

No. _____

In The
Supreme Court of the United States

JOHN BARTH,
Petitioner,

v.

UNITED STATES,
Respondent.

On Petition For A Writ Of Certiorari
To The Court of Appeals for the Federal Circuit

PETITION FOR A WRIT OF CERTIORARI

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Questions Presented for Review

1. Can the Court of Federal Claims find that a taking of property occurred as the *effect* of decisions of other federal courts, without detailed review of their proceedings? (b) Did acts of the United States judiciary have the effect of taking private property of the Plaintiff without just compensation?
2. Does the CFC have jurisdiction of claims against the United States involving tort, the denial of constitutional rights to property, equal protection and due process, and laws without explicit provision for money damages?
(b) Does the CFC have jurisdiction over parties other than the United States, where such parties must be joined for determination of the equities?

PARTIES

1. Petitioner John S. Barth is an engineer and philanthropist, able to brief and argue the issues pro se.
2. The United States is the nominal defendant in the Court of Federal Claims, sued for incidental denial of property, due process, and equal protection. Other defendants may be joined for determination of equities.
3. Defendant Elizabeth Kovachevich etc.) is a judge of the US District Court for the Middle District of Florida, and defendant Jacob Travers is a junior clerk of the Supreme Court, sued as individuals for abuse of office.
4. Defendants state of Florida and Sarasota County thereof, employers of defendants below, and Scott Ortner, director of sheriff Animal Services, are sued for extensive and willful violations of the Civil Rights Act.
5. Defendant Kimberly (Carlton) Bonner is a Florida local judge, sued in her individual capacity for abuse of office with intent to obstruct investigation by the Plaintiff of her theft of \$51 million of state funds, and for denial of his constitutional rights.
6. The remaining defendants are original tortfeasors, sued for protracted violations of constitutional rights, state law, and county ordinances prohibiting extreme nuisances. Defendant Starlet McNeely occupies 4317 Brazilnut Ave adjacent to property of Plaintiff, and Chantel Saunders a/k/a Hollman is the daughter of McNeely, both employees of the defendant County, claiming to reside at times with McNeely and sex offender Frederic Hollman. Defendant Herbert Buck resides nearby at 4320 Almond Ave. Defendant Robert Lincoln is an extremely dishonest lawyer representing these defendants and now himself, for extensive perjury and collusion to violate constitutional rights.

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10. *Ruckelshaus v. Monsanto*, 467 U.S. 986, 1019 21
11. *Preseault v. ICC*, 494 U.S. 1, 14 (1990) 21
12. *Lucas v. S. Carolina C.C.*, 112 S.Ct. 2886 (1992)23
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23. *Anderson v. U.S.*, 117 Fed. Cl. 330 (2014) 43

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(further cases are cited in Appellant Brief [100])

- 28. *Marlin v. U.S.*, 63 Fed. Cl. 475, 476 (2005) 41
- 30. *Hildra Lavon Jones III v. U.S.*, 104 Fed. Cl. 92, 99
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- 34. *U.S. v. White Mountain Apache Tribe*, 537 U.S. 465,
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- 35. *Samish Indian Nation v. U.S.*, 657 F.3d 1330, 1335
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- 36. *RadioShack v. U.S.*, 566 F.3d 1358-60 (Fed. Cir.)
- 37. *Rick's Mushroom v. U.S.*, 521 F.3d 1343 39,40
- 44. *Muehlen v. U.S.*, 209 Ct.Cl. 690 (1976)

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(further cases are cited in Appellant Brief [100])

- 50. *McKenzie v. U.S.*, 13-5022 (Fed. Cir. 2013)
- 60. *Brown v. U.S.*, 105 F.3d 621-3 (Fed. Cir.) 39
- 75. *Agee v. U.S.*, 72 Fed. Cl. 284, 290 (2006) (falsely
quotes Tucker Act by deleting most of the text to falsely
associate phrases) 39,40
- 76. *Rick's Mushroom Serv., Inc. v. U.S.*, 521 F.3d at
1343 (Fed Cir 2008) (falsely interprets Tucker Act by
underlining phrases not in fact associated) 39,40
- 77. *Schillinger v. U.S.*, 155 U.S. 163, 167-169, 15 S.Ct.
85, (1894) (falsely claims Tucker Act did not relinquish
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- 78. *Dooley v. U.S.*, 182 U.S. 222 (Supr Ct 1901) 30,40
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89. *Conrad Diehm*, Sarasota Probate,
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91. *Barth v. McNeely*, Sarasota Cnty 2012-006843 10,13
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94. state supr ct, No. 16-2247 (Fl Supr Ct), 10,13,24
95. US Supr Ct No. 16-1247 (2017) 10,13,24,27
96. *Barth v. McNeely*, Fl.MD No. 8:14-cv-118-T-17
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97. appeal No. 14-13182 (11th Cir, 2014);
(Appendix C) 11,22,27
98. US Supr Ct No. 15-92 (2015) 12,22,24,27,28
99. *Barth v. U.S.*, No. 17-635 (Fed.Cl. 2017)
(Appendix B) 12,17-29, 35-45
100. appeal No. 17-2238 (Fed.Cir. 2017)
(Appendix A) 13,17-29, 35-45

Jurisdiction and Orders Entered

Jurisdiction of the United States Supreme Court is conferred by Article III sections 1,2 of the U.S. Constitution; 28 USC §2106 confers jurisdiction to modify or reverse any judgment or order of court lawfully brought for review.

This petition is brought under the Civil Rights Act (42 USC §§1983 to 1986), for violation by the defendants of rights of the Plaintiff guaranteed by the Constitution. The federal courts have jurisdiction under 28 USC §1331 of the claims herein of violations of rights guaranteed by the US Constitution; and under 28 USC §1343(1-3) of all claims herein of deprivations of civil rights in violation of 42 USC §§ 1983-1986; and under 28 USC §1332 of state law claims, as Plaintiff is a resident of Maine, whereas the other defendants are residents or subdivisions of other states.

This petition is timely brought within 90 days of the decision of U.S. Court of Appeals for the Federal Circuit docketed 12/11/2017, in accordance with the Rules of the Supreme Court, Rule 13.1.

