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No. 26-578

In the Supreme Court of the United States

KOSHY MATHAI,
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

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QUESTIONS PRESENTED

VA recruited petitioner from private practice for a Pain Management position providing interventional-pain medicine. The complaint alleges that, before appointment and while petitioner remained a private civilian, VA had already planned to obtain control of that specialty labor and redirect it toward addiction treatment under a different service. The Federal Circuit recast the pleaded property as bonus and assignment expectations and held that the antecedent plan "makes no difference" because petitioner later accepted federal employment.

The questions presented are:

1. Whether specialized professional labor may constitute "private property" under the Takings Clause when independent law and official acquisition instruments objectively define a bounded labor-use interest, or whether acceptance of a paid federal appointment categorically forecloses that inquiry.

2. Whether, as in *Snyder v. United States*, the timing of an antecedent arrangement may determine the legal character of a later implementing act, such that a court reviewing a Rule 12(b)(6) dismissal may not treat the Government's preappointment plan to acquire and redirect a private specialist's labor as legally irrelevant merely because the specialist later accepted a federal appointment.

PARTIES TO THE PROCEEDING

Petitioner Koshy Mathai was plaintiff in the United States Court of Federal Claims and plaintiff-appellant in the United States Court of Appeals for the Federal Circuit.

Respondent United States was defendant in the Court of Federal Claims and defendant-appellee in the Federal Circuit.

The caption contains all parties. Neither party has a stock ticker symbol.

No corporate disclosure statement is required under Rule 29.6.

STATEMENT OF RELATED PROCEEDINGS

This case arises from the following directly related proceedings within the meaning of Rule 14.1(b)(iii):

- *Mathai v. United States*, No. 2026-1041, United States Court of Appeals for the Federal Circuit. Judgment entered June 8, 2026; rehearing denied July 23, 2026.
- *Mathai v. United States*, No. 24-1954 C, United States Court of Federal Claims. Opinion and order entered September 11, 2025; judgment entered September 12, 2025.

There are no other directly related proceedings in state or federal trial or appellate courts, or in this Court.

TABLE OF CONTENTS

QUESTIONS PRESENTED i
PARTIES TO THE PROCEEDING ii
STATEMENT OF RELATED PROCEEDINGS ii
TABLE OF CONTENTS iii
TABLE OF AUTHORITIES v
PETITION FOR A WRIT OF CERTIORARI 1
OPINIONS BELOW 1
JURISDICTION 1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 2
INTRODUCTION 2
STATEMENT OF THE CASE 6
A. Title 38 uses appointment, specialty pay, and professional privileges to acquire physician services. 6
B. VA recruited petitioner for interventional-pain work while simultaneously building an addictionologist-led Whole Health service. 8
C. Both courts recharacterized the pleaded property and treated later status as dispositive. 10
REASONS FOR GRANTING THE PETITION 12
I. Lower courts are divided over whether professional services are property or merely a status-based duty. 12
II. The decision below conflicts with Tyler and departs from accepted pleading procedure. 18
III. The holding that preappointment timing "makes no difference" warrants review. 26
IV. The questions are exceptionally important and the Federal Circuit has nationwide practical control. 30

V. The decision threatens the constitutional relationship between citizen and government. . .33
VI. This case is an excellent vehicle. 35
CONCLUSION 38
APPENDIX A—Federal Circuit Opinion (June 8, 2026) 2a
APPENDIX B—Court of Federal Claims Opinion and Order (September 11, 2025) 10a
APPENDIX C—Court of Federal Claims Judgment (September 12, 2025) 14a
APPENDIX D—Order Denying Rehearing (July 23, 2026) 15a
APPENDIX E—Federal Circuit Judgment (June 8, 2026) 17a
APPENDIX F—Constitutional and Statutory Provisions 18a
APPENDIX G—First Amended Complaint Excerpts (C.A. App. 25–26, 33) 21a
APPENDIX H—Recruitment Service Agreement and Official Job Offer (C.A. App. 48–49) 24a
APPENDIX I—VHA Handbook 1100.19 and CTVHCS Bylaws Excerpts (C.A. App. 164–165, 197) 26a
APPENDIX J—Realignment, OPPE, and Privileges Email (C.A. App. 55) 29a
APPENDIX K—Preappointment Recruitment and Whole Health Timeline Excerpts (C.A. App. 28–31, 34) 30a
APPENDIX L—Realignment Approval and Notice (C.A. App. 57–58) 36a

TABLE OF AUTHORITIES

Cases

Adams v. United States, 391 F.3d 1212 (Fed. Cir. 2004) 10–11, 18, 20
Armstrong v. United States, 364 U.S. 40 (1960) 33
Arnold v. Kemp, 306 Ark. 294, 813 S.W.2d 770 (1991) 14
Ashcroft v. Iqbal, 556 U.S. 662 (2009) 9, 21, 26, 29
Baker County Medical Services, Inc. v. U.S. Attorney General, 763 F.3d 1274 (11th Cir. 2014) 14–16
Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007) 21, 26
Board of Regents v. Roth, 408 U.S. 564 (1972) 21
Butler v. Pennsylvania, 51 U.S. (10 How.) 402 (1850) 21
Butler v. Perry, 240 U.S. 328 (1916) 14, 17
Cedar Point Nursery v. Hassid, 594 U.S. 139 (2021) 3, 19, 21, 33–34
Chicago, Burlington & Quincy Railroad Co. v. Chicago, 166 U.S. 226 (1897) 34
Cross v. Department of Transportation, 127 F.3d 1443 (Fed. Cir. 1997) 18, 20
DeLisio v. Alaska Superior Court, 740 P.2d 437 (Alaska 1987) 13
Dolan v. City of Tigard, 512 U.S. 374 (1994) 29
Eastern Enterprises v. Apfel, 524 U.S. 498 (1998) ..32
Ex parte Brown, 393 S.C. 214, 711 S.E.2d 899 (2011) 13–14
Family Division Trial Lawyers of the Superior Court-D.C., Inc. v. Moultrie, 725 F.2d 695 (D.C. Cir. 1984) 12, 18

First English Evangelical Lutheran Church of Glendale v. County of Los Angeles, 482 U.S. 304 (1987) 10
Frey v. Department of Labor, 359 F.3d 1355 (Fed. Cir. 2004) 18, 20
Horne v. Department of Agriculture, 576 U.S. 351 (2015) 4, 15, 19, 24, 33
Jones v. United States, 846 F.3d 1343 (Fed. Cir. 2017) 29
Koontz v. St. Johns River Water Management District, 570 U.S. 595 (2013) 29
Lynch v. United States, 292 U.S. 571 (1934) 23
Mathai v. United States, No. 2026-1041 (Fed. Cir. June 8, 2026) .....ii, 1
Mathai v. United States, 2025 WL 2622178 (Fed. Cl. Sept. 11, 2025) 1
Nollan v. California Coastal Commission, 483 U.S. 825 (1987) 29
Omnia Commercial Co. v. United States, 261 U.S. 502 (1923) 36
Phillips v. Washington Legal Foundation, 524 U.S. 156 (1998) 4, 7, 18–19
Ruckelshaus v. Monsanto Co., 467 U.S. 986 (1984) 4, 19, 21, 25, 29, 37
Sekhar v. United States, 570 U.S. 729 (2013) ...19–20
Sierra Medical Services Alliance v. Kent, 883 F.3d 1216 (9th Cir. 2018) 15–16
Snyder v. United States, 603 U.S. 1 (2024) 28–29
State ex rel. Stephan v. Smith, 242 Kan. 336, 747 P.2d 816 (1987) 13–14
Tyler v. Hennepin County, 598 U.S. 631 (2023) 4, 7, 9, 11, 18, 20–23, 25, 29, 33
United States v. Dillon, 346 F.2d 633 (9th Cir. 1965) 12, 18

