IV. PROCEEDINGS BELOW

1. Unable to redeem Arkansas's bonds from Treasury, Petitioner brought suit in the Court of Federal Claims, alleging breach of contract, unconstitutional taking, and illegal exaction. App.97a. The Court of Federal Claims had jurisdiction pursuant to 28 U.S.C. §§ 1346, 1491.

2. Petitioner's suit is not the first challenge to Respondent's new practice of refusing to redeem abandoned savings bonds to States that have succeeded in *title* to those bonds pursuant to principles of escheatment. On December 20, 2013, the Treasurer of the State of Kansas (a Respondent here) filed a similar lawsuit, seeking to redeem bonds it had taken title to under the authority of a statute much like Arkansas's. Respondent moved to dismiss Kansas's suit, arguing that a judgment of escheatment—even one granting a State *title* to abandoned savings

bonds—was not a "valid judicial proceeding" within the meaning of its regulations because that phrase reaches only those specific kinds of state-court actions that are elsewhere mentioned in Subpart 315(E) of the Code of Federal Regulations (a class that includes, for example, certain bankruptcy and divorce proceedings, but not escheatment).

On August 20, 2015, the Court of Federal Claims denied that motion in principal part, concluding that Section 315.20 of Treasury's regulations was best read as requiring the Government generally to recognize a transfer of title to a savings bond that was established by *any* "valid judicial proceeding"—including a judgment of escheatment—not only those expressly singled out elsewhere in Subpart 315(E). App.64a–65a. Treasury's contrary interpretation, the court held, was "nothing more than a convenient litigating position," App.79a (quotation marks omitted).

3. Following a period of limited discovery, Petitioner and the plaintiff in *Estes* (now captioned *LaTurner v. United States*, due to a change in Kansas officeholders) filed cross-motions for summary judgment as to liability. The Government's motions in both cases argued that the Arkansas and Kansas escheatment proceedings were not "valid" judicial proceedings because their escheatment statutes were preempted by federal law and violated inter-governmental immunity. Respondent also argued that even if Arkansas and Kansas validly owned the abandoned bonds, it had no obligation to redeem those bonds unless the States were in possession of the physical bond certificates.

On August 8, 2017, in materially identical opinions, the Court of Federal Claims denied the Government's motions in both cases, granted Arkansas's and Kansas's motions, and entered partial summary judgment as to liability in favor of the two States. App.57a. The court concluded that Respondent's preemption and intergovernmental immunity arguments were "without merit," App.52a, and held that "Arkansas is the lawful owner of the absent bonds pursuant to 31 C.F.R. § 315.20(b)," App.57a. Because Arkansas is the valid owner of the bonds in question, the Court further concluded that it was "entitled to receive from the government the information necessary to allow it to make a request to redeem the bonds," including "the serial numbers of the absent bonds." App. 48a, 57a.

4. Respondent appealed, and a panel of the United States Court of Appeals for the Federal Circuit reversed and remanded with instructions to enter judgment for Respondent. Despite the fact that Treasury did not meaningfully challenge on appeal the trial court's earlier conclusion that Section 315.20(b)'s "valid judicial proceeding" provision encompasses state escheatment proceedings, Judge Dyk reached out and reversed that interpretation of Section 315.20(b). Without even addressing—much less rebutting—any of the principles of interpretation the Court of Federal Claims had relied upon in reaching its interpretation, the panel concluded that Section 315.20(b) authorized the transfer of ownership in savings bonds *exclusively* through the types of judicial proceedings specifically discussed in the adjacent regulatory provisions—including bankruptcy and divorce proceedings—and *not* through

escheatment proceedings. App.13a. In the alternative, the panel further held that even if Arkansas *did* hold title to the savings bonds in question pursuant to its judgment of escheatment, it is forever barred from *redeeming* them, because it "do[es] not have physical possession of the bonds," and also "do[es] not have the bond serial numbers as required by 31 C.F.R. § 315.29(c)," App.15a–16a—a regulation providing that if the original owner of a missing bond wishes to redeem it more than six years after maturity, he must submit the bond's serial number.

5. On December 11, 2019, the Federal Circuit denied Petitioner's request for rehearing en banc. App.88a.

REASONS FOR GRANTING THE WRIT

This Court's review is necessary in this case for two independent reasons: (I) to determine the legality and constitutionality of the Federal Government's *de facto* appropriation of $26 billion worth of matured savings-bonds proceeds, and (II) to resolve the direct conflict in the Circuits over the correct interpretation of the Treasury regulations governing the transfer of savings bonds.