<u>Date</u>	<u>Court</u>	<u>Item</u>
12/11/2017	U.S. Court of Appeals, Federal Circuit No. 17-2238	(affirming)
6/14/2017	U.S. Court of Federal Claims No. 17-635	(dismissal)

Provisions of the United States Constitution

Amendment V:

"No person shall...be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation."

Amendment XIV Section 1:

"... No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Laws of the United States

18 USC §§ 1961–1968 Racketeering (RICO)

28 USC §§ 1491, 1495 Tucker Act Appx. E

28 USC Ch. 161 The US as a Party

28 USC §§ 1346(a2),(b), 2671–2680 Tort Claims Appx. G

42 USC §§ 1983–1988 Civil Rights Act

Statement of the Case with Pertinent Facts

1. This action arises from acts of a U.S. district court knowingly preventing the defense of property against taking by third parties, the other defendants, and in so doing causing the United States to act as a principal in the taking of property, and the denial of due process and equal protection of law.

2. In the present case, the Plaintiff was caused years of unemployment and suffering and litigation by state process that dismissed the complaint despite finding no significant errors in his pleadings, no error at all in his final complaint, and at no time evaluated his evidence or argument [90, 91, 92, 93, 94, 95]. That situation resulted from the Plaintiff's investigation of the theft of \$51 million in state funds by the family of a corrupt state judge who took over the case and refused to recuse, who willfully and extremely misapplied state rules with intent to deny process to the plaintiff. This misconduct brought the matter to federal district court.

3. The Supreme Court has held [14] that state process may not deprive a citizen of constitutional rights. But far from vindicating the constitutional rights denied, the plainly prejudiced judge Kovacevich [96] denied all claims in a decision utterly false on each point of law (Appendix D), denying discovery and distorting the standard of allegation to require proof before discovery, falsely claiming that there was not even enough evidence for allegation (despite police reports and full defendant admissions), denying the possibility of unequal protection on the grounds that maybe the longstanding state laws had never been enforced

(although she had enforced the same laws herself, and denied discovery of enforcement records), denying diversity jurisdiction on the grounds that maybe the Plaintiff was a state resident (despite his proof of residency out of state), and other outright lies and travesties of process constituting misconduct, sufficient for the removal of the prejudiced judge.

5. The district court without justification denied all Plaintiff motions to Order Answer (docs 18, 26), to Strike Sham Pleadings of defendants (docs 18, 26), and for Summary Judgment (doc 37), inventing pretexts and failing to respond to superior arguments. The district court showed overriding prejudice, and sought to block discovery and immunize the state for violation of civil rights, by dismissing all civil rights claims without cognizable argument (Appendix D).

6. These issues were appealed with full analysis of the district court errors [97], affording the 11th Circuit opportunity to correct errors. [*Memorandum of Law 1*]. With full knowledge that these acts of the judicial branch would solicit, facilitate and ratify takings of private property, the notorious Atlanta bastion of opposition to constitutional rights instead affirmed the decision with a cut-and-paste non-argument, failing to respond to argument on any of the issues presented.

7. The appeal decision was of poor intellectual quality (Appendix C). It begins with a page of false statements of the facts and the course of proceedings, intended to create prejudice. The unprovoked attacks upon the Plaintiff are called a "neighborhood dispute"; the complaint is slurred as "pro se" despite its superior argument; the facts are misstated to conceal the

background estate dispute; the nuisance at night is falsely stated as five instances instead of over 2000; the several state actions are blamed on the Plaintiff although due entirely to maneuvers by the now-disqualified state judge under investigation for theft of state funds; and the claims are said to “comingle [sic]” although clearly distinct. This is not judicial opinion, it is deliberate abuse of office.

8. The 11th circuit opinion merely copied the meritless arguments of the defendants, a mixture of false statements of fact, false quotations, false statements of law in direct conflict with decisions of this Court, and false citations having no factual connection to the case whatsoever. The argument attacks constitutional rights that the 11th circuit would jealously defend if *they* were the victims, just as the district court judge and sheriff deputies were shown to have in fact done for *themselves*.

9. This Supreme Court was properly petitioned for certiorari, with notice that a takings claim would be necessary if process against the original defendants could not proceed, but certiorari was denied [98] by a corrupt clerk returning petitions on the false claim of type size error despite repeated proofs of correctness. This is likely due to payoffs from specialized printers.

10. The clear effect of such defective federal process, was denial to the Plaintiff of defense of constitutional rights to due process and equal protection of law, and against the taking of private property. Therefore the cause of action now lay against the United States, and action was filed in the Court of Federal Claims (CFC), [99] with clear argumentation and evidence on all points.

11. The original claims and prior proceedings are not the subject of this action: only the unconstitutional *effect* of prior judgments. However, the CFC incorrectly denied jurisdiction (Appendix B), stating that it would have to review the proceedings of other courts, which is not the case here, and stating that it has no jurisdiction of claims involving torts or constitutional rights (despite its long history of deciding such claims), and even claiming that it has no jurisdiction over other defendants. All of these claims are contrary to the clearly stated Tucker Act that created the CFC and stated its jurisdiction, as well as prior rulings by this Supreme Court. The Court of Appeals for the Federal Circuit [100] merely copied these errors with a per curiam affirmation (App'x A) that requires correction.

Facts of the Underlying Cause of Action

12. The original defendants have since 2011 sought to seize the Plaintiff's home as a result of their estate dispute with the prior owner, having been ejected therefrom by probate court [89]. They then enclosed part of his land for over one year, forcing a lawsuit to eject them again [90], and sought for five years to force the unoffending Plaintiff from his home by vandalism, perjury, slander, solicitation of crime, assault, and intolerable nuisance, keeping large dogs outside to bark through the night, deliberately forcing the Plaintiff to prosecute more state civil actions [91-95]. The nuisance noise awakened the Plaintiff several times every night, more than two thousand times since 2012, and has crippled the Plaintiff by over five years of severe sleep deprivation, causing adverse health effects, inability to function as an engineer, and laborious efforts to defend basic rights to liberty and property. This extreme abuse

is an internationally recognized form of torture, denying his liberty and the free use of his property. These acts are evidenced by five Sheriff reports despite their reluctance to make such reports, and the defendants have admitted in sworn interrogatories both the facts of causing the nuisance, and their intent to awaken persons in nearby homes. There is no dispute as to these facts, which were sufficient for summary judgment.

