ORIGINAL

No. 21-6420

IN THE

SUPREME COURT OF THE UNITED STATES

SIMONA TANASESCU
S.T. (A MINOR)
— PETITIONERS

VS.

MATTHEW M. KREMER
MATTHEW M. KREMER, THE OFFICES OF
DORIN COROIAN
MIRELA MOSOIU
CRISTIAN COROIAN
ADRIAN COROIAN
ZOE CRISTINA SUCIU
ROBERT K.JOHNSON
ROBERT K JOHNSON, THE OFFICE OF
E. DANIEL BORS JR.
E. DANIEL BORS III
JEFFREY H. SHERTER
THE UNITED STATES
THE STATE BAR OF CALIFORNIA
— RESPONDENTS

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

PETITION FOR WRIT OF CERTIORARI
SUPPLEMENTAL BRIEF

SIMONA TANASESCU and S.T. (A MINOR), PRO PER
360 E. FIRST ST. # 595
TUSTIN, CA 92780
(714) 204-1420

SUPPLEMENTAL QUESTIONS PRESENTED

The Contract Disputes Act of 1978 ("CDA", Pub.L. 95–563, 92 Stat. 2383) codified, as amended, at 41 USC §§ 7101 – 7109, provides for the resolution of claims and disputes relating to Government contracts awarded by executive agencies. The term "executive agency" means an executive department as defined in 5 USC § 101, relevant here is the Department of Justice (DOJ). The CDA applies to any express or implied contract made by an executive agency for the procurement of services (41 USC § 7102(a)(2)).

Article III of the Constitution sets the United States Judicial Branch for administration of judicial services under the duty to afford equal treatment under law and in accordance with the United States Constitution.

Judicial officers take the oath under 28 U.S. Code § 453 before performing the duties of their office to "administer justice without respect to persons, and do equal right to the poor and to the rich, and ... faithfully and impartially discharge and perform all the duties incumbent ... under the Constitution and laws of the United States".

1) Whether the US Court of Federal Claims, and subsequently the US Court of Appeals for the Federal Circuit, departed from the accepted and usual course of judicial proceedings for evading adjudication of plaintiffs/petitioners' claims under the CDA of 1978 against the executive agency DOJ for breach of implied contracts on the duty to afford the plaintiffs/petitioners equal treatment under law and by holding that "[t]he Claims Court does not have subject matter jurisdiction to review the decisions of other federal courts", contrary to 28 U.S.C. § 1491(a)(2), as to call for the exercise of this Court's supervisory power over these lower courts.

2) Whether the U.S. Court of Appeals for the Federal Circuit's holding that the U.S. Court of Federal Claims "does not have subject matter jurisdiction to review the decisions of other federal courts. *Straw v. United States*, 4 F.4th 1358, 1361 (Fed. Cir. 2021) (holding that the Claims Court does not have jurisdiction to review district court decisions)" is effectively barring the CDA's exclusive mechanism for resolution of disputes arising from breach of implied contracts with the executive agency DOJ for adjudication services and consequently shields the DOJ from disputes arising out of the DOJ's breach of duty to uphold the United States Constitution and afford equal treatment under law to the self-represented plaintiffs/petitioners and therefore to any citizen similarly situated.

SUPPLEMENTAL STATEMENT OF THE CASE

Introduction

The instant Supplemental Brief to the Petition for Writ of Certiorari is submitted upon the December 7, 2021 Decision by the U.S. Court of Appeals for the Federal Circuit (true copy in the attached **Supplemental Appendix S-A**) in the appeal from the May 19, 2021 judgment (**Appendix V**) of the U.S. Court of Federal Claims (USCFC) with affirming the dismissal of plaintiffs/petitioners' civil action on the holding that "the Claims Court does not have subject matter jurisdiction to review the decisions of other federal courts".

Summary of relevant factual and procedural background related to plaintiffs/petitioners' civil action in the U.S. Court of Federal Claims.

On April 19, 2021 the petitioners filed the civil action *Tanasescu v. the United States*, No. 1:21–cv–01289–ZNS, in the U.S. Court of Federal Claims (USCFC) under the **Contract Disputes Act of 1978** ("CDA", Pub.L. 95–563, 92 Stat. 2383) **codified, as amended, at** 41 USC §§ 7101 – 7109.

