6/18/26

No. 25- 1412

IN THE
Supreme Court of the United States

JAMES W. TINDALL,

Petitioner,

v.

UNITED STATES,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

JAMES W. TINDALL, JD, LLM (TAX), CPA
GA Bar License #71279 (inactive)
Petitioner Pro Se
4674 Jefferson Township Place
Marietta, GA 30066
(770) 337-2746
theslayor@yahoo.com

121114

COUNSEL PRESS
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QUESTIONS PRESENTED

1.) Whether Respondent's multi-year possession, control and use of Petitioner's property is a taking sufficient to trigger the payment of "just compensation", as required by the 5th Amendment to the U.S. Constitution?

2.) Whether the lower courts properly applied the doctrines of res judicata and claim preclusion when they ignored the two different and non-overlapping sets of transactional facts as clearly identified in Petitioner's Amended 2025 Complaint (the first set of facts ending on September 12, 2023, and the second set of facts beginning on September 13, 2023) when determining if the lower court has subject matter jurisdiction under 28 U.S.C. 1491(a)(1)?

3.) Whether the lower courts properly applied the doctrines of res judicata and claim preclusion when both of the lower courts failed to correctly identify Petitioner's property interests taken by Respondent, failed to identify when Petitioner's property interests were taken and continue to be taken by Respondent and failed to identify when Respondent continues to breach the implied contract between the parties, which are necessary predicates to the legal conclusions reached by the lower courts?

4.) Whether the lower courts properly applied Due Process, as required by the 5th Amendment to the U.S. Constitution, when they failed to even identify the standard to be applied?

PARTIES TO THE PROCEEDING

Petitioner James W. Tindall was the Plaintiff in the proceeding before the U.S. Court of Federal Claims ("the lower court") and the Appellant before the U.S. Court of Appeals for the Federal Circuit ("Court of Appeals" or "appellate court")(together referred to as "lower courts").

Respondent United States was the Defendant in the proceeding before the U.S. Court of Federal Claims and the Appellee before the U.S. Court of Appeals for the Federal Circuit.

RELATED CASES

Based on the facts and the related timeline identified in Petitioner's Amended 2025 Complaint, there are no related cases.

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PETITION FOR A WRIT OF CERTIORARI

James W. Tindall petitions for a writ of certiorari to review the judgment of the U.S. Court of Appeals for the Federal Circuit.

OPINIONS BELOW

The U.S. Court of Appeals' opinion is reported as a non-precedential disposition by the U.S. Court of Appeals for the Federal Circuit at Case # 2025-1845 and is reproduced at App. 1a–10a.

The U.S. Court of Federal Claims' order dismissing Petitioner's complaint for failure to state a claim and for lack of subject matter jurisdiction is reproduced at App. 11a–23a.

The U.S. Court of Appeals' order denying Petitioner's motion for panel rehearing and rehearing *en banc* is reproduced at App. 54a–55a.

JURISDICTION

The U.S. Court of Appeals entered judgment on January 8, 2026. (App. 1a).

The U.S. Court of Appeals denied a timely petition for panel rehearing and rehearing *en banc* on March 25, 2026. (App. 54a).

Therefore, this Court has jurisdiction under 28 U.S.C. §1254(1).

STATUTES INVOLVED

This petition concerns 28 U.S.C. §1491(a)(1), which specifically states that:

> *"[t]he 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."* [highlights added]

Copies of the statutory provision are included in the Appendix.

1. 28 U.S.C. §1491(a)(1). (App. 57a).

INTRODUCTION AND STATEMENT OF THE CASE

On June 1, 2026, Justice Thomas eloquently lamented this Court's priorities *"while it refuses to correct far more consequential errors for law-abiding citizens"*.

The over-arching constitutional issue in this dispute impacts thousands of Americans whose properties were similarly taken by Respondent pursuant to the same Executive Order and who have similarly received no compensation whatsoever for those takings and can be stated as:

Whether Respondent should be required to pay Petitioner "just compensation" for Petitioner's property interests that Respondent has possessed, controlled and used for over four (4) years?

As any 10-year old or 1st year law student would quickly and correctly answer:

Yes, Respondent should pay for its multi-year possession, control and use of Petitioner's property.

Unfortunately, the lower courts refused to address that over-arching issue, because they incorrectly concluded that they lacked subject matter jurisdiction to review Petitioner's constitutional claims and breach of contract claim, despite the clear language of 28 U.S.C. §1491(a)(1).

Said differently, given the specific mandatory grant of subject matter jurisdiction to the U.S. Court of Federal Claims found in 28 U.S.C. §1491(a)(1), why are the lower courts refusing to exercise their statutory and constitutional powers to defend the U.S. Constitution from encroachment by the executive branch?

In summary, this dispute relates to Respondent's refusal to pay any compensation to Petitioner for Respondent's multi-year possession, control and use of Petitioner's property to achieve that public good. (App. 25a–26a and App. 28a–47a).

Background Facts – Petitioner's Offer Letter

By letters, dated April 27, 2022, and May 13, 2022, Petitioner offered Respondent the use of Petitioner's property. (App. 29a–30a). In Petitioner's offer letter, Petitioner identified the offered property, identified the price to be paid by Respondent for the use of Petitioner's property and specifically identified the method of acceptance. (App. 29a–31a).

Background Facts – Respondent Takes Possession of Petitioner's Property

On May 25, 2022, Respondent exercised its power of eminent domain and took possession of Petitioner's property pursuant to an executive order signed by then-President Biden consistent with the terms of acceptance identified in Petitioner's offer letter. (App. 31a).

Respondent transferred those Petitioner's property interests from Petitioner's brokerage account to an escrow account controlled by Respondent's Office of Foreign Assets Control where they have been used every day since that date to wage economic war against Russia for its invasion of Ukraine. (App. 31a).

The transfer of the present property interests in Petitioner's property to an escrow account controlled by Respondent is ignored by the lower courts – despite its legal significance. Respondent did not take all the property interests in Petitioner's property on May 25, 2022, but rather only the then-existing present interests. As each day passes, Petitioner's remaining future interests in Petitioner's property become present interests, which are then taken and used by Respondent in its economic war against Russia. Thus, each passing day constitutes a separate and distinct set of Due Process and Takings violations of the 5th Amendment to the U.S. Constitution.

Also, as each week passes, Respondent incurs another set of weekly lease payment fees that Respondent fails to pay. (App. 32a). As such, Respondent's failure to pay means that Respondent breaches the implied contract between the parties each week and also takes Petitioner's weekly lease payments without paying the required "just compensation". (App. 38a–41a, 51a). Thus, each passing week constitutes a separate and distinct breach of contract and a separate and distinct set of Due Process and Takings violations.