I. REVIEW IS NEEDED TO RESOLVE THE IMPORTANT LEGAL QUESTIONS CONCERNING THE FEDERAL GOVERNMENT'S *DE FACTO* APPROPRIATION OF $26 BILLION IN U.S. SAVINGS BONDS PROCEEDS.

This Court's intervention is needed to correct an extraordinary instance of government overreach. In the opinion below, the Federal Circuit blessed the Treasury Department's implementation of a new, self-serving interpretation of the regulations governing the transfer and redemption of savings bonds that not

only contradicts the plain text of those regulations but brazenly reverses the interpretation adhered to by Respondent for *over six decades*—including in representations made by the Solicitor General, on Treasury's behalf, before this Court. And the upshot of the holding below is that the federal Government has now effectively helped itself to over $26 billion in matured savings-bonds proceeds—$26 billion that, of right, should go into the bank accounts of the patriotic small-dollar investors (or their heirs) who many decades ago invested the money now sitting in Treasury's coffers.

A. THE TREASURY DEPARTMENT'S NEW SELF-SERVING INTERPRETATION OF ITS REGULATIONS CONTRADICTS DECADES OF SOLEMN GOVERNMENT REPRESENTATIONS TO STATES AND BONDHOLDERS ABOUT THE CIRCUMSTANCES IN WHICH OWNERSHIP OF SAVINGS BONDS MAY BE TRANSFERRED.

1. Unlike much other personal property, savings bonds are transferrable only in limited circumstances defined by law. But since early in the history of the savings bond program—and until the litigation giving rise to this case—it was uniformly understood that one type of transfer Treasury must recognize, under its own regulations, is a transfer of ownership that is effected through "valid judicial proceedings."

31 C.F.R. Section 315.20(b) provided (until Treasury's 2015 amendment, promulgated in the midst of this litigation) that "[t]he Department of the Treasury will recognize a claim" of ownership in a savings bond "if established by valid, judicial proceedings, but only as specifically provided in this

subpart." The two following sections of Subpart E provide specific rules and limitations governing four types of judicial proceedings: bankruptcy, divorce, levy, and judicial enforcement of a gift *causa mortis*. *See id.* §§ 315.21–315.22. Section 315.23(a) then establishes a general rule governing the process of establishing the validity of *any* judicial proceeding: "[t]o establish the validity of judicial proceedings, certified copies of the final judgment, decree, or court order, and of any necessary supplementary proceedings, must be submitted."

By their plain text, these provisions require Respondent to recognize a transfer of ownership effected by *any* "valid, judicial proceeding[ ]," 31 C.F.R. § 315.20(b), including a valid judgment of escheatment like the state-court judgment granting Arkansas ownership of the abandoned bonds at issue in this case. And that is how Respondent, and everyone else, read these regulatory provisions *for over six decades*. From when it first addressed the issue in 1952 until the beginning of the present dispute in 2013, Treasury consistently interpreted the regulatory provisions described above as requiring it to recognize and honor a valid judgment of escheatment. *Not once* during that period did Treasury express any doubt that a judgment of escheatment amounted to a "valid judicial proceeding" that would transfer title under Section 315.20(b).

2. The first statement of Respondent's position on escheated bonds comes from a 1952 Bulletin issued by Treasury, which copied the text of a letter the Secretary of the Treasury had sent to New York's Comptroller. New York had apparently sought to

redeem four bonds "total[ing] $350 in face amount" that had not yet matured but that had come into its possession under its abandoned property law. App.155a. Moreover, New York was exploring the idea of enacting a "legislative program by which New York would greatly broaden its program of custody or escheat of the proceeds of securities of the United States." *Id.* In response, Treasury set forth its view that it could not redeem the bonds to New York because the State's unclaimed property statutes "do not purport to substitute the State of New York for [the registered bondholder] as the owner of the bonds." App.157a. Indeed, New York's *custody*-based escheatment scheme did not transfer title to the bonds in question *at all*; its statutes "recognize the continued existence of [the bondholder's] claim," raising the specter of double-payment, and they "attempt[ed] to change the obligor's responsibilities" in a way detrimental to the bondholder. App.158a. By contrast, Respondent noted, it *was* obligated to "pay one who *succeeds to the title of the bondholder*. This is not regarded as a violation of the agreement, but, on the contrary, as *payment to the bondholder in the person of his successor or representative*." App.157a (emphasis in original).