The case cover sheet noted the Nature of Suit Code 114 for "Contract – Service – (CDA)" and the requests for monetary and injunctive/declaratory relief for redress from the damages created by the executive agency DOJ's breach of the implied contracts with the plaintiffs/petitioners for equal treatment under law and the faithful and impartial discharge of DOJ's duties under the Constitution and laws of the United States in the adjudication of the "2011 Action", the "2012 BK Adversary Action", and the "2017 RICO Action" as

identified in the Petition for Writ of Certiorari.

A. In the 2011 Action, Judge Cormac J. Carney and his Magistrate Judge intentionally failed to afford plaintiffs/petitioners equal protection under:

a) F.R.C.P. Rule 15(a) for leave to amend the complaint for curing the court's findings of "unclear" in the 2012 R&R (**Appendix O-1**);

b) FRCP Rule 17 for protection of minor S.T.'s rights and interests;

c) FRCP Rules 18 and 19 for joinder of claims and parties in interest;

d) FRCP Rule 60(d)(3) for the federal court power to "set aside a judgment for fraud on the court";

e) the *Rooker-Feldman* doctrine which does not bar a district court from reviewing and adjudicating judgments obtained through fraud upon state courts; and

f) the precedent in *Brown v. Roe*, 279 F.3d 742 (9th Cir. 2002) as cited by the district court but not applied in fact.

The Court knowingly and intentionally refrained from discharging its legal obligation to apply the rule of law and the precedent in *Brown v. Roe* when entering its 2012 Order (true copy in **Appendix O-2**). On the subsequent appeal, judge Carney certified that the appeal was taken in bad faith and was frivolous while he had to know that he departed from the rule of law and did not apply the precedent of *Brown v. Roe* he cited in denying petitioners' request for leave to amend the complaint, which would not have been futile but would have been for curing the findings of "unclear", for joining in minor S.T., and for

pleading the claim under the RICO Act as requested for the first time in the objection to the magistrate judge's 2012 R&R as it was permitted in *Brown v. Roe* by the Ninth Circuit which reversed and remanded to the lower court for consideration of Brown's claim of equitable tolling made for the first time in his objection to the magistrate judge's findings and recommendation stating in relevant part the following at 745, 746:

"For two separate reasons, we hold that the district court abused its discretion in this case in failing to consider Brown's equitable tolling claim. **First**, there is nothing in the record that shows the district court 'actually exercise[d] its discretion,' *Howell,* 231 F.3d at 622, in refusing to consider Brown's newly-raised claim. Unlike the district court's statement in *Howell,* which specifically addressed Howell's newly-raised objection and gave reasons for rejecting it, the district court's order in this case **is very brief, stating without elaboration that it conducted a *de novo* review of the magistrate's findings and recommendations. Second**, unlike the litigant in *Howell,* who was represented by counsel, Brown **was a *pro se* petitioner at all relevant times and was making a relatively novel claim under a relatively new statute**." (emphasis added)

On the subsequent appeal, the Ninth Circuit required the unrepresented petitioner to submit to the manufactured "Circuit Rule 30-1.1.1" (**Appendix P-1**) which the appeal panel subsequently used for the play on words that "[plaintiff/petitioner]'s contention that the district court ignored portions of her complaint and objections to the report and recommendation is unsupported by the record" (**Appendix Q**), as there was no record on appeal, while also refraining from addressing its own holding in *Brown v. Roe* for finding in error and in departure from the rule of law that the proposed amendments, which were requested for curing the findings of "unclear" in the 2012 R&R, for joinder

of minor S.T. and for pleading the claim under the RICO Act, "would have been futile".

B. In the 2012 BK Action, the Bankruptcy Court knowingly and intentionally refrained from discharging its legal obligation to apply the rule of law and precedent equally to self-represented Simona. At a minimum, judge Peter H. Carroll intentionally refrained from applying Fed.R.Civ.P. 15(a), which provides in relevant part that "[t]he court should freely permit an amendment when doing so will aid in presenting the merits", and as the Ninth Circuit and the Supreme Court caselaw precedents held that:

> The Ninth Circuit Court of Appeals has noted "on several occasions ... that the 'Supreme Court has instructed the lower federal courts to heed carefully the command of Rule 15(a), F[ed].R.Civ.P., by freely granting leave to amend when justice so requires.' 'Gabrielson v. Montgomery Ward & Co., *785 F.2d 762*, 765 (9th Cir.1986) ... Thus '[r]ule 15's policy of favoring amendments to pleadings should be applied with 'extreme liberality.' 'Webb, 655 F.2d at 979'".

