APPENDIX

TABLE OF APPENDICES

Page

Appendix A — Opinion of the United States Court of Appeals for the Federal Circuit, Filed January 8, 2026 .... 1a

Appendix B — Memorandum Opinion and Order of the United States Court of Federal Claims, Filed April 17, 2025 .... 11a

Appendix C — Plaintiff's Amended Complaint of the United States Court of Federal Claims, Dated April 14, 2025 .... 24a

Appendix D — Order for Rehearing of the United States Court of Appeals for the Federal Circuit, Filed March 25, 2026 .... 54a

Appendix E — Constitutional and Statutory Provisions 56a

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT, FILED JANUARY 8, 2026

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

2025-1845

JAMES TINDALL,

Plaintiff-Appellant,

v.

UNITED STATES,

Defendant-Appellee.

Decided January 8, 2026

Appeal from the United States Court of Federal Claims in No. 1:25-cv-00122-DAT, Judge David A. Tapp

Before LOURIE, TARANTO, and CHEN, *Circuit Judges.*

LOURIE, *Circuit Judge.*

James Tindall appeals from the decision of the United States Court of Federal Claims ("the Claims Court") dismissing his complaint for failure to state a claim on *res judicata* grounds. *Tindall v. United States*, 176 Fed. Cl. 339 (2025) ("*Decision*"). For the following reasons, we *affirm.*

BACKGROUND

Tindall owns shares in a Russian-majority state-owned bank. *Decision* at 342. In 2021, then-President Biden issued an executive order purporting to "block property with respect to specified harmful foreign activities of the government of the Russian Federation." Exec. Order No. 14,024, 31 C.F.R. § 587 App. A (2021). Pursuant to this executive order, in February 2022, the Office of Foreign Assets Control ("OFAC") of the United States Department of the Treasury issued sanctions prohibiting the processing of securities transactions involving certain Russian financial institutions, including the bank in which Tindall owns shares. *See Publ'n of Fin. Servs. Sectoral Determination & Directives 1A, 2, 3, & 4 Under Exec. Ord. 14024 of Apr. 15, 2021*, 87 Fed. Reg. 32,303, 32,305 (Off. of Foreign Assets Control May 31, 2022). As a result, Tindall's shares were placed into an OFAC-controlled escrow account. *See Decision* at 342.

Tindall sent several letters of protest to President Biden, other government officials, and his broker. *See id.* These letters included offers whereby the United States could buy or rent Tindall's shares. *See id.* Tindall construed the government's silence concerning these offers and retention of his shares in the escrow account as acceptance of the offers. *See id.*

Prior to and apart from the complaint giving rise to this appeal, Tindall had filed a complaint in May 2023 in the Claims Court alleging (1) a violation of his Fifth Amendment due process rights, (2) breach of contract, and (3) an unconstitutional taking of property without just compensation. *See id.*

The Claims Court dismissed the claims, determining that it lacked jurisdiction over the Fifth Amendment claim because the Fifth Amendment is not money-mandating, that Tindall failed to state a claim for breach of contract because no contract was formed, and that Tindall failed to state a takings claim because he failed to concede the validity of the government's actions and, even if he had stated such a claim, the government's actions served a substantial national security interest and were thus exempt from a takings claim. *Tindall v. United States*, 167 Fed. Cl. 440, 443, 445, 446 (2023). We affirmed the subsequent appeal to this court and the Supreme Court denied Tindall's petition for a writ of *certiorari*. *Tindall v. United States*, No. 2024-1143, 2024 WL 960452, at *3 (Fed. Cir. Mar. 6, 2024), *cert. denied*, 145 S. Ct. 282 (2024).

In January 2025, Tindall filed a new complaint in the Claims Court again alleging (1) a violation of his Fifth Amendment due process rights, (2) breach of contract, and (3) an unconstitutional taking of property without just compensation. *See Decision* at 342-43; S.A. 10-39.[1] The government moved to dismiss, *see* S.A. 40-48, and Tindall filed an amended complaint, *see* S.A. 51-84. The Claims Court determined that the government's motion applied to Tindall's amended complaint and dismissed the amended complaint for failure to state a claim, determining that the

1. "S.A." refers to the supplemental appendix filed by the government.

claims were precluded on *res judicata* grounds. *Decision* at 342 n.3, 346.

Tindall timely appeals. We have jurisdiction under 28 U.S.C. § 1295(a)(3).

DISCUSSION

We review the Claims Court's dismissal for failure to state a claim *de novo*. *B.H. Aircraft Co. v. United States*, 89 F.4th 1360, 1362 (Fed. Cir. 2024). A complaint must be dismissed if it fails "to state a claim upon which relief can be granted." RCFC 12(b)(6). Whether a claim is barred by *res judicata*, or claim preclusion, is a question of law also reviewed *de novo*. *Faust v. United States*, 101 F.3d 675, 677 (Fed. Cir. 1996). *Pro se* complaints are held to a less stringent standard compared with pleadings drafted by counsel, *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam), but *pro se* litigants still must meet pleading requirements, *Ottah v. Fiat Chrysler*, 884 F.3d 1135, 1141 (Fed. Cir. 2018).

Tindall argues that (1) claim preclusion does not apply, (2) the Claims Court improperly construed the government's motion to dismiss to apply to Tindall's amended complaint, and (3) the Claims Court used the wrong legal standards. We address each argument in turn.

I

For claim preclusion to apply, three elements must be met: "(1) the parties [be] identical or in privity; (2) the first suit proceed[] to a final judgment on the merits; and (3) the second claim [be] based on the same set of transactional facts as the first." *Ammex, Inc. v. United States*, 334 F.3d 1052, 1055 (Fed. Cir. 2003) (citation omitted). The Claims Court determined that all three elements were met and dismissed Tindall's amended complaint. *Decision* at 344-45. We find no error in its decision.

First, it is undisputed that the parties in the two suits were identical. *See id.* at 344; Tindall Op. Br. at 12.

Second, Tindall's first suit resulted in a final judgment on the merits. Tindall's breach of contract and takings claims were dismissed for failure to state a claim, *Tindall*, 167 Fed. Cl. at 445-47, which constitutes a final judgment on the merits for purposes of claim preclusion, *see Federated Dep't Stores v. Moitie*, 452 U.S. 394, 399 n.3 (1981). As for Tindall's Fifth Amendment due process claim which was dismissed for lack of jurisdiction, certain jurisdictional dismissals may be subject to claim preclusion. *See Underwriters Nat'l Assurance Co. v. N.C. Life & Accident & Health Ins. Guar. Ass'n*, 455 U.S. 691, 706 (1982). Such is the case here. We have explained that "the determination that [a] source is money-mandating shall be determinative both as to the question of the court's jurisdiction and thereafter as to the question of whether, *on the merits*, plaintiff has a money-mandating source on which to base his cause of action." *Fisher v. United States*, 402 F.3d 1167, 1173 (Fed. Cir. 2005) (emphasis added). Therefore, the Claims Court's dismissal of Tindall's Fifth Amendment due process claim for failing to identify a money-mandating source is a final judgment on the merits for purposes of claim preclusion.

Third, the instant amended complaint was based on the same set of transactional facts as Tindall's 2023 complaint. Both concern Tindall's shares in a Russian bank being placed into an OFAC-controlled escrow account and allege the same three claims stemming from that conduct: a violation of his Fifth Amendment due process rights, breach of contract, and an unconstitutional taking of property without just compensation. *See* S.A. 58; *Tindall*, 167 Fed. Cl. at 444. Tindall argues that the transactional facts are not the same because his instant amended complaint includes allegations of wrongdoing by the government that occurred after his first lawsuit was dismissed, namely, that the government continued to hold Tindall's shares after his 2023 complaint was dismissed. *See* Tindall Op. Br. at 11, 13. But underlying those allegations is the same set of transactional facts: that the United States government seized Tindall's shares in a Russian bank.

Tindall then points to three specific facts that he argues were alleged in his instant amended complaint but were not alleged in his 2023 complaint, thereby rendering the two complaints not based on the same set of transactional facts.