<u>Background Facts – Respondent's Refusal to Pay Any Compensation for the Possession, Control and Use of Petitioner's Property</u>

In the intervening four (4) years since May 25, 2022, Respondent has refused to pay Petitioner any compensation for Respondent's multi-year possession, control and use of Petitioner's property interests that Respondent has used to wage economic war against Russia. (App. 40a and 46a).

Background Facts – Petitioner's 2023 Complaint Before the Lower Court

On May 19, 2023, Petitioner filed its 2023 Complaint in the U.S. Court of Federal Claims relating to Respondent's taking, possession, control and use of Petitioner's property interests without any compensation by Respondent. [*Tindall v. U.S.*, case #23-757].

On September 12, 2023, the lower court dismissed Petitioner's 2023 Complaint for lack of subject matter jurisdiction.

Thus, as an indisputable fact, Petitioner's 2023 Complaint could have only possibly addressed Respondent's conduct that occurred prior to September 13, 2023.

Background Facts – Petitioner's Amended 2025 Complaint

On April 14, 2025, Petitioner filed its Amended 2025 Complaint in the U.S. Court of Federal Claims, which specifically addressed Respondent's conduct beginning on September 13, 2023, which is a completely different set of transactional facts from those addressed in Petitioner's 2023 Complaint, because there is no overlapping window of time with Petitioner's 2023 Complaint. (App. 24a–53a).

As a matter of law[1], because Petitioner's Amended 2025 Complaint superseded and replaced Petitioner's original 2025 Complaint, the record properly before the lower court for the lower court to consider in deciding the issue of subject matter jurisdiction consisted solely of Petitioner's Amended 2025 Complaint, dated April 14, 2025.

In Petitioner's Amended 2025 Complaint, Petitioner identified three (3) alternative legal theories for recovery from Respondent for Respondent's ongoing multi-year possession, control and use of Petitioner's property interests – *"defendant's willful breaches of the implied contract between the parties for defendant's ongoing and continuous use of plaintiff's property"*, *"defendant's taking of plaintiff's property . . . without paying plaintiff 'just compensation', as required by the 5th Amendment to the U.S. Constitution"* and *"defendant's taking of plaintiff's property . . . without any pre- or post-deprivation due process, as required by the 5th Amendment to the U.S. Constitution"*. (App. 25a–26a).

1. See *Washer v. Bullitt County*, 110 U.S. 558, 562 (1884), where this Court stated that *"[w]hen a petition is amended by leave of the court, the amendment becomes a part of the original petition as fully as if the amendment had been originally inserted therein."* See also *Pac. Bell Tel. Co. v. Linkline Commc'ns, Inc.*, 555 U.S. 438, 456 n.4 (2009), where this Court treated the amended complaint as replacing earlier pleadings. See also *ConnectU LLC v. Zuckerberg*, 522 F.3d 82, 91 (1st Cir. 2008), where the court stated that *"[a]n amended complaint, once filed, normally supersedes the antecedent complaint."* See also *Fritz v. Standard Sec. Life Ins. Co.*, 676 F.2d 1356, 1358 (11th Cir. 1982), where the court stated that *"[u]nder the Federal Rules, an amended complaint supersedes the original complaint."*

Importantly, Petitioner's Amended 2025 Complaint specifically limited the timeline of events to Respondent's constitutional violations and breaches of contract that occurred after September 12, 2023, when Petitioner's 2023 Complaint was dismissed for lack of subject matter jurisdiction. (App. 27a–28a). The earlier 2023 Complaint is mentioned here, because the lower courts failed to conduct the required comparison of the transactional facts covered by the 2023 complaint with the transactional facts identified in the Amended 2025 Complaint, which limits itself to Respondent's acts that occurred after September 12, 2023, the date the 2023 Complaint was dismissed.

Background Facts – Petitioner's Amended 2025 Complaint (Elements of a Breach of Contract)

In Petitioner's Amended 2025 Complaint, Petitioner identified the four (4) elements of a contract (i.e., offer, acceptance, exchange of mutual consideration and performance) and then addressed each element with supporting facts. (App. 34a–38a, 44a).

Thus, Petitioner's Amended 2025 Complaint identified and addressed each element of a breach of contract in its pleadings as required to state a claim.

Background Facts – Petitioner's Amended 2025 Complaint (Elements of a Takings Violation)

In Petitioner's Amended 2025 Complaint, Petitioner identified the three (3) elements for a Takings violation of the 5th Amendment to the U.S. Constitution (i.e., authorized exercise of Respondent's power of eminent domain, direct transfer of Petitioner's property interests to Respondent and the abject failure by Respondent to pay any compensation for the multi-year taking, possession and control of Petitioner's present property interests) and then addressed each element with supporting facts. (App. 38a–41a, 45a).

Thus, Petitioner's Amended 2025 Complaint identified and addressed each element of a Takings violation in its pleadings, as required to state a claim.

Background Facts – Petitioner's Amended 2025 Complaint (Elements of a Due Process Violation)

In Petitioner's Amended 2025 Complaint, Petitioner identified the two (2) elements for a Due Process violation of the 5th Amendment to the U.S. Constitution (i.e., an action by Respondent to deprive Petitioner of property and an absence of due process surrounding that decision and action) and then addressed each element with supporting facts. (App. 41a–45a).

Thus, Petitioner's Amended 2025 Complaint identified and addressed each element of a Due Process violation in its pleadings, as required to state a claim.

Background Facts – Lower Court Dismisses Petitioner's Amended 2025 Complaint

On April 17, 2025, merely three (3) days after Petitioner filed Petitioner's Amended 2025 Complaint, the lower court issued its 6-page order of dismissal of Petitioner's Amended 2025 Complaint for failure to state a claim without allowing Respondent the opportunity to file a response to that Amended 2025 Complaint and without allowing Petitioner the opportunity to file a reply to any such Respondent's response – in violation of the lower court's own procedural rules. (App. 11a).

The lower court concluded that the doctrines of res judicata and claim preclusion applied to its earlier order of dismissal, dated September 12, 2023, and terminated Petitioner's access to judicial review for Respondent's continuing conduct that occurred <u>after</u> September 12, 2023. (App. 14a–23a).