Dcd Programs Ltd v. W Leighton, 833 F. 2d 183 (9th Cir. 1987) noted:

> "If a district court believes the plaintiff is not able to state a claim, it should provide written findings explaining this. Such action is advisable because, in the absence of written findings or a record which clearly indicates reasons for the district court's denial, this court will reverse a denial of leave to amend. Klamath, 701 F.2d at 1292; Hurn, 648 F.2d at 1254. Denials of motions for leave to amend have been reversed when lacking a contemporaneous specific finding by the district court of prejudice to the opposing party, bad faith by the moving party, or futility of amendment. See, e.g., Howey, 481 F.2d at 1191 no contemporaneous finding of prejudice, bad faith or futility of amendment)".

Judge Peter H. Carroll's order dismissing Simona's complaint without prejudice for a new filing (**Appendix R**) showed the judge recognized no bad faith and no futility of an amendment as in addition the order gives no reasons

for denying leave to amend.

On appeal, the Ninth Circuit did not apply FRCP Rule 15(a) and its own precedents when affirming the unconstitutional order by Judge Carroll in violation of the implied contract with Simona for equal application of the rule of law and precedents and for equal treatment under law.

Furthermore, the Ninth Circuit did not act upon Simona's appeal for 44 months, way more than its timeline on appeals estimated at maximum 20 months, until and when Simona notified the Court of its discrepancy in such egregious delay which made for additional unequal treatment under law.

C. The Court in the 2017 RICO Action the trial court knowingly and intentionally refrained from discharging its legal obligation to apply the rule of law and caselaw precedents equally and afford plaintiffs/petitioners equal treatment under law, especially to plaintiff S.T. (a minor) who is the innocent victim suffering from the beginning of her life due to the parents' oppression and confinement from receiving the visit of the Coroian family of four in 1998 and subsequent RICO acts to keep the Tanasescu family of three under the falsehood of the void and sham cross-marriages of the in-laws through the 2008 and 2009 dissolution judgments rubberstamped by the defrauded state courts.

The Court in the 2017 RICO Action refrained from protecting the minor's rights and interests for the particular and intertwined claims. The Court dismissed the minor, who is also a necessary party for the finality of the action, in violation of FRCP Rules 17, 18, and 19 and thus in violation of minors' rights

and interests. Judge Carter dismissed minor S.T. without prejudice for pursuing her particular and intertwined claims upon reaching the age of majority, which makes for further undue overburdens on the completely innocent victim who does not even have knowledge of the facts that are causing her irreparable harm since beginning of life, instead of appointing a minor's counsel under 28 U.S Code 1915(e). In the November 6, 2017 Order Dismissing Action as to Minor S.T. (**Appendix B**) is dishonest for covering up the trial court's deliberate failure to protect minor S.T.'s rights and interests by intentionally leaving out from the cited precedent in *Wilborn v. Escalderon,* 789 F.2d 1328 (1986) (at pages 4 and 5) that both "the likelihood of success on the merits [and] the ability of the petitioner to articulate his claims *pro se* in light of the complexity of the legal issues involved" "must be viewed together before reaching a decision on request for counsel". The trial court knew that minor S.T. had no ability to articulate any claims for being considered incompetent under the law. Judge Carter did not want to afford equal application of law and precedents even to minor S.T., in violation of section 1915(e) and FRCP Rule 17(c) and the precedent in *Wilborn.*

Petitioners were not afforded equal application of FRCP Rule 15(a) for at least one opportunity to amend the complaint in response to any of the defendants' scrutiny.

D. On appeal from the 2017 RICO Action, the Ninth Circuit did not afford minor S.T equal application of law and precedents when ordering the minor to

proceed together with the mother without counsel on appeal (**Appendix U**) contrary to the Ninth Circuit own precedent in Johns v. County of San Diego, 114 F.3d 874, 876 (9th Cir. 1997) holding that minors who "have claims that require adjudication, they are entitled to trained legal assistance so their rights may be fully protected" and also the precedent in Castillo-Ramirez v. Cnty. of Sonoma, No. C-09-5938 EMC, 2010 WL 1460142, at *1 (N.D. Cal. Apr. 9, 2010) noting that a minor child may only proceed if the child is represented by (1) a guardian and (2) an attorney the trial court cited for dismissing minor S.T. from the proceedings.