Tindall first points to his allegation that the government validly took his property, Tindall Op. Br. at 14 & n.26, an element necessary to state a takings claim under the Tucker Act, *see Tabb Lakes, Ltd. v. United States*, 10 F.3d 796, 802 (Fed. Cir. 1993). But the Claims Court previously determined that Tindall's claim failed even if he had implicitly conceded the validity of the government's action, and we affirmed that determination. *Tindall*, 167 Fed. Cl. at 446-47, *aff'd*, 2024 WL 960452, at *3. Regardless, that allegation does not change the fact that the nature of the underlying transactional facts alleged in the two complaints was the same.

Tindall next points to his allegation that the government accepted Tindall's offer to buy or rent the shares by taking and continuing to hold his property. Tindall Op. Br. at 14-15; S.A. 63, 65-67. Again, Tindall's allegations are based on the same set of transactional facts: that the United States government seized his shares in a Russian bank. Further, the Claims Court considered this allegation and determined that the government's "blocking the shares would have happened with or without Mr. Tindall's 'offers.'" *Decision* at 345. That finding was not clearly erroneous: Tindall learned that his shares would be blocked, sent letters of protest, and then the shares were placed in escrow. *Id.* The government's actions, which had been predetermined, did not constitute an acceptance; and, regardless, Tindall offers no new facts of government action not alleged in his 2023 complaint.

Tindall finally points to his allegation that he seeks payment for the government's possession, control, and use of his property, not payment for any decline in value. Tindall Op. Br. at 15. That is a remedy sought, not additional facts that render the two lawsuits based on different sets of transactional facts.

In sum, underlying Tindall's amended complaint is the same set of transactional facts underlying his 2023 complaint: that the United States government seized his shares in a Russian bank. Accordingly, even to the extent that Tindall alleged later-dated facts, reframed the legal significance of the government's conduct, or sought different relief, those differences do not alter the operative transactional facts or make the amended complaint meaningfully distinct for purposes of claim preclusion.

II

Tindall next argues that the Claims Court violated his due process rights by granting the government's motion to dismiss with respect to his amended complaint, even though he filed his amended complaint after the government filed its motion to dismiss. Tindall Op. Br. at 6-8. We do not agree.

The Claims Court did not abuse its discretion in construing the motion to dismiss to apply to Tindall's amended complaint, because the amended complaint contained substantially the same factual allegations as the original. *See Mitsui Foods, Inc. v. Unites States*, 867 F.2d 1401, 1404 (Fed. Cir. 1989) (a trial court did not abuse its discretion in denying a motion for leave to amend complaint when amendment would be futile); *Kalos v. United States*, 368 F. App'x 127, 131-32 (Fed. Cir. 2010) ("[T]he trial court did not abuse its discretion by construing the government's motion to dismiss as applying to the amended complaint, given that the amended complaint contained the same claims and substantially the same factual allegations as the original."). The Claims Court considered the new allegations in Tindall's amended complaint and determined that the allegations did "not cure the defects contained in his original pleading." *Decision* at 346. Indeed, the main difference between the originally-filed complaint and the amended complaint seems to be that Tindall emphasizes in his amended complaint that the government continues to violate Tindall's rights by keeping his shares in escrow. *Compare, e.g.*, S.A. 12, *with* S.A. 55. For the reasons explained above, those allegations do not render Tindall's amended complaint based on a set of transactional facts different from the 2023 complaint. Tindall points to no other allegedly new facts included in his amended complaint that would change that analysis.

III

Tindall finally argues that the Claims Court failed to consider the proper standard for dismissal. *See* Tindall Op. Br. at 23-27. He argues that the Claims Court ignored the requirements to assume that all facts in the amended complaint are true, and to construe those facts liberally and in Tindall's favor. *Id.* at 23. We do not agree. The Claims Court properly identified the standard for dismissal: A complaint must be dismissed if it fails to state a claim for relief that is plausible on its face. *Decision* at 343-44 (citation omitted). The Claims Court then correctly identified that a complaint can be dismissed on *res judicata* grounds. *Id.* at 344. For the foregoing reasons, we agree with the Claims Court's determination that the claims are precluded. The Claims Court thus identified and applied the correct standard for dismissal.

CONCLUSION

We have considered Tindall's remaining arguments but find them unpersuasive. For the above reasons, the Claims Court properly dismissed Tindall's amended complaint. We therefore *affirm.*

AFFIRMED

APPENDIX B — MEMORANDUM OPINION AND ORDER OF THE UNITED STATES COURT OF FEDERAL CLAIMS, FILED APRIL 17, 2025

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

No. 25-122

JAMES W. TINDALL,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

Filed April 17, 2025

MEMORANDUM OPINION AND ORDER

Legal claims are singular verses, not choruses intended to be repeated. *Res judicata* is a legally binding effort for courts to avoid unnecessary repetition. The United States moves to dismiss Plaintiff James Tindall's ("Mr. Tindall") Complaint in accordance with the principles of *res judicata*, claiming that he has asserted these same claims and failed.[1] (Def.'s Mot., ECF No.

1. Pursuant to RCFC 7.2(b)(2), a reply to a response *may* be filed within fourteen days after service of the response. *Compare* RCFC 7.2(b)(1) ("a response or an objection to a written motion

7). This assertion is correct; Mr. Tindall's claims are precluded.[2] Accordingly, the United States' Motion is **GRANTED.**[3]

I. Background

Following former President Biden's declaration of a national emergency regarding Russian activities and subsequent invasion of Ukraine in early 2022, the U.S. Office of Foreign Assets Control ("OFAC") imposed sanctions prohibiting transactions in securities of specified Russian entities, including a Russian majority state-owned banking and financial services company ("Sberbank"). Exec. Order No. 14,024, 86 Fed. Reg. 20249 (Apr. 15, 2021) ("EO 14,024"). This directive affected owners of Sberbank shares, including Mr. Tindall. (*See generally* Am. Compl., ECF No. 8).

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must be filed within 28 days after service of the motion . . . ") (emphasis added). The Court does not believe that supplemental briefing will assist in this matter, thus a Reply is unnecessary.

2. Mr. Tindall's first bite at the apple occurred in September of 2023 when he attempted the same set of claims before the undersigned. *Tindall v. United States*, Case No. 23-757 (dismissed under RCFC 12(b)(1) and 12(b)(6)); *Tindall v. United States*, 167 Fed. Cl. 440 (2023) (*Tindall I*), *aff'd*, No. 2024-1143, 2024 WL 960452 (Fed. Cir. Mar. 6, 2024), *cert. denied*, 145 S. Ct. 282 (2024).

3. While Mr. Tindall has since filed an Amended Complaint, (Am. Compl., ECF No. 8), the Court finds that the amended pleading does not assert new facts or claims. The United States' arguments, while specific to the initial Complaint, apply to the Amended Complaint as well.

Given the Executive Order, Mr. Tindall's broker, Charles Schwab, informed him that he had until May 25, 2022 to divest the Sberbank shares to non-U.S. persons, after which the shares would be blocked in an escrow account accessible only with OFAC permission. (Am. Compl. at 8). In lieu of divesting the shares, Mr. Tindall vehemently protested, sending multiple letters to President Biden, government officials, and Charles Schwab between April 2022 and February 2023. (*Id.* at 8-12). The overall tone of those letters was that blocking Mr. Tindall's shares constituted an unconstitutional taking of his property under the Fourth and Fifth Amendments. (*Id.* at 8-9).

Unable to access his shares, Mr. Tindall's primary desire was compensation. (Am. Compl. at 9-11). His letters continued, initially offering the United States two purchase options—a $25 per share (buyout) or $1 per share per week (rental). (*Id.* at 8-9). On the government's radio silence, Mr. Tindall later claimed the United States' act of blocking the shares constituted acceptance of his terms, and escalated his demands to $1,000,000, and then $5,000,000 per violation, adding penalties and interest for non-payment. (*Id.* at 9 ("I value my constitutional rights at $1,000,000 per violation, plus cumulative interest."), 10 ("[T]he going rate for each constitutional right is now $5,000,000/per violation.")).