In 1971, Treasury responded to another request—this time by Indiana—to redeem "some $14,000" in bonds that had fallen to the State under its unclaimed property act. App.159a. In denying Indiana's request, Respondent drew the same line as it had in 1952: the "critical distinction" was "whether the State has actually succeeded to the title and ownership of the securities, or whether it is acting as a repository." *Id.* For where a State takes *title* to a bond through a valid

escheat proceeding, "it has succeeded to the legal ownership of the security," *id.*—that is, there has been a valid substitution of obligees. By contrast, were Treasury to pay a State that had only taken custody of abandoned bonds, that would amount to a "substitution of the United States *as obligor* on its securities"—a result *not* contemplated by any federal law or regulation. *Id.* (emphasis added).

Respondent next opined on the issue in a 1976 Letter to the State of New Hampshire, and it once again maintained its position that the critical distinction was between mere custody and the actual transfer of title:

> Th[e] long-standing position is that the Department will recognize claims by States for payment of United States securities where the States have actually succeeded to the title and ownership of the securities pursuant to valid escheat proceedings. The Department, however, does not recognize claims for payment by a State acting merely as custodian of unclaimed or abandoned securities and not a successor in title and ownership of the securities.

App.161a. Treasury repeated that explanation of its obligations in the case of escheatment again and again, in the same or substantially identical language, in a lengthy series of letters issued between 1976 and 2000. *See* Joint Appendix at Appx385–492, *LaTurner v. United States*, No. 18-1509 (Fed. Cir. June 19, 2018), Doc. No. 54-3 ("Federal Circuit J.A.").

Respondent noted the same distinction in a 1982 letter to Massachusetts, where it explained that it

would recognize a judgment of escheatment only when entered "pursuant to a statute which provides for the . . . vesting of title" in the State. App.163a. Treasury specifically referenced Section 315.23(a)'s provisions regarding "the proper evidence to be submitted" to substantiate a claim that the state had taken title "through appropriate court proceedings," App.164a—making clear that the source of its authority in such cases is Section 315.20(b).

In another articulation of this consistent and longstanding position, since as early as 2000 until as recently as 2015, a statement posted on Treasury's website represented that

> The Department of the Treasury will recognize claims by States for payment of United States securities where the States have succeeded to the title and ownership of the securities pursuant to valid escheat proceedings. The Department, however, does not recognize claims for payment by a State acting merely as custodian of unclaimed or abandoned securities and not as successor in title and ownership of the securities.

App.170a.[3]

In 2004, Treasury responded to claims by several States to "an amount equal to [each State's] estimate of the value of matured but unredeemed savings bonds held by residents of [the State]." App.165a. As the request indicates, the States were not in possession of

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[3] In the current version of Treasury's FAQ's, *available at* http://goo.gl/d9XxiM, the section on escheatment law has been deleted.

the bonds. In response to each request, Respondent again homed in on the necessity that a State obtain *title* to unclaimed bonds to redeem them. *See, e.g.*, *id.*; *see also* Federal Circuit J.A. at Appx509–519. In 2006, Treasury replied in like terms to a similar request from Florida, insisting that its regulations "would permit the state of Florida to [take ownership of] the bonds, pursuant to an appropriate state statute and after due process, by obtaining an order of escheat from a court of competent jurisdiction vesting title in the state . . . ." App.167a.

3. After Respondent declined in 2004 and 2006 to pay the claims of Connecticut, North Carolina, and the other States just discussed, seven of those States took the Government to court over its refusal to pay them the value of the abandoned bonds. The case ended up before the Third Circuit, and in its briefing before that court, Respondent held fast to the understanding it had articulated since 1952:

> Treasury regulations generally provide that payment on a U.S. savings bond will be made only to the registered owner. The regulations specify limited exceptions to this rule, including cases in which a third party obtains ownership of the bond through valid judicial proceedings. . . . Accordingly, Treasury has long advised state governments that, to receive payment on a U.S. savings bond, a State must go through an escheat process that satisfies due process and awards title to the bond to the State, making the State the rightful owner of the bond.

App.172a.

As discussed in more detail below, the Third Circuit sided with Respondent, holding the States' custody escheatment laws preempted based on the interpretation of the Treasury regulations that the Government advanced. The losing States petitioned this Court for certiorari, and in his brief on behalf of Treasury, the Solicitor General again embraced the distinction between custody and title escheatment—and the settled understanding that Treasury was bound by its regulations to honor the latter type of transfer—referring to it as "the [Treasury] Department's considered interpretation of federal law." App.176a.