REASONS FOR GRANTING THE WRIT

Petitioners are a first-generation immigrant and a minor child coming before this Court without counsel. The task of petitioning this Court with concise statements of fact and law covering petitioners' decade long civil proceedings in the Ninth Circuit Courts, where DOJ's employees deliberately refrained to afford the petitioners equal protection of law, is a monumental duty for the self-represented Simona who's also responsible for the rights and interests of S.T. (a minor) who's without counsel. Minor S.T. is entitled to trained legal assistance for full protection of rights and interests as held by the Ninth Circuit in *Johns v. County of San Diego* (1997), but the courts refrained from affording minor S.T. equal protection under FRCP Rule 17 and the cited precedent in *Wilborn v. Escalderon,* 789 F.2d 1328 (1986). Petitioners' decade long efforts and legal proceedings for redress, on the suffering caused by the RICO enterprise formed

to defraud the United States for procurement of naturalization by non-immigrant visa overstays, have been hindered by the identified Ninth Circuit Courts making decisions through deliberate failures to afford the petitioners equal application of laws and precedents and thus breaching the implied by fact and law contracts between the DOJ and the petitioners on procurement of adjudication services.

Upon appealing the May 19, 2021 judgment of the USCFC, the petitioners learned about the interference and influence by "Staff Attorney Office" at the time of filing their complaint in the trial court. The Case Docket summary (**Appendix W)** including "Court Only" filings in the trial court not intended for the public view or the plaintiffs/petitioners, indicates that the plaintiffs/petitioners' Complaint was "reviewed by Staff Attorney Office before filing" and that there was "Staff Attorney Advice Memo forwarded to chambers" in the trial court.

The docket also revealed that plaintiffs/petitioners' statements in the Case Cover Sheet were altered in the trial court from Nature of Suit code 114 for "Contract – Service – (CDA)" to code 528 for "Miscellaneous-Other" and "Cause: 28-1491 Tacker Act", and the request for monetary relief totaling $320,000,000 was altered to $1,000,000 and with excluding the injunctive/declaratory relief sought.

Upon filing of the appeal, the USCAFC did not serve the July 7, 2021 Notice of Docketing package (Appeal No. 21-2117 Dkt. #1) on the

plaintiffs/petitioners as it also shows no proof of service thus leaving the plaintiffs/petitioners to learn by luck the lower court's filing deadlines on maintaining the appeal.

On December 7, 2021, the USCACF entered its decision affirming the May 19, 2021 judgment dismissing petitioners' complaint against the DOJ for the intentional failures to afford the petitioners equal application of law and precedents in breach of the implied by fact and law contracts for adjudication services in the civil actions identified in the Petition for Writ of Certiorari as the "2011 Action", the "2012 BK Adversary Action", and the "2017 RICO Action", as well as the Ninth Circuit's intentional misguiding information with use of manufactured "Circuit Rule 30-1.1.1".

The USCAFC's decision has to be reviewed by this Court for ignoring departures from the accepted and usual course of judicial proceedings and for contradicting the CDA of 1978 while setting the DOJ above the law, as follows:

1) The USCACF minimized petitioners' allegations of breach of implied contract by the DOJ, in the making of judicial decisions through deliberate failures to afford the petitioners equal protection of laws and precedents, as "alleged errors in those decisions":

The USCAFC ignored plaintiffs/petitioners' pleadings that the factual intentional failures to afford the petitioners equal protection of law constituted the DOJ's breach of the implied contracts with the petitioners in the adjudication of the three cases: the 2011 Action, the 2012 BK Action, and the 2017 RICO Action. The USCAFC's finding that petitioner "[Simona] asserts

that the United States District Court for the Central District of California, United States Bankruptcy Court for the Central District of California, and the United States Court of Appeals for the Ninth Circuit failed to correctly apply the law in three cases involving [Simona]" is incorrect for ignoring the facts pleaded in the complaint and also discounting plaintiff/petitioner S.T. (a minor). The USCAFC's finding that the Ninth Circuit Courts "failed to correctly apply the law in the three cases" ignores the facts pleaded that the identified Ninth Circuit Courts intentionally failed to apply the laws and precedents equally for the petitioners in breach of their duty under the Constitution and laws of the United States.

As summarized in the Petition for Writ of Certiorari and herein previous:

- the courts in the 2011 Action intentionally failed to afford the petitioners the equal application of FRCP Rules 15(a), 17, 18, 19 and 60(d)(3), of Rooker-Feldman doctrine, and of the precedent in Brown v. Roe, and on appeal the Ninth Circuit even misguided Simona using manufactured "Circuit Rule 30-1.1.1" for directing the self-represented contrary to the actual Circuit Rule 30-1.2;
- the courts in the 2012 BK Action intentionally failed to afford the self-represented Simona the equal application of FRCP Rule 15(a) and the Ninth Circuit own precedents noting "that the 'Supreme Court has instructed the lower federal courts to heed carefully the command of Rule 15(a), F[ed].R.Civ.P., by freely granting leave to amend when justice so requires.'