This is not the first time the Court is faced with these facts from Mr. Tindall. In May of 2023, Mr. Tindall came before the Court of Federal Claims with three claims. "First, he argue[d] that the United States willfully violated his Fifth Amendment due process rights. Second, he claim[ed] the United States knowingly breached an existing contract with him. And third, he allege[d] that the United States' actions amounted to an unconstitutional taking of his property without just compensation." *Tindall I*, 167 Fed. Cl. at 444. The Court dismissed those claims in September of 2023, and the Federal Circuit affirmed that decision the following March. *Tindall v. United States*, No. 2024-1143, 2024 WL 960452 (Fed. Cir. Mar. 6, 2024). The Supreme Court denied certiorari thereafter. 145 S. Ct. 282 (2024).

Undeterred from his prior failure, (Am. Compl. at 4-5 (acknowledging prior lawsuit)), Mr. Tindall returned to this Court on January 21, 2025 and amended his Complaint on April 14. (*See* Compl., ECF No. 1; Am. Compl.). His renewed allegations, involving the same operative facts, assert claims for: (1) breach of implied contract, (Am. Compl. at 13-18, 24); (2) 4,800 violations of the takings clause, (*id.* at 18-20, 25); and (3) 2,400 due process violations, (*id.* at 21-22, 25).

II. Analysis

The United States moves to dismiss Mr. Tindall's claims under RCFC 12(b)(6) arguing that they are barred by *res judicata*. (*See generally* Def.'s Mot. (citing *Tindall I*, 167 Fed. Cl. 440)). The Court agrees.

A motion to dismiss for failure to state a claim upon which relief can be granted is governed by Rule 12(b)(6). This rule requires dismissal when a complaint fails to state a "claim for relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 554, 570 (2007)). At the pleading stage, the plausibility standard does not impose a probability requirement; it simply calls for enough facts to raise a reasonable expectation that discovery will reveal evidence to support the plaintiff's allegations. *Nalco Co. v. Chem-Mod, LLC*, 883 F.3d 1337, 1350 (Fed. Cir. 2018). Under Rule 12(b)(6) a claim must be dismissed "when the facts asserted by the claimant do not entitle him to a legal remedy." *Lindsay v. United States*, 295 F.3d 1252, 1257 (Fed. Cir. 2002).

While the Court acknowledges that pro se plaintiffs are not expected to frame issues with the precision of attorneys, *Roche v. U.S. Postal Serv.*, 828 F.2d 1555, 1558 (Fed. Cir. 1987), even pro se litigants must allege "plausible" facts sufficient to satisfy both the requirements of subject-matter jurisdiction and the necessary elements of a claim as a matter of law for which relief may be granted. *See Stephanatos v. United States*, 306 F. App'x 560, 564 (Fed. Cir. 2009) (stating that arguments should be "fleshed out."). This standard necessarily implicates the doctrine of *res judicata*. *See Palafox Street Assoc., L.P. v. United States*, 114 Fed. Cl. 773, 780 (2014) (citing *Chisolm v. United States*, 82 Fed. Cl. 185, 193 (2008), *aff'd*, 298 Fed. Appx. 957 (Fed. Cir. 2008) (noting that because "claim preclusion rests on a final judgment on the merits, it can quite properly and naturally be raised via a merits-based RCFC 12(b)(6) motion[.]")).

"*Res judicata*," or "a matter already judged," traditionally refers to two similar legal effects: (1) claim preclusion and (2) issue preclusion, also called "collateral estoppel." *Baker v. General Motors Corp.*, 522 U.S. 222, 233 n.5 (1998). "Application of both doctrines is central to the purpose for which civil courts have been established, the conclusive resolution of disputes within their jurisdictions." *Montana v. United States*, 440 U.S. 147, 153 (1979). Issue preclusion typically pertains to a matter that was actually litigated, while claim preclusion forecloses matters arising out of the same facts which should have been litigated but were not. *See Migra v. Warren City Sch. Dist. Bd. of Educ.*, 465 U.S. 75, 77 n.1 (1984). Here, while both doctrines would apply, the Court only addresses the broader doctrine of claim preclusion.

"Claim preclusion applies when '(1) the parties are identical or in privity; (2) the first suit proceeded to a final judgment on the merits; and (3) the second claim is based on the same set of transactional facts as the first.'" *Phillips/May Corp. v. United States*, 524 F.3d 1264, 1268 (Fed. Cir. 2008) (quoting *Ammex, Inc. v. United States*, 334 F.3d 1052, 1055 (Fed. Cir. 2003)). It is undisputed that the parties in both suits are Mr. Tindall and the United States. (*See* Compl. at 3 ("This [C]omplaint . . . is directly related to [*Tindall I*] because it involves the same parties[.]"); Am. Compl. at 5 ("The amended 2025 complaint is related to the 2023 Complaint, because it involves the same parties[.])). Therefore, the first element is satisfied.

As to whether *Tindall I* proceeded to final, valid judgment on the merits, the Court finds that it did. Mr. Tindall's claims were dismissed in *Tindall I*, and those findings were affirmed in full. 167 Fed. Cl. 440; 2024 WL 960452. Specifically, the Court dismissed Mr. Tindall's takings and contractual breach claims, finding that he failed to present a facially valid claim upon which relief could be granted. 167 Fed. Cl. at 445-47 (dismissal pursuant to RCFC 12(b)(6)). "Dismissals for failure to state a claim upon which relief can be granted are judgments on the merits, and, thus, entitled to *res judicata* effect." *eVideo Inc. v. United States*, 136 Fed. Cl. 164, 169 (2018), *aff'd* 748 F. App'x 327 (Fed. Cir. 2019); *see also Federated Dep't Stores, Inc. v. Moitie*, 452 U.S. 394, 399 n.3 (1981). Thus, the judgment as to Mr. Tindall's breach and takings claims were valid, final judgments.

As to Mr. Tindall's prior assertion of a due process violation, *Tindall I* dismissed that claim based on a failure to establish jurisdiction under RCFC 12(b)(1). 167 Fed. Cl. at 445. Jurisdictional determinations typically have a preclusive effect. *See Ins. Corp. of Ir. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702 n.9 (1982) ("It has long been the rule that principles of [finality] apply to jurisdictional determinations—both subject matter and personal."). While the Rules of this Court state that dismissal for lack of jurisdiction does not operate as an adjudication on the merits, the finality of the judgment still applies. *See Milgroom v. United States*, 122 Fed. Cl. 779, 794 (2015) (citing RCFC 41(b)), *aff'd*, 651 F. App'x 1001 (Fed. Cir. 2016). That is, a jurisdictional determination may have a preclusive effect to bar matters previously litigated if the plaintiff fails to allege additional claims to cure the jurisdictional defect in a subsequent court action. *See Lowe v. United States*, 79 Fed. Cl. 218, 229 (2007) ("[A] prior dismissal does preclude the same action based on the same facts unless the jurisdictional flaw that necessitated dismissal of the first suit has been cured.") (citing *New Jersey Institute of Tech. v. Medjet, Inc.*, 47 Fed. Appx. 921, 925 (Fed. Cir. 2002)). There is no question that the Due Process clause of the Fifth Amendment does not mandate the payment of money. *See Tindall*, 2024 WL 960452, at *2 (citing *LeBlanc v. United States*, 50 F.3d 1025, 1028 (Fed. Cir. 1995)). Standing alone, a due process violation claim can *never* satisfy the jurisdictional requirements in this Court. Accordingly, the jurisdictional defect has not been cured. The finality of that decision renders the *Tindall I* judgment final and valid in totality.