<u>Background Facts – The Lower Court's Order of Dismissal Includes 139 Mistakes of Fact and Law</u>

In the lower court's 6-page order of dismissal, the lower court made 139 mistakes of fact and law across 72 sentence groupings. These fundamental flaws in the lower court's order are documented in a larger 39-page, single-spaced analysis[2] of each sentence in the lower court's order of dismissal. Copies of this 39-page analysis have been provided to both lower courts.

The documented 139 mistakes of fact and law include:

1) Twenty-one (21) true, but still misleading statements;

2. A copy of this 39-page analysis may be requested from Judge Tapp of the U.S. Court of Federal Claims or any of the judges at the U.S. Court of Appeals for the Federal Circuit. If they have misplaced their copies, then Petitioner is amenable to providing copies of that 39-page analysis for this Court to review upon request.

2) Nineteen (19) false factual statements not supported by the record before the lower court;

3) Thirty-eight (38) false factual statements contradicted by the record before the lower court;

4) Seventeen (17) violations of Rule 12(b)(6) of the Rules of the U.S. Federal Court of Claims;

5) Twenty (20) failures to conduct and include the required legal analyses;

6) Fourteen (14) failures to properly apply the rules of law;

7) Zero (0) identified instances where the lower court liberally construed Petitioner's Amended 2025 Complaint, as required; and

8) Zero (0) identified instances where the lower court drew any reasonable inference in favor of Petitioner, as required.

Background Facts – Appellate Court Affirms Lower Court's Order of Dismissal

On January 8, 2026, the appellate court affirmed the lower court's order of dismissal, including the 139 mistakes of fact and law in that order of dismissal that were identified and highlighted to each of the judges on the appellate court. (App. 1a–10a).

In order to reach that conclusion, however, the lower courts made the following fundamental errors:

(i) The lower courts ignored the clear language of 28 U.S.C. §1491(a)(1)(App. 57a);

(ii) The lower courts identified <u>no</u> applicable exception to the "just compensation" requirement of the 5th Amendment to the U.S. Constitution that allows for Respondent's continued possession, control and use of the Petitioner's present property interests without payment of any compensation for that continuing use;

(iii) The lower courts failed to identify the same set of transactional facts and related timeline necessary to properly apply the doctrines of res judicata and claim preclusion to Petitioner's Amended 2025 Complaint, while they simultaneously ignored statements in Petitioner's Amended 2025 Complaint that identified the two (2) non-overlapping sets of transactional facts (i.e., Petitioner's 2023 Complaint addressed Respondent's acts that occurred <u>prior</u> to September 13, 2023, and Petitioner's Amended 2025 Complaint addressed Respondent's acts that occurred <u>after</u> September 12, 2023)(identified nowhere in App. 1a–23a);

(iv) The lower courts failed to correctly identify Petitioner's specific property interests taken by Respondent (i.e., only the present property interests), failed to identify <u>when</u> those property interests were and continue to be taken by Respondent (i.e., daily and weekly) and failed to identify <u>when</u> Respondent continues to breach the implied contract between the parties (i.e., weekly)(identified nowhere in App. 1a–23a); and

(v) The lower courts failed to satisfy the requirements placed upon the federal judiciary by the Due Process Clause of the 5th Amendment to the U.S. Constitution (i.e., including and affirming 139 mistakes of fact and law in a 6-page order of dismissal is so egregious as to offend any defined standard of Due Process that applies to the federal judiciary)(identified nowhere in App. 1a–23a).

REASONS FOR GRANTING THE PETITION

The ultimate reason for granting this petition is to correct the manifest injustice of Respondent's *per se* Takings violations while Respondent continues to possess, control and use Petitioner's property without payment of any compensation – an anathema to the 5th Amendment to the U.S. Constitution, which specifically states that:

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

Respondent's multi-year taking, possession and control of Petitioner's property interests without payment of any kind is exactly the conduct proscribed by the 5th Amendment to the U.S. Constitution. **The transfer of Petitioner's property interests to Respondent pursuant to Respondent's exercise of its power of eminent domain is obviously sufficient to trigger the payment of "just**

compensation" and Respondent's failure to pay "just compensation" violates the 5th Amendment to the U.S. Constitution.

Moreover, the federal judiciary has the constitutional obligation to defend constitutional rights from encroachment by the legislative and executive branches – that is the foundational function of the federal judiciary. Perversely, in this case, the federal judiciary has buried its head in the sand and done everything it can to ignore Respondent's clear constitutional violations.

First, 28 U.S.C. §1491(a)(1) identifies the scope of the lower court's subject matter jurisdiction as:

> *"[t]he 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."* [highlights added]

Petitioner's Amended 2025 Complaint clearly identified three (3) alternative claims that fall within this specific grant of subject matter jurisdiction and sufficiently alleged each element of those claims with facts specific to Respondent's conduct that continued after September 12, 2023. (App. 25a–26a, 34a–46a).

Second, Petitioner's Amended 2025 Complaint specifically identifies two (2) different and non-overlapping sets of transactional facts – the first ending on September 12, 2023 and the second beginning on September 13, 2023. (App. 27a–28a).

Because Respondent's conduct continued after September 12, 2023, none of the facts that occurred after September 12, 2023, can be part of the same set of transactional facts that were considered by the lower court in its order of dismissal, dated September 12, 2023. (App. 27a–28a, 33a, 35a–36a, 38a, 40a–41a, 44a, 46a and 52a).

Quite simply, legal claims require facts and facts occur on a chronological timeline.

The lower court's order of dismissal, dated September 12, 2023, addressed the timeline ending on September 12, 2023. Because Respondent's conduct continued after September 12, 2023, none of the claims related to facts that occurred after September 12, 2023, could have possibly been put in issue before that date.

The lower courts insistence on focusing on the generalized type of claims asserted by Petitioner (i.e., constitutional violations and breach of contract) instead of identifying the two sets of transactional facts (and related dates) covered by the first order of dismissal (through September 12, 2023) and covered by Petitioner's Amended 2025 Complaint (beginning on September 13, 2023) precludes the lower courts from correctly applying the doctrines of res judicata and claim preclusion. Both lower courts failed to conduct the first step of the proper analysis necessary to reach any supportable legal conclusion.

As applied, the lower courts propose a radical expansion of the doctrines of res judicata and claim preclusion to claims that are based on future events – a radical interpretation that this Court rejected more than seventy (70) years ago in *Lawlor v. National Screen Service Corp.*, 349 U.S. 322 (1955).

Third, both lower courts failed to specifically identify Petitioner's property interests taken by Respondent, which necessarily preclude the lower courts from determining when Respondent took petitioner's property interests and when Respondent breached the contract between the parties for Respondent's use of Petitioner's property interests.