United States v. General Motors Corp., 323 U.S. 373 (1945) 36
United States v. Thompson, 647 F.3d 180 (5th Cir. 2011) 19
Webb's Fabulous Pharmacies, Inc. v. Beckwith, 449 U.S. 155 (1980) 4, 19, 23
Williamson v. Vardeman, 674 F.2d 1211 (8th Cir. 1982) 12, 18

Constitutional Provisions

U.S. Const. amend. V 2, 7, 13, 36

Statutes and Rules

28 U.S.C. § 1254(1) 1–2, 33, 35
28 U.S.C. § 1295(a)(3) 1, 32
28 U.S.C. § 1491(a)(1) 1–2, 32, 37
38 U.S.C. § 7401 .....2, 6, 37
38 U.S.C. § 7402 .....2, 37
38 U.S.C. § 7431 .....2, 6–7, 24, 37
Fed. Cir. R. 32.1 32
Sup. Ct. R. 10 .....26, 33
Sup. Ct. R. 13.3 1
Sup. Ct. R. 14.1(b)(iii) ii
RCFC 12(b)(6) 10

Other Authority

U.S. Government Accountability Office, GAO-18-124, Veterans Health Administration: Better Data and Evaluation Could Help Improve Physician Staffing, Recruitment, and Retention Strategies (2017) 31
U.S. Government Accountability Office, GAO-23-106836, Veterans Health Care: Staffing Challenges and Recommendations for Improvement (2023) 31
The Declaration of Independence para. 2 (U.S. 1776) 34

PETITION FOR A WRIT OF CERTIORARI

Koshy Mathai respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Federal Circuit.

OPINIONS BELOW

The Federal Circuit's opinion is unreported. *Mathai v. United States*, No. 2026-1041 (Fed. Cir. June 8, 2026). It is reproduced at App. 2a–9a. Its order denying panel rehearing and rehearing en banc is unreported and reproduced at App. 15a–16a. The Federal Circuit's judgment is reproduced at App. 17a.

The opinion of the Court of Federal Claims is unreported but available at 2025 WL 2622178. It is reproduced at App. 10a–13a. The judgment of the Court of Federal Claims is reproduced at App. 14a.

JURISDICTION

The Federal Circuit entered judgment on June 8, 2026. App. 17a. Petitioner timely sought panel rehearing and rehearing en banc, which the Federal Circuit denied on July 23, 2026. App. 15a–16a. This petition is timely under Rule 13.3. This Court has jurisdiction under 28 U.S.C. § 1254(1).

The Court of Federal Claims had jurisdiction over petitioner's claim for just compensation under 28 U.S.C. § 1491(a)(1). The Federal Circuit had jurisdiction under 28 U.S.C. § 1295(a)(3).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Takings Clause of the Fifth Amendment provides: "nor shall private property be taken for public use, without just compensation."

Pertinent provisions of 28 U.S.C. §§ 1254 and 1491 and 38 U.S.C. §§ 7401, 7402, and 7431 are reproduced at App. 18a–20a.

INTRODUCTION

This case presents a concrete mismatch. VA recruited petitioner from outside federal service to provide interventional-pain medicine. App. 24a–25a. Yet the complaint pleads that, before appointment, VA planned to obtain control of that labor, move Pain Management under an addictionologist-led Whole Health service, and press petitioner to treat addiction—outside the specialty for which he was recruited, credentialed, privileged, and paid. App. 21a–23a. The plan formed while he remained a private civilian; appointment supplied the supervisory control needed to implement it.

Petitioner does not claim a retention incentive, preferred supervisor, or organizational chart, and does not challenge ordinary federal reassignment. The property is petitioner's specialist labor, bounded by the uses objectively conveyed to VA. The antecedent plan and the later postappointment act operate together: the plan identifies the materially different use VA allegedly intended while petitioner remained a private civilian, and the later redirection of his professional services after appointment is the act alleged to effect the taking. Appointment supplied the control needed to implement the plan; it did not itself answer the scope of consent or erase the

retained labor-use interest. VA's authority to recruit, appoint, pay, and supervise physicians is not disputed. "The government must pay for what it takes." *Cedar Point Nursery v. Hassid*, 594 U.S. 139, 148 (2021).

That theory does not rest on petitioner's subjective expectation. VA's official offer identified the position and organizational placement as "Physician (Pain Management)" in the "Pain Management Section/Surgical Service." App. 25a. The signed service agreement obligated petitioner to serve for two years as "Staff Physician (Pain Management)" in "Surgical Service" and made a move to another "service/location/position" material to the incentive. App. 24a. Title 38 made market pay reflect the physician's "specialty or assignment," and VA's privileging rules made clinical privileges facility-specific and provider-specific. App. 26a. Those government-created sources—not an uncommunicated hope—define the pleaded interest.

The decision below never analyzed that claim. Although the Federal Circuit acknowledged that petitioner identified the property as his "labor of providing Interventional Pain specialty" and made clear that he was not claiming a retention incentive, App. 5a, the court substituted two different interests: an "expectation of a retention bonus" and an "expectation of not being assigned particular duties." App. 7a. It then invoked ordinary federal-employment cases and declared that preappointment planning "makes no difference." App. 8a.

The petition supplies four independent paths to review: division over property and professional status; materially different circuit approaches to voluntariness in mandated medical services; conflict

with *Tyler*, *Horne*, and *Ruckelshaus*; and departure from accepted pleading procedure. Each leads to the same question: may government use authority obtained through an acquisition to define retrospectively what the acquisition included?

That categorical rule conflicts with this Court's method for identifying property and with a substantial division among lower courts over whether compelled professional services are property. *Tyler v. Hennepin County* instructs courts to consult independent law, traditional property principles, history, and precedent; government cannot "sidestep the Takings Clause by disavowing traditional property interests" in what it wishes to appropriate. 598 U.S. 631, 638 (2023) (quoting *Phillips v. Washington Legal Foundation*, 524 U.S. 156, 167 (1998)). The panel instead let the government's later status relationship erase the antecedent property inquiry.

Tyler supplies the closest structural logic. Hennepin County could sell property to collect *Tyler*'s tax debt. But it could not "use the toehold of the tax debt to confiscate more property than was due." 598 U.S. at 639. Here, VA's lawful appointment was its toehold: appointment furnished authority to supervise petitioner, but it did not automatically answer whether VA had used that authority to acquire and divert a separately defined labor-use interest. The government may not use legislation or its own status mechanism, "by ipse dixit," to "transform private property into public property without compensation." *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155, 164 (1980).

The timing holding compounds the error. Before appointment, petitioner was a private civilian. VA could recruit him, value his specialty, and ask him to accept a service obligation, but it could not direct a minute of his labor. The authority on which the panel relied existed only after the acquisition. The complaint alleges that VA formed the operative plan while petitioner was outside its chain of command and executed the plan once appointment supplied control. Yet the panel held that the plan's preappointment formation "makes no difference." App. 8a. That converts the consequence of acquisition —later managerial authority—into a defense that makes the acquisition itself constitutionally invisible.