The heart of Mr. Tindall's claims lies with the deprivation of access to his Sberbank shares. (*See generally* Am. Compl.). These were the same issues central to *Tindall I*. 167 Fed. Cl. at 443-44. The inquiry into whether two claims involve the same transactional facts must be conducted "pragmatically, giving weight to such considerations as whether the facts are related in time, space, origin, or motivation, whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties' expectations or business understanding or usage." *Phillips/May Corp.*, 524 F.3d at 1271 (quoting Restatement (Second) Judgments § 24(2) (1982)). In identifying which facts are transactional, courts "have defined 'transaction' in terms of a 'core of operative facts,' the 'same operative facts,' or the 'same nucleus of operative facts,' and 'based on the same, or nearly the same, factual allegations.'" *Barajas v. United States*, 154 Fed. Cl. 318, 323 (2021) (citing *Jet, Inc. v. Sewage Aeration Sys.*, 223 F.3d 1360, 1363 (Fed. Cir. 2000). Here, using Mr. Tindall's own original verbiage, "[t]his [C]omplaint . . . is directly related to [*Tindall I*] because it . . . is based on the same claims[.]" (Compl. at 3). There can be no doubt that this case arises out of the same transactional facts as *Tindall I*.

Mr. Tindall objects to the United States' Motion to Dismiss in total, (Pl.'s Resp., ECF No. 9), and submitted an Amended Complaint, (Am. Compl. at 1 (stating the document is filed "in response to Defendant's Motion to Dismiss Pursuant to Rule 12(b)(6)")). Mr. Tindall's primary addition is that this suit is different from *Tindall I* as it is intended to secure "relief from defendant's ongoing and <u>continuing</u> breaches of the implied contract between the parties for defendant's ongoing and <u>continuing</u> possession, control and use of plaintiff's property, as well as defendant's numerous ongoing and <u>continuing</u> violations of plaintiff's 5th Amendment constitutional rights." (*Id.* at 3-4 (emphasis in original)). Mr. Tindall attempts to distinguish these claims as being based on the United States' "incremental conduct" occurring separately after his *Tindall I* complaint was dismissed. (*Id.* at 5). However, Mr. Tindall's failure to show that his new claims are based on new government action bars them from forming the basis of a new lawsuit. Even if Mr. Tindall's claims were not precluded, his Amended Complaint is not based on new allegations and does not cure the defects contained in his original pleading.

The only "new" allegation seems to be a new theory of the United States' acceptance to form a contract. The Federal Circuit resoundingly affirmed *Tindall I* finding that the United States' actions did "not constitute acceptance of Mr. Tindall's alleged offer[,]" which was fatal to his breach of contract claim. 2024 WL 960452, at *2. He now characterizes the United States' act of taking possession of his stocks as the moment of the United States' acceptance. (Am. Compl. at 14). Even were the Court to consider the merits of this argument, Mr. Tindall's reasoning is circular. For contract formation, acceptance must be in *response* to an offer. *See* Restatement (Second) of Contracts § 22(1) (1981). Mr. Tindall learned of his shares being blocked on April 26, 2022. (Am. Compl. at 8). His letters to the United States began the next day. (*Id.*). The stocks were placed in escrow on May 25, 2022. (*Id.* at 11). Characterizing blocking his Sberbank shares as formal acceptance from the United States ignores the inevitability that blocking the shares would have happened with or without Mr. Tindall's "offers." A plaintiff cannot assert that a pre-existing government action, which would have occurred regardless of the plaintiff's offer, constitutes valid acceptance necessary to form a contract. Consequently, the Court finds that Mr. Tindall asserts no new governmental actions occurred that may constitute acceptance or a separate contract.

Mr. Tindall's entire argument hinges on a finding that the continuous holding of his stocks occurred after dismissal of *Tindall I* and therefore qualify as new events. (Pl.'s Resp. at 4, 7). However, the continuous nature of Mr. Tindall's allegations by themselves cannot constitute a separate cause of action. In some cases, new and independent breaches by the government may be treated as separate causes of action under the continuing claims doctrine. *Westlands Water Dist. v. United States*, 109 Fed. Cl. 177, 212-13 (2013) (citing *Boling v. United States*, 220 F.3d 1365, 1373-74 (Fed. Cir. 2000)). For continuing claims, "the plaintiff's claim must be inherently susceptible to being broken down into a series of independent and distinct events or wrongs, each having its own associated damages." *Wells v. United States*, 420 F.3d 1343, 1345 (Fed. Cir. 2005) (citing *Brown Park Estates-Fairfield Dev. Co. v. United States*, 127 F.3d 1449, 1456 (Fed. Cir. 1997)). But "if there was only a single alleged wrong, even though the wrong caused later adverse effects . . . the continuing claim doctrine is not applicable." *Id.* at 1345-46 (citing *Hart v. United States*, 910 F.2d 815 (Fed. Cir. 1990)). While the continuing claims doctrine is most often applied to instances examining a statute of limitations question, the Court finds it illuminating for Mr. Tindall's claims.

The United States' continuous, ongoing holding of his stocks is not a series of independent and distinct events. Because Mr. Tindall continues to suffer adverse effects from that singular action does not give rise to these new allegations. The same logic applies to Mr. Tindall's takings claim—the facts alleged cannot be broken down into separate events and therefore do not constitute a separate cause of action.[4] *See Barclay v. United States*, 443 F.3d

4. Mr. Tindall's attempt to reassert a due process violation is also futile. As the Court has said, a due process violation claim can *never* satisfy the jurisdictional requirements in this Court because it is not money-mandating—despite Mr. Tindall's rote contention that it is. *LeBlanc*, 50 F.3d at 1028; (Am. Compl. at 21-23).

1368, 1375 (Fed. Cir. 2006) (holding that multiple takings claims cannot be based on a single, continuous government action). There is one government action giving rise to both cases—blocking Mr. Tindall's Sberbank shares. That the United States continues the same conduct alleged to be wrongful in *Tindall I* cannot field the basis for a new cause of action. Stated differently, *Tindall I*'s failure necessarily cannot give rise to a second phase of litigation. As each new day dawns, with no other changes, Mr. Tindall cannot claim a new cause of action in perpetuity.

Mr. Tindall's Amended Complaint does not cure the defects contained in his original pleading and his claims do not allege new causes of action. Having satisfied the three elements for claim preclusion, *res judicata* precludes Mr. Tindall's claims. Mr. Tindall seemingly wants this Court to revise its earlier findings, an act that would require contradicting itself and, importantly, the Federal Circuit. While Mr. Tindall may overestimate this Court's power, the Court does not possess the authority, nor the desire, to take such action.

III. Conclusion

Mr. Tindall's Complaint is a chorus to *Tindall I* and his claims are precluded. The United States' Motion to Dismiss, (ECF No. 7), is **GRANTED**. Further, the Clerk is directed to **REJECT** "Plaintiff's Notice of Directly Related Case—Declaration by Plaintiff" received on April 14, as it is a duplicate of a previously filed Notice, (ECF No. 2). The Clerk **SHALL** enter judgment accordingly. The Clerk is directed to **REJECT** any future submissions in this case unless they comply with this Court's rules regarding post-dismissal submissions.[5]

IT IS SO ORDERED.

/s/ David A. Tapp
DAVID A. TAPP, Judge

5. This provision does not act as an anti-filing injunction or a sanction. *Allen v. United States*, 88 F.4th 983, 989 (Fed. Cir. 2023) (holding that courts must provide pro se plaintiffs with notice and opportunity to be heard before issuing an anti-filing injunction). Plaintiff is not enjoined from proper post-dismissal filings in this case, nor is Plaintiff required to seek leave before filing future actions in this Court. *See id.* This provision is a mechanism to reject non-compliant filings in the above-captioned action once it is dismissed.

APPENDIX C — PLAINTIFF'S AMENDED COMPLAINT OF THE UNITED STATES COURT OF FEDERAL CLAIMS, DATED APRIL 14, 2025

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

Case No. 25-122C

JAMES W. TINDALL,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

Judge Tapp

PLAINTIFF'S AMENDED COMPLAINT

I. JURISDICTION

U.S. Const., Article III, Sec. 2 states that:

> ***"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;—to all Cases affecting Ambassadors, other public Ministers*

> *and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—**to Controversies to which the United States shall be a Party**;—to Controversies between two or more States;—between a State and Citizens of another State,—between Citizens of different States,—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects."*

Pursuant to 28 U.S.C. §1491(a)(1), the U.S. Court of Federal Claims has 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*".