> The Department has provided guidance to the States about how [escheat] laws may apply to U.S. savings bonds in light of the strict limitations on redemptions and transfer established by the federal scheme. . . . [T]he regulations generally provide that payment on a U.S. savings bond will be made only to the registered owner, thus precluding payment to a State invoking its unclaimed-property statute. The regulations include an exception, however, for cases in which a third party obtains ownership of the bond through valid judicial proceedings. 31 C.F.R. 315.20(b) . . . . Accordingly, the Department has long advised the States that to receive payment on a U.S. savings bond a State must complete an escheat proceeding that satisfies due process and that awards title to the bond to the State, substituting the State for the original bondholder as the lawful owner. . . . But given the regulatory prohibition on payment to anyone

> other than the lawful owner, the Department has also made clear that it will not make payment to a State on a bond if a State does not obtain title to the bond but instead merely seeks "custody" of bond proceeds until the bondholder redeems the bond.

App.175a–176a.

4. Beginning with Kansas's redemption request in 2013, Respondent sharply departed from its historic understanding, claiming instead that Section 315.20(b)'s reference to "valid[ ] judicial proceedings" is limited to *only* the four types of proceedings singled out in the successive sections—bankruptcy, divorce, levy, and gifts *causa mortis*—and that its previous willingness to redeem escheated bonds to States that had obtained title was in fact an application of its discretionary waiver authority. *See* 31 C.F.R. § 315.90. It thus began to take the position that judgments of escheatment *did not* qualify as "valid[ ] judicial proceedings" capable of effecting transfer of a savings bond—in express contradiction to its six-decades' worth of statements to the contrary—and that it accordingly had no obligation to honor the States' redemption requests.

Treasury's newfound interpretation of Section 315.20(b) was predicated on the final clause of the regulation's relevant sentence, which provides that Treasury must honor valid judicial proceedings that transfer ownership of a bond "only as specifically provided in this subpart." Rather than referring to the type of evidence a claimant must submit (or the type of procedural hoops she must go through) to establish the validity of a judicial proceeding, Respondent

claimed that phrase acted as a placeholder for the types of proceedings mentioned in the following sections. But as the Court of Federal Claims noted below, interpreting the "as specifically provided" clause in this way is contrary to basic principles of legal interpretation. App.77a–79a.

To begin, Subsection (a) of 315.20 listed two types of valid judicial proceedings—a proceeding that "gives effect to an attempted voluntary transfer inter vivos of a bond" and a proceeding "that impairs the rights of survivorship conferred by these regulations"—that Treasury "*will not* recognize" under that Section. 31 C.F.R. § 315.20(a) (emphasis added). But neither type of proceeding is mentioned anywhere else in Subpart E. On the Government's reading, then, the entirety of Subsection (a) is superfluous—it cuts out two types of proceedings that were never part of the tapestry to begin with, because they are not "specifically provided [for]" in subpart E. As the trial court below recognized, "regulatory text should not be read in such a way as to render any portion of the language superfluous." App.78a (citing *Glover v. West*, 185 F.3d 1328, 1332 (Fed. Cir. 1999)). What is more, Treasury's new, cramped reading of Section 315.20(b) "ignores what appears to be the[ ] actual purpose" of the other provisions in Subpart E that *do* mention specific types of judicial proceedings: "to address specific considerations and concerns attendant to the types of judgments referenced in those sections." App.78a.

The Federal Circuit panel below adopted Respondent's newfound interpretation of Section 315.20(b) notwithstanding these obvious deficiencies. It was plainly wrong to do so. The panel's opinion did

not meaningfully treat with *any* of the lower court's reasons for rejecting Treasury's revisionist interpretation. It did not carefully analyze Section 315.20(b)'s text. It did not explain how limiting the reference to valid judicial proceedings to the specific proceedings discussed later in Subpart E, such as divorce and bankruptcy, is consistent with the provision's purpose and with the regulatory scheme as a whole. And critically, it not even *mention*, much less distinguish, Respondent's assurances to this Court that Section 315.20(b)'s reference to "valid judicial proceedings" encompasses "an escheat proceeding that satisfies due process and that awards title to the bond to the State, substituting the State for the original bondholder as the lawful owner." App.176a.

Instead, the Federal Circuit's cursory analysis of Section 315.20 is confined to the solitary contention that because "[a] different provision, § 315.23, already specifies how to prove the validity of a proceeding, such as by providing certified copies of the judgment," Section 315.20(b) cannot be read as referring to "the *manner* in which judicial proceedings will be recognized." App.13a. This utterly nonsensical argument cites evidence that *refutes* Treasury's interpretation *as though it confirmed it*. It is precisely because Section 315.23 "specifies how to prove the validity of a proceeding," *id.*, that we know that Section 315.20(b)'s reference to the rules "specifically provided in this subpart" for "establish[ing] [a] valid, judicial proceeding[ ]" *does* refer to the manner in which ownership pursuant to a valid judicial proceeding must be established. Section 315.23 *is the provision* "in this subpart" *to which Section 315.20(b) refers*.

