No. 17-1090

In the Supreme Court of the United States

PETRO-HUNT, LLC, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether petitioner may obtain compensation in the Court of Federal Claims for an asserted taking of private property by a federal court of appeals.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-32a) is reported at 862 F.3d 1370. The opinion of the United States Court of Federal Claims (Pet. App. 33a-73a) is reported at 126 Fed. Cl. 367.

JURISDICTION

The judgment of the court of appeals was entered on July 17, 2017. A petition for rehearing was denied on October 3, 2017 (Pet. App. 74a-75a). On December 15, 2017, the Chief Justice extended the time within which to file a petition for a writ of certiorari to and including February 1, 2018, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Petitioner is the successor-in-interest to companies that owned mineral servitudes affecting lands acquired

by the United States for a national forest. See Pet. App. 3a-7a. At the time the United States acquired that land, Louisiana law provided that rights to extract minerals from land revert to the owner of the land if the mineral rights are not used for a certain period of time. *Id.* at 3a. The Louisiana legislature subsequently changed that law with respect to land owned by the United States, *id.* at 4a, and the Fifth Circuit originally held that the new state law could be retroactively applied against the United States with respect to one parcel of land, *United States* v. *Nebo Oil Co.*, 190 F.2d 1003, 1006-1010 (1951). This Court later held that federal common law—not state law—governs mineral rights on federal land acquired under a particular statute, and that Louisiana's change in mineral-rights law could not be retroactively applied against the United States with respect to land acquired under that statute. *United States* v. *Little Lake Misere Land Co.*, 412 U.S. 580, 592-597 (1973).

Petitioner sued the United States in federal district court, asserting that it owned certain mineral rights on federal forest land pursuant to the Fifth Circuit's 1951 decision in *Nebo Oil*. Pet. App. 7a. The district court granted summary judgment to petitioner, see *id.* at 8a, but the Fifth Circuit reversed, holding that its decision in *Nebo Oil* bound the United States only with respect to the single parcel at issue in that case, and that this Court's subsequent decision in *Little Lake Misere* otherwise precludes the retroactive application of Louisiana's revised mineral-rights law against the United States, *Petro-Hunt, L.L.C.* v. *United States*, 365 F.3d 385, 398-399 (5th Cir.), cert. denied, 543 U.S. 1034 (2004). Petitioner then asserted a claim in the United States Court of Federal Claims (CFC) contending that the Fifth Circuit's decision operated as a taking of its property with

respect to its asserted mineral rights on parcels affected by the Fifth Circuit's ruling. Pet. App. 11a. The CFC held that it lacked jurisdiction over petitioner's claim. *Id.* at 55a-73a. The court of appeals affirmed. *Id.* at 28a-32a.

1. Under longstanding Louisiana law, mineral rights in real property may not be owned separately from the land; they may be owned only as a right of servitude to enter the land and extract the minerals. La. Rev. Stat. Ann. § 31:21 (2000); see *Little Lake Misere*, 412 U.S. at 583 n.2; *Frost-Johnson Lumber Co.* v. *Salling's Heirs*, 91 So. 207, 243-245 (La. 1920). Such mineral servitudes ordinarily prescribe—that is, revert to the landowner—if not used for ten years. La. Rev. Stat. Ann. § 31:27(1) (2000); see *Little Lake Misere*, 412 U.S. at 583 n.2; *Frost-Johnson*, 91 So. at 243-245.

Between 1934 and 1937, the United States acquired multiple parcels of forest land in Louisiana from two timber companies. Pet. App. 3a. The government acquired the land pursuant to the Weeks Law, ch. 186, 36 Stat. 961, for purposes of including it in the Kisatchie National Forest, Pet. App. 35a. The land acquired by the government was burdened by 96 separate mineral servitudes in favor of Good Pine Oil, each of which was subject to a ten-year prescription period. *Id.* at 3a.

2. a. In 1940, the Louisiana legislature enacted Act 315, which altered the status of mineral rights on federal land. 1940 La. Acts 1249; see *Little Lake Misere*, 412 U.S. at 584; Pet. App. 4a n.1 Specifically, Act 315 provided that when the United States acquires land subject to a mineral servitude, the servitude is "imprescriptible"—*i.e.*, the servitude will not revert to the landowner—even if unused for more than ten years. 1940 La. Acts 1250. The law, moreover, applied retroactively to all

servitudes on federal land that had not yet prescribed, even if the government acquired the land before enactment of Act 315. *Ibid.*; see Pet. App. 4a.