Therefore, the U.S. Court of Federal Claims has subject matter jurisdiction over this dispute pursuant to 28 U.S.C. §1491(a)(1), because the basis for this dispute is defendant's willful breaches of the implied contract between the parties for defendant's ongoing and continuous use of plaintiff's property (to wit, 2,400 shares of SBRCY) in defendant's continuing economic retaliation against Russia for its invasion of Ukraine.

In the alternative[1], the U.S. Court of Federal Claims has jurisdiction over this dispute pursuant to 28 U.S.C.

1. FRCP 8(d)(2) and (3).

§1491(a)(1), because the basis for this dispute is defendant's taking of plaintiff's property (to wit, 2,400 shares of SBRCY and the related income streams) without paying plaintiff 'just compensation', as required by the 5th Amendment to the U.S. Constitution, which states "*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*".[2]

In the alternative[3], the U.S. Court of Federal Claims has jurisdiction over this dispute pursuant to 28 U.S.C. §1491(a)(1), because the basis for this dispute is defendant's taking of plaintiff's property (to wit, 2,400 shares of SBRCY and the related income streams) without any pre- or post- deprivation due process, as required by the 5th Amendment to the U.S. Constitution, which states "*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*".[4]

2. PARTIES

Plaintiff, James W. Tindall, resides at 4674 Jefferson Township Place, Marietta, GA, 30066, (770) 337-2746.

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2. U.S. Const., Amdt. 5.

3. FRCP 8(d)(2) and (3).

4. U.S. Const., Amdt. 5.

3. PREVIOUS LAWSUITS

Plaintiff has attempted to secure relief from defendant's ongoing and continuing breaches of the implied contract between the parties for defendant's ongoing and continuing possession, control and use of plaintiff's property, as well as defendant's numerous ongoing and continuing violations of plaintiff's 5th Amendment constitutional rights by filing a previous complaint in this Court. To avoid confusion, that earlier case (Tindall v. US, Case No. 23-757L, Judge Tapp) will be referred to as "**the 2023 Complaint**".

On September 12, 2023, the 2023 Complaint was dismissed for failure to state a claim (see Order of Dismissal, dated September 12, 2023).

On or about January 17, 2025, plaintiff filed a second complaint with this court, which also expanded the relevant facts to include defendant's conduct that occurred after September 12, 2023. To avoid confusion, the second complaint (Case No. 25-122C, Judge Tapp) will be referred to as "**the 2025 Complaint**".

On April 14, 2025, in response to Defendant's Motion to Dismiss, dated March 24, 2025, plaintiff filed this Plaintiff's Amended Complaint. To avoid confusion, the amended complaint (Case No. 25-122C, Judge Tapp) will be referred to as "**the amended 2025 Complaint**". The amended 2025 complaint is related to the 2023 Complaint, because it involves the same parties and is based on the same legal arguments as applied to an expanded set of facts that occurred after September 12, 2023 (defendant's breach of implied contract and defendant's violations of plaintiff's Fifth Amendment rights [i.e., the Takings Clause and the Due Process Clause]).

Quite simply, both the 2025 Complaint and the amended 2025 Complaint include defendant's incremental conduct that occurred after September 12, 2023—defendant's continuing breaches of the implied contract between the parties, defendant's continuing taking, possession, control and use of plaintiff's property without paying 'just compensation' and defendant's failure to provide any due process related to its continuing unconstitutional conduct (all of which have continued to occur after September 12, 2023). **Any order issued by this court on September 12, 2023, cannot possibly apply to conduct that occurred after the date of that order.**

As required by RCRC 40.2, plaintiff is including the required Notice of Directly Related Case with this amended complaint.

4. STATEMENT OF THE CLAIM—TABLE OF CONTENTS

[TABLE INTENTIONALLY OMITTED]

A. Facts Specific to All Alternative Theories for Recovery

On April 26, 2022, plaintiff received an email from his brokerage firm alerting him to defendant's desire to use plaintiff's property as part of defendant's economic retaliation against Russia for its invasion of Ukraine. That email specifically stated that

> *"After 25 May, federal law will require us to place these blocked shares into an escrow account* ***for OFAC-authorized transactions only. Clients will not be able to access these shares without OFAC's permission.***"

By letter, dated April 27, 2022, and addressed to Mr. Biden, Mr. Klain, Mrs. Yellen and Mr. Garland, plaintiff identified the constitutional violations should defendant pursue its strategy of taking plaintiff's property without paying 'just compensation' as required by the 5th Amendment to the U.S. Constitution.

In that same letter, plaintiff made a written offer to defendant for the use of plaintiff's property and identified the two payment options for defendant's possession, control and use of plaintiff's property when plaintiff stated

> "*you may pay me* ***$25/share for the property . . . and I will immediately transfer all those shares to you.***
>
> *Alternatively, you may pay me* ***$1/share/ week for the use of my property . . . until such time as I am 'allowed' to control my property again.***"

In that offer letter, dated April 27, 2022, plaintiff also notified defendant of the value of plaintiff's constitutional rights when plaintiff stated

> *"**I value my constitutional rights at $1,000,000 per violation**, plus cumulative interest".*

By letter, dated May 13, 2022, and addressed to Mr. Biden, Mr. Klain, Mrs. Yellen and Mr. Garland, plaintiff again identified the constitutional violations should defendant pursue its strategy of taking plaintiff's property without paying 'just compensation' as required by the 5th Amendment to the U.S. Constitution, referenced plaintiff's offer of April 27, 2022, and confirmed that defendant had not responded to indicate which of the two payment alternatives defendant would like to exercise.

In that subsequent letter, dated May 13, 2022, plaintiff repeated his offer to defendant for the use of his property and identified the two payment options for defendant's possession, control and use of plaintiff's property when plaintiff stated

> " . . . you will pay pay me **$25/share for the property** . . . or you may pay me **$1/share/week for the use of my property** . . . **whichever is greater**."

In that subsequent letter, dated May 13, 2022, plaintiff notified defendant of the increased value of plaintiff's constitutional rights when plaintiff stated

“ . . . ***the going rate for each constitutional right is now $5, 000, 000/per violation***”.

On May 25, 2022, plaintiff received an email from his brokerage firm notifying him that defendant had taken possession and control of plaintiff’s 2,400 shares of SBRCY, which stated

> “**Because of sanctions, which are administered by the Office of Foreign Assets Control (OFAC) of the U.S. Department of the Treasury**, Sberbank shares have been frozen. These shares can no longer be traded by U.S. financial institutions, including Schwab. . . .
>
> *As of 25 May 2022,* ***federal law requires us to place Sberbank shares into an escrow account from which only OFAC-authorized transactions may be made.*** . . .
>
> ***Clients will be unable to access Sberbank shares without permission from OFAC.*** *Within 10 business days, the Sberbank shares in your Schwab account will be assigned an escrow CUSIP number, and the share value will appear as “N/A.””*

On May 25, 2022, defendant’s Office of Foreign Assets Control (“OFAC”) took possession of, started exercising control over and began using plaintiff’s 2,400 shares of SBRCY.

Therefore, on May 25, 2022, defendant took possession of plaintiff's property, which is an overt act by defendant indicating defendant's acceptance by conduct of plaintiff's then-outstanding offer.