The panel's interpretation of Respondent's regulations as foreclosing the transfer of savings bonds through escheatment also runs contrary to this Court's settled preemption jurisprudence. Since the dawn of modern preemption doctrine, it has been established that the courts must begin " 'with the assumption that the historic police powers of the States are not to be superseded by [federal law] unless that was the clear and manifest purpose of Congress,' " particularly where "Congress has legislated in a field traditionally occupied by the States." *Altria Grp., Inc. v. Good*, 555 U.S. 70, 77 (2008) (brackets omitted) (quoting *Rice v. Santa Fe Elev. Corp.*, 331 U.S. 218, 230 (1947)). That presumption unquestionably applies here, where the state authority at issue is its historic power of escheatment—an authority that "has existed for centuries in the common law." *Connecticut Mut. Life Ins. Co. v. Moore*, 333 U.S. 541, 547 (1948). Yet far from pointing to any clear and manifest congressional purpose, the panel below concluded that this centuries'-old authority was preempted by nothing more than a regulation that *does not mention* escheatment or abandoned property and that Treasury itself has for six decades interpreted as *allowing for* State escheatment of savings bonds.

The Federal Circuit's conclusion that Section 315.20(b) does not "permit the transfer of ownership under escheat laws," App.11a, is thus at odds with the provision's plain text, impossible to square with settled preemption jurisprudence, and contrary to all sense. And it sanctions an egregious bait-and-switch maneuver by Respondent, allowing it go to back on decades' worth of solemn assurances to States, the

public, and this Court for no other or better reason than that it now finds the implications of those assurances to be inconvenient.

5. The panel below also held, in the alternative, that "even if Federal law recognized [the States claiming ownership through escheat] as the rightful bond owners," Treasury was *still* not obligated to honor their claims to redeem the abandoned bonds they own, because the States "do not have physical possession of the bonds" and therefore cannot satisfy the general Treasury requirement that "a bond owner must 'present the bond to an authorized paying agent for redemption.' " App.15a (quoting 31 C.F.R. § 315.39(a)). This back-up holding is no more persuasive than the panel's principal one. The ordinary Treasury rules governing the presentation and redemption of bonds—set forth in 31 C.F.R. Subpart H—do not stand in the way of Petitioner's redemption request because Subpart E of Treasury's regulations set forth an entirely *separate* process governing the redemption of bonds that are transferred pursuant to valid judicial proceedings.

The provisions in Subpart E lay out with particularity the steps that a transferee must take to assume ownership and receive payment on the transferred bond. Sections 315.21 and 315.22 contain detailed requirements governing those who take ownership of a bond through divorce, bankruptcy, judicial levy, or a court-enforced gift *causa mortis*. Section 315.21, for instance, sets forth rules governing "[p]ayment to judgment creditors." (emphasis added) ("Payment" is the Regulations' term for "redemption." *See* 31 C.F.R. § 315.23.) And Section 315.21 of Subpart

E sets forth the requirements that a purchaser under levy or a transferee under a bankruptcy decree must satisfy before "Treasury will pay" the transferred bond "at current redemption value." 31 C.F.R. § 315.21(a), (b) (emphasis added); *see also id.* §§ 315.22(a)–(c), 315.23(b)–(c). Finally, and importantly, Section 315.23 provides generally that in these cases or any others, "[t]o establish the validity of judicial proceedings" entitling the transferee to payment, "certified copies of the final judgment, decree, or court order, and of any necessary supplementary proceedings, must be submitted." These provisions do not so much as hint that one who has taken title to a bond through a valid judicial proceeding must physically present the bond's certificate in order to obtain payment. Instead, where one of the specific rules set forth in Section 315.22 and 315.23 does not apply, Section 315.23 makes clear that all a transferee need do to obtain payment is submit "certified copies of the final judgment" granting it ownership. As the Court of Federal Claims concluded, "where ownership is conferred by a judicial determination, it would seem that submission of the certified judgment would suffice to prove such ownership" and require redemption. App.48a.

Even if Respondent were correct that States seeking to redeem bonds that have escheated to them must follow the ordinary redemption process applicable to a bond's original, registered owner, that would still not justify Treasury's refusal to redeem Arkansas's bonds. For that ordinary redemption process itself allows the owner of a bond to redeem it even in cases where he does not possess it.