13. There is no citizen, no judge, no human being who would not be forced to make the same defense as the Plaintiff under these circumstances, and Plaintiff has shown that the same district court judge has done so herself when *she* was the victim, that she has enforced the same laws for female victims, and that Sheriff deputies have enforced the same laws with violence when *they* were the victims. Noise nuisances at night have been prohibited by law since Roman times, are prohibited in every culture throughout history and around the world, and are prohibited by Common Law, and by statute and ordinance in every state, including two Florida statutes and two County ordinances. Such laws have been enforced for millennia.

14. Defendants McNeely and Saunders/Hollman are employees of the defendant county, with many relatives in its Sheriff department. Defendant County, acting through its Sheriff department, denied the Plaintiff equal protection of law by selective enforcement of four nuisance statutes and ordinances, denied the Plaintiff liberty and property without due process of law by reckless disregard of need and mistreating, and by falsification and concealment of records of disparate enforcement, and has acted in collusion with these defendants in violation of 42 USC §§ 1983-1986.

15. During state and federal action, these defendants continued these torts, and conspired to deny the Plaintiff due process and equal protection by filing spurious motions in lieu of Answer. A state judge under investigation by Plaintiff, in the corrupt state grant of \$51 million to her family ranch without public benefit, obstructed state action by extreme abuse of rules to deny due process. When the Plaintiff changed venue and found a sympathetic judge, his political party forced his retirement, promoted the corrupt judge to assign her the case, and she continued to deny due process, and refused to recuse, bringing the matter to federal court.

Summary of the Argument

16. The dismissal order of the Court of Federal Claims falsely represents the cause of action, the plaintiff, the Complaint and Memoranda of Law, the course of proceedings, and the basis of jurisdiction. This outright lying and prejudiced decision are exactly the means by which the United States was made a principal in the violation of rights guaranteed by its own Constitution.

17. The level of juridical argument of the decision under review is remarkably poor, the lower tier of a double standard serving this judge as an excuse for prejudice. Typical of inadequate arguments, the decision seeks first to disparage the complaint and the Plaintiff, claiming these to be a mere neighbor dispute presented pro se. But in fact the Complaint and extensive Memoranda of Law provide clear argumentation and documentation on points of broad significance, and are argued on a far higher legal plane than the decision.

18. The decision consists entirely of unsupported assertions that the CFC should have almost no jurisdiction whatsoever, in stark contradiction of the plain language of the Tucker Act at every turn. In fact the jurisdictional grant of the Tucker Act is very broad, and the CFC must not be allowed to pretend otherwise, or to dismiss cases without justification.

19. With no argument whatsoever in the judgment or any of its citations, the decision under review denies jurisdiction of all claims of damages caused by violations of constitutional rights, property takings, and torts, and denies jurisdiction of defendants other than the United States. Each pathetic excuse is dissected completely herein, and shown to rest upon chains of citations leading only to unsupported assertions, two deceitful misquotes of the Act, and one decision reversed by this Court well over a century ago. No reason whatsoever was produced, not even a poor argument, for denying jurisdiction on *any* of the grounds asserted.

20. Because several recent cases are cited in the judgment containing these egregious errors, they are briefly but fully traced herein, so that they do not further pollute the law as precedents. It is time to correct these clear jurisdictional errors of the CFC and the many problems that they have caused.

21. The problem before the lower courts was not to decide *whether* to enforce the rights of the Plaintiff, but to *find the legal path* to do so. They were shown the correct path, and have sought instead to subvert the Constitution and Civil Rights Act, and know that their arguments are false and readily refuted on all points.

Reasons for Certiorari of Question 1: Federal Takings

Question 1. Can the Court of Federal Claims find that a taking of property occurred as the *effect* of decisions of other federal courts, without detailed review of their proceedings? (b) Did acts of the United States judiciary have the effect of taking private property of the Plaintiff without just compensation?

Review of Other Court Proceedings Not Required

In certain classes of cases, the CFC need not review the basis of other federal court decisions, nor examine their proceedings, to evaluate a claim for damage caused by incidental effects of a decision.

This claim is not based upon the question of whether substantive provisions of law have been correctly applied in district court action. As in Boise Cascade Corp. v. U.S. [1], this court is not called upon to review the merits of the district court's decision in order to decide the merits of the claim. This Court held that:

However, resolution of this case did not require the Court of Federal Claims to review the merits of the district court's order enjoining Boise from logging without a permit. Boise has accepted the validity of the injunction, and only filed suit in the Court of Federal Claims to determine whether the Service's assertion of jurisdiction over it by seeking and obtaining the injunction worked a taking of its property that requires compensation under the Takings Clause. Whether or not the

government action took Boise's property was not before the district court, nor could it have been. Because Boise seeks over \$10,000 in compensation for this alleged taking,[4] the Court of Federal Claims is the sole forum available to hear Boise's claim. See 28 U.S.C. § 1346(a)(2) (2000). Because the takings claim does not require the trial court to review the district court's actions, there is no constitutional defect in the Court of Federal Claims' assertion of jurisdiction over this case.

For explanatory purposes, the complaint before the CFC summarizes errors of the district court having the effect of property taking. But federal taking was not a claim before that court, nor could it have been. The complaint does not seek review of those proceedings, and so states in several places. Because over \$10,000 in compensation for taking is sought, the Court of Federal Claims is the sole forum available to hear this claim (Appendix F).

Regardless of the argument of those decisions, the Plaintiff's constitutional right against taking of his property by the other defendants remains in violation, as well his rights to due process and equal protection of law, and these rights cannot constitutionally be dissolved by any court, nor alienated by any act of the Plaintiff. That cause of action now lies against the United States because its act of denial of process obstructs the defense of property rights by the Plaintiff, and thereby effects a taking of private property.

When judicial process denies defense against the taking of property, by denial of all process on a claim of property taking by third parties, it is plain that the taking was the result either of error, or of a process correct in itself as in Boise [1] but nonetheless having

the effect of property taking by ratification and enforcement. That decision does not require review of other proceedings; it requires only review of the effects thereof. The CFC may readily judge such a claim upon the evidence.