As described in Petitioner's Amended 2025 Complaint, Respondent transferred Petitioner's property interests into an escrow account, which resulted in a transfer of Petitioner's present property interests to Respondent, but was not a transfer all the property interests in Petitioner's property to Respondent. (App. 31a). The decision by Respondent to use an escrow account meaningfully changes the required analysis that the lower courts failed to conduct.

Because only Petitioner's present property interests were taken by Respondent, the future property interests were retained by Petitioner. As time passes, Petitioner's future property interests are converted into present property interests and are immediately taken by Respondent, reducing Petitioner's days of usage. As Petitioner's future property interests are converted into present property interests after September 12, 2023, Respondent has taken them without paying the required "just compensation" after September 12, 2023, in violation of the 5th Amendment. (App. 46a–47a and 52a).

At the same time, the contract between the parties requires weekly lease payments for Respondent's use of Petitioner's property. Respondent breaches the contract between the parties every week after September 12, 2023, because Respondent fails to remit the weekly lease payments for weeks of usage that occur after September 12, 2023. (App. 38a). At the same time, Respondent's failure to promptly pay over the weekly lease fees earned by Petitioner is another set of Takings violations by Respondent. (App. 39a–41a).

Thus, the abject failure by the lower courts to identify Petitioner's property interests taken by Respondent precludes the lower courts from being able to conduct the required analysis of the differing sets of transactional facts.

Fourth, both lower courts failed to satisfy the Due Process requirement found in the 5th Amendment of the U.S. Constitution as it applies to the federal judiciary.

Regardless of how loose and undefined that Due Process standard might be, the lower court's inclusion of 139 mistakes of fact and law in a 6-page order and the appellate court's affirmation of a 6-page order that included 139 mistakes of fact and law, is a manifest injustice and grossly offensive to the Due Process Clause of the 5th Amendment to the U.S. Constitution.

Moreover, when considering a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6), the courts are obligated to liberally construe the complaint, assume all facts stated therein are true and draw all reasonable inferences in favor of Petitioner. As described in Petitioner's briefs to the appellate court, none of this occurred in the lower court's order of dismissal. Instead of complying with this standard, the lower courts repeatedly ignored and contradicted statements of fact in Petitioner's Amended 2025 Complaint while relying on excerpts from Petitioner's original 2025 Complaint that were not properly part of the record before the lower court, which was necessarily limited to Petitioner's Amended 2025 Complaint. For example, on page 3 of the lower court's order of dismissal, dated April 17, 2025, the lower court relies upon an excerpt from Petitioner's superseded original 2025 Complaint that is found nowhere in Petitioner's Amended 2025 Complaint to conclude that Petitioner's 2023 Complaint and Petitioner's Amended 2025 Complaint are directly related despite the factual allegations to the contrary in Petitioner's Amended 2025 Complaint. (App. 16a).

The focus of the lower court's entire subject matter jurisdiction analysis must be specific to Petitioner's Amended 2025 Complaint, because that is the complaint properly before the lower court that the lower court is supposed to be considering. Despite this, more than 75% of the lower court's 6-page order of dismissal focused on things <u>not</u> in Petitioner's Amended 2025 Complaint. No Due Process standard can be satisfied when the lower courts ignored the law, ignored their own rules and ignored the facts in Petitioner's Amended 2025 Complaint.

Thus, this Court should grant review to:

(1) determine if the multi-year possession, control and use of Petitioner's property by Respondent is sufficient to trigger Respondent's payment of "just compensation" pursuant to the 5th Amendment to the U.S. Constitution;

(2) determine if the lower courts ignored the clear grant of subject matter jurisdiction found in 28 U.S.C. §1491(a)(1) [that specifically includes claims based on the U.S. Constitution or a contract with the United States];

(3) determine if the lower courts properly expanded the scope of the doctrines of res judicata and claim preclusion to apply to future events contrary to the longstanding judicial precedents by this Court;

(4) determine if the lower courts' failure to specifically identify Petitioner's property interests taken by Respondent precluded the lower courts from determining when those property interests were taken by Respondent and when Respondent breached the contract between the parties: and

(5) determine what the standard of Due Process is under the 5th Amendment to the U.S. Constitution as it applies to the federal judiciary and to determine if a 6-page order that includes 139 mistakes of fact and law satisfies that standard.

I. Petitioner Has Stated Three (3) Claims Each of Which is Sufficient to Withstand a Rule 12(b)(6) Review by the Lower Court

Both lower courts concluded that Petitioner failed to state a claim and that the lower court lacked subject matter jurisdiction over Petitioner's claims.

A. The Lower Courts' Conclusion Ignored the Specific Grant of Subject Matter Jurisdiction in 28 U.S.C. §1491(a)(1)

28 U.S.C. §1491(a)(1) defines the lower court's subject matter jurisdiction as:

> *"[t]he 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."* [highlights added]

Fed. R. Civ. P. 8(d)(2) and (3) state that

> *"a party may set out 2 or more statements of a claim . . .* ***alternatively*** *or hypothetically, either in a single count. . . .* ***If a party makes alternative statements, the pleading is sufficient if any one of them is sufficient****. . . . A party may state as many separate claims . . . as it has,* ***regardless of consistency****."*

Petitioner raised three (3) claims in its complaint and each of them is specifically identified in 28 U.S.C. §1491(a)(1):

1) Respondent's breach of contract for Respondent's use of Petitioner's property without compensation (App. 34a–38a and 44a);

2) Respondent's unconstitutional takings of Petitioner's property without just compensation (App. 38a–40a and 45a); and

3) Respondent's unconstitutional violations of Petitioner's due process rights when taking Petitioner's property without just compensation (App. 40a–45a).

Petitioner identified each element for each of the three (3) claims and addressed them in Petitioner's Amended 2025 Complaint and in its informal brief to the appellate court.

Petitioner has identified the offer, the acceptance, the exchange of consideration and Petitioner's performance – clearly establishing all the elements for a breach of contract claim. (App. 34a–38a and 44a).

Petitioner has identified Respondent's exercise of its power of eminent domain, Respondent's possession, control and use of Petitioner's property and Respondent's refusal to pay any compensation for that possession and use – clearly establishing all the elements for a series of *per se* unconstitutional Takings violations. (App. 38a–40a and 45a).

Petitioner has alleged the absence of any due process and Respondent has been unable to identify any due process that occurred prior to, during or after Respondent's acts of taking Petitioner's property and using it – clearly establishing all the elements for a series of Due Process violations. (App. 40a–45a).