'Gabrielson v. Montgomery Ward & Co., *785 F.2d 762*, 765 (9th Cir.1986)" when dismissing the action "without prejudice to plaintiff's filing of a complaint under 11 U.S.C. § 523" and therefore disrupted statutes of limitations, caused plaintiff undue procedural and financial burdens and restricted relief from all applicable laws and theories.

- The courts in the 2017 RICO Action intentionally failed to afford the plaintiffs/petitioners the equal application of FRCP Rules 15(a), 17, 18 and 19, FRCP Rule 60(d)(3), 28 USC §1915(e), Rooker-Feldman doctrine, and the precedent in *Wilborn v. Escalderon,* 789 F.2d 1328 (1986).
- Ninth Circuit ordered minor S.T. to proceed on appeal without counsel contrary to the precedent used to dismiss the minor from the action in the trial court.

2) The executive agency DOJ interfered with and influenced the adjudication of petitioners' claims under the CDA, and the USCAFC minimized them to "procedural errors":

The USCAFC found in error that "'Ms. Tanasescu asserts that the Claims Court substantively erred by ignoring the allegedly contractual nature of her claims. She identifies two purported procedural errors underlying the Claims Court's decision and one purported procedural error by this court" (USCFAC Decision at pg. 3) referring to the USCFC altering the Nature of Suit code from 114 ('Contract – Service – (CDA)') to 528 ("Miscellaneous – Other") and the request for monetary relief and without the injunctive/declaratory relief sought, and to the USCAFC never serving the Notice of Docketing of the appeal showing

the case deadlines, all which surfaced upon petitioners' appeal from the May 19, 2021 judgement of the USCFC.

The USCAFC's opinion is silent about the Case Docket (Appendix W) which includes "Court Only" information locked from public view showing that the plaintiffs/petitioners' Complaint entered on 4/26/2021 was "reviewed by Staff Attorney Office before filing" and that there was "Staff Attorney Advice Memo forwarded to chambers" on 4/27/2021, a clear departure from the accepted and usual course of judicial proceedings as to call for exercise of this Court's supervisory power over the lower courts and for the interference and influence in the alteration of petitioners' request for relief and the nature of suit code 114 for "Contract – Service – (CDA)".

Petitioners' complaint alleged breach of the implied contract between the DOJ and the petitioners seeking adjudication services on the justified expectation of DOJ's faithful and impartial discharge and performance of all the duties under the Constitution and laws of the United States. The agency DOJ had the privilege to alter petitioners' request for relief and the nature of suit code 114 for "Contract – Service – (CDA)" for evading the CDA's "exclusive mechanism for dispute resolution" over petitioners' valid claims of breach of contract by the agency DOJ.

3) The USCAFC's holding that "the Claims Court does not have subject matter jurisdiction to review the decisions of other federal courts" is effectively barring the CDA's "exclusive mechanism for dispute resolution" over the DOJ's breach of implied contracts in procurement of adjudication services and thus sets the DOJ above the law:

Petitioners' informal brief pleaded on page 6 as follows:

> **"The trial court did not take into account Appellants' pleadings under the Contract Disputes Act of 1978** ('CDA', Pub.L. 95–563, 92 Stat. 2383) **codified, as amended, at** 41 USC §§ 7101 – 7109, which provides for the resolution of claims and disputes relating to Government contracts awarded by executive agencies. The term 'executive agency' means an executive department as defined in 5 USC § 101, relevant here is the Department of Justice (DOJ). The CDA applies to any express or implied contract made by an executive agency for the procurement of services (41 USC § 7102(a)(2)). Appellants complied with the requirements of the DCA as shown in the Complaint."

In addition, petitioners' informal brief answer to question 4: "Did the trial court fail to consider important grounds for relief? " was the following:

"The record shows that the trial court intentionally failed to consider its jurisdiction over Appellants' claims under the CDA of 1978.

The United States Court of Federal Claims has jurisdiction over a wide range of claims against the government including, as relevant here, contract disputes.

When more than $10,000 is claimed, the Court of Federal Claims possesses exclusive jurisdiction in these cases pursuant to the Tucker Act, 28 U.S.C. § 1491.