This case offers a clean vehicle to decide whether that categorical eraser is permissible. It comes from a dismissal for failure to state a claim. The Federal Circuit squarely identified and rejected both the labor-property theory and the preappointment timing theory. No factual dispute must be resolved at this stage, and petitioner asks only for the opportunity to prove the claim he pleaded. Review is especially important because the Court of Federal Claims and Federal Circuit exercise nationwide control over monetary Takings claims exceeding $10,000 against the United States. The decision below, though labeled nonprecedential, supplies a ready-made threshold rule for every federal agency that recruits specialized professionals: once appointment creates supervisory authority, the means and timing of acquiring the professional's private labor are irrelevant.

STATEMENT OF THE CASE

A. Title 38 uses appointment, specialty pay, and professional privileges to acquire physician services.

Congress authorized the Secretary of Veterans Affairs to appoint physicians "as the Secretary may find necessary for the health care of veterans." 38 U.S.C. § 7401. Appointment under § 7401 is not a generic purchase of undifferentiated labor. Congress ties physician pay to specialty and assignment. A VA physician's annual pay includes base pay and market pay, § 7431(a), and "[m]arket pay shall consist of pay intended to reflect the recruitment and retention needs for the specialty or assignment" of the particular physician at the facility, § 7431(c)(2). In setting market pay, VA considers "the level of experience of the physician or dentist in the specialty or assignment," "the need for the specialty or assignment," and "the health care labor market for the specialty or assignment." § 7431(c)(4)(A), (B), (C).

VA also governs clinical practice through credentialing and privileging. The VHA Handbook excerpt in the record defined clinical privileging as the process by which a practitioner licensed for independent practice is authorized by law and the facility to provide "specified medical or other patient care services," and it required privileges to be both facility-specific and provider-specific. App. 26a. The same Handbook excerpt required credentialing to ensure that an applicant possessed the education, training, experience, health, and skill needed "to fulfill the requirements of the position and to support the requested clinical privileges." App. 27a. And the facility bylaws required written requests for privileges, including core privileges for the assigned

medical discipline "within well-defined limits." App. 28a. Those sources do not guarantee a preferred department or bar every change in duties. They do show that VA itself defines, evaluates, acquires, and authorizes clinically bounded professional capacity.

VA unquestionably possesses broad managerial authority after appointment. But neither Title 38 nor VA Handbook 5007/58—the incentive policy cited below—says that statutory salary necessarily compensates every medical service an official may later request regardless of the specialty, assignment, written service obligation, and privileges VA itself documented. Section 7431 points the other way: Congress required market pay to reflect the "specialty or assignment" and directed VA to consider the facility's need and labor market for that specialty or assignment. 38 U.S.C. § 7431(c)(2), (4). General managerial authority therefore cannot substitute for identifying the particular use interest VA acquired.

That structure matters to the property question. The Fifth Amendment does not create property interests; courts first consult "existing rules or understandings" derived from independent law. *Phillips*, 524 U.S. at 164. But no one source must do all the work. State law, common law, federal statutes and regulations, history, and this Court's precedents may define the relevant interest. *Tyler*, 598 U.S. at 638. Here those sources converge on the interest the complaint identified: petitioner's specialized professional labor and the bounded use of that labor that VA acquired from him.

B. VA recruited petitioner for interventional-pain work while simultaneously building an addictionologist-led Whole Health service.

Petitioner is a physician trained in Interventional Pain management. In June 2019, VA's Central Texas facility recruited him for "the position for Interventional Pain Management" in Temple, Texas. App. 35a. In August, VA tentatively selected him as "Physician (Pain Management)" and determined market pay based on the pain specialty. App. 30a.

The final documents were equally specific. VA's official offer listed the "Service (Activity/Unit/Office)" as "Pain Management Section/Surgical Service." App. 25a. VA offered a $50,003 recruitment incentive in exchange for a two-year service obligation. App. 24a–25a. The signed agreement required 52 pay periods as "Staff Physician (Pain Management)" in "Surgical Service" and stated that relocation to another "service/location/position" would affect the incentive. App. 24a. VA could terminate the incentive agreement for management needs, but the document did not describe an unlimited purchase of undifferentiated medical labor. Petitioner signed the agreement on December 17, 2019; VA confirmed his acceptance the next morning, and he resigned his West Virginia position that day. App. 24a–25a; App. 32a–33a.

The parties also discussed a possible future retention incentive. Petitioner's note called it "likely but not promised," C.A. App. 35, and the complaint expressly disclaimed any claim to it. App. 23a. That discussion supplies context for the pleaded sequence and VA's valuation; the incentive itself is not the asserted property.

While VA was recruiting petitioner for pain management, the facility was building a Whole Health and Integrated Health Service. The complaint identifies a Whole Health leadership posting that opened in August 2019 and another that closed in December 2019. App. 31a–32a.

Petitioner began serving in March 2020. In September, the Chief of Staff instructed the new Whole Health Clinical Director to "[w]ait until the realignment is complete before touching the OPPE's and privileges." App. 29a. Later that month, VA moved the Pain Management Section into Whole Health. App. 36a–37a. The complaint alleges that Whole Health leadership then pressed pain physicians toward addiction-medicine and Whole Health duties incongruent with petitioner's recruited, trained, credentialed, and privileged specialty. App. 22a–23a. In 2022, VA moved the Pain Management Section again, this time to Anesthesiology. C.A. App. 31, 75, 116.

From the parallel recruitment timelines, the specialty-specific offer, the service obligation, and the instruction to defer changes to privileges until the realignment was complete, the complaint draws the inference that VA planned before appointment to acquire petitioner's interventional-pain labor and deploy it through the new service structure after appointment. It describes a "prior-to-hire plan, actioned via an authorized repurposing of my labor." App. 22a, 30a–37a. At this stage, that pleaded inference must be accepted if plausible. See *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Tyler*, 598 U.S. at 637 (at dismissal stage, plaintiff "need not definitively prove" the claim or "disprove the [government's] defenses").

The complaint thus accepts that VA acted under valid appointment and pay statutes. App. 22a. That concession does not abandon a taking; it invokes one. A taking claim ordinarily presupposes lawful government action for a public use and seeks compensation rather than invalidation. *First English Evangelical Lutheran Church of Glendale v. County of Los Angeles*, 482 U.S. 304, 315–16 (1987). Petitioner alleges that lawful mechanisms acquired his labor for public use but that the government did not compensate the value of the bounded use it appropriated and diverted.

C. Both courts recharacterized the pleaded property and treated later status as dispositive.

Petitioner filed in the Court of Federal Claims under the Tucker Act. The amended complaint stated: "My labor (medical services) was my property taken from me by VA." App. 21a. It specified the interest as "my labor of providing Interventional Pain specialty medical care." App. 22a. It also stated: "This is not a claim for a Retention Incentive." App. 23a.