The effect of Act 315 was tested in 1948, when the United States filed a declaratory judgment action against Nebo Oil—a successor-in-interest to Good Pine Oil—contending that the mineral rights on an 800-acre parcel of land acquired by the government in 1936 had prescribed to the United States because the mineral rights had not been used for more than ten years. Pet. App. 4a; see *Nebo Oil*, 190 F.2d at 1005-1006. The district court denied the United States relief, and the Fifth Circuit affirmed, holding that Act 315 had rendered the mineral rights on that 800-acre parcel "imprescriptible." *Nebo Oil*, 190 F.2d at 1006; see *id.* at 1006-1010.

b. This Court subsequently considered the effect of Act 315 in *Little Lake Misere*. There, the United States had acquired two parcels in Louisiana under the Migratory Bird Conservation Act (MBCA), 16 U.S.C. 715 *et seq.* See 412 U.S. at 582. The Little Lake Misere Land Company contended that its mineral servitudes on those parcels were imprescriptible under Act 315. *Id.* at 582-584. This Court rejected the company's position, holding that federal land acquisitions under the MBCA are governed by federal common law, not state law, and that applying Act 315 to federal land acquired before its enactment would deprive the government of "bargained-for contractual interests" and be "plainly hostile to the interests of the United States." *Id.* at 597; see *id.* at 592-597. The Court accordingly held that the mineral servitudes had prescribed to the United States after ten years of non-use. *Id.* at 604. The Court cited but "did not overrule" the Fifth Circuit's decision in *Nebo Oil*. Pet. App. 5a.

3. a. Petitioner is a successor-in-interest to Nebo Oil. See Pet. App. 7a-8a, 38a. In 2000, petitioner sued the United States in the District Court for the Western District of Louisiana seeking a declaration that it owns, by virtue of Act 315 and the Fifth Circuit's decision in *Nebo Oil*, all 96 of the mineral servitudes on the land the United States acquired from the two timber companies to include in the Kisatchie National Forest in the 1930s. *Id.* at 7a. The government conceded that the one servitude at issue in *Nebo Oil* was governed by that case's judgment that the servitude was imprescriptible. But the government, relying on *Little Lake Misere*, argued that the remaining 95 servitudes were subject to the ordinary rule of prescription that predated Act 315. See *Petro-Hunt,* 365 F.3d at 394 & n.49, 396 n.58.

The district court granted summary judgment to petitioner based on what it concluded was the preclusive effect of *Nebo Oil*, but the court of appeals reversed. *Petro-Hunt,* 365 F.3d at 397-399. The court of appeals held that claim preclusion did not bar the United States from asserting that the 95 servitudes not at issue in *Nebo Oil* had prescribed, because claim preclusion applies only if two actions are based on the "same claim," and the different parcels of land involved different claims. *Id.* at 395. Likewise, the court held that issue preclusion did not bar the government from contesting Act 315's applicability, because *Nebo Oil* did not address the threshold choice-of-law issue identified in *Little Lake Misere*, and because issue preclusion does not apply when there has been a change in controlling legal principles, as occurred in *Little Lake Misere*. *Id.* at 397-399. The court further noted that it had applied the holding of *Little Lake Misere*, rather than *Nebo Oil*, in another recent case involving federal acquisitions of

land for the Kisatchie National Forest under the Weeks Law. *Id.* at 393; see *Central Pines Land Co.* v. *United States*, 274 F.3d 881, 885-892 (2001), cert. denied, 537 U.S. 822 (2002). The court accordingly determined that *Little Lake Misere* and *Central Pines* were controlling, and that Act 315 could not bar the government from invoking prescription with respect to servitudes created before its enactment. *Petro-Hunt*, 365 F.3d at 398-399.