Thus, Petitioner has indeed stated a set of claims consistent with the lower court's grant of subject matter jurisdiction – the lower courts' contrary conclusion is contradicted by the facts, the judicial precedents and the clear language of 28 U.S.C. §1491(a)(1).

B. The Lower Courts' Conclusion Ignored This Court's Judicial Precedents For Applying Fed. R. Civ. P. 12(b)(6)

In *Conley v. Gibson*, 335 U.S. 41, 48 (1957) and *Bell Atlantic Corp v. Twombly*, 550 U.S. 540, 570 (2007), this Court held that a Rule 12(b)(6) motion to dismiss should be granted only if it appears beyond a doubt that the plaintiff can prove no set of facts in support of its claim which would entitle it to relief.

This Court explained that a Rule 12(b)(6) motion to dismiss merely tests the legal sufficiency of a complaint, requiring a court to construe the complaint liberally, assume all facts as true, and draw all reasonable inferences in favor of the plaintiff.

Unfortunately, the lower courts ignored that clear guidance by this Court. The lower courts repeatedly ignored the factual statements in Petitioner's Amended 2025 Complaint, created contrary factual allegations out of whole cloth and then resolved conflicting factual allegations against Petitioner.

For example, the lower courts repeatedly refer to a same set of transactional facts but fail to identify the timeline over which that supposedly same set of transactional facts occur, despite Petitioner's Amended

2025 Complaint repeatedly identifying two (2) separate and distinct non-overlapping sets of transactional facts – the first set ending on September 12, 2023 and the second set beginning on September 13, 2023. (App. 27a–28a, 33a, 35a–36a, 38a, 40a–41a, 44a, 46a and 52a).

Neither of the lower courts bothered to conduct any analysis of the two (2) sets of transactional facts. The lower court repeatedly attempts to gloss over this meaningful distinction by misstating *"[Petitioner's] renewed allegations, involving the same set of operative facts . . .* " without identifying that same set of operative facts. (App. 14a). This misstatement is materially false and intentionally misleading, because the two (2) chronological timelines covered by Petitioner's 2023 Complaint versus Petitioner's Amended 2025 Complaint are radically and meaningfully different with no overlap.

Specifically, Petitioner's Amended 2025 Complaint repeatedly and consistently refers to Respondent's continuing conduct that occurred <u>after</u> September 12, 2023, which created new causes of action that were not litigated or resolved by an order issued on September 12, 2023, because they include Respondent's ongoing takings of Petitioner's property interests and Respondent's weekly breaches of the contract between the parties that occurred after that date and continue to occur to this day. (App. 27a–28a, 33a, 35a–36a, 38a, 40a–41a, 44a, 46a and 52a).

It is logically impossible for the lower courts to have properly applied the principles identified by this Court for considering a Rule 12(b)(6) motion to dismiss when the lower courts resolved these conflicting factual allegations <u>against</u> the non-moving party and contrary to the only document in the record before the lower courts.

II. Respondent's Direct Taking of Petitioner's Property Without "Just Compensation" is a *Per Se* Violation of the 5th Amendment

The 5th Amendment to the U.S. Constitution very clearly states that

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

In *Armstrong v. United States*, 364 U.S. 40, 49 (1960), this Court clearly stated that *"[t]he Fifth Amendment's guarantee . . . was designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole"*. This Court recently re-affirmed this proposition in *Tyler v. Hennepin*, 598 U.S. 631 (2023).

In *Horne v. Department of Agriculture*, 576 U.S. 350, 361–62 (2015), this Court stated that *"[t]he Government has a categorical duty to pay just compensation when it takes your car, just as when it takes your home."*

In *First English Evangelical Lutheran Church v. County of Los Angeles*, 482 U.S. 304, 318 (1987), this Court stated that even *"temporary . . . takings are compensable under the Fifth Amendment."*

In *Cedar Point Nursery v. Hassid*, 594 U.S. 139 (2021), this Court stated that even when *"a regulation results in a physical appropriation of property, a per se taking has occurred."*

In *Knick v. Township of Scott*, 588 U.S. 180 (2019), this Court stated that *"a property owner has an actionable Fifth Amendment takings claim when the government takes his property without paying for it."*

In *United States v. General Motors Corp.*, 323 U.S. 373, 378 (1945), this Court stated that *"[t]he term 'property' . . . denotes the group of rights inhering in the citizen's relation to the physical thing, as the right to possess, use and dispose of it."*

In *Lynch v. United States*, 292 U.S. 571, 579 (1934), this Court stated that *"valid contracts are property."*

Finally, in *Tyler v. Hennepin*, 598 U.S. 631 (2023), this Court clearly stated that

> *"[t]he Takings Clause "was designed to bar the Government from forcing some people alone to bear the public burdens which, in all fairness and justice, should be borne by the public as a whole.""*

Thus, this Court has clearly defined a *per se* Takings violation as occurring when Respondent takes possession of property interests (which includes valid contracts as property) and fails to compensate the property owner.

As alleged in Petitioner's Amended 2025 Complaint, on May 25, 2022, Respondent exercised its power of eminent domain and took possession of Petitioner's present property interests. Respondent immediately removed those property interests from Petitioner's possession and control and transferred them to an escrow account controlled by Respondent's Office of Foreign Assets Control where they have been used every day since that date to wage economic war against Russia for its invasion of Ukraine. (App. 31a).

As alleged in Petitioner's Amended 2025 Complaint, in the intervening four (4) years since May 25, 2022, Respondent has refused to pay Petitioner any compensation for Respondent's multi-year possession, control and use of Petitioner's property interests. (App. 40a and 46a).

Moreover, as Petitioner's future property interests are converted into present property interests over time, Respondent takes those new present property interests from Petitioner by retaining possession of those weekly lease fees. (App. 32a). For example, the property interests for July 4, 2026 are currently future interests and are Petitioner's. Yet, once July 4, 2026 arrives, those future property interests become present property interests and will be taken and consumed by Respondent. Thus, every day is a new set of *per se* Takings violations.

At the same time, as Respondent fails to make the required weekly lease payments for the use of Petitioner's property interests, Respondent's failure to pay means that Respondent incrementally possesses Petitioner's property each week. (App. 38a–41a, 51a). Thus, every week is a new set of *per se* Takings violations.

Respondent's taking of Petitioner's property interests without paying "just compensation" for those property interests is a *per se* violation of the 5th Amendment to the U.S. Constitution.