CFC has Jurisdiction of Unconstitutional Effects

There are situations in which decisions of a district or circuit court may work a taking of property without a judgment that taking should occur. Examples include the effect of an injunction as in *Boise* [1], damages due to a judgment later overturned, or errors of procedure causing injury. Because the United States is not an original party, such damages are not within the original claims before those courts, and where the damage exceeds \$10,000, it is within the exclusive jurisdiction of the Court of Federal Claims.

In criminal matters, persons unjustly convicted and imprisoned may maintain an action in the CFC for damages against the United States under 28 U.S. Code § 1495 without review of prior proceedings.

In copyright infringement by the United States, where property is taken, the exclusive forum for damage claims under 28 U.S. Code § 1498 (b) is the CFC.

Disclosure in error by a district court of trade secrets, financial information, passwords, or other valuable information under seal can cause a taking of property of the parties. No review of prior proceedings is necessary: only the improper effect of the proceeding is to be judged, and again the proper forum is the CFC.

Similarly, process in another federal court cannot be presumed to have left no issue of equities unresolved,

especially where all process was denied. As in Boise [1], the issues in district court may not include the matter of property taking because that is only the potential effect of a district court decision, and where damages exceed \$10,000, such a claim could not have been asserted in district court. Such a claim can be asserted only after district court proceedings, and only in the CFC.

Finally, even where no error is made by a court, the result may have demonstrably unjust effects, and the judicial branch should do justice. To assume that a plainly inequitable result must be just punishment of the injured party, is an indefensible non sequitur, of which no good citizen could wish to be the cause.

Compensation of all classes of damages caused by judicial process is the responsibility of federal government. This Court noted in Palazzolo [9] that:

These inquiries are informed by the purpose of the Takings Clause, which is to prevent the government from forcing some people to alone bear public burdens which, in fairness and justice, should be borne by the public as a whole. (*Palazzolo v. Rhode Island*, (Supreme Court, 2001), citing *Armstrong v. United States*, 364 U.S. 40, 49, 1960)

Therefore the simple argument that property taking could not have occurred, simply because this resulted from procedure in another court, is plainly false.

To avoid unwarranted review of rulings by other federal courts, this Court may simply establish a clear standard of judgment requiring a plainly inequitable result. Cases meeting this standard may be useful in correcting systemic errors of judgment or procedure, but

those errors need not yet be found, for the CFC to see and correct the inequitable result.

Denial of Jurisdiction Would Deny Any Forum

In this case, the CFC cannot presume that a district court or court of appeals would fairly judge a case against themselves, and these courts have already held that they made no error. Hence these courts cannot be the forum for such a tort claim under the federal Tort Claims Act. Cases against a component of the judicial branch for denial of constitutional right must therefore be heard by the CFC.

Because this Tucker Act claim based upon constitutional right exceeds \$10,000, it is within the exclusive jurisdiction of the Court of Federal Claims.

Only unequivocal evidence could permit a court to attribute to Congress the deliberate intent to deny its citizens any forum for vindication of their constitutional rights. The CFC decision effectively asserts that it can deny any jurisdiction of constitutional obligations under the Fifth Amendment's Just Compensation Clause, which contradicts decisions of this Court.

Because of serious constitutional concerns raised by withdrawal of jurisdiction for Takings claims, this Court has repeatedly held that only "an unambiguous intention to withdraw the Tucker Act remedy" will suffice, *Ruckelshaus v. Monsanto Co.* (1984) [10], and that congressional intent to do so must be "clear and unmistakable," *Preseault v. ICC* (1990) [11].

The US is Principal in the Taking of Property

The federal district court complaint [96] was founded on denial of due process and equal protection by the defendant county, ratifying and enabling the knowing and willful denial by the original defendants of the use of property, by means of extreme nuisance, harassment, and other torts. The failure of the federal district [96] and Eleventh Circuit courts [97] to correctly apply standards of judgment of dispositive motions resulted in dismissal without cause, which obstructed the defense of private property against public taking, a federal ratification of denial of the use and value of property, with consequent damages.

Had the district court fairly applied the existing standards of dispositive motions, or had the Eleventh Circuit corrected the obvious errors upon appeal, the action might have proceeded in district court with no residual constitutional claim. In this case, the prejudiced Tampa district judge deliberately misstated the standards of allegation of fact, demanding final proof before discovery (Appendix D), simultaneously denying discovery, an all-purpose excuse to dismiss any action on the basis of prejudice. The Jim Crow Eleventh Circuit merely pasted that excuse into its affirmation (Appendix C), and the Supreme Court declined certiorari [98], allowing the legal and factual falsehoods of a prejudiced district judge to stand without review. This exhaustion of state and federal remedies, obstructing defense of the constitutional rights in district and circuit courts, left the residual claim of taking of private property by federal procedural error.

The claim of property taking may be argued as (1) a categorical taking under *Lucas v. South Carolina*

Coastal Council (1992) [12], based upon denial of use; (2) an exaction-type taking under *Agins v. City of Tiburon* (1980) [13], because denial of use did not substantially advance a legitimate government interest; or (3) a regulatory taking under *Penn Central* (1978) [5].

To determine whether there is a taking by application of law or regulation, three factors are applied as set forth by the Supreme Court in *Penn Central* [5]: (1) the character of the impairment of use of the property, (2) the economic impact of the government process as applied to the property, (3) the property owner's distinct investment backed expectations of value of the property. In this case, (1) the impairment prevented residential use of this residential property, (2) the impairment is of the full value of the property, with the consequent damages in preventing the employment of the Plaintiff for a period of years, and (3) the property owner had the full investment backed expectation of the residential value of the property. Therefore all criteria of property taking by application of law or regulation are met.

Ripeness for federal takings action requires (1) a final decision having the effect of taking the property, (2) the exhaustion of administrative remedies, and (3) exhaustion of state remedies. The Supreme Court held in *Palazzolo* [9] that this does not require exhaustion of all possible alternative uses and procedures:

While a landowner must give a land-use authority an appropriate opportunity to exercise its discretion, once it becomes clear that the agency lacks discretion to permit any development, or it is clear the permissible uses of the property are known to a reasonable degree of certainty, a takings claim is likely to have ripened.