Petitioner filed a petition for a writ of certiorari contending, *inter alia*, that allowing the Fifth Circuit's decision to stand would result in an uncompensated taking of property in violation of the Fifth Amendment. See Pet. at 30, *Petro-Hunt, L.L.C.* v. *United States*, 543 U.S. 1034 (2004) (No. 04-190). This Court denied review. *Petro-Hunt, L.L.C.* v. *United States*, 543 U.S. 1034 (2004).

b. On remand, the parties stipulated that five servitudes had remained in use since the 1930s and therefore had not prescribed to the United States, while the rest had prescribed to the United States. *Petro-Hunt, L.L.C.* v. *United States*, No. 06-30095, 2007 WL 715270, at *1 (5th Cir. Mar. 6, 2007) (per curiam). The court of appeals affirmed. *Id.* at *3. This Court again denied review. *Petro-Hunt, L.L.C.* v. *United States*, 552 U.S. 1242 (2008) (No. 07-563).

4. a. Petitioner filed suit in the CFC alleging an uncompensated taking of its interest in the mineral servitudes. The court dismissed most of petitioner's claims as time-barred. 90 Fed. Cl. 51, 65-67. Petitioner then amended its complaint to add a judicial-takings claim after this Court's decision in *Stop the Beach Renourishment, Inc.* v. *Florida Department of Environmental Protection*, 560 U.S. 702 (2010), in which four Justices indicated that a state-court decision may constitute a taking in violation of the Just Compensation Clause by

"declar[ing] that what was once an established right of private property no longer exists," *id.* at 715 (plurality opinion); but see *id.* at 733-734 (Kennedy, J., concurring in part and concurring in the judgment) (declining to reach the judicial-takings issue); *id.* at 742 (Breyer, J., concurring in part and concurring in the judgment) (same). Specifically, petitioner argued that the Fifth Circuit's decision holding that *Little Lake Misere*, rather than *Nebo Oil*, governed the treatment of the mineral servitudes on the government's land had taken its property without just compensation. See Pet. App. 41a.

b. The CFC dismissed petitioner's judicial-takings claim for lack of jurisdiction. Pet. App. 60a. The court explained that adjudicating that claim would require it to decide whether "the Fifth Circuit was correct in its finding that *Little Lake Misere* and *Central Pines*," rather than its earlier decision in *Nebo Oil*, controlled and "established that lands sold to the United States before the enactment of Act 315, like the surface lands in question here, were subject to Louisiana's ten-year prescription rule." *Id.* at 70a. Because the CFC is an Article I court that lacks jurisdiction to review whether an Article III court of appeals "correctly interpreted its own precedent," the CFC held that it "lacks jurisdiction over [petitioner's] judicial takings claim." *Ibid.*

c. The court of appeals affirmed. Pet. App. 1a-32a. Like the CFC, the court of appeals found it unnecessary to address the general availability of judicial-takings claims, because it concluded that the CFC lacked jurisdiction over the claim asserted by petitioner. *Id.* at 28a-32a. To resolve petitioner's claim, the court explained, the CFC "would necessarily have to review the Fifth Circuit's decision to decide whether [petitioner] ever

had a cognizable property interest in perpetual ownership of the servitudes," and that would require the CFC to "determine the res judicata or collateral estoppel effect of *Nebo Oil*," which the Fifth Circuit had already done. *Id.* at 29a. Because "finding that the Fifth Circuit's decision was in error" is "something [the CFC] has no jurisdiction to do," the court upheld the dismissal of petitioner's judicial-takings claim. *Id.* at 31a.

ARGUMENT

Petitioner contends (Pet. 14-31) that this Court's review is warranted to determine whether and how a federal-court decision can give rise to a takings claim. The courts below, however, did not address that broad question. They instead held that petitioner lacked a cognizable property interest in the property allegedly taken, and that the CFC had no jurisdiction to review the Fifth Circuit's decisions on that issue. The decisions below are correct, and there is no conflict among the courts of appeals on the question presented. In addition, this Court has already denied petitioner's request for review of the claim that it asserts here. Further review is accordingly unwarranted.[1]

1. The Just Compensation Clause of the Fifth Amendment provides that "private property" shall not "be taken for public use, without just compensation." In the long history of its jurisprudence under the Clause, this Court has never held that a judicial decision effected a taking of property. And no court has ever held that a federal-court decision produced such a result. There are good reasons for that dearth of authority.

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[1] The petition for a writ of certiorari in *Stanford* v. *United States*, No. 17-809 (filed Dec. 1, 2017), presents a similar question.