III. The Lower Courts Ignored the Proper Application of the Doctrines of Res Judicata and Claim Preclusion

A. The Lower Courts Failed to Identify the Single Set of Transactional Facts – Required to Properly Apply the Doctrines of Res Judicata and Claim Preclusion

Over seventy (70) years ago, in *Lawlor v. National Screen Service Corp.*, 349 U.S. 322 (1955), this Court clearly differentiated between "*the same cause of action*" and "*essentially the same course of wrongful conduct*", and concluded that "*essentially the same course of conduct*" is "*not decisive*" and "*may frequently give rise to more than a single cause of action*".

As it relates to claims arising <u>after</u> the resolution of a prior case, in *Lawlor v. National Screen Service Corp.*, 349 U.S. 322, 328-329 (1955), this Court clearly stated that while

> *"judgment precludes recovery on claims arising prior to its entry,* ***it cannot be given the effect of extinguishing claims which did not even then exist****, and which could not possibly have been sued upon in the previous case".*
>
> *"Acceptance of the respondents' novel contention would in effect confer upon them a partial immunity from civil liability for future violations.* ***Such a result is inconsistent with . . . the doctrine of res judicata****".*

In other words, continuous conduct is not a single cause of action and barring claims that are based on facts that had not yet occurred is inconsistent with the doctrine of res judicata.

Consistent with this Court's clear guidance, in Petitioner's appellate briefs, Petitioner stated that the doctrine of *res judicata* "***bars claims*** *in a second suit arising from the same set of transactional facts,* ***not the legal basis or the arguments****, in the first suit*", and defined a 'claim' to be more than an 'argument' or 'assertion,' but "*is used in the sense of the facts giving rise to the suit*". *Shelkofsky v. United States*, 119 Fed. Cl. 133, 144-45 (2014) (citing *United States v. Tohono O'Odham Nation*, 563 U.S. 307 (2011); and *Foster v. Hallco Mfg. Co.*, 947 F.2d 469, 478 (Fed. Cir. 1991).

In Petitioner's appellate briefs, Petitioner stated that the doctrine of claim preclusion bars a suit where "*the second claim is based on the same set of transactional facts*". *First Mortg. Corp. v. United States*, 961 F.3d 1331, 1338 (Fed. Cir. 2020)(citing *Ammex, Inc. v. United States*, 334 F.3d 1052, 1055 (Fed. Cir. 2003)(quoting *Parklane Hosiery Co.*, 439 U.S. 322, at 326 n.5 (1979)).

Thus, in order to properly apply the doctrines of res judicata and claim preclusion, the lower courts are required to identify the transactional facts and the related timeline over which they occur – **a required analysis that neither of the lower courts bothered to do.**

The fundamental and fatal flaw in the lower courts' application of these doctrines to Petitioner's Amended 2025 Complaint is that Respondent's conduct continued after September 12, 2023, creating new transactional fact-based claims that could not have possibly been considered by the lower court on September 12, 2023. Because Respondent's conduct continued after September 12, 2023, none of the facts that occurred after September 12, 2023, can be part of the same set of "*transactional facts*" that were considered by the lower court in its order of dismissal, dated September 12, 2023.

Quite simply, legal claims require facts and facts occur on a chronological timeline.

The lower court's order of dismissal, dated September 12, 2023, addressed the timeline ending on September 12, 2023. Because Respondent's conduct continued after September 12, 2023, none of the facts that occurred after September 12, 2023, could have possibly been put in issue before that date.

The lower court's order of dismissal, dated April 17, 2025, proposes a radical expansion of the doctrines of res judicata and claim preclusion to future events – a position that this Court rejected seventy (70) years ago in *Lawlor v. National Screen Service Corp.*, 349 U.S. 322 (1955).

Thus, this Court has specifically rejected the lower courts' proposed radical expansion of the doctrines of res judicata and claim preclusion to include future conduct and confirmed that the doctrines of res judicata and claim preclusion only apply to claims that existed at the time the prior cause of action was resolved on the merits. Apparently, the lower courts need yet another reminder that they are required to follow clear, longstanding judicial precedents by this Court.

B. The Lower Courts Failed to Identify Petitioner's Property Interests Taken by Respondent – Required to Properly Apply the Doctrines of Res Judicata and Claim Preclusion

As described above, the proper application of the doctrines of res judicata and claim preclusion require the lower courts to identify the transactional facts and the related timeline over which they occur – **a required analysis that neither of the lower courts bothered to do.**

Specifically, as part of the omitted analysis of the transactional facts that the lower courts are obligated to conduct when applying the doctrines of res judicata and claim preclusion, the lower courts are required to identify Petitioner's property interests that were and are being taken by Respondent in order to determine when those takings occurred on the chronological timeline – before or after September 12, 2023.

On May 25, 2022, Respondent exercised its power of eminent domain and took possession of Petitioner's property pursuant to an executive order signed by then-President Biden consistent with the terms of acceptance identified in Petitioner's offer letter. (App. 31a).

Respondent transferred Petitioner's property into an escrow account, which resulted in a transfer of Petitioner's present property interests to Respondent, but was not a transfer all the property interests in Petitioner's property to Respondent. (App. 31a). The decision by Respondent to use an escrow account meaningfully changes the required analysis that the lower courts failed to conduct.

Because only Petitioner's present property interests were taken by Respondent, the future property interests were retained by Petitioner. (App. 31a). As time passes, however, Petitioner's future property interests are converted into present property interests and are immediately taken by Respondent, reducing Petitioner's days of usage. As Petitioner's future property interests are converted into present property interests after September 12, 2023, Respondent has taken them without paying the required "just compensation" in violation of the 5th Amendment after September 12, 2023.

At the same time, the contract between the parties requires weekly lease payments for Respondent's use of Petitioner's present property interests. (App. 46a–47a). Respondent breaches the contract between the parties every week after September 12, 2023, because Respondent fails to remit the weekly lease payments for weeks of usage that occur after September 12, 2023.

At the same time, Respondent's failure to promptly pay over the weekly lease fees earned by Petitioner is another set of Takings violations by Respondent that occur after September 12, 2023.

Thus, the abject failure by the lower courts to identify Petitioner's property interests taken by Respondent precludes the lower courts from being able to conduct the required analysis of the two (2) differing sets of non-overlapping transactional facts. The lower courts willingness to gloss over the required first step of identifying the transactional facts (which both lower courts omitted) precludes the lower courts from properly applying the doctrines of res judicata and claim preclusion to preclude judicial review of Respondent's conduct that continues after September 12, 2023.