Disputes arising out of commercial contracts with the federal government are governed by the Contract Disputes Act, 41 U.S.C. § 7101 et seq. (CDA).

The CDA provides the exclusive method for resolution of any dispute relating to a government contract, and district courts possess no jurisdiction in these cases. 28 U.S.C. § 1346(a)(2) ('(T)he district courts shall not have jurisdiction of any civil action or claim against the United States founded upon any express or implied contract with the United States of the Contract Disputes Act of 1978'); 28 U.S.C. § 1491(a)(2) ('The Court of Federal Claims shall have jurisdiction to render judgment upon any claim by or against, or dispute with, a contractor arising under section 10(a)(1) of the Contract Disputes Act of 1978.'); see, e.g., Texas Health Choice, L.C. v. Office of Personnel Mgmt., 400 F.3d 895, 898-99 (Fed. Cir. 2005) ('The CDA exclusively governs Government contracts and Government contract disputes' and, '[w]hen the [CDA] applies, it provides the exclusive mechanism for dispute resolution.') (citations omitted)."

The USCAFC minimized petitioners' claims, of deliberate failure by the Ninth Circuit Courts in the three actions of 2011 2012 and 2017 to afford the

petitioners equal protection of laws and precedents in breach of their duty under the Constitution and laws of the United States, as failures "to correctly apply the law" in the three cases.

Subsequently, the USCAFC discussed at page 4 that "Ms. Tanasescu seems to argue that the separate source of substantive law in this case is the Contract Disputes Act of 1978, 41 U.S.C. §§ 7101–7109", but because review under the DCA of 1978 for the DOJ's breach of duty to afford equal protection when deciding the three actions would require "to review decisions of other federal courts", the USCAFC contends that the "Claims Court does not have subject matter jurisdiction to review the decisions of other federal courts":

> "At its core, Ms. Tanasescu's complaint asks the Claims Court to review decisions of other federal courts. The alleged errors in those decisions form the 'breach' in her 'breach of implied contract' claims. The Claims Court does not have subject matter jurisdiction to review the decisions of other federal courts. *Straw v. United States*, 4 F.4th 1358, 1361 (Fed. Cir. 2021) (holding that the Claims Court does not have jurisdiction to review district court decisions)"

Such holding by the USCAFC effectively bars the CDA's "exclusive mechanism for dispute resolution" over the DOJ's breach of implied contracts in procurement of adjudication services and thus sets the DOJ apart from the other "executive agencies" and more egregiously and unconstitutionally above the law.

The 28 U.S.C. § 1491(a)(2) provides in relevant part:

"The Court of Federal Claims shall have jurisdiction to render judgment upon any claim by or against, or dispute with, a contractor arising under section 7104(b)(1) of title 41".

The USCAFC's holding that the "Claims Court does not have subject matter

jurisdiction to review the decisions of other federal courts" is misplaced for not applying to claims under the CDA, or the alternative of been accepted contrary to the CDA begs the question for the proper forum of resolving petitioners' disputes with the DOJ for breach of implied contract under the CDA of 1978 because said dispute cannot be circled back for adjudicated by the Ninth Circuit.

CONCLUSION

The judicial system is set by the U.S. Constitution to promote justice and fairness to all citizens, but when those powerless, also with limitations in the English language and no training in the law or being under the age of majority, are factually cheated of protections set in laws and precedents, it calls for the exercise of this Court's supervisory power over the lower courts even as the self-represented petitioners' pleadings are imperfect but nevertheless show the DOJ's intentional failures to afford such petitioners equal protection under law and even misguidance by the Ninth Circuit using manufactured "Circuit Rule 30-1.1.1" in support for misinforming appellants similarly proceeding pro-se.

The foregoing supplement the call for exercise of this Court's supervisory power over the USCFC and USCAFC for departing from the accepted and usual course of judicial proceedings and for effectively barring the USCFC's jurisdiction under the DCA of 1978 on disputes arising from the DOJ's breach of implied contracts with the petitioners for adjudication services through equal treatment under the Constitution and laws of the United States.

Respectfully submitted:
December 24, 2021

Simona Tanasescu

Simona Tanasescu for herself and S.T. (a minor)

NOTE: This disposition is nonprecedential.

United States Court of Appeals for the Federal Circuit

SIMONA TANASESCU, ON BEHALF OF HERSELF AND S.T., A MINOR,
Plaintiff-Appellant

v.

UNITED STATES,
Defendant-Appellee

2021-2117

Appeal from the United States Court of Federal Claims in No. 1:21-cv-01289-ZNS, Judge Zachary N. Somers.