The Framers understood the Just Compensation Clause as confined to the government's physical appropriation of private property for public use by eminent domain. See, *e.g.*, *Lucas* v. *South Carolina Coastal Council*, 505 U.S. 1003, 1028 n.15 (1992). The power of eminent domain was traditionally reserved to the legislature, which could decide both whether to take property and whether to pay compensation. See, *e.g.*, *First English Evangelical Lutheran Church* v. *County of L.A.*, 482 U.S. 304, 321 (1987). Over time, legislatures granted executive officials authority to exercise eminent domain and to regulate property in other ways, and this Court determined that the Just Compensation Clause can apply to regulatory as well as physical takings. See *Lucas*, 505 U.S. at 1014. But the powers to take property and pay compensation have remained "vested in the political branches and subject to political control," while the judiciary "historically has not had the right or responsibility to say what property should or should not be taken." *Stop the Beach Renourishment, Inc.* v. *Florida Dep't of Envtl. Prot.*, 560 U.S. 702, 739, 742 (2010) (Kennedy, J., concurring in part and concurring in the judgment). Allowing takings claims on the premise that a judicial decision standing alone can take property requiring the payment of just compensation would break sharply with historical practice and raise significant separation-of-powers concerns. See *id.* at 739. At a minimum, the Court should proceed with caution before adopting such an approach.

2. As petitioner observes (Pet. 15-18), this Court in *Stop the Beach* considered whether a state-court decision interpreting state-law property rights could give rise to a takings claim. 560 U.S. at 707. The Court, how-

ever, did not provide an answer. Four Justices indicated that a takings claims may arise from a state-court decision under some circumstances, see *id.* at 713-715 (plurality opinion), but the Court resolved the case on the unanimous ground that no taking had occurred because the plaintiffs had no "established property rights" in the property allegedly taken, *id.* at 733 (majority opinion); see *ibid.* (Kennedy, J., concurring in part and concurring in the judgment); *id.* at 742 (Breyer, J., concurring in part and concurring in the judgment).

The courts below resolved this case on the same ground—that petitioner had no "cognizable property interest" that would give rise to a takings claim. Pet. App. 29a. The courts accordingly did not address the propriety of federal judicial-takings claims as a general matter. The decisions below are correct, and petitioner identifies no substantial reason for this Court to review those decisions or consider any broader questions about federal judicial-takings claims in the first instance.

a. By its terms, the Just Compensation Clause applies only to a taking of "private property." U.S. Const. Amend. V. A successful takings claim thus requires as a threshold matter the assertion of a "cognizable property interest" in the property allegedly taken. Pet. App. 29a; see, *e.g.*, *Ruckelshaus* v. *Monsanto Co.*, 467 U.S. 986, 1000-1004 (1984) (discussing cognizable property interests); accord *Stop the Beach*, 560 U.S. at 733.

The premise of petitioner's claim is that (1) it held imprescriptible mineral rights on the lands that the United States acquired to create the Kisatchie National Forest in the 1930s, and (2) the Fifth Circuit's decisions in 2004 and 2007 deprived it of those rights without compensation. See Pet. App. 29a. There is, however, no foundation for the first element in petitioner's claim.

Under Louisiana law in effect at the time the United States acquired the land, mineral rights prescribed to landowners after ten years. *Id.* at 3a. Indeed, many of the deeds expressly stated that "a ten-year prescriptive period would apply." *Ibid.* Petitioner asserts that Louisiana's Act 315 retroactively altered that rule with respect to the federal land at issue here. But that was a disputed proposition. The Fifth Circuit once ruled in favor of petitioner's predecessor with respect to one parcel of land in *United States* v. *Nebo Oil Co.*, 190 F.2d 1003, 1006-1010 (1951). Then, following this Court's intervening decision in *United States* v. *Little Lake Misere Land Co.*, 412 U.S. 580 (1973), and its own decision in *Central Pines Land Co.* v. *United States*, 274 F.3d 881 (2001), cert. denied, 537 U.S. 822 (2002), the Fifth Circuit resolved the dispute in favor of the United States with respect to the other 95 servitudes at issue. *Petro-Hunt, L.L.C.* v. *United States*, 365 F.3d 385, 397-399, cert. denied, 543 U.S. 1034 (2004); *Petro-Hunt, L.L.C.* v. *United States*, No. 06-30095, 2007 WL 715270, at *1-*3 (Mar. 6, 2007) (per curiam), cert. denied, 552 U.S. 1242 (2008). Petitioner's assertion of imprescriptible mineral rights in the 95 servitudes at issue here has thus been rejected by the dispositive judicial decisions considering the question.