By letter, dated May 29, 2022, and addressed to Mr. Biden, Mr. Klain, Mrs. Yellen and Mr. Garland, plaintiff confirmed defendant's overt act of acceptance of plaintiff's offer and reminded defendant of its contractual obligation to start weekly payments when plaintiff stated

> *"Because you are now in possession of and exerting control over my property,* ***your taking of my property is sufficient evidence of your acceptance of my offer*** *(see letters referred to above)—****the agreed upon contractual price is $25/share*** *. . .* ***or $1/share/week for the use of my property*** *. . .* ***<u>whichever is greater</u>.****"*

In that letter, dated May 29, 2022, plaintiff also notified defendant of the rate of interest that will accrue on all outstanding balances, when plaintiff stated

> *" . . .* ***if timely payment is not received by Friday, June 10, 2022, then you will be charged interest at 22.30% on the outstanding amounts retroactive to May 25, 2022.****"*

Beginning on June 10, 2022, through August 14, 2022, plaintiff repeatedly reached out to defendant and reminded them of their contractual obligations and past-due payments.

Appendix C

By letter, dated December 4, 2024, and addressed to Mr. Biden, Mr. Zients, Mrs. Yellen, Mr. Garland, and defendant's OFAC, plaintiff issued its "NOTICE & DEMAND FOR PAYMENT". In that letter, plaintiff identified each and every previous instance in which plaintiff had contacted defendant to resolve defendant's breach of the contract between the parties and to resolve defendant's numerous constitutional violations.

Defendant failed to respond to plaintiff's requests.

Without payment of any monies for defendant's possession, use and control of plaintiff's property since May 25, 2022, defendant continues to possess, use and control plaintiff's property (to wit, the 2,400 shares of SBRCY).

To date, defendant has not made any payments pursuant to the terms of the contract for defendant's continuing use of plaintiff's property, nor has defendant bothered to respond to its ever-increasing liability for said possession, control and use of plaintiff's property with paying 'just compensation', as required by the 5th Amendment to the U.S. Constitution.

To date, defendant has utterly failed to provide any due process to its continued possession, control and use of plaintiff's property, as required by the 5th Amendment to the U.S. Constitution.

B. Facts Specific to Defendant's Breaches of the Implied Contract

The required elements of a contract are straight forward:

(i) An offer;

(ii) An acceptance;

(iii) An exchange of mutual consideration; and

(iv) Performance.

(i) Offer Made

Plaintiff's letters, dated April 27, 2022, and May 13, 2022, are clearly offer letters, identifying the offer, the property interest being offered, the price to be paid by offeree and the method of acceptance (offeree's taking and use of the plaintiff's property). **Offer made.**

(ii) Implied Acceptance by Conduct

On May 25, 2022, defendant took possession of plaintiff's property—an act of acceptance as identified in plaintiff's written offer. Conduct constitutes acceptance of an offer if it occurs in accordance with and in response to the specific terms of the offer. **Implied acceptance occurs when the parties act in a way that indicates their agreement with the contract terms.**

The U.S. Court of Federal Claims has "***jurisdiction to render judgment upon any claim against the United States founded*** *either upon the Constitution,... or* ***upon any*** *express or* ***implied contract with the United States***".[5] Thus, the statutory language creating this Court's jurisdiction specifically acknowledges that this Court has jurisdiction over implied contracts.

By actively taking possession of plaintiff's property on May 25, 2022, and actively using it to wage continuous economic war on Russia ever since, defendant's continuing overt acts confirm defendant's acceptance of plaintiff's offer. **Offer accepted.**

(iii) Mutual Consideration—Exchange of Promises

Mutual consideration is the exchange of promises—plaintiff promised to allow defendant the use of his property and defendant promised to pay for that use, confirmed by defendant's possession and use of plaintiff's property after having been made aware of the related price to be paid for that use. **Promises exchanged.**

(iv) Performance by Plaintiff Occurred

On May 25, 2022, defendant took possession of, exercised control over and has continued to use plaintiff's property consistent with plaintiff's offer, confirming that plaintiff has satisfied plaintiff's promise. **Performance by plaintiff has occurred.**

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5. 28 U.S.C. §1491(a)(1).

Thus, on May 25, 2022, all four elements of a contract were satisfied and a binding contract came into existence.

(v) The Defense of 'Mere Silence' Does Not Apply When Defendant Accepts Plaintiff's Offer by Defendant's Conduct

An offer may be accepted by several methods, including signing a formal contract, orally agreeing to the conditions, or **performing an action that displays acceptance.**

Conduct constitutes acceptance of an offer if it occurs in accordance with and in response to the specific terms of the offer. Although express acceptance occurs when clear, explicit agreement is made in response to an offer, **implied acceptance occurs when the parties act in a way that indicates their agreement with the contract terms.**

By its own terms, plaintiff's offer was to be accepted by defendant's overt act of taking plaintiff's property. Thus, defendant's conduct and continuing overt acts of taking and using plaintiff's property indicated defendant's acceptance of plaintiff's offer.

Moreover, defendant's acceptance of plaintiff's offer was confirmed by more than just a single overt act by defendant at a single point in time, but rather defendant's acceptance was confirmed by a series of overt acts occurring consistently over time and that continue to this date.

First, President Biden accepted plaintiff's offer by signing his name to the executive order authorizing the taking of plaintiff's property for use in defendant's economic war against Russia. Signing an executive order is an overt act and is more than 'mere silence'.

Second, President Biden ordered the Department of Treasury's OFAC to take possession of plaintiff's property. Ordering someone to do something is an overt act and is more than 'mere silence'.

Third, defendant's OFAC took possession of plaintiff's property and transferred it from plaintiff's investment account to an escrow account controlled and managed by defendant's OFAC. Taking possession of someone's property and transferring it to a different account is an overt act and is more than 'mere silence'. Defendant <u>continues</u> to possess plaintiff's property in a separate account.

Fourth, every day since defendant took possession of plaintiff's property, defendant has <u>continuously</u> used plaintiff's property as part of defendant's economic war against Russia. Waging war is an overt act and is more than 'mere silence'.

Thus, defendant confirmed its acceptance of plaintiff's offer by its conduct and numerous overt acts of taking and using plaintiff's property. **Defendant's own active and ongoing conduct precludes the defense of 'mere silence' from possibly applying to the current dispute.**

In the face of an offer by plaintiff to allow defendant the use of plaintiff's property, defendant's acts of taking and using plaintiff's property is a clear acceptance of the offer by defendant's conduct, which created an implied contract between the parties that the U.S. Court of Federal Claims has jurisdiction to review pursuant to 28 U.S.C. §1491(a)(1).

(vi) Defendant Breaches the Implied Contract Between the Parties Each and Every Passing Week

The terms of the contract between the parties require defendant to pay plaintiff a weekly lease fee of $1/share/week.

Defendant has never paid any of the weekly lease fees and continues to refuse to pay those weekly lease fees as each new week passes. Thus, each week that passes without payment of the weekly lease fee for that week is another breach of contract by defendant. **These weekly breaches of contract are continuing as of April 14, 2025.**

C. Facts Specific to Defendant's 4,800 Violations of the Takings Clause

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

> *"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".[6]

Thus, an unconstitutional takings violation requires:

(i) **A taking of property**; and

(ii) **Failure to pay 'just compensation'.**

(i) Defendant's Direct Taking of Plaintiff's Property

On May 25, 2022, defendant took direct possession of plaintiff's property and transferred it to an escrow account controlled by defendant's OFAC.

Since that day, defendant has continued to possess, control and use plaintiff's property to wage economic war on Russia. **Thus, defendant's direct taking of plaintiff's property has been complete, pervasive and long-term (if not permanent).**

Defendant's refusal to pay plaintiff the weekly lease fees specific to each of the 2,400 shares is another subset of plaintiff's property taken by defendant, namely, the individual income streams specific to each of the 2,400 shares. As such, Defendant has violated plaintiff's constitutional rights under the Takings Clause 4,800 times—2,400 times for each of the individual 2,400 shares and another 2,400 times for the each of the individual income streams related to those individual shares.