The Court of Federal Claims dismissed under RCFC 12(b)(6). App. 10a–12a. It treated the suit as one about "expectations about the terms and compensation" of employment and relied on *Adams v. United States*, 391 F.3d 1212 (Fed. Cir. 2004), a case rejecting a federal employee's asserted property interest in statutory overtime compensation. App. 11a. Because petitioner served by appointment rather than contract and conceded that VA's conduct was lawful, the court concluded that his "prior expectations have no legal force." App. 12a.

The Federal Circuit affirmed. It accurately recorded that the amended complaint identified the property as petitioner's "labor of providing Interventional Pain specialty," attributed the taking to the "repurposing of [his] labor," and "made clear that he was not making a claim for 'a Retention Incentive.'" App. 5a. Yet its analysis addressed two different interests: "an expectation of a retention bonus" and "an expectation of not being assigned particular duties." App. 7a. It rejected the first under *Adams* and the second under cases concerning ordinary reassignment and reduction in force. App. 7a–8a.

As to timing, the panel reasoned that VA could exercise managerial discretion after appointment and that petitioner identified no law categorically exempting employees from particular assigned medical services. App. 8a. The court then declared: "It makes no difference that the managerial decision was allegedly 'premeditated.'" Ibid. That sentence squarely rejected the distinction on which the complaint rests: managerial discretion over petitioner's labor did not exist before appointment, and the complaint alleges that the government designed the acquisition and diversion then but used its discretion only after control attached.

Petitioner sought panel rehearing and rehearing en banc, emphasizing the recharacterization, the independent sources defining the labor-use interest, *Tyler*'s anti-stripping principle, and the legal importance of preappointment timing. The Federal Circuit denied rehearing on July 23, 2026. App. 15a–16a.

REASONS FOR GRANTING THE PETITION

I. Lower courts are divided over whether professional services are property or merely a status-based duty.

The cases arise in different professional settings and do not share identical facts. But the lower courts have adopted conflicting analytical starting points on the antecedent question this case presents: whether a professional's services can be "private property" under the Takings Clause when government requires or appropriates their use, or whether professional status converts those services into a public duty.

A. Several federal courts treat professional status as defeating the property claim.

In *United States v. Dillon*, the Ninth Circuit held that compelled legal services were not taken property because, by entering the profession, an attorney accepts an obligation to represent indigent defendants. 346 F.2d 633, 635 (9th Cir. 1965). The court reasoned that the duty attached to the attorney's "professional status" and therefore could be demanded without compensation. Ibid.

Williamson rejected a taking claim based on attorneys' traditional duty as officers of the court. 674 F.2d 1211, 1214–15 (8th Cir. 1982). *Moultrie*, however, refused to treat status as categorical. It held that appointed lawyers lacked an entitlement to payment for particular cases, but reversed summary judgment because a family-law specialty practice could constitute property and the uncompensated burden might effect a taking by effectively denying remunerative specialty practice. *Family Division Trial Lawyers of the Superior Court-D.C., Inc. v. Moultrie*, 725 F.2d 695, 705–09 (D.C. Cir. 1984).

Those decisions treat status and its associated duty as doing the constitutional work. Once the professional relationship exists, the service is not property in the ordinary Takings sense, or the duty is a background limitation that defeats the claim.

B. State courts of last resort hold that professional services are property.

Other courts reject a categorical status rule. The South Carolina Supreme Court held that "the Takings Clause of the Fifth Amendment ... is implicated when an attorney is appointed by the court to represent an indigent litigant." *Ex parte Brown*, 393 S.C. 214, 220, 711 S.E.2d 899, 902 (2011). It explained:

> Attorneys make their living through their services. Their services are the means of their livelihood. We do not expect architects to design public buildings, engineers to design highways, dikes, and bridges, or physicians to treat the indigent without compensation. ... We conclude that attorneys' services are property, and are thus subject to Fifth Amendment protection.

Id. at 224–25, 711 S.E.2d at 904–05 (quoting *State ex rel. Stephan v. Smith*, 242 Kan. 336, 369–70, 747 P.2d 816, 841–42 (1987)).

The Alaska Supreme Court reached an analogous conclusion under Alaska's Takings Clause in *DeLisio v. Alaska Superior Court*, 740 P.2d 437, 441–43 (Alaska 1987) (interpreting Alaska Const. art. I, § 18). The property at issue was not the attorney's license or general ability to practice; it was the attorney's labor. The court held that compelling the service could require just compensation

notwithstanding the lawyer's professional status. See also State ex rel. *Stephan*, 242 Kan. at 369–70, 747 P.2d at 841–42.

Those decisions did not make total nonpayment a prerequisite to recognizing property. *Ex parte Brown* involved statutory rates of $40 per hour out of court and $60 per hour in court, capped at $3,500 for a felony case. 393 S.C. at 218, 711 S.E.2d at 901. State ex rel. *Stephan* involved a $30 hourly rate, mandatory caps, and a further twelve-percent reduction. 242 Kan. at 341–42, 360, 747 P.2d at 821–22, 835. And *Arnold v. Kemp* held that an attorney's services were property notwithstanding a $1,000 statutory fee cap. 306 Ark. 294, 302–03, 813 S.W.2d 770, 774–75 (1991). Those courts treated the existence and adequacy of payment as questions of just compensation after identifying the services as property. The Federal Circuit instead used petitioner's salary to avoid that antecedent inquiry.

This Court has supplied the premise but not the rule that resolves the disagreement. "Conceding for some purposes labor must be considered as property," *Butler v. Perry*, 240 U.S. 328, 333 (1916), the Court distinguished labor imposed as discharge of a preexisting public duty, ibid. The division below is therefore about the boundary: when does an antecedent duty or status qualify the interest, and when does government instead appropriate professional labor that remains private property?

C. The circuits take materially different approaches to voluntariness and mandated medical services.

Baker County Medical Services, Inc. v. U.S. Attorney General, 763 F.3d 1274 (11th Cir. 2014), treated voluntary participation as threshold-

dispositive. A rural hospital's Medicare participation triggered federal emergency-care obligations, and another statute fixed Medicare rates as full compensation for treating federal detainees. Id. at 1276–78. The Eleventh Circuit held that voluntary entry foreclosed the Takings claim and declined to attribute separate state-law compulsion to the federal defendants. Id. at 1279–80. On that approach, voluntary entry ended the federal inquiry.

Sierra Medical Services Alliance v. Kent, 883 F.3d 1216 (9th Cir. 2018), required a different sequence. Private ambulance companies voluntarily participated in Medi-Cal and received predetermined reimbursement, but a separate state law required them to provide emergency services without regard to ability to pay. Id. at 1224–26. The Ninth Circuit distinguished the asserted reimbursement entitlement from the property used to perform the mandated services—including ambulances, equipment, wages, supplies, goodwill, and service and employment contracts—and held that the district court erred by finding no protected property. Id. at 1225–26. Relying on *Horne*, it held that "voluntary participation in a market that is subject to regulation does not defeat a takings claim," even though the companies could avoid the mandate only by ceasing operations. Id. at 1226–27. Only after identifying the property did the court apply the regulatory-takings framework and reject the claim on the merits. Id. at 1227–28.