IV. The Due Process Clause of the 5th Amendment to the U.S. Constitution Requires a Meaningful and Unbiased Review

The 5th Amendment to the U.S. Constitution very clearly states that

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

A. The Standard for Due Process to be Applied by the Federal Judiciary

As one of the three branches of the federal government, the Due Process Clause of the 5th Amendment to the U.S. Constitution applies to the judicial branch of the federal government, as well as the executive branch.

The Due Process Clause of the 5th Amendment to the U.S. Constitution requires the federal judiciary (and all federal adjudicators) to provide fundamentally fair, impartial, and non-arbitrary adjudication before depriving a person of life, liberty, or property. While this Court has never succinctly defined Due Process as applied to the federal judiciary, this Court's judicial precedents consistently identify several core requirements.

In *In re Murchison*, 349 U.S. 133, 136 (1955), this Court stated that *"[a] fair trial in a fair tribunal is a* *basic requirement of due process*" and emphasized that "*[o]ur system of law has always endeavored to prevent even the probability of unfairness.*"

In *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950), this Court clearly stated that "*[a]n elementary and fundamental requirement of due process . . . is notice reasonably calculated . . . to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.*"

In *Goldberg v. Kelly*, 397 U.S. 254, 267–68 (1970), this Court stated that "*[t]he fundamental requisite of due process of law is the opportunity to be heard.*"

In *United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948), this Court stated that "*[f]indings must be supported by evidence.*" Although arising in an administrative context, this principle reflects broader due process requirements against arbitrary adjudication, which apply to all branches of the federal government – what is good for the goose is good for the gander.

In *County of Sacramento v. Lewis*, 523 U.S. 833, 845–46 (1998), this Court stated that "*[t]he touchstone of due process is protection of the individual against arbitrary action of government.*"

In *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), this Court stated that due process protects against "*arbitrary governmental action.*"

These cases can be readily summarized to conclude that the Due Process Clause of the 5th Amendment to

the U.S. Constitution requires, at a minimum, neutral and impartial adjudication; notice and opportunity to be heard; that a decision be based on evidence and compliance with identified legal standards; protection against arbitrary government action; and that a decision be free from arbitrary reasoning.

B. The Lower Courts' Arbitrary and Capricious Conclusions Fall Far Short of Any Constitutionally-based Standard of Due Process

Quite simply, none of the requirements for due process identified by this Court for satisfying the constitutional requirements of the Due Process Clause were met by the lower courts.

As identified in the lower court's order of dismissal, the lower courts have repeatedly refused to provide Petitioner with <u>any</u> judicial review of Respondent's conduct, despite Petitioner sufficiently pleading all the required elements for the identified constitutional violations and breaches of contract, which are clearly identified in the statutory grant of subject matter jurisdiction found in 28 U.S.C. §1491(a)(1). (App. 57a).

As stated in Petitioner's Amended 2025 Complaint,

> *"On May 25, 2022, defendant took possession of plaintiff's property and has used plaintiff's property to wage economic war on Russia ever since. . . .* ***At no point in time has defendant provided plaintiff with any due process as part of defendant's overt acts of taking possession***

> ***of plaintiff's property*** *that defendant has used to wage economic war against Russia. No pre- or post-deprivation due process has been provided from May 25, 2022 to April 14, 2025.* ***None whatsoever.***" (App. 41a–42a).

The existence of 139 mistakes of fact and law in a 6-page order of dismissal violates all of the identified Due Process requirements for the federal judiciary. Those mistakes have been identified to both Judge Tapp (of the U.S. Court of Federal Claims) and every judge of the U.S. Court of Appeals for the Federal Circuit (as part of Petitioner's Petition for Panel Rehearing and Rehearing En Banc). These 139 mistakes include:

1) Twenty-one (21) true, but still misleading statements;

2) Nineteen (19) false factual statements not supported by the record before the lower court;

3) Thirty-eight (38) false factual statements contradicted by the record before the lower court;

4) Seventeen (17) violations of Rule 12(b)(6) of the Rules of the U.S. Federal Court of Claims;

5) Twenty (20) failures to conduct and include the required legal analyses;

6) Fourteen (14) failures to properly apply the rules of law;

7) Zero (0) identified instances where the lower court liberally construed Petitioner's Amended 2025 Complaint; and

8) Zero (0) identified instances where the lower court drew any reasonable inference in favor of Petitioner.

The lower court issued its dismissal order only three (3) days after receiving Petitioner's Amended 2025 Complaint. Judge Tapp (of the lower court) justified this in footnote 1 of that order, in which he stated that *"[t]he Court does not believe that supplemental briefing will assist in this matter, thus a Reply is unnecessary"*. (App. 12a). In other words, Judge Tapp had already decided to dismiss Petitioner's complaint no matter what was filed by Petitioner or Respondent, which reeks of a biased, arbitrary and capricious decision that flies in the face of the Due Process as required by the 5th Amendment to the U.S. Constitution.

The lower courts' failed to explain how an order of dismissal, dated September 12, 2023, could possibly ever apply to claims related to Respondent's conduct that occurred after that date and that continues to occur. This expanded interpretation of the doctrines of res judicata and claim preclusion was rejected by this Court over seventy (70) years ago and violates the standards of due process.

The lower courts' refusal to conduct the required identification of the set(s) of transactional facts necessary to properly apply the doctrines of res judicata and claim preclusion violate the standards of due process.

The lower courts' continued reference to a single set of transactional facts despite Petitioner's Amended 2025 Complaint identifying two (2) non-overlapping sets of transactional facts (the first set ending on September 12, 2023, and the second set beginning on September 13, 2023) violates the standard the lower courts must apply when resolving two sets of conflicting allegations.

The lower courts' abject failure in identifying Petitioner's property interests that were and are being taken by Respondent precludes the court from being able to identify when those takings occurred and when the contract was breached.

The lower courts' insistence on ignoring factual statements in Petitioner's Amended 2025 Complaint, which is the sole document in the record from which facts can be sourced, violates the standards of due process.

The lower court's intentional mislabeling of Petitioner's "*renewed allegations*" is specifically contradicted by the record before the lower court (App. 27a–28a, 33a, 35a–36a, 38a, 40a–41a, 44a, 46a and 52a, which repeatedly and consistently refer to Respondent's continuing conduct that occurred after September 12, 2023), because the lower court's order of dismissal, dated September 12, 2023, addressed the timeline ending on September 12, 2023, whereas Petitioner's Amended 2025 Complaint addressed the timeline beginning after September 12, 2023.