6. U.S. Const., Amdt. 5.

(ii) Defendant has Refused to Pay Any Compensation for its Taking of Plaintiff's Property

Since May 25, 2022, defendant has refused to pay plaintiff a single penny for defendant's <u>continuing</u> possession, control and use of plaintiff's property, despite repeated demand letters by plaintiff. **Thus, defendant has not paid plaintiff any compensation for the <u>continuing</u> possession and use of plaintiff's property, much less the 'just compensation' required by the 5th Amendment to the U.S. Constitution.**

(iii) Defendant's Possession of Plaintiff's Property (both the shares and the weekly payments) Continues Unabated

Defendant remains in the <u>continuing</u> possession of plaintiff's property (i.e., the 2,400 shares) and has <u>continued</u> to use and control plaintiff's property without paying plaintiff the 'just compensation' required by the Takings Clause of the U.S. Constitution for that possession. **Defendant's possession of plaintiff's 2,400 shares without 'just compensation' is <u>continuing</u> as of April 14, 2025.**

Additionally, for each week since May 25, 2022, defendant has refused and continues to refuse to pay over the contractually-obligated weekly lease fees for each of the 2,400 shares. Defendant therefore remains in the continuing possession of plaintiff's property (i.e., the weekly lease fees) without paying plaintiff the 'just compensation' required by the Takings Clause of the U.S. Constitution for that possession. **Defendant's weekly takings are continuing as of April 14, 2025.**

D. Facts Specific to Defendant's 2,400 Violations of the Due Process Clause

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

> *"**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".*[7]

The required elements of a Due Process violation are very straightforward:

(i) **An action by the government to deprive plaintiff of property**; and

(ii) **An absence of due process surrounding that decision and action.**

(i) Defendant's Action to Take Plaintiff's Property

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.

7. U.S. Const., Amdt. 5.

(ii) Absence of Any Due Process

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.**

(iii) The Due Process Clause is Necessarily a Money-mandating Provision Under the 'Fair Interpretation' Test

The Supreme Court of the United States has previously interpreted the "*money-mandating*" category of the U.S. Court of Federal Claims' jurisdiction to require it

> "***To*** *determine whether a statutory claim falls within the Tucker Act's immunity waiver, we typically* ***employ a "fair interpretation" test. A statute creates a "right capable of grounding a claim within the waiver of sovereign immunity if, but only if, it 'can fairly be interpreted as mandating compensation by the Federal Government for the damage sustained.'"*** *United States v. White Mountain Apache Tribe, 537 U.S. 475, 472, 123 S.Ct. 1126, 155 L. Ed. 2d 40 (2003) (quoting Mitchell, 463 U.S. at 217, 103 S. Ct. 2961); see also Navajo Nation, 556 U.S. at 290, 129 S. Ct. 1547 (****"The other source of law need not explicitly provide that the right or duty it creates is enforceable***

> *through a suit for damages"). **Satisfying this rubric is generally both necessary and sufficient to permit a Tucker Act suit for damages in the Court of Federal Claims.** White Mountain Apache, 537 U.S. at 472–473, 123 S. Ct. 1126."*[8]

Thus, when considering if a statute or constitutional provision is money-mandating, the reviewing court must apply the 'fair interpretation' test. **As any parent of a 4-year old can attest, any rule prohibiting conduct that lacks consequences for the prohibited conduct will never achieve its stated goal of minimizing the prohibited conduct.**

The constitutional requirement of due process is clearly articulated in the 5th Amendment and absent any consequences to defendant for its failure to comply with the due process requirements of the U.S. Constitution, defendant will continue to violate the U.S. Constitution with impunity (as it has in this case). Thus, any 'fair interpretation' of the U.S. Constitution must conclude that some consequences must apply to defendant when it violates those constitutional prohibitions. **The contrary conclusion would convert the U.S. Constitution from a document of limited powers, defined rights and specific prohibitions into a list of mere suggestions, hopes and fairy dust. Thus, defendant's failure to provide any due process protections during its taking and use of**

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8. Maine Cmty. Health Options v. United States, 140 S. Ct. 1308, at 1328 (2020).

plaintiff's property is a clear violation of plaintiff's 5th Amendment rights under the Due Process clause of the U.S. Constitution subject to review by the U.S. Court of Federal Claims.

E. Defendant's Legal Possession of Plaintiff's Property

Under each of plaintiff's theories for recovery, defendant's possession of plaintiff's property is clearly legal. In fact, defendant's continuing possession of plaintiff's property necessarily satisfies certain elements of each of those theories of recovery.

(i) 'Breach of Contract' Theory—Legal Possession Satisfies the 'Acceptance' Element

Under the 'breach of contract' theory for recovery, defendant's continuing possession of plaintiff's property satisfies the 'acceptance' element of the breach of contract action, because defendant's overt act of taking possession of plaintiff's property is the overt act necessary to confirm defendant's acceptance of plaintiff's offer. Defendant's continuing possession of plaintiff's property also satisfies the 'performance' element of the breach of contract action, because defendant's possession of plaintiff's property confirms that plaintiff has performed consistent with plaintiff's promise to provide plaintiff's property to defendant. Thus, defendant's possession of plaintiff's property satisfies two necessary elements of plaintiff's 'breach of contract' theory for recovery.

(ii) 'Takings Violation' Theory—Defendant's Possession is Legal Because Defendant Exercised Its Power of Eminent Domain

Under the 'Takings Clause' theory for recovery, defendant has clearly exercised its constitutional power of eminent domain to take plaintiff's property to use in its war against Russia. Thus, defendant has legal possession of plaintiff's property.

Fortunately, the power of eminent domain does not trump the 5th Amendment to the U.S. Constitution, but rather triggers the 5th Amendment's requirement that defendant pay plaintiff 'just compensation' for that taking effected by defendant's power of eminent domain. Thus, defendant's possession of plaintiff's property satisfies a necessary element of plaintiff's 'Takings Clause' theory for recovery.

(iii) 'Due Process Clause' Theory—Defendant's Exercise of Its Power of Eminent Domain Requires Due Process

Under the 'Due Process Clause' theory for recovery, defendant is required to provide some manner of due process when exercising its power of eminent domain. Thus, defendant's possession of plaintiff's property satisfies a necessary element of plaintiff's 'Due Process Clause' theory for recovery.

(iv) Defendant's Failure to Pay Creates Defendant's Liability

For clarity, it is not defendant's legal possession of plaintiff's property that subjects defendant to liability under each of plaintiff's theories of recovery, but rather defendant's failure to pay the agreed upon amount for defendant's legal possession (under the 'breach of contract' theory), defendant's failure to pay 'just compensation' for defendant's legal possession (under the 'Takings Clause' theory) and defendant's failure to provide any due process when exercising its power of eminent domain (under the 'Due Process Clause' theory) that subjects defendant to liability for its conduct.

F. Plaintiff's Damages—Breaches of Contract Damages and 'Just Compensation'

Under both the 'breach of contract' theory for recovery and the 'Takings Clause' theory for recovery, plaintiff is entitled to an amount reflecting defendant's <u>continuing</u> possession, control and use of plaintiff's property for the continuing period of time of defendant's possession, control and use.

By letter, dated April 27, 2022, and addressed to Mr. Biden, Mr. Klain, Mrs. Yellen and Mr. Garland, plaintiff identified the two payment options for defendant's use and control of plaintiff's property when plaintiff stated

> *"you may pay me **$25/share for the property . . . and I will immediately transfer all those shares to you**.*

> *Alternatively, you may pay me **$1/share/ week for the use of my property . . . until such time as I am 'allowed' to control my property again.**"*

In plaintiff's subsequent letter, dated May 13, 2022, plaintiff repeated his offer to defendant for the use of his property and identified the two payment options for defendant's use and control of plaintiff's property when plaintiff stated

> *" . . . you will pay me **$25/share for the property** . . . or you may pay me **$1/share/week for the use of my property** . . . **<u>whichever is greater.</u>**"*

Thus, the measure of plaintiff's damages under the 'breach of contract' theory for recovery or the 'just compensation' requirement of the 5th Amendment is $1/ share/week, or $2,400/week for 151 weeks since defendant took possession of plaintiff's property. **Defendant owes plaintiff approximately $361,714.29 for the use of plaintiff's property pursuant to the implied contract and also pursuant to the 'just compensation' requirement of the 5th Amendment to the U.S. Constitution. That amount will continue to increase as the number of weeks that defendant <u>continues</u> to possess, control and use plaintiff's property increases.**

G. Plaintiff's Damages—7,200 Constitutional Violations are Extreme, Inexcusable and Warrant Commiserate Consequences to Encourage Defendant to Change Its Conduct

As it relates to each of plaintiff's 2,400 shares of SBRCY, defendant has violated plaintiff's 5th Amendment constitutional rights three (3) times.