The factual distinction between *Baker County* and *Sierra Medical* exposes, rather than resolves, the unsettled boundary: whether the challenged use was objectively disclosed as part of the voluntary undertaking or instead arose from a separate

governmental command. This case presents that boundary at the moment of a federal acquisition. VA's documents identified Pain Management, Surgical Service, specialty-based pay, and provider-specific privileges. App. 24a–28a. The complaint alleges that VA nevertheless formed before appointment a plan to use appointment-created control to divert the acquired specialty labor after petitioner entered service. App. 21a–23a. The question is whether voluntary entry is irrelevant. It is whether entry constitutes consent to every use government later places within a status relationship, including a use that, as pleaded, VA planned before the relationship existed but did not objectively disclose in the instruments securing acceptance.

Neither medical-services decision is factually identical to this case, but their competing approaches make the question concrete. *Baker County* used voluntary entry to foreclose the claim; *Sierra Medical* first identified the property, separated it from the claimed reimbursement entitlement, and then asked whether the mandate was part of the voluntary program. The Federal Circuit followed the former sequence categorically: it substituted compensation and assignment expectations and treated paid appointment as ending the property inquiry. App. 7a–8a. Review is needed to establish the order of analysis.

D. This case cleanly presents the boundary because the asserted plan predates the status-based duty.

The appointed-counsel decisions embed an old professional obligation: lawyers are officers of the court, and the claimed duty was historically associated with entering that office. Petitioner is a

physician, not an officer of the court. More importantly, the complaint alleges that the government formed its operative acquisition-and-diversion plan before petitioner entered federal service. At that time he had no public duty to VA. He was a private civilian whose specialized labor VA could obtain only by securing his acceptance of the official appointment and debt-backed service terms.

That chronology makes this case a particularly clean vehicle for resolving the conflict. If *Butler*'s public-duty distinction means anything, a duty acquired later cannot silently reach backward and erase the private character of labor when the government designed its acquisition. After appointment, VA had broad authority to manage petitioner. Before appointment, it had none. The Federal Circuit's rule collapses those periods by allowing the later status to control everything.

The government will argue that the federal-employment relationship itself supplies the same answer as the officer-of-the-court cases. That argument is the issue, not a reason to deny review. The state high courts' rule asks whether services are property; the federal cases ask whether status supplies a duty that defeats the claim. This case places the asserted acquisition on one side of the status line and its implementation on the other. Only this Court can supply a uniform constitutional rule.

The appointed-counsel cases involved judicial compulsion without ordinary market compensation; petitioner accepted paid federal service. That factual distinction does not dissolve the legal conflict. Compulsion, consent, and payment bear on whether a particular use was conveyed, whether a taking occurred, and what compensation is due. The

antecedent division is whether professional services are property at all or instead disappear from Takings analysis whenever government can invoke a later-acquired professional status. This case presents that boundary in an especially concrete form because VA's own written instruments identify the specialty use it acquired, while the pleaded diversion plan predates the status on which the government relies.

No precedent invoked below addressed that sequence. *Dillon* and *Williamson* concerned attorneys' historical public duty; *Moultrie*, the burden of appointments on an existing specialty practice. *Adams* concerned statutory overtime compensation. *Frey* and *Cross* concerned personnel actions taken within relationships that already existed. None considered an alleged government plan, formed before appointment and before managerial authority existed, to obtain specialist labor under one objectively defined professional premise and then implement a materially different use after appointment supplied control. The absence of such precedent is why the timing question presented here is distinct rather than merely another challenge to managerial discretion.

II. The decision below conflicts with *Tyler* and departs from accepted pleading procedure.

A. Courts must identify the interest actually pleaded from independent law, history, and precedent.

The Takings Clause "does not itself define property." *Tyler*, 598 U.S. at 638 (quoting *Phillips*, 524 U.S. at 164). Courts consult existing rules and understandings, including state law, traditional property principles, historical practice, and this

Court's precedents. Ibid. Government law is an important source, but it cannot be the only one; otherwise government could "sidestep the Takings Clause by disavowing traditional property interests" in assets it wishes to take. Ibid. (quoting *Phillips*, 524 U.S. at 167).

That method is not limited to land. In *Webb's*, interest earned on private funds remained private property even though government held the principal in a court registry. 449 U.S. at 160–65. In *Phillips*, interest generated by client funds was property even though a regulatory program controlled the account. 524 U.S. at 164–72. In *Ruckelshaus v. Monsanto Co.*, trade secrets qualified as property based on independent law and reasonable expectations. 467 U.S. 986, 1001–04 (1984). In *Horne v. Department of Agriculture*, the Court rejected lesser categorical protection for personal property. 576 U.S. 351, 358–60 (2015). And in *Cedar Point*, the Court focused on the discrete access interest appropriated, not simply title to the underlying land. 594 U.S. at 149–52.

Three Justices have also recognized the economic distinction between a government employee's position and the employee's professional labor. In *Sekhar v. United States*, they distinguished a state lawyer's nontransferable internal recommendation from interests that did have economic value to him: "his labor as a lawyer, his law license, and his reputation as an attorney." 570 U.S. 729, 742 (2013) (Alito, J., concurring in the judgment). The concurrence cited *United States v. Thompson*, 647 F.3d 180, 186–87 (5th Cir. 2011), for the proposition that "a person's labor is property capable of being extorted." *Sekhar* arose under the Hobbs Act and is not a Takings holding. But the concurrence

illustrates that treating professional labor as property is neither conceptually impossible nor equivalent to treating the employee's government position or an anticipated benefit as property.

The complaint identified a discrete interest: petitioner's retained control over uses of his specialized interventional-pain labor not objectively conveyed to VA. The sources it invoked include common-law recognition of labor and professional services; Title 38's specialty-specific appointment and market-pay rules; VA credentialing and privileging rules defining authorized independent practice; the specialty-specific offer; and the service agreement through which VA obtained two years of service. Those sources may or may not ultimately establish a compensable interest. But *Tyler* requires analysis of them.

The panel did something else. It substituted an unpromised retention bonus and a preferred assignment, then disposed of those substitutes under compensation and personnel precedents. App. 7a–8a. *Adams* addressed an asserted statutory right to overtime pay. 391 F.3d at 1221–25. *Frey v. Department of Labor* and *Cross v. Department of Transportation* addressed personnel actions. 359 F.3d 1355, 1357, 1360 (Fed. Cir. 2004); 127 F.3d 1443, 1447 (Fed. Cir. 1997). None asked whether independently bounded professional services can be property or whether the government acquired their use before invoking employment status.

Recharacterization determined the outcome and was especially consequential at Rule 12(b)(6). A court need not accept a complaint's legal conclusions, but it must accept well-pleaded factual allegations and determine whether they plausibly support the claim

actually asserted. *Ashcroft v. Iqbal*, 556 U.S. 662, 678–79 (2009); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The complaint identified the asserted property as the acquired use of petitioner's interventional-pain labor, expressly disclaimed a claim to a retention incentive, and pleaded a preappointment acquisition-and-diversion plan. App. 21a–23a. The panel did not test that claim. It tested and rejected an unpromised bonus and an expectation against reassignment. App. 7a–8a. A bonus expectation fails because the payment was discretionary, and a preferred-assignment expectation fails because federal managers ordinarily may assign work. But dismissal of those unpleaded interests does not establish the legal insufficiency of the materially different property interest the complaint actually identified. At minimum, a court applying *Tyler* must identify the property as pleaded and test the independent sources pleaded to define it.