In this case, (1) the final decision of the Supreme Court denying certiorari [98] was made in 2015, (2) administrative remedies were exhausted prior to litigation, and (3) state remedies were exhausted in [94] and federal remedies were exhausted in [95, 98]. Therefore the federal takings issue is ripe.

A. Obstruction Of Defense Against Property Taking Is Property Taking

The obstruction of defense against taking of property has been recognized as property taking by the United States judiciary, for all means of defense of property against taking, and for all classes of entities other than the United States which might obstruct such defense, including the judiciaries of foreign governments, and for all components of the United States government which might obstruct such defense, including the district courts [1]. This is shown in detail in the Plaintiff *Brief of Appellant* in the Federal Circuit appeal [100], with many citations of historical cases.

The United States has long recognized that obstruction of the defense of private property against taking, is in itself the taking of private property. The defense obstructed may be the legal defense, private defense, or military defense of the property against taking, or defense against damage by severe weather. The United States has held responsible domestic and foreign individuals and entities, local and state governments, federal agencies, foreign agencies and military forces, and even foreign judiciaries for takings of private property by obstruction of defense. The United States has held in *Boise* [1] that the act of its

own district courts in granting an injunction, denying the legal defense of private property against taking, effected a taking of private property. Any argument that the U.S. may deny responsibility for obstructing the defense of the property of U.S. citizens against taking by third parties, is clearly unfounded.

B. Direct and Substantial Involvement of the United States

To establish taking by the U.S. acting through a third party, the Supreme Court has required showing that the taking or damage occurred as a result of "direct and substantial" involvement of the U.S. in the third party acts [7, 8 at 93].

The act of a sovereign power, including the United States, or its agents or magistrates in obstructing the defense of property against taking or damage by a third party is "direct and substantial involvement" in the damage. Where the U.S. acts to encourage or ratify the taking of private property by a third party, even in a foreign country, it is a principal in the taking and liable for compensation. This is shown in detail in the Plaintiff *Brief of Appellant* in the Federal Circuit appeal [100], with citations of historical cases such as *Turney* [7].

In every case of obstruction by a sovereign power of the military, private, or legal defense of property of U.S. citizens against taking or damage by third parties, the United States has found the sovereign power to have had direct and substantial involvement in the taking, and where no law or treaty held, has responded with military force. This includes both historical and very recent cases of obstruction by magistrates of foreign powers of the legal defense of U.S. property. The

United States has accepted reciprocal responsibilities under treaties and arbitration, that obstruction of the military, private, or legal defense of foreign property against taking or damage by third parties or natural processes operates as "direct and substantial" involvement of the *United States* therein (see treaty citations [100]). Finally, United States law obligates individuals and private entities as principals in the taking or damage of property by such obstruction of its defense, as "direct and substantial" involvement, and the United States has held that it is obligated in the same manner as an individual in such takings.

Therefore the United States in the same manner as an individual, private entity, or foreign power, has "direct and substantial involvement" where it obstructs the military, private, or legal defense of private property against taking or damage by third parties, and is liable for just compensation for the damage under established law. Where the United States acts explicitly to prevent the legal defense of certain private property against ongoing damage by a third party, it solicits, facilitates, and ratifies the damage to property as a principal, and is liable for just compensation.

In this case, the US ratified a state and private taking of property without just compensation, where it had the constitutional authority to protect the right of the Plaintiff, and the issue and evidence was before it.

In denying process against property taking by the other defendants, the errant judge intentionally denied constitutional rights. Like the guard of an armored truck who prevents a fellow guard from defending, the power of the judicial office was used to obstruct the defense of private property against taking or damage by third parties, and made the United States a principal in the damage. Even if the errant judge could not be held

to the duty of a guard, the judicial branch cannot claim to have been an neutral bystander, nor an accessory, because without its powers and its decision the damage could not have been done. In obstructing defense, the errant judge used the judicial power to defeat the rights of the people against the taking of property.

The denial of defense amounts to a regulatory taking by the judicial branch as defined by this court in *Palm Beach Isles Associates v. U.S.* [4] (Fed. Cir. 2001) and the cases cited therein. The criteria of regulatory taking established by the Supreme Court in *Penn Cent. Transp. Co. v. New York City* [5] are (1) denial of an economically viable use of the property; (2) investment-backed expectation of the denied use (likelihood that property would be used in the manner denied); and (3) the right balance between private rights and government need (more properly a criterion of eminent domain taking rather than whether a taking has occurred). This case clearly meets these criteria in that (1) the viable residential use of the residential property of the Plaintiff was denied, (2) the residential use was a reasonable investment-backed expectation, and (3) there was no government need whatsoever warranting denial of private rights.

The decision of the Tampa district court denying all claims, was severely flawed in every point of law and was appealed on this basis, affording the judicial branch ample notice and opportunity to correct error. (see *Memorandum of Law 1*). The Court was notified that a takings claim against the government would be necessary if process against other defendants was denied [95, 98]. With full knowledge that these acts of the judicial branch would solicit, facilitate and ratify takings of private property, the Eleventh Circuit court of appeals affirmed the decision without argument [97],

and the Supreme Court denied certiorari [98]. The question whether the judicial branch decisions accord with its own doctrines is not at issue, but those decisions intentionally prevented the Plaintiff's defense of the constitutional right against taking of his property. That right cannot be dissolved by any act of court, nor alienated by any act of the Plaintiff, but is now violated as the result of acts of the United States.

Without those acts of the judicial branch, the Plaintiff could have defended his constitutional rights in property. Amendment V obviously does not permit government evasion by authorizing third parties to take property. There is no wordplay or judicial doctrine that can nullify rights clearly set forth in the Constitution.

The Constitutional Convention and the ratifying States were very much aware of these relationships when they prohibited such acts by the federal government. The founders of the nation would have been aghast to hear of interference such as this by the judicial branch with the defense of rights so clearly and unequivocally established in our supreme law.