First, defendant has failed to pay 'just compensation' related to each of plaintiff's 2,400 shares of SBRCY that defendant continues to possess.

Second, defendant has failed to pay 'just compensation' for the income stream related to each of plaintiff's 2,400 shares of SBRCY that defendant continues to possess.

Third, defendant has failed to provide any due process surrounding its exercise of its power of eminent domain when it took possession of plaintiff's 2,400 shares of SBRCY.

Because each share of SBRCY is a separate and distinct item of property, defendant's conduct is multiplied by 2,400 times.

Thus, defendant has violated plaintiff's constitutional rights 7,200 times (2,400 shares of SBRCY X 3 constitutional violations / share = 7,200 violations).

The absolute quantity of defendant's constitutional violations is staggering—Defendant's has violated plaintiff's constitutional rights no less than 7,200 times. Defendant is such a habitual violator of the U.S. Constitution that severe consequences are required to encourage defendant to comply with the prohibitions in the U.S. Constitution. In fact, defendant has continued its unconstitutional conduct after this court's dismissal of plaintiff's 2023 complaint, because no consequences were applied to defendant's unconstitutional conduct.

In plaintiff's letter, dated May 13, 2022, plaintiff notified defendant of the increased value of plaintiff's constitutional rights when plaintiff stated

> " . . . ***the going rate for each constitutional right is now $5,000,000/per violation***".

Finally, it is a simple matter of 4th grade math to determine the total amount that plaintiff is owed for defendant's willful and habitual violations of plaintiff's constitutional rights, to wit, the number of violations multiplied by the value of those constitutional rights. The total amount that plaintiff is owed equals $36,000,000,000 (7,200 violations X $5M/violation).

Plaintiff acknowledges that the amount defendant owes for those 7,200 constitutional violations is eye-popping, but so, too, is the number of constitutional violations by defendant in this case.

Perhaps defendant will now have some financial incentive to alter defendant's willful and habitual unconstitutional behavior in the future, when defendant considers violating the U.S. Constitution and its limitations on defendant's conduct.

H. Plaintiff's Damages—Accrued Annual Interest of 23.56%—32.59%

Under both the 'breach of contract' theory for recovery and the 'constitutional violations' theories for recovery, plaintiff is entitled to accrued interest for the period of time since defendant possessed plaintiff's property without payment and defendant violated plaintiff's constitutional rights, all of which began on May 25, 2022 and continues to April 14, 2025.

Under the 'breach of contract' theory, accrued interest is part of the 'damages' element.

Under the 'Takings Clause' theory, accrued interest is part of the 'just compensation' required to be paid by the 5th Amendment.

Plaintiff's current net after-tax, pre-profit rate of interest is between 11.29%—16.25% (reflecting plaintiff's actual rate on his personal loan and line of credit, respectively).

In order to arrive at the proper pre-tax, after-profit interest rate necessary for defendant to adequately compensate plaintiff, that rate must be increased by the amount of taxes to be paid by plaintiff and by an amount of profit that plaintiff would have earned as a lender. Plaintiff's marginal effective combined tax rate is 45.09%.

Plaintiff's very reasonable profit margin is 3%. **Grossing up plaintiff's range of its after-tax, pre-profit rates of interest for these items results in a range of pre-tax annual interest rate to be charged defendant of 23.56%—32.59%.**

I. Plaintiff's Damages—Plaintiff is Not Seeking Damages for Any Decline in Value

For clarity, plaintiff is seeking damages for defendant's possession, control and use of plaintiff's property for the last 1,055 days that defendant has possessed, controlled and used plaintiff's property in defendant's economic war against Russia (the number of days will continue to increase).

The best measure of damages under the 'breach of contract' alternative theory for recovery is the weekly lease fee identified in that contract.

The best measure of damages under the 'Takings Clause' alternative theory for recovery is also the payment of the required 'just compensation' by defendant for its possession, control and use of plaintiff's property based on the weekly lease fee identified in the contract.

At no point in this complaint has plaintiff requested damages from defendant based on a decline in value related to plaintiff's property.

At no point in this complaint has plaintiff alleged a decline in value related to plaintiff's property.

Plaintiff has unequivocally requested damages and 'just compensation' relating to defendant's continuing taking, possession, control and use and plaintiff's property—the best measure of those damages and 'just compensation' being the weekly lease fee identified in plaintiff's offer letter that defendant received before it took possession of plaintiff's property, before it exercised control over plaintiff's property and before it used plaintiff's property to wage economic war against Russia.

RELIEF REQUESTED

Plaintiff requests the following:

a) An order from the U.S. Court of Federal Claims requiring the prompt and immediate payment by defendant for its possession, control and use of plaintiff's 2,400 shares of SBRCY (approximately $361,714.29, as of April 14, 2025, but will continue to increase);

b) An order from the U.S. Court of Federal Claims requiring the prompt and immediate payment by defendant for the accrued interest on the outstanding balance owed to plaintiff for defendant's breach of contract or the 'just compensation' owed to plaintiff for defendant's continuing possession, control and use of plaintiff's property (approximately $282,910.74, as of April 14, 2025, but will continue to increase);

c) An order from the U.S. Court of Federal Claims requiring defendant to pay plaintiff $5,000,000 for each of the 7,200 violations of plaintiff's 5th Amendment constitutional rights (a violation of the Takings Clause and a violation of the Due Process Clause specific to each of the 2,400 shares, plus a third violation of the Takings Clause specific to the income stream related to each of the 2,400 shares = 2,400 shares X 3 violations/share X $5,000,000/violation = $36,000,000,000), totaling **$36,000,000,000**, plus accrued interest thereon.

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

Signed this 14th day of April, 2025,

/s/ James W. Tindall
James W. Tindall
Plaintiff
4674 Jefferson Township Place
Marietta, GA 30066
Tel: (770) 337-2746
Email: theslayor@yahoo.com

APPENDIX D — ORDER FOR REHEARING OF THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT, FILED MARCH 25, 2026

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

2025-1845

JAMES TINDALL,

Plaintiff-Appellant,

v.

UNITED STATES,

Defendant-Appellee.

Appeal from the United States Court of Federal Claims in No. 1:25-cv-00122-DAT, Judge David A. Tapp

ON PETITION FOR PANEL REHEARING AND REHEARING EN BANC

Before MOORE, *Chief Judge*, LOURIE, DYK, PROST, REYNA, TARANTO, CHEN, HUGHES, STOLL, CUNNINGHAM, and STARK, *Circuit Judges*[1].

PER CURIAM.

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1. Circuit Judge Newman did not participate.

Appendix D

ORDER

On February 20, 2026, James Tindall filed a combined petition for panel rehearing and rehearing en banc [ECF No. 18]. The petition was referred to the panel that heard the appeal, and thereafter the petition was referred to the circuit judges who are in regular active service.

Upon consideration thereof,

IT IS ORDERED THAT:

The petition for panel rehearing is denied.

The petition for rehearing en banc is denied.

March 25, 2026
Date

APPENDIX E — CONSTITUTIONAL AND STATUTORY PROVISIONS

Rule 14(f)—Constitutional & Statutory Provisions

U.S. Const., 5^{th} Amendment:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

28 U.S.C. §1491(a)(1):

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 incases not sounding in tort. For the purpose of this paragraph, an express or implied contract with the Army and Air Force Exchange Service, Navy Exchanges, Marine Corps Exchanges, Coast Guard Exchanges, or Exchange Councils of the National Aeronautics and Space Administration shall be considered an express or implied contract with the United States.