Petitioner contends (Pet. 28) that the Fifth Circuit's later decisions rest on a misunderstanding of the preclusive effect of its earlier decision. See Pet. App. 29a. But the Fifth Circuit expressly considered and rejected that argument, see *Petro-Hunt*, 365 F.3d at 395-399, and this Court denied certiorari, *Petro-Hunt, L.L.C.* v. *United States*, 543 U.S. 1034 (2004). Petitioner's assertion of a judicial taking thus amounts to a collateral attack on the Fifth Circuit's understanding of its own

precedent. See Pet. App. 29a. The courts below correctly concluded that the CFC could not adjudicate such a claim. As an Article I body, the CFC has no power to review the merits decision of the Fifth Circuit, an Article III court of appeals. See *id.* at 28a. Article III courts render binding judgments in cases or controversies "subject to review only by superior courts in the Article III hierarchy." *Plaut* v. *Spendthrift Farm, Inc.*, 514 U.S. 211, 218-219 (1995). As relevant here, decisions by federal courts of appeals are reviewable on rehearing by the court of appeals, Fed. R. App. P. 35, or by this Court, 28 U.S.C. 1254. No statute purports to authorize the CFC to review the decisions of federal courts of appeals. See 28 U.S.C. 1491-1509 (defining the CFC's jurisdiction). The Federal Circuit has thus consistently held that the CFC lacks jurisdiction over claims like petitioner's, see Pet. App. 28a (collecting cases), and petitioner does not suggest that any court has taken a different view.

b. As petitioner observes (Pet. 20), the Federal Circuit entertained, but ultimately rejected, a takings claim where a federal court had previously enjoined a paper company from logging its land without an incidental-take permit under the Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.* See *Boise Cascade Corp.* v. *United States*, 296 F.3d 1339, 1341 (Fed. Cir. 2002), cert. denied, 538 U.S. 906 (2003). As the court of appeals explained in this case, however, *Boise Cascade* provides no support for petitioner's position. Pet. App. 30a. First, the paper company in that case indisputably held a property interest in the land, see 296 F.3d at 1343, whereas petitioner here did not, see Pet. App. 29a. Second, the paper company in *Boise Cascade* "accepted the

validity of the injunction" entered by the Article III district court, 296 F.3d at 1344, whereas petitioner's claim here depends on invalidating the Fifth Circuit's judgment that it did not hold imprescriptible mineral servitudes on the parcels of land at issue, see Pet. App. 30a. Indeed, as the court of appeals noted, petitioner's own submissions to the CFC indicate that it was contesting the Fifth Circuit's decision on the merits. See *ibid.* Petitioner's statement in this Court that it accepts "the premise that the judgment in question was validly entered," Pet. 25, does not change the fact that its "takings claim depends on the CFC's finding that the Fifth Circuit's decision was in error—something it has no jurisdiction to do," Pet. App. 31a. In sum, even assuming *arguendo* that a judicial-takings claim could be considered in some circumstances, the courts below correctly concluded that the CFC lacked jurisdiction to consider the claim that petitioner advanced here.

3. Petitioner does not suggest that the courts of appeals are divided over the question that the court of appeals decided here, and there is no other basis for this Court's review.

a. As noted above, no court has ever held that a taking resulted from a federal court's decision. Contrary to petitioner's assertion (Pet. 19), the Federal Circuit's decision in *Smith* v. *United States*, 709 F.3d 1114, cert. denied, 134 S. Ct. 259 (2013), did not "recognize[] that federal judicial action can give rise to a federal judicial takings claim in the" CFC, Pet. 19. Rather, *Smith* held that an attorney's claim that court disbarment decisions had taken his law license without just compensation was time-barred. 709 F.3d at 1115. In reaching that holding, the Court noted that "the theory of judicial takings existed prior to 2010," and that the plaintiff's "taking

claim did not become actionable due to *Stop the Beach*." *Id.* at 1117. *Smith* thus had no occasion to determine the nature or scope of a federal judicial-takings claim.[2]