Conclusion on Certiorari of Question 1

In conclusion, every individual, private entity, state, and foreign power which obstructs the legal, private, or military defense of property of the United States or its citizens against taking or damage by third parties or natural processes, is and always has been held responsible by the United States for the damage to property. When *its own property* is taken by third parties under judicial protection of a sovereign power, the United States has held the sovereign power responsible, and has used or threatened military force to protect its own property rights.

The United States is responsible for taking or damage of private property of its citizens in the same manner, and is explicitly required to make just compensation by Amendment V of the Constitution.

To establish a double standard, by which the United States could with impunity deny judicial process to its citizens against third parties taking their private property, would be a travesty of judicial process.

In this case, the United States acting through the judicial branch has taken private property by preventing its defense against third party damage, and must make just compensation. The claim is based upon the Constitution, requires no review of prior proceedings, enumerates the statutory basis for money damages, and was properly brought before the Court of Federal Claims. Therefore the order to dismiss and its affirmation were improper and should be reversed.

The plaintiff should be justly compensated for the taking of property interests by the federal government. The case should be tried de novo or remanded to the CFC, with instructions for compensation proceedings in the light of this Court's findings.

Jurisdiction of the CFC Under the Tucker Act

Jurisdiction in suits against the United States was conferred on the Court of Claims by 10 Stat. 612 (1855), and extended by the Tucker Act of 1887 (amended and codified at 28 USC § 1491):

The United States Court of Federal Claims shall have 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.

The Court was renamed the U.S. Court of Claims (Ct.Cl.) in 1948, the U.S. Claims Court in 1982, and is presently named the Court of Federal Claims (CFC).

The *Schillinger* [77] decision in 1894 refused to admit that the Tucker Act relinquishes sovereign immunity of the United States against prosecution for injuries to citizens, merely asserting without argument that the Act must exclude tort claims on the “general principle” of sovereign immunity. That denial preceded recognition by this Supreme Court that the Tucker Act extends jurisdiction to nearly all claims against the United States. [80] In 1901 this Court recognized in *Dooley v. United States* [78] that the Act clearly includes tort claims, contract claims and all non-tort claims for specific damages, and confirmed this in 1903 in *United States v. Lynah*. [79] The citation in recent decisions of the unfounded, isolated and superceded 1894 *Schillinger* decision is dishonest.

The Jurisdiction of the CFC Is Broader Than That Of Other Federal Courts

The jurisdiction of the CFC is the same as that of all other federal courts, except that the Tucker Act extends this jurisdiction to claims against the United States, of the types listed in the Act. The United States Constitution Article III provides that:

Section 1. The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish.

The Supreme Court is created by Article III itself; all other US courts are Article III courts created by Congress from which the CFC cannot be distinguished in constitutional authority. The CFC and its predecessor were ordained and established by Congress in its acts of 1855 and the 1887 Tucker Act under this same Article III authority as the district and circuit courts.

Article III provides that the courts established by Congress have the same fundamental powers:

Section 2. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; ...

These are therefore the powers of all US courts including the CFC. Any “laws of the United States” may apportion judicial power among the courts, as the Tucker Act provides further powers of the CFC to hear claims against the United States.

No other legislation restricts the powers of the CFC, and no act of Congress authorizes specialization of courts to such a degree that a court cannot handle cases involving multiple claims, defendants and remedies, and forcing cases to be separated, limited in claims or remedies or defendants, or shuffled from court to court. Any such pretense is without foundation in the Constitution or federal law.

For example, in *U.S. v. Sherwood* (1941) [22] the court incorrectly asserted that:

The Court of Claims is a legislative, not a constitutional, court. Its judicial power is derived from the Congressional power "to pay the debts ... of the United States," ... which it may exercise through nonjudicial agencies.

This argument applies to some administrative "courts" but is incorrect as to the CFC, as shown above. Citations based on such precedents are groundless.

No other legislation restricts the powers of the CFC. Therefore the jurisdiction of the CFC includes the jurisdiction of all federal courts as to claims, remedies, and defendants, and is extended by the Tucker Act to those claims against the United States listed therein.

The "Tucker Act Shuffle" Should Be Ended

The Tucker Act merely provides a jurisdiction for cases that *include* claims against the United States; it does not require splitting cases so that litigation of related defendants and issues occurs in other courts.

No act of Congress requires specialization of courts to such a degree that a court cannot handle cases

involving multiple claims, defendants and remedies, forcing cases to be separated, limited in claims or remedies or defendants, or shuffled from court to court.

The problems created by CFC attempts to make its jurisdiction narrower than the issues of many cases are unjustifiable, and were not intended by Congress, as shown by the clear phrasing of Article III and the Tucker Act. These schemes serve no public purpose, and have resulted in the “Tucker Act Shuffle” involving traps of timing and preclusion that waste litigation resources, as well as the resources of Congress in attempts to stop this misconduct.

The Tucker Act does not limit jurisdiction over other defendants, and plaintiffs should not be forced to shuffle cases involving other defendants between district courts and the CFC. Where a district court has willfully caused property taking, the district court cannot be a proper forum for the claim.

The Tucker Act does not limit CFC jurisdiction of constitutional rights claims, or tort claims, and the CFC should not be allowed to split jurisdiction of such cases.

Similarly, the CFC denied authority to grant equitable or declaratory relief in *U.S. v. King* (1969) [20], forcing cases requiring injunction or declaratory judgment to be split between district court for that relief, and the CFC for monetary relief. Often one court cannot decide on the relief sought until the other court has determined relief within its jurisdiction, setting traps of timing and preclusion. Citizens with limited resources now face unreasonable confusion and costs in being shuffled back and forth. In *National Center for Mfg. v. U.S.* (1997) [21], this Court stated,

This appeal requires us to engage in the wasteful exercise of deciding not how a dispute should be

resolved, but what court should be responsible for resolving it. As Justice Scalia pointed out in a similar setting, "nothing is more wasteful than litigation about where to litigate, especially when all the options are courts within the same legal system that will apply the same law." *Bowen v. Massachusetts*, 487 U.S. 879, 930, 108 S.Ct. 2722, 2750, 101 L.Ed.2d 749 (1988)

Efforts by the House Committee on Judiciary to clarify jurisdiction ended in a Senate filibuster blocking the Tucker Act Shuffle Relief Act of 1997 (H.R. 992) to allow monetary and injunctive relief in either district court or the CFC; and to clarify that the CFC shares jurisdiction of claims under the Federal Tort Claims Act.