The lower court's recharacterization of Respondent's taking of Petitioner's property interests and related transfer of those interests to an escrow account as an "*act of blocking*" is found nowhere in Petitioner's Amended

2025 Complaint, but instead was imagined by Judge Tapp. (App. 13a, 20a and 22a). That the appellate court adopts this mischaracterization of the facts by the lower court is appalling (App. 7a), because nowhere in Petitioner's Amended 2025 Complaint does Petitioner describe anything remotely akin to "blocking". Petitioner's Amended 2025 Complaint repeatedly describes the transfer of Petitioner's property to an escrow account controlled by Respondent – that is a direct taking and not merely "blocking".

The lower courts' failed to properly apply the standard for dismissing a complaint pursuant to Rule 12(b)(6), because Petitioner's Amended 2025 Complaint specifically identified and credibly addressed each and every element of all of the arguments raised with specific references to the supporting documents provided with Petitioner's Amended 2025 Complaint.

These are merely a few of the fundamental flaws in the lower courts' order and opinion that are documented in a larger 39-page, single-spaced analysis of each sentence in the lower court's order of dismissal, dated April 17, 2025. Because copies of this 39-page analysis have been provided to Judge Tapp and each judge of the U.S. Court of Appeals for the Federal Circuit, none of them can claim they were unaware of the deficiencies in that 6-page order.

C. The Lower Courts Failed to Identify the Proper Standard(s) For Reviewing Respondent's Conduct That Violates Petitioner's Constitutional Rights (i.e., pursuant to the Due Process and Takings Clause)

The lower court's order, dated April 17, 2025, fails to even identify the proper standard(s) for its review of Respondent's unconstitutional conduct, which precludes the lower courts from properly applying those standard(s).

Because Respondent's takings of Petitioner's property interests are *per se* Takings violations, the proper standard to apply when considering Respondent's conduct is the *"strict standard of scrutiny"*. *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1114 (1992).

Based on Petitioner's Amended 2025 Complaint, Respondent's multi-year possession, control and use of Petitioner's present property interests has been complete. (App. 27a–28a, 31a, 33a, 35a–36a, 38a, 40a–41a, 44a, 46a and 52a). As such, any analysis by the lower courts related to Respondent's Takings Clause violations must be conducted using the *"strict scrutiny"* standard. Even if the lower courts concluded that Respondent's takings were not complete, however, the lower courts would be obligated to apply the *"intermediate scrutiny"* standard of review, which is a multi-factor balancing test. *Penn Central Transportation Co. v. New York City*, 438 U.S. 104 (1978).

The lower courts failed to identify and apply either of these standard(s) of review to Respondent's Takings violations.

Similarly, because the lower courts failed to identify the proper standard for reviewing Respondent's Due Process violations (procedural due process applying *Mathews v. Eldridge*, 424 U.S. 319 (1976) and substantive due process applying *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123, at 168 (1951)), the lower courts failed to properly apply those standard(s) of review to Respondent's violations of the Due Process Clause.

Because the lower courts failed to even identify the proper standard(s) of review to be applied to Respondent's unconstitutional conduct, the lower courts failed to properly apply those applicable standard(s). Thus, the lower courts' order and opinion affirming that order lack a proper legal foundation and should be vacated.

Therefore, both lower courts and Respondent have violated the Due Process requirements of the 5th Amendment of the U.S. Constitution, because none of them have provided any pre- or post-deprivation due process to Petitioner at any point in time related to Respondent's ongoing and continuing multi-year possession, control and use of Petitioner's property interests.

CONCLUSION – RELIEF SOUGHT

For the reasons set forth above, the order by the U.S. Court of Appeals for the Federal Circuit, dated January 8, 2026, affirming the U.S. Court of Federal Claim's order granting dismissal, dated April 17, 2025, ignored the clear statutory grant of subject matter jurisdiction in 28 U.S.C. §1491(a)(1); ignored this Court's longstanding guidance for considering a motion to dismiss; ignored Respondent's *per se* Takings violations of the 5th Amendment to the U.S. Constitution, which are specifically included in the statutory grant of subject matter jurisdiction under 28 U.S.C. §1491(a)(1); failed to conduct the required analysis and identification of the set(s) of transactional facts necessary to properly apply the doctrines of res judicata and claim preclusion; failed to identify the property interests taken by Respondent necessary to properly apply the doctrines of res judicata and claim preclusion; and utterly failed to satisfy any of the requirements of the Due Process Clause of the 5th Amendment that apply to the federal judiciary.

As such, this Court should grant this petition for a writ of certiorari to allow this Court to review the lower courts' significant revisions to the 5th Amendment to the U.S. Constitution; to review the lower courts' radical expansion of the doctrines of res judicata and claim preclusion that contradict seventy (70) years of precedents by this Court; to review the lower courts' abject failure to conduct any of the required analysis and factual identification necessary to property apply the doctrines of res judicata and claim preclusion; to succinctly confirm the standard of Due Process applicable to the federal judiciary; and to review the lower courts' departures from longstanding rules governing judicial proceedings resulting in a manifest injustice.

Alternatively, this Court should vacate the orders by the lower courts and remand this case back to the U.S. Court of Federal Claims with the admonishment that the U.S. Court of Federal Claims properly consider Petitioner's claims in light of the specific language of 28 U.S.C. §1491(a)(1); properly apply the standards of Fed.

R. Civ. P. 12(b)(6); properly reconsider its conclusions in light of this Court's longstanding view of the Due Process and Takings Clause of the 5th Amendment of the U.S. Constitution (as expressed in *Tyler v. Hennepin*, 598 U.S. 631 (2023)) as applied to Respondent's failure to pay any compensation to Petitioner for Respondent's multi-year possession, control and use of Petitioner's property; properly apply the doctrines of res judicata and claim preclusion only after identifying the set(s) of transactional facts along a chronological timeline and properly identifying Petitioner's property taken by Respondent; and comply with the Due Process requirements of the 5th Amendment to the U.S. Constitution, as applied to the federal judiciary .

On June 1, 2026, Justice Thomas eloquently lamented about this Court's priorities *"while it refuses to correct far more consequential errors for law-abiding citizens"*. Here is this Court's opportunity to correct far more consequential errors for law-abiding citizens.

Respectfully submitted this the 18th day of June, 2026,

James W. Tindall, JD, LLM (tax), CPA
GA Bar License #71279 (inactive)
Petitioner Pro Se
4674 Jefferson Township Place
Marietta, GA 30066
(770) 337-2746
theslayor@yahoo.com