31 C.F.R. Section 315.25 provides for redemption even in the case of ordinary, registered bondholders, where such a bondholder seeks to redeem a bond he has lost and no longer physically possesses. The abandoned bonds owned by Arkansas by virtue of the state-court's escheatment judgment are plainly "lost," within the meaning of this provision. To be sure, Respondent's regulations further provide that a request to redeem a lost bond must, if brought more than six years after maturity, include "the serial number of the bond." 31 C.F.R. § 315.29(c). But while Petitioner does not know the serial numbers of the lost bonds in question, *Treasury* has that information in its records, and the State has given Treasury information sufficient to identify each of the bonds in question and has requested that the Government provide a list of the missing serial numbers. App.140a. The duty of good faith and fair dealing—which is implied in every Government contract, *see Metcalf Constr. Co. v. United States*, 742 F.3d 984, 990 (Fed. Cir. 2014)—clearly requires the Government to provide Arkansas with basic factual information about the bonds it owns and to otherwise cooperate in the State's effort to redeem them. *See Pittsburgh Terminal Corp. v. Baltimore & Ohio R.R. Co.*, 680 F.2d 933, 941 (3d Cir. 1982); *Kirke La Shelle Co. v. Paul Armstrong Co.*, 263 N.Y. 79, 87 (1933) (similar); *see generally* RESTATEMENT (SECOND) OF CONTRACTS § 205 (Am. Law Inst. 1981); *see also* 31 C.F.R. § 323.2(b) (providing that a bond owner may obtain from Treasury information "relating to the purchase, ownership of, and transactions in" his bond).

B. THE INTERPRETATION OF FEDERAL LAW ADOPTED BY THE FEDERAL CIRCUIT IN ITS ALTERNATIVE HOLDING RESULTS IN A MASSIVE, UNCOMPENSATED TAKING OF PROPERTY IN VIOLATION OF THE TAKINGS CLAUSE.

Even if there were any doubt that States holding title to abandoned bonds pursuant to escheatment are entitled to redeem the bonds under the principles just discussed, that doubt would have to be resolved in Petitioner's favor. For the consequence of the panel's contrary conclusion is that Arkansas *owns* the lost savings bonds in question but can never *redeem* them. And the effect of *that* proposition is that the federal government would have effectively *appropriated* to itself *the entirety* of the value of the bonds. Under the Takings Clause, the Government must pay just compensation if it is to totally deprive Arkansas's savings bonds of all value in this way.

The Federal Circuit's alternative holding, stripped down to its essentials, is that Arkansas and other States may take *ownership* of abandoned bonds through escheatment, but they will never be entitled to *redeem* those bonds. Under the terms of Arkansas's statute, after all, abandoned bonds are subject to escheatment only after seven years have passed since maturity—at which point they can only be redeemed, by Respondent's and the panel's lights, if the State knows their serial numbers. According to the Panel's alternative holding, the United States has thus erected a system where States may validly take *title* to abandoned savings bonds but may never receive *payment* on them—with the result that Treasury itself

has effectively captured the entirety of the economic value of the bonds. The only economic value of a debt contract like a savings bond is in the creditor's right to repayment from the debtor at the end of the loan. But if Respondent's argument is correct, then once a valid judgment of escheatment has been entered, *no one* can claim repayment of the bonds—not the original owner, since he or she no longer has title to them, and not the State, since it does not have possession or know their serial numbers.

The Federal Circuit's alternative holding thus effects a *per se* taking of the bonds under *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1019 (1992). *Cf. Brown v. Legal Found. of Wash.*, 538 U.S. 216, 234–35 (2003) (Government's appropriation of interest earned by trust account was a "*per se*" taking); *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155, 164 (1980) (statute which "ha[d] the practical effect of appropriating for the [defendant] county the value of the use of [an interpleader] fund for the period in which it is held in the [county's] registry" was a taking). It also constitutes a taking under the *Penn Central* test. *Penn Cent. Transp. Co. v City of New York*, 438 U.S. 104, 124 (1978). The "economic impact," *id.*, of the regime, on Treasury's interpretation, is to wipe out the value of the escheated bonds. And this type of shell game—where the game ends with the Government pocketing the pea—is precisely the sort of interference "with distinct investment-backed expectations" that the Takings Clause proscribes. *Id.*; *see also Cienega Gardens v. United States*, 331 F.3d 1319, 1327, 1336–53 (Fed. Cir. 2003) (statute which "nullif[ied] the [plaintiffs'

contractual] option to prepay their [HUD-affiliated] mortgages" was a regulatory taking).