Decided: December 7, 2021

SIMONA TANASESCU, Tustin, CA, pro se.

MILES KARSON, Commercial Litigation Branch, Civil Division, United States Department of Justice, Washington, DC, for defendant-appellee. Also represented by BRIAN M. BOYNTON, CLAUDIA BURKE, MARTIN F. HOCKEY, JR.

Before LOURIE, MAYER, and CUNNINGHAM, *Circuit Judges*.

PER CURIAM.

Simona Tanasescu appeals from a decision of the Court of Federal Claims ("Claims Court") dismissing her breach of contract claims for lack of subject matter jurisdiction, *Tanasescu v. United States*, No. 21-1289 C, 2021 WL 2010295 (Fed. Cl. May 19, 2021). Because the Claims Court lacks jurisdiction to adjudicate claims asking the Claims Court to review the decisions of other federal courts, we *affirm*.

I. BACKGROUND

In her complaint before the Claims Court, Ms. Tanasescu asserts that the United States District Court for the Central District of California, United States Bankruptcy Court for the Central District of California, and the United States Court of Appeals for the Ninth Circuit failed to correctly apply the law in three cases involving Ms. Tanasescu. She asserts that this failure is a breach of an implied contract between herself and the Department of Justice ("DOJ").

The Claims Court dismissed Ms. Tanasescu's complaint for lack of subject matter jurisdiction. *Tanasescu*, 2021 WL 2010295, at *1. The court found that Ms. Tanasescu's complaint asked it to review various decisions of other federal courts—something that the Claims Court lacks subject matter jurisdiction to do. *Id.* at *2.

Ms. Tanasescu appeals the Claims Court's dismissal of her case for lack of subject matter jurisdiction. We have jurisdiction to review the Claims Court's final decision under 28 U.S.C. § 1295(a)(3).

II. DISCUSSION

On appeal, Ms. Tanasescu argues that the Claims Court improperly dismissed her complaint for lack of subject matter jurisdiction. She asserts that the Claims Court made both substantive and procedural errors. Ms.

Tanasescu asserts that the Claims Court substantively erred by ignoring the allegedly contractual nature of her claims. She identifies two purported procedural errors underlying the Claims Court's decision and one purported procedural error by this court. First, she asserts that the Claims Court changed the "Nature-of-Suit Code" in the case cover sheet from 114 ("Contract – Service – (CDA)") to 528 ("Miscellaneous – Other") without notifying her. Second, she asserts that the Claims Court changed the "Amount Claimed" in the case cover sheet from an estimated $320,000,000 to $1,000,000, again, without notifying her. Finally, Ms. Tanasescu asserts that she was never served with a Notice of Docketing of her appeal before this court.

This court reviews Claims Court decisions to dismiss for lack of jurisdiction *de novo*. *Campbell v. United States*, 932 F.3d 1331, 1336 (Fed. Cir. 2019). Subject matter jurisdiction is a threshold issue that courts must consider before they consider the merits of a claim. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94–95 (1998). As Ms. Tanasescu is a *pro se* plaintiff, her pleadings are liberally construed. But that does not alleviate her burden to demonstrate that the Claims Court has jurisdiction. *See Beltran v. Shinseki*, 447 F. App'x 208, 209 (Fed. Cir. 2011). Ms. Tanasescu still bears the burden of proving subject matter jurisdiction by a preponderance of the evidence. *See Freeman v. United States*, 875 F.3d 623, 628 (Fed. Cir. 2017).

The Claims Court's jurisdiction, if any, over Ms. Tanasescu's case arises under the Tucker Act, 28 U.S.C. § 1491(a). The Tucker Act gives the Claims Court "jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort." *Id.* The Tucker Act is "a

jurisdictional statute; it does not create any substantive right enforceable against the United States for money damages." *United States v. Testan*, 424 U.S. 392, 398 (1976). Thus, "a plaintiff must identify a separate source of substantive law that creates the right to money damages." *Fisher v. United States*, 402 F.3d 1167, 1172 (Fed. Cir. 2005) (en banc).

Ms. Tanasescu seems to argue that the separate source of substantive law in this case is the Contract Disputes Act of 1978, 41 U.S.C. §§ 7101–7109. Ms. Tanasescu asserts that she had an implied contract with the DOJ and alleges that the DOJ breached this contract when the United States District Court for the Central District of California, United States Bankruptcy Court for the Central District of California, and the Ninth Circuit Court of Appeals decided various motions and cases in ways adverse to Ms. Tanasescu's interests.