The panel's demand for a law "exempt[ing]" petitioner from particular assigned services, App. 8a, asks the wrong property question. Petitioner does not claim a categorical veto over assignments. Property interests are often bounded use interests rather than absolute prohibitions on government action. See *Cedar Point*, 594 U.S. at 149–52; *Ruckelshaus*, 467 U.S. at 1001–04. The relevant inquiry is whether the identified sources defined the specialty labor-use interest VA acquired and whether the pleaded diversion exceeded that interest—not whether one source used talismanic words forbidding reassignment.

Neither *Board of Regents v. Roth* nor *Butler v. Pennsylvania* supports the substitution. *Roth* holds that a unilateral expectation of a government benefit

is not an entitlement. 408 U.S. 564, 577 (1972). Petitioner claims no entitlement to the unpromised incentive. *Butler* held under the Contract Clause that appointment to public office did not create a contract immunizing statutory salary from legislative change. 51 U.S. (10 How.) 402, 416–17 (1850). Petitioner claims neither a federal employment contract nor immunity from changes in statutory pay. Neither case decided whether professional services can be property, how official acquisition instruments define the use obtained, or whether a status created after an operative acquisition plan may erase the antecedent inquiry.

B. Tyler forbids use of a lawful government foothold to confiscate value beyond its proper object.

Tyler's logic is strikingly close. Hennepin County had unquestioned authority to collect taxes and sell property to satisfy the debt. 598 U.S. at 637–39. But the County "could not use the toehold of the tax debt to confiscate more property than was due." Id. at 639. The lawful mechanism did not turn excess value into government property.

So too here. VA's appointment authority is lawful, and petitioner does not challenge it. Appointment gave VA supervisory authority and the right to receive the services validly encompassed by the appointment. But the existence of that authority cannot answer, by itself, whether VA acquired a bounded specialty labor-use interest under one legal structure while already planning to divert that use once control attached.

This is the labor-property counterpart of equity stripping. The analogy concerns the constitutional structure, not a claim that human labor is identical

to real estate. In *Tyler*, government used a tax-law foothold to retain value beyond the debt and argued that its own law extinguished the owner's property. Here, the government used appointment to obtain control of specialized labor and argues that the status created by appointment extinguishes any inquiry into the acquired interest. In each, the government seeks to make the excess value disappear by attaching a legal label of its own making.

The same rule answers both: "a State, by ipse dixit, may not transform private property into public property without compensation." *Webb's*, 449 U.S. at 164. Nor may the Federal Government. See *Lynch v. United States*, 292 U.S. 571, 580 (1934) ("Congress was without power to reduce expenditures by abrogating contractual obligations of the United States."). Lawful authority over part of a transaction does not make the constitutional remainder vanish.

Nor did petitioner plead that every use of a federal employee's labor is a taking. Ordinary supervision, scheduling, good-faith reassignment, performance management, and denial of discretionary benefits remain ordinary incidents of federal employment. Petitioner's proposed rule applies only when the complaint plausibly alleges that (1) government targeted specialized labor while the professional remained a private civilian; (2) it used legally bounded appointment, compensation, credentialing, privileging, recruitment, or service-obligation mechanisms to acquire that labor-use capacity; (3) the asserted property is the bounded control over specialized labor not objectively conveyed, not a benefit or preferred assignment; and (4) the operative diversion plan formed before

supervisory authority existed and was implemented after that authority attached.

That rule preserves managerial power while preventing government from using the very status created by acquisition to make the acquisition constitutionally invisible. It does not permit an employee to constitutionalize a workplace disagreement merely by alleging bad motive: the claim requires a plausibly pleaded antecedent plan and independent, objective sources defining the acquired use.

C. Statutory salary does not answer the property question at step one.

Petitioner received $320,000 in annual pay and a $50,003 recruitment incentive. The petition does not hide those payments or claim that VA failed to pay the stated salary. The question is what use they compensated. VA's own documents tied the offer, salary, incentive, service, and organizational placement to Pain Management and Surgical Service; Title 38 tied market pay to "specialty or assignment." App. 24a–25a; 38 U.S.C. § 7431(c)(2). Respondent may argue on remand that those payments fully compensated every use VA made of petitioner's labor. But "fully compensated" is a conclusion about the scope and value of the acquired interest, not a reason to replace that interest at the threshold with a bonus or preferred assignment.

Horne illustrates the required sequence. The Government argued that no taking occurred because raisin growers voluntarily entered the raisin market and could plant another crop. This Court rejected that categorical answer: "Property rights 'cannot be so easily manipulated.'" 576 U.S. at 365–66. The growers' possible interest in sale proceeds and

asserted regulatory benefits likewise did not establish that no property had been taken; the Court first identified the interest appropriated and separately addressed compensation. Id. at 363–64, 368–69.

Ruckelshaus supplies the complementary rule. Voluntary submission of post-1978 trade-secret data did not effect a taking because the governing statute gave advance notice of the conditions under which EPA could use and disclose the data. 467 U.S. at 1005–08. But submissions made under the statutory assurances governing the 1972–1978 period supported protected expectations and a possible taking when EPA exceeded them. Id. at 1010–14. Thus voluntariness matters after the Court identifies both the property and the objectively disclosed terms of conveyance. It is not a substitute for those inquiries.

This case does not equate salary with a general regulatory benefit. It draws the narrower point that neither voluntary appointment nor payment identifies the professional use conveyed and compensated. The official instruments and governing law must be examined first. Only then can a court decide whether petitioner consented to the challenged use, whether VA took something more, or whether existing compensation already covered it.

At the Rule 12 stage, petitioner did not have to disprove respondent's compensation defense. *Tyler*, 598 U.S. at 637. The formal offer, service agreement, specialty-pay statute, and privilege rules at least plausibly foreclose a categorical inference that statutory salary necessarily compensated any medical use management later selected. Whether the pleaded plan existed and whether any

uncompensated increment remained are questions for a properly framed merits inquiry, not grounds for refusing to analyze the property pleaded.

D. The court of appeals sanctioned a departure from accepted pleading procedure.

Rule 10(a) identifies a court of appeals' serious departure from "the accepted and usual course of judicial proceedings" as a ground for this Court's supervisory review. This is not a request to correct an ordinary factual mistake. The panel accurately recorded that petitioner identified his interventional-pain labor as the property and "made clear" that he did not claim a retention incentive. App. 5a. It nevertheless tested an "expectation of a retention bonus" and an "expectation of not being assigned particular duties." App. 7a. It never tested the independent sources or preappointment plan supporting the pleaded interest.

Iqbal and *Twombly* require a court to determine whether well-pleaded facts plausibly support the claim actually asserted. *Iqbal*, 556 U.S. at 678–79; *Twombly*, 550 U.S. at 570. They do not authorize dismissal of a substituted claim the complaint disclaims. Because the substitution eliminated both questions without deciding either, it supports this Court's supervisory review.

III. The holding that preappointment timing "makes no difference" warrants review.

A. Timing marks the boundary between private property and government control.

The panel's timing holding is not a harmless observation about motive. Petitioner does not contend that intent, standing alone, creates property or effects a taking: the official instruments and

independent law define the asserted labor-use interest, and the later postappointment redirection is the act alleged to take it. But the antecedent plan remains critical because it identifies the governmental arrangement being implemented and the temporal use of public power. It determines whether postappointment authority was an existing background limitation on the interest or the execution mechanism for a materially different use designed while no such authority existed.