But it is not necessary for Congress to amend the Tucker Act: this problem was created by the CFC in pretending that it has very limited jurisdiction, and is best solved by simply ruling that the Act does not say what it does not say. The Tucker Act in no way limits the CFC to narrow claims and one defendant; it merely provides for CFC jurisdiction of cases involving the United States.

This finding on CFC jurisdiction will solve the problem of joinder of other defendants, permitting the United States to apportion costs to defendants directly involved in property taking.

Reasons for Certiorari of Question 2: Jurisdiction

Question 2. Does the CFC have jurisdiction of claims against the United States involving tort, the denial of constitutional rights to property, equal protection and due process, and laws without explicit provision of money damages?

(b) Does the CFC have jurisdiction over parties other than the United States, where such parties must be joined for determination of the equities?

The Tucker Act Does Not Require Explicit Provision for Money Damages

The judgment under review claims (p.4, 6) that the CFC does not have jurisdiction of claims not based upon a “money-mandating” statute, seeking to nullify nearly every provision of the Tucker Act and deny that it says what it says, that the United States relinquishes sovereign immunity in all claims against itself based upon its Constitution, laws, and regulations. Of course there is no mention whatsoever of such a restriction in the Tucker Act. No argument is made in the judgment under review, nor in any of the cited cases; this is a manufactured excuse.

The judgment under review cites (p.4, 6) Jones v. United States (2012) [30] to deny jurisdiction of constitutional rights claims on the grounds that they are not money-mandating. But this case merely echoes the CFC assertion, citing further cases that do the same, sometimes citing other cases that do the same. No argument whatsoever lies behind these citations, just the same groundless assertion of the CFC. These cases

are traced in detail in the Plaintiff *Brief of Appellant* for the Federal Circuit appeal under *The Tucker Act Does Not Require Explicit Provision for Money Damages*.

This Supreme Court held in United States v. White Mountain Apache Tribe, 2003 [34] that :

The Court rejects the Government's ... assertion that an explicit provision for money damages is necessary to support every Tucker Act claim ...if a specific provision for damages is needed, a trust obligation and trust law are not.

Of course the same argument applies far more strongly to the trust obligation of federal government created by the Bill of Rights. The people of the United States demanded the Bill of Rights not as a vague declaration, or even a property trust agreement, but to provide in the very structure of federal government a mandate for relief for damages in the event of their violation. If this did not mandate whatever compensatory, injunctive, and declaratory relief was required, there would be no need for the Bill of Rights, and such an argument is not cognizable or honorable under United States law.

No such argument has been made in the judgment itself, and there is nothing in the Tucker Act that in any way implies such a restriction. Therefore the CFC has jurisdiction of all categories of claims listed in the Tucker Act, with no restriction as to a "money-mandating" provision of law.

The Tucker Act Does Not Exclude Constitutional Rights Violation Claims

The judgment under review falsely claims (p.4, 6) that the CFC has no jurisdiction in cases of violation by the United States of constitutional rights, including Due Process and Equal Protection, although that jurisdiction is clear *prima facie* in the language of the Act:

The United States Court of Federal Claims shall have 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.

It could not be more clear that this provides jurisdiction over claims of violation of constitutional rights.

As shown in detail in the Plaintiff *Brief of Appellant* for the Federal Circuit appeal under *The Tucker Act Does Not Exclude Constitutional Rights Violation Claims*, this obvious CFC error is based upon a string of immaterial citations leading to no argument of that point whatsoever, but only the unsupportable claim that a “money-mandating” statute is required.

The CFC has set about the subversion of the Tucker Act, which defines its primary responsibility, in pursuit of the improper goal of denying responsibilities of the United States to its own citizens. This Court has a profound duty to the people of the United States to correct these false assertions by the CFC that it has no jurisdiction for damage claims under the Civil Rights

Act and the Bill of Rights, despite the clearest possible statement of the Tucker Act that it does provide that jurisdiction as a primary responsibility of the CFC.

The Tucker Act Does Not Exclude Tort Claims

The Tucker Act of 1887, 28 U.S. Code § 1491(a)(1) extended the Act of 1868, permitting the Court of Claims to handle all types of tort, contract, and most non-tort claims against the United States. This is clear *prima facie* in the language of the Act:

The United States Court of Federal Claims shall have 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.

Nothing could be more plainly false than the assertion of the decision under review (Appx. B) that this excludes all tort claims, simply because the last phrase adds non-tort claims.

As shown in detail in the Plaintiff *Brief of Appellant* for the Federal Circuit appeal under *The Tucker Act Does Not Exclude Tort Claims*, this obvious CFC error is based upon a string of immaterial citations that lead upon close study to no rational argument, but to three cases, one of which is merely a long-superseded early rebellion against the Act overturned by this Supreme Court over a century ago, and two cases which

deliberately misquote the one-sentence Act to deceive the casual reader, all acts of willful and profound abuse of judicial office.

The cases cited rely upon a long impressive list of 24 citations in hope that subsequent judges will not trace through and read all of the cases, to discover their complete lack of rational basis.

Certain citations traced in the Brief ultimately refer to *Agee v. U.S.* (2006) [75] which **falsely quotes the Tucker Act** with clear intent to distort its obvious meaning: “United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim against the United States... not sounding in tort” and cites only *Brown* [60] shown to be immaterial. These citations provide no argument and are immaterial.

Certain citations traced in the Brief ultimately refer to *Rick’s Mushroom Serv., Inc. v. U.S.* (Fed. Cir. 2008) [76] which again **deceitfully underlines part of the Tucker Act** phrase “upon any express or implied contract with the United States” and the final phrase “in cases not sounding in tort” and pretends to have convinced itself that the final phrase applies to all prior types of claims, rather than the final category. These citations provide no argument and are immaterial.

Finally, certain citations traced in the Brief ultimately refer to *Schillinger v. U.S.* (1894) [77] which merely asserted without argument in 1894 that the 1887 Tucker Act must exclude tort claims on the “general principle” of sovereign immunity, despite the explicit relinquishing of sovereign immunity by the Act, which preceded the 1901 recognition by this Supreme Court that the Tucker Act does in fact extend jurisdiction to tort claims, including property takings without implied contract.