At its core, Ms. Tanasescu's complaint asks the Claims Court to review decisions of other federal courts. The alleged errors in those decisions form the "breach" in her "breach of implied contract" claims. The Claims Court does not have subject matter jurisdiction to review the decisions of other federal courts. *Straw v. United States*, 4 F.4th 1358, 1361 (Fed. Cir. 2021) (holding that the Claims Court does not have jurisdiction to review district court decisions); *Allustiarte v. United States*, 256 F.3d 1349, 1352 (Fed. Cir. 2001) (noting that the "proper forum for appellants' challenges to the bankruptcy trustees' actions [which were approved by the bankruptcy court] . . . lies in the Ninth Circuit, not the Court of Federal Claims"). Creative claiming cannot endow the Claims Court with jurisdiction to review the decisions of other federal courts. *See Straw*, 4 F.4th at 1360–61 (affirming the Claims Court's decision that it lacks subject matter jurisdiction to adjudicate a Fifth Amendment takings claim in which the alleged taking was effected when a district court dismissed a tort claim).

The purported procedural errors identified by Ms. Tanasescu do not change our analysis. The nature-of-claim code and the amount claimed played no role in the Claims Court's decision, which was based on the content of Ms. Tanasescu's complaint. The Claims Court does not have jurisdiction to adjudicate Ms. Tanasescu's claims regardless of the nature-of-claim code or amount claimed. Nor does Ms. Tanasescu's allegation that she was improperly served with notice of docketing by this court have any relation to the Claims Court's lack of jurisdiction to hear her claims.

III. CONCLUSION

For these reasons, we *affirm*.

AFFIRMED

COSTS

No costs.

No. 21-6420

IN THE
SUPREME COURT OF THE UNITED STATES

Simona Tanasescu, and S.T. (a minor) — PETITIONERS

VS.

Matthew M. Kremer et al — RESPONDENT(S)

PROOF OF SERVICE

I, Simona Tanasescu, do swear or declare that on this date, December 24, 2021, as required by Supreme Court Rule 29 I have served the SUPPLEMENTAL BRIEF as email attachment in PDF format and/or by depositing an envelope containing the above documents in the United States mail properly addressed and with first-class postage prepaid on each responding party to the above proceeding or that party's counsel, as follows:

MATTHEW M. KREMER; MATTHEW M. KREMER, THE OFFICES OF	**By E-Mail** to MATTHEW M. KREMER: 2514 Jamacha Road, Ste 502-195 El Cajon, CA 92019 (Email: lmatthew765@gmail.com)	
DORIN COROIAN; MIRELA MOSOIU; CRISTIAN COROIAN; ADRIAN COROIAN; ZOE CRISTINA SUCIU	**By E-Mail** to JAMES F. RUMM: Ferruzzo & Ferruzzo, LLP 3737 Birch St., Suite 400 Newport Beach, CA 92660 (Email: jrumm@ferruzzo.com)	
JEFFREY H. SHERTER	**By E-Mail** to JEFFREY H. SHERTER: Law Office of Jeffrey H. Sherter, 4501 E. Carson St., Ste. 205, Long Beach, CA 90808 (Email: jhslaw1@gmail.com)	
STATE BAR OF CALIFORNIA	**By E-Mail** to JAMES JOU CHANG, Assistant General Counsel: The State Bar of California, 180 Howard Street San Francisco, CA 94105-1639 (Email: james.chang@calbar.ca.gov)	
THE UNITED STATES	**By E-Mail** to MATTHEW J. BARRAGAN: Federal Building, Suite 7516, 300 North Los Angeles Str. Los Angeles, CA 90012 (Email: Matthew.Barragan@usdoj.gov)	**By First Class Mail** to Solicitor General of the United States Room 5614, Department of Justice 950 Pennsylvania Ave., N.W., Washington, D. C. 20530–0001.
ROBERT K. JOHNSON; ROBERT K. JOHNSON, THE OFFICE OF	**By First Class Mail** to: ROBERT K. JOHNSON Law Ofc Robert K Johnson 43867 Bobby Jones Dr. Lancaster, CA 93536	
E. DANIEL BORS III	**By First Class Mail** to: E. DANIEL BORS III Superior Court of California -Los Angeles Self Help Resource Center, 111 N. Hill St., Rm. 426 Los Angeles, CA 90012-3115	

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 24, 2021

/s/ Simona Tanasescu

Simona Tanasescu