The Federal Circuit resisted this conclusion, arguing in a conclusory paragraph that Arkansas has not had any property taken because it cannot have obtained a "greater property interest then the original owners," and those initial owners, too, were subject to the requirement that they submit serial numbers if they wish to redeem bonds more than six years after their maturity. App.21a. But the panel's alternative holding amounts to a taking not because States like Arkansas have any greater *rights* than the original owners but because Treasury's regime imposes a unique *burden*, in the context of unclaimed bonds that have escheated to the State. Again, because States holding abandoned bonds pursuant to escheatment generally will not have possession of the missing bonds or knowledge of their serial numbers, Treasury's regulations (under the panel's alternative holding) create a catch-22—establishing that the State, not the original owner, owns *title* to the escheated bonds, but that it can never *redeem them*—that necessarily strips the bonds of all value. The Takings Clause cannot allow such a result—not in the absence of just compensation.

The financial implications of the Taking blessed by Judge Dyk's opinion for the panel below are significant enough in this case alone—wiping out bonds worth an estimated $242 million. But when the full consequences of the Federal Circuit's misguided decision are appreciated, the stakes become enormous. In addition to Arkansas, ten States (including Kansas)

have filed suit against Respondent seeking redemption of bonds they obtained through state-court judgments of escheatment—collectively claiming an estimated $3.2 billion worth of abandoned bonds. And expanding the view even further, the legal conclusions adopted by the Federal Circuit will also ultimately dictate the fate of the entirety of the $26 billion worth of abandoned bonds that have matured but have been left unredeemed. Treasury's own course of conduct makes clear that it has no intention of undertaking any serious effort to facilitate the redemption of these bonds by their rightful owners. And throughout this litigation, the Government has at every turn *impeded* the States' own efforts to reach out to bond-owners in an attempt to reunite them with their property (as State abandoned property agencies like Petitioner's have successfully done for millions of dollars' worth of other forms of abandoned property).

The result is that $26 billion worth of savings bonds remain sitting in the Treasury's accounts, for the use and enjoyment of the federal government. In the present circumstances, many American families who made small-dollar investments in savings bonds several decades ago could likely benefit from an additional $300–$500. If the United States is going to help itself to that money instead, at the very least it should not be allowed to do so by means of the self-serving, bait-and-switch tactics at issue in this case.

II. REVIEW IS NEEDED TO RESOLVE THE CONFLICT IN THE CIRCUITS OVER THE CORRECT INTERPRETATION OF THE REGULATORY PROVISION GOVERNING TRANSFER OF U.S. SAVINGS BONDS PURSUANT TO VALID JUDICIAL PROCEEDINGS.

This Court's review is independently warranted because the interpretation of Treasury's regulations adopted by the court below is in direct conflict with the interpretation adopted by the United States Court of Appeals for the Third Circuit in *Treasurer of New Jersey*, 684 F.3d 382.

As discussed above, after the Government refused to pay claims relating to matured bonds that New Jersey, North Carolina, and five other States claimed under principles of *custody* escheatment, those States brought suit. The Third Circuit denied the States' claims because they had obtained only custody escheatment of the bonds. But based on Treasury's representations in its briefing in the case, discussed above, the Third Circuit made clear that the fact that the States had not obtained *title* escheatment was critical to its analysis.

The Third Circuit emphasized that "[t]he unclaimed property acts at issue . . . are 'custody' escheat statutes rather than 'title' escheat statutes in that under them the State does not take title to abandoned property, but, instead, obtains its custody and beneficial use pending identification of the property owner." *Id.* at 389. And because that was so, the court continued, if Respondent were to honor the States' requests the result "effectively would [be to] substitute the respective States for the United States as the obligor on affected savings bonds,"—thereby

"interfer[ing] with the terms of the contracts between the United States and the owners of the bonds." *Id.* at 408.

By contrast, the Third circuit expressly noted, no such interference occurs under a *title* escheatment regime, since in that context the State is substituted not as an *obligor*, in the place of Treasury, but rather as an *obligee*, in the place of the original bondholder:

> [A]s provided in the federal regulations and as recognized by the Treasury, third parties, including the States, may obtain ownership of the bonds—and consequently the right to redemption—through "valid[ ] judicial proceedings," 31 C.F.R. § 315.20(b), so long as they submit certified copies of the judgment or order affecting ownership and other evidence that may be necessary to support the validity of the judgment or order. *See* 31 C.F.R. § 315.23. The Government . . . admits as much. Here, however, the States merely seek custody of, not title to, the funds at issue under their unclaimed property acts.