Likewise, neither of the cases outside the Federal Circuit identified by petitioner recognized a judicial taking resulting from a federal court decision. The Third Circuit in *In re Lazy Days' RV Center, Inc.*, 724 F.3d 418, 425 (2013), held that a bankruptcy-court decision "did not take any of [the litigant's] established property rights." And the Fifth Circuit's unpublished decision in *Sanders* v. *Belle Exploration, Inc.*, 481 Fed. Appx. 98, 103 (2011) (per curiam), declined to consider a judicial-takings claim because it was not presented to the district court. Other federal court of appeals decisions since *Stop the Beach* have similarly rejected judicial-takings claims without engaging the issues raised by the petition. See, *e.g.*, *PPW Royalty Trust* v. *Barton*, 841 F.3d 746, 756 (8th Cir. 2016), cert denied, 137 S. Ct. 1596 (2017); *Gibson* v. *American Cyanamid Co.*, 760 F.3d 600, 626 n.10 (7th Cir. 2014), cert. denied, 135 S. Ct. 2311 (2015); *Vandevere* v. *Lloyd*, 644 F.3d 957, 963 n.4 (9th Cir.), cert. denied, 565 U.S. 1093 (2011).

This Court has also repeatedly declined to review cases concerning judicial-takings claims after *Stop the Beach*. See, *e.g.*, *L.D. Drilling, Inc.* v. *Northern Natural Gas Co.*, 138 S. Ct. 747 (2018) (No. 17-786); *Nies* v. *Town*

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[2] To the extent *Smith* could be read to suggest that *Stop the Beach* definitively endorsed the possibility of judicial-takings claims, that suggestion rests on a misunderstanding of this Court's decision, in which only a plurality of Justices accepted the possibility of judicial-takings claims. See Pet. App. 32a n.6 (addressing *Smith* and explaining that this "Court's decision in *Stop the Beach* that a cause of action for a judicial taking exists is a plurality decision, and therefore not a binding judgment").

of Emerald Isle, 138 S. Ct. 75 (2017) (No. 16-1305); *Edwards* v. *Blackman*, 137 S. Ct. 52 (2016) (No. 15-1343); *Shinnecock Indian Nation* v. *New York*, 136 S. Ct. 2512 (2016) (No. 15-1215). Indeed, this Court declined to review petitioner's judicial-takings claim when petitioner sought review of the Fifth Circuit decision that petitioner asserts was a judicial taking. See Pet. at 30, *Petro-Hunt, supra* (No. 04-190).

b. In the absence of a circuit conflict, petitioner contends (Pet. 24) that this Court's review is warranted to correct "the Federal Circuit's inconsisten[t]" treatment of federal judicial-takings claims. But as explained above, there is no conflict between decisions like *Boise Cascade* and the decision below. See Pet. App. 30a. In any event, it "is primarily the task of a Court of Appeals," not this Court, "to reconcile its internal difficulties." *Wisniewski* v. *United States*, 353 U.S. 901, 902 (1957) (per curiam). And unlike some matters falling within the Federal Circuit's specialized jurisdiction, the question of whether and how federal judicial-takings claims can arise is one on which a circuit conflict could develop. See, *e.g.*, Pet. 29 (discussing judicial-takings claims addressed by the Third Circuit).

c. Finally, petitioner's contention (Pet. 24) that the decision below conflicts with *Stop the Beach* is incorrect. The courts below resolved this case on the same basis that this Court resolved *Stop the Beach*—they concluded that petitioner lacked a "cognizable property interest" in the property allegedly taken. Pet. App. 29a; accord *Stop the Beach*, 560 U.S. at 733 (rejecting claim because petitioner lacked "established property rights" in the property allegedly taken). This Court, moreover, had no occasion to review the question presented here in

Stop the Beach, which arose in a markedly different jurisdictional posture. In *Stop the Beach*, the Florida landowners asserted their judicial-takings claim in seeking direct review of the state-court decision that they considered a taking. See 560 U.S. at 711. Here, petitioner asserted its judicial-takings claim through a separate lawsuit filed in the CFC. Taken to its logical conclusion, petitioner's theory would allow the CFC to review a takings claim alleging that a decision of this Court—for example, a decision overruling a precedent that affects property rights—entitles the losing party to compensation from the federal treasury. Petitioner cites no authority supporting that anomalous result, which is another of the numerous "difficulties that should be considered before accepting the theory that a judicial decision" may "constitute[] a violation of the Takings Clause," and which further weighs against this Court's review here. *Id.* at 734 (Kennedy, J., concurring in part and concurring in the judgment).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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