Before appointment, petitioner was a private civilian. VA could not assign patients, direct clinical services, determine a supervisor, or compel any VA work. It could act only as a recruiter in the private labor market, using the legal tools Congress supplied to value and acquire physician services. After appointment, VA obtained managerial authority. The complaint alleges that VA designed the acquisition and diversion in the first period, then used authority available only in the second period to carry out the plan.

A later, good-faith operational reassignment may be ordinary management. An antecedent plan to acquire specialty labor through one defined appointment and privilege structure and then use appointment-created control to effect a different acquisition presents another question. The relevant timing is therefore not evidentiary decoration. It determines whether the government is relying on a duty that already bounded the property or on control it obtained only through the challenged acquisition.

Objective scope and preappointment intent do separate and mutually reinforcing work. The statutes and acquisition instruments identify what petitioner conveyed upon acceptance. The

preappointment plan identifies the governmental design being challenged and, as pleaded, its implementation after appointment supplied supervisory control. The claim survives if the pleaded sources objectively bounded the use and VA exceeded it; the antecedent plan independently defeats the panel's premise that the case necessarily involves only an ordinary later reassignment. Preserving both inquiries gives the lower courts alternative paths on remand without allowing either to be erased at Rule 12.

But the Federal Circuit held that timing "makes no difference." App. 8a. That creates a self-validating loop: appointment supplies control; control characterizes the diversion as management; and the management label retroactively erases scrutiny of how control was obtained. No Takings precedent establishes that loop.

B. Snyder illustrates, by analogy, that legal character may turn on the antecedent arrangement, not the final implementing act.

This Court's recent decision in *Snyder v. United States* illustrates why the antecedent plan and later implementing act must be analyzed together. In distinguishing bribes from gratuities under 18 U.S.C. § 666, the Court explained that "the timing of the agreement is the key, not the timing of the payment." 603 U.S. 1, 19 (2024). A payment after an official act could still implement an agreement made before the act; the final payment's timing could not be considered in isolation. Ibid.

Petitioner does not import bribery doctrine or a mens rea element into the Takings Clause. The analogy matters because *Snyder* rejects temporal formalism in its own statutory context. When an

antecedent arrangement supplies the legal character of a later implementing act, a court may not look only at the final act and declare the earlier formation irrelevant.

Other decisions reflect the same structural point. In *Ruckelshaus*, whether disclosure of trade-secret data effected a taking depended in part on the legal assurances and expectations that existed when the owner submitted the data. 467 U.S. at 1005–14. In *Nollan*, *Dolan*, and *Koontz*, a lawful permitting process could not be evaluated without asking what property the government demanded as the price of the benefit. *Nollan v. California Coastal Commission*, 483 U.S. 825, 831–37 (1987); *Dolan v. City of Tigard*, 512 U.S. 374, 385–96 (1994); *Koontz v. St. Johns River Water Management District*, 570 U.S. 595, 604–15 (2013). These doctrines differ, but each refuses to let a lawful government mechanism obscure the antecedent transaction that gives the later act constitutional meaning.

The panel was free to hold, after applying the correct standard, that the identified sources did not create a property interest or that the facts ultimately did not prove the pleaded plan. It was not free at the pleading stage to deem the plan's timing legally irrelevant merely because appointment later furnished management authority.

C. The pleading posture makes the error outcome-determinative and reviewable.

This case was dismissed before discovery. The courts therefore had to take well-pleaded facts as true and draw reasonable inferences for petitioner. *Iqbal*, 556 U.S. at 678; *Jones v. United States*, 846 F.3d 1343, 1351 (Fed. Cir. 2017). *Tyler* is particularly instructive: at the initial stage, the claimant "need

not definitively prove" the injury or "disprove the County's defenses"; plausible pleading was "enough for now." 598 U.S. at 637.

The complaint alleges a preappointment plan and identifies facts supporting that inference. Whether discovery will prove the plan is not before this Court. Nor is the measure of compensation. The question is whether a court can treat the timing allegation as categorically irrelevant and recharacterize the property before the government answers the claim on its own terms.

That pure legal question was preserved at every stage. The amended complaint identified the pre-hire plan and the labor interest. App. 21a–22a. Petitioner's Federal Circuit briefs argued that managerial discretion did not exist before appointment and that privileging sources bounded the acquired use. Petitioner renewed both points on rehearing. The panel squarely passed on them. App. 5a, 7a–8a. This Court can resolve the questions presented without factfinding.

IV. The questions are exceptionally important and the Federal Circuit has nationwide practical control.

The federal government recruits far more than generic employee time. It competes in private markets for physicians, scientists, engineers, cybersecurity specialists, researchers, and other professionals whose capacity is defined by training, licensure, credentials, privileges, classifications, and specialty compensation. Congress and agencies use those legal categories precisely because specialized capacity is scarce, differentiated, and valuable.

The scale is national. The Government Accountability Office reports that VHA operates the Nation's largest integrated healthcare system, employing more than 371,000 clinical and support staff at 171 medical centers and more than 1,100 outpatient facilities. U.S. Gov't Accountability Off., GAO-23-106836, Veterans Health Care: Staffing Challenges and Recommendations for Improvement 1 (2023). GAO separately documented more than 11,000 employed mission-critical physicians and VHA's use of financial incentives to recruit and retain them. U.S. Gov't Accountability Off., GAO-18-124, Veterans Health Administration: Better Data and Evaluation Could Help Improve Physician Staffing, Recruitment, and Retention Strategies, Highlights, 24–25 (2017). The appointment, specialty-pay, privileging, and incentive mechanisms at issue here operate throughout that national system.

The rule below reaches every such acquisition. An agency may recruit a private civilian through a specialized framework; require the civilian to relinquish alternatives and accept a service obligation; obtain supervisory control through appointment; and then invoke that resulting status to foreclose any inquiry into the acquisition. Under the panel's express rule, even a plausibly pleaded preappointment plan "makes no difference." App. 8a. That is an institutional rule, not a one-off dispute about petitioner's duties.

That rule creates grave institutional risks: veterans may face avoidable risk of loss of life when clinicians are pressed beyond their delineated specialties, while physicians entering federal service may face career-ending consequences that deprive them of control over their trained practice and the value of their training and labor. This is not theoretic; this is the situation now.

The need for review is amplified by the Tucker Act's jurisdictional structure. Monetary Takings claims against the United States exceeding $10,000 ordinarily must be brought in the Court of Federal Claims, with appeal to the Federal Circuit. 28 U.S.C. §§ 1295(a)(3), 1491(a)(1); *Eastern Enterprises v. Apfel*, 524 U.S. 498, 520 (1998) (plurality opinion). Regional circuits cannot develop competing rules governing compensation claims against the Federal Government. The Federal Circuit's approach therefore has nationwide practical effect.

The decision's nonprecedential label does not remove the problem. That designation means the panel regarded the opinion as "not adding significantly to the body of law"; it does not make the reasoning disappear. Fed. Cir. R. 32.1(b). Parties may cite the disposition, and the Federal Circuit itself may use it "for guidance or persuasive reasoning." Fed. Cir. R. 32.1(c)–(d). The decision is the Federal Circuit's final judgment, and its reasoning gives the Government and Court of Federal Claims a concise categorical answer: specialized labor becomes compensation or assignment once appointment occurs, and preappointment planning is irrelevant. Rehearing was denied. App. 15a–16a.