In *Dooley v. United States* [78], the Court concluded that four distinct classes of cases were contemplated by the statute, so that the words "not sounding in tort" were referable only to the class of cases which were for "damages, liquidated or unliquidated."

See *Federal Liability for Takings and Torts* [80].

This was confirmed in the 1903 *United States v. Lynah* [79] concurring opinion that the words "not sounding in tort" do not apply to the prior clauses, so that "claims founded upon the Constitution may be prosecuted in the Court of Claims, whether sounding in contract or in tort ..." [at 745]. Modern citation of *Schillinger* (1894) [77] is therefore dishonest.

The entire list of citations in the judgment under review, concerning tort claims, lead ultimately to one false assertion (in *Schillinger* [77]) superceded over a century ago, and two deceitful misquotations (in *Agee* [75] and *Rick's Mushroom Service* [76]), pretending that the final phrase of 28 U.S. Code § 1491(a)(1) somehow excludes tort claims, when in fact it *adds* to the several categories of tort and contract claims, a category of non-tort claims. These three deceitful cases are the ultimate sources of error in this decision, on tort claims.

There can be little doubt that these intervening decisions were made with intent to subvert the Tucker Act. In any case, the tort claim denial argument of the judgment under review has no merit whatsoever.

RICO Claims Are Not Excluded from Jurisdiction

The judgment falsely claims (p.6) that the COFC has no jurisdiction in cases of violation of RICO, despite the incontrovertible statement of the Act that it has

jurisdiction “upon any claim against the United States founded either upon the Constitution, or any Act of Congress.” Tort claims that arise from criminal acts remain tort claims as to the injured party.

Federal Tort Claims Act Does Not Provide District Court Jurisdiction

According to the *Manual Of Federal Practice* [81], the Federal Tort Claims Act (FTCA) 28 U.S.C. §§ 2671-2680 does not provide jurisdiction of district courts over claims against the United States based upon acts of government employees that are discretionary acts [2], misrepresentation [30], or intentional torts [28], and therefore district courts are not the proper jurisdiction of the present claims against the United States for judicial procedure causing property taking and denial of constitutional rights. The FTCA provides that:

Individuals who are injured or whose property is damaged by the wrongful or negligent act of a federal employee acting within his or her official duties may file a claim with the government for reimbursement for that injury or damage. To state a valid claim, the claimant must demonstrate that:

1. his property was damaged by a federal government employee;
2. the employee was acting within the scope of his official duties;
3. the employee was acting negligently or wrongfully; and
4. the negligent or wrongful act proximately caused the damage complained of.

The claimant must also provide documentation establishing that his claim satisfies all the elements of the FTCA. The procedures laid out here apply only to claims arising from alleged conduct of officers and employees of the federal judiciary.

According to the *Manual of Federal Practice* [81]:

Under the FTCA, federal district courts may entertain tort claims for damages against the United States based on the actions of government employees in cases in which the United States has not abrogated its sovereign immunity under the Tucker Act. The FTCA's consent to be sued and waiver of sovereign immunity apply only to cases in which "a private person" would be liable.

Therefore the FTCA does not provide jurisdiction of district courts in the present case.

Tucker Act Does Not Exclude Other Defendants

The decision under review makes no argument or material citation on jurisdiction of the CFC as to defendants other than the United States. It claims (p.4):

the Court of Federal Claims only has jurisdiction to hear claims against the United States. United States v. Sherwood, 312 U.S. 584, 588 (1941) ... As this court explained in Anderson v. United States, the Court of Federal Claims lacks "Jurisdiction over any claims alleged against states, localities, state and local government entities, or state and local government officials

and employees; jurisdiction only extends to suits against the United States itself."

But there is no such language in Anderson [23]. That decision (by the same CFC judge) involves constitutional rights claims, and merely cites the cases shown above to provide no argument. The CFC judge simply cited her past unfounded decision, calling this "well settled law."

The Court held in United States v. Sherwood (1941) [22] that

Jurisdiction of a federal court to award damages for breach of contract by the United States is defined by the Tucker Act, and is restricted to suits against the Government alone...

but offered no argument or citations. In fact the Tucker Act plainly contains no limitation upon defendants:

The United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim against the United States ...

No argument has been made that this somehow prevents the joinder of other defendants necessary to the determination of equities. Any such intent would require phrasing such as "only against," or "United States only," which does not appear in the Act. So the citations are again deceitful and immaterial, and the point is not argued at all.

The exception provided by 28 U.S. Code § 1500, that the CFC does not have jurisdiction of "any person ... acting... under the authority of the United States" might preclude joinder of judicial branch employees

Kovachevich and Travers, but does not preclude termination or disciplinary action.

If the CFC only compensated claims as to the United States, and then transferred the case to a district court with instructions as to the equities of other defendants, it would have to balance the equities in advance anyway, and should handle the entire process.

In cases like the present one, wherein the district courts have caused a federal taking of property by others, the exclusion of other defendants unfairly burdens the public, which can be relieved by joining the other defendants to compensate plaintiffs.

Therefore the CFC should join parties as needed to afford complete relief, unless the United States undertakes to compensate Plaintiffs for all injuries.

Conclusion on Certiorari

The United States acting through the judicial branch has taken private property by preventing its defense against third party damage, and must ensure just compensation in accordance with Amendment V. The claim is based upon the Constitution, requires no review of prior proceedings, enumerates the statutory basis for money damages, and was properly brought before the Court of Federal Claims. Therefore the order to dismiss was improper and should be reversed.

If the other defendants are not joined, the plaintiff should be justly compensated for the taking of property interests by the federal government. The case should be tried de novo by this Court or remanded to the Court of Federal Claims, for compensation proceedings in the light of this Court's findings.

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OATH

I hereby certify that all statements in the foregoing document are true and correct to the best of my knowledge and belief, and that service has been made in accordance with Rule 29 of the Rules of the Supreme Court, upon all parties hereto as shown by the Proof of Service filed herewith.

For Petitioner:

John S. Barth, pro se,
Petitioner and Plaintiff
Dated this _____ day of _____, 2017