Id. at 412–13.

The Third Circuit thus—at Respondent's own behest—adopted an interpretation of the "valid[ ] judicial proceedings" provision of 31 C.F.R. Section 315.20(b) that is flatly contrary to that of the panel below. While the Third Circuit held that States, under their "escheat laws," "*may* obtain ownership of the bonds—and consequently the right to redemption—through 'valid[ ] judicial proceedings,' 31 C.F.R. § 315.20(b)," *id.* at 412–13, the Federal Circuit below held precisely the opposite: "we reject the States'

contention that Treasury regulations permit the transfer of ownership under escheat laws." App.14a.

The panel below briefly suggested that there was no conflict because the Third Circuit "declined to address" whether Section 315.20(b) would allow States to obtain ownership of savings bonds through title, rather than custody, escheatment. App.5a. That is nonsense. The question that the Third Circuit "d[id] not address" was what *result* would obtain if the Government "*abandoned its long held position* as reflected in the Escheat Decision and refused to recognize the enforceability of [a title escheatment] judgment with respect to savings bonds or their proceeds." *Treasurer of New Jersey*, 684 F.3d at 413 n.28 (emphasis added). While the court was not presented with such a situation, and thus properly did not opine on the legal implications of such a course-reversal by Treasury (the very course-reversal that Treasury ultimately executed), it plainly *did* address—and determine—that under Treasury's existing "federal regulations . . . third parties, including the States, may obtain ownership of the bonds—and consequently the right to redemption—through 'valid[ ] judicial proceedings.' " *Id.* at 412.

The decision below is also contrary to the understanding of title escheatment adopted by the D.C. Circuit in *Arizona v. Bowsher*, 935 F.2d 332 (D.C. Cir. 1991). Like *Treasurer of New Jersey*, that case involved an attempt by States to take "custody"—not title—to funds held by Treasury; and like the Third Circuit, the *Bowsher* court rebuffed the attempt because the States had sought only "to assume custody over [their share of] these funds." *Id.* at 333. But, the

D.C. Circuit continued, if the States had obtained *title* escheatment over the funds, "escheat of the claimant's right might well substitute the state for the claimant and entitle it to payment." *Id.* at 335. The Federal Circuit never even attempted to distinguish *Bowsher*, or explain why it adopted a different understanding of title escheatment.

The decision below thus presents a stark split between the circuits over the nature of title-based escheatment, and the interpretation of 31 C.F.R. § 315.20(b). Given the importance of the stakes in this case, *see supra*, Part I.B, that conflict warrants this Court's attention.

To be sure, as part of Respondent's efforts to secure the abandoned savings bond proceeds from redemption, on December 24, 2015 Treasury promulgated a revised version of Section 315.20 which purports to foreclose future efforts by the States to obtain ownership of abandoned bonds through escheatment. *See* 80 Fed. Reg. at 80,264. But even assuming Treasury's Christmas-Eve amendment resolves the issue going forward, that is not sufficient reason for this Court to stay its hand. The Court routinely grants review of circuit conflicts even though the issue ultimately underlying the conflict has been resolved as a *purely prospective* matter, where the stakes are sufficiently important. Every case in which the Court grants cert. to determine the retroactivity of a new rule of criminal procedure, for instance, falls in this category—the going-forward implications of the new rule are clear, but the consequences for *existing* cases, even if temporally limited, are often important enough to warrant the intervention of the Court. *See,*

e.g., *Edwards v. Vannoy*, 590 U.S. ---, 2020 WL 2105209 (May 4, 2020) (grating review to determine whether *Ramos v. Louisiana*, 590 U.S. ---, 2020 WL 1906545 (Apr. 20, 2020), applies retroactively); *Welch v. United States*, 136 S. Ct. 1257, 1263 (2016) (determining whether *Johnson v. United States*, 575 U.S. ---, 135 S. Ct. 2551 (2015), applies retroactively); *Chaidez v. United States*, 568 U.S. 342, 344 (2013) (determining whether *Padilla v. Kentucky*, 559 U.S. 356 (2010) applies retroactively).

As discussed above, the fate of over $3 billion in bond proceeds that have already been escheated rides on the outcome in this case—and it also carries significant implications for the full $26 billion of matured, unredeemed savings bonds that are currently held by bond-owners throughout the Nation. All that is true *despite* Treasury's attempt to change the rules of the game in 2015. This Court should grant the writ.

CONCLUSION

For the reasons set forth above, the Court should grant the petition for certiorari.

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Respectfully submitted,

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