This Court reviews "[c]ases in the courts of appeals," not only published opinions. 28 U.S.C. § 1254(1). Rule 10 likewise turns on conflict, importance, and serious departure from accepted law —not a publication label. In an ordinary regional circuit, later panels and other circuits might permit percolation. Here, the Tucker Act channels the relevant national claims into one trial court and one appellate court. Without this Court's review, the only national appellate court for these claims has supplied the only appellate answer available at the property-identification stage.

This Court has repeatedly granted review where a lower court's categorical threshold rule prevents a plausible Takings claim from proceeding. *Tyler* itself came from a Rule 12 dismissal. 598 U.S. at 636–37. *Horne* reviewed a Ninth Circuit rule denying per se protection to personal property. 576 U.S. at 358–60. *Cedar Point* rejected a rule that characterized an appropriated access right as mere regulation. 594 U.S. at 149–59. The same correction is warranted here: identify the interest, examine its independent legal sources, and then decide whether it was taken.

V. The decision threatens the constitutional relationship between citizen and government.

The Takings Clause is not a technical preference for one remedial forum. It expresses a basic rule of American constitutional government: when public authority takes private property for public use, the public must pay. Its "purpose" is "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." *Armstrong v. United States*, 364 U.S. 40, 49 (1960).

The Founders understood protection of property as "indispensable to the promotion of individual freedom." *Cedar Point*, 594 U.S. at 147. This Court has warned that "in a free government almost all other rights would become worthless if the government possessed an uncontrollable power over the private fortune of every citizen." *Chicago, Burlington & Quincy Railroad Co. v. Chicago*, 166 U.S. 226, 236 (1897).

Specialized labor is not the whole person, and petitioner does not ask the Court to treat persons as property. The opposite premise animates the claim: a person retains a legally protected interest in the use and economic value of his own professional services until lawfully and transparently conveyed. Government can acquire those services, but the constitutional order does not permit it to make the limits of that acquisition disappear through a status label.

The Declaration is not the source of petitioner's cause of action. But its premise—that governments derive "their just powers from the consent of the governed"—illuminates the stakes. The Constitution makes that ideal enforceable: government may take what public necessity requires, but it does not own whatever value its legal mechanisms can reach.

If the Federal Circuit's rule stands, the American Government may use appointment to cross the private-civilian boundary, then treat the crossing itself as eliminating review of what it acquired and why. That is not ordinary governance under American constitutional ideals. It is a departure from the role those ideals assign to government: powerful enough to serve the public, but bound to recognize

the rights of the people from whom its power and resources come.

Recognizing a pleading-stage inquiry here would not disable government. VA could continue to recruit, appoint, supervise, reassign, and compensate physicians under law. The Government could contest whether the pleaded interest is property, whether the plan existed, whether any taking occurred, and what compensation—if any—is due. What it could not do is avoid every one of those questions by renaming specialized labor as a bonus and invoking authority obtained only after the pleaded plan was formed.

VI. This case is an excellent vehicle.

The questions are outcome-determinative. The Federal Circuit affirmed solely because it found no cognizable property interest in the bonus-and-assignment formulation it supplied and because premeditation supposedly made no difference. App. 7a–8a. If specialized services may qualify as property and the timing theory must be analyzed, the dismissal cannot stand.

The vehicle is clean. There is a final judgment. Jurisdiction is secure under 28 U.S.C. § 1254(1). The case arrives after a timely rehearing petition. Both questions were preserved and expressly decided. The Rule 12 posture allows the Court to address the threshold legal question without resolving factual disputes or determining ultimate liability.

The case is also narrow. Petitioner does not ask the Court to constitutionalize personnel law, compel a retention payment, restore a department, enjoin VA management, or decide damages. He asks the Court to vacate a categorical dismissal and require

analysis of the property and timing theories actually pleaded. On remand, the Government retains every defense under the correct framework.

The pro se complaint proposed alternative career-earnings differentials of $9.1 million and $2.785 million as possible measures of compensation. App. 22a. Petitioner does not ask this Court to approve either figure. Ordinary just-compensation principles focus on the market value of the interest actually taken and exclude consequential losses peculiar to the owner. *United States v. General Motors Corp.*, 323 U.S. 373, 379–80 (1945). If the threshold dismissal is vacated, petitioner's compensation theory would therefore focus on the constitutionally appropriate value of any professional services proven to have been required beyond the bounded use VA acquired, accounting for compensation already attributable to those services. Neither court reached that question. The Court of Federal Claims can determine the proper measure on a developed record; an untested prayer for relief is not an alternative ground for affirming a judgment based solely on the absence of property.

Nor does *Omnia Commercial Co. v. United States*, 261 U.S. 502 (1923), supply an alternative ground for affirmance. *Omnia* distinguished a direct appropriation from consequential injury caused by lawful governmental action. Id. at 508–13. Petitioner does not seek compensation merely because government action impaired an outside contract, reduced career opportunities, or frustrated an expectation. The complaint alleges that VA itself acquired and used the specific professional capacity at issue. App. 21a–23a. Whether that direct use

exceeded the interest objectively conveyed is the question the courts below bypassed.

Nor is petitioner attempting to bypass a personnel remedy. He seeks no reinstatement, back pay, promotion, reassignment, or review of an adverse personnel action. He seeks only the remedy the Fifth Amendment prescribes—just compensation from the United States—in the court Congress authorized to hear claims "founded ... upon the Constitution." 28 U.S.C. § 1491(a)(1). Neither court below found the claim displaced by the Civil Service Reform Act or Title 38; both exercised Tucker Act jurisdiction and dismissed solely because they found no property. App. 7a–9a, 10a–13a. And this Court does not infer withdrawal of the Tucker Act remedy from silence: the question is whether Congress has withdrawn that jurisdiction, and implied repeals are disfavored. *Ruckelshaus*, 467 U.S. at 1016–19. Nothing in the provisions invoked below supplies a just-compensation remedy or withdraws this one.

Finally, no further percolation is likely to help. State courts and federal circuits have divided for decades on whether professional services are property or status-bound duty. Tucker Act jurisdiction channels federal-government claims into a single appellate court. And the Federal Circuit has now said that a preappointment plan makes no difference. Only this Court can resolve the constitutional boundary.

Title 38 begins with a defined professional need. Section 7401 authorizes appointment of physicians necessary for veterans' care; § 7402 requires physician-specific qualifications; and § 7431 makes specialty, assignment, facility need, and labor market relevant to pay. App. 19a–20a. VA's

privileging rules separately define the services a practitioner may provide by education, training, credentials, competence, and performance. App. 26a–28a. In this case, VA recruited for Pain Management and selected a specialist whose training matched the position within a framework requiring provider-specific privileges for specified clinical services. If VA may enter that process already intending a materially different use and later invoke appointment as conclusive consent, those statutory and professional distinctions lose practical force. Recognizing a bounded property interest in specialist labor would not prevent lawful workforce reorganization. It would require the Government to confront what it sought, what the applicant conveyed, and whether a preplanned excess use was taken. That inquiry would promote fidelity to Congress's workforce design, disciplined managerial discretion, safe practice, credible recruitment, and VA's future capacity to serve veterans, while respecting the Nation's commitments to self-determination and private property when citizens enter public service.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,
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