No. 17-50201

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

MICHAEL SAMMONS,

Plaintiff-Appellant,

v.

UNITED STATES OF AMERICA,

Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
Civil Action No. 5:16-CV-1054 (Biery, J.)

BRIEF FOR THE UNITED STATES OF AMERICA

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CERTIFICATE OF INTERESTED PERSONS

Sammons v. United States, No. 17-50201

The undersigned counsel of record certifies that the following listed persons and entities, in addition to those listed in Appellant's brief, have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

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STATEMENT REGARDING ORAL ARGUMENT

Plaintiff's claim that the Tucker Act is unconstitutional does not warrant oral argument.

TABLE OF CONTENTS

Page(s)

CERTIFICATE OF INTERESTED PERSONS

STATEMENT REGARDING ORAL ARGUMENT

STATEMENT OF JURISDICTION 1

STATEMENT OF THE ISSUE 1

STATEMENT OF THE CASE 1

SUMMARY OF ARGUMENT 6

STANDARD OF REVIEW 7

ARGUMENT 8

The District Court Properly Dismissed Plaintiff's Suit For Lack of Jurisdiction 8

A. Because plaintiff's suit seeks more than $10,000, the Court of Federal Claims has exclusive jurisdiction 8

B. The Tucker Act is constitutional as applied to plaintiff's takings suit. 10

CONCLUSION 18

CERTIFICATE OF SERVICE

CERTIFICATE OF COMPLIANCE

TABLE OF AUTHORITIES

Cases: **Page(s)**

American Fed'n of Gov't Emps. v. Stone,
146 F. App'x 704 (5th Cir. 2005) 8

Amoco Prod. Co. v. Hodel,
815 F.2d 352 (5th Cir. 1987) 10

Ex parte Bakelite Corp.,
279 U.S. 438 (1929) 12

Commodity Futures Trading Comm'n v. Schor,
478 U.S. 833 (1986) 6, 10

Crowell v. Benson,
285 U.S. 22 (1932) 12

Eastern Enters. v. Apfel,
524 U.S.498 (1998) 9

Elgin v. Department of Treasury,
132 S. Ct. 2126 (2012) 16

Fairholme Funds v. United States,
No. 1:13-cv-00465, 2017 WL 1533568 (Fed. Cl. Apr. 28, 2017) 4, 17
No. 2017-1015, _ F. App'x _, 2017 WL 991077 (Fed. Cir. Mar 14, 2017)......4, 16, 17

Glidden Co. v. Zdanok,
370 U.S. 530 (1962) 13

Graham v. Henegar,
640 F.2d 732 (5th Cir. 1981) 10

Granfinanciera, S.A. v. Nordberg,
492 U.S. 33 (1989) 12

Horne v. Department of Agric.,
135 S. Ct. 2419 (2015) 15

Jan's Helicopter Serv., Inc. v. FAA,
525 F.3d 1299 (Fed. Cir. 2008) 9

In re Katrina Canal Breaches Litigation,
495 F.3d 191 (5th Cir. 2007) 7

Library of Congress v. Shaw,
478 U.S. 310 (1986) 13

McGuire v. United States,
707 F.3d 1351 (Fed. Cir. 2013) 15

Morris v. United States,
392 F.3d 1372 (Fed. Cir. 2004) 14

Murray's Lessee v. Hoboken Land & Improvement Co.,
59 U.S. (18 How.) 272 (1856) 11, 12

Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.,
458 U.S. 50 (1982) 11, 12

Perry Capital LLC v. Mnuchin,
848 F.3d 1072 (D.C. Cir. 2017) 1, 2, 3

Preseault v. Interstate Commerce Comm'n,
494 U.S. 1 (1990) 14, 17

Regional Rail Reorganization Act Cases,
419 U.S. 102 (1974) 17

Rose Acre Farms, Inc. v. Madigan,
956 F.2d 670 (7th Cir. 1992) 17

Ruckelshaus v. Monsanto Co.,
467 U.S. 986 (1984) 14

Smith v. Orr,
855 F.2d 1544 (Fed. Cir. 1988) 8

Stern v. Marshall,
564 U.S. 462 (2011) 6, 11, 12, 14, 15

Thomas v. Union Carbide Agric. Prods. Co.,
473 U.S. 568 (1985) 11

Thunder Basin Coal Co. v. Reich,
510 U.S. 200 (1994) 16

United States v. Bormes,
133 S. Ct. 12 (2012) 9, 13, 14

United States v. Mitchell,
463 U.S. 206 (1983) 9

United States v. Navajo Nation,
556 U.S. 287 (2009) 9

United States v. Nordic Village, Inc.,
503 U.S. 30 (1992) 5

United States v. Testan,
424 U.S. 392 (1976) 9

United States ex. rel. Toth v. Quarles,
350 U.S. 11 (1955) 10

Ware v. United States,
626 F.2d 1278 (5th Cir. 1980) 9

Wilkerson v. United States,
67 F.3d 112 (5th Cir. 1995) 9

Williams v. United States,
289 U.S. 533 (1933) 13

Statutes:

Act of July 28, 1953,
ch. 253, 67 Stat. 226 13

Federal Courts Improvement Act of 1982,
Pub. L. No. 97-164, 96 Stat. 25 .... 13, 14

Housing and Economic Recovery Act of 2008:
12 U.S.C. § 1716(4) 1
12 U.S.C. § 1719(g)(1)(A) 2
12 U.S.C. § 4511 2
12 U.S.C. § 4617(a) 2

Little Tucker Act,
28 U.S.C. § 1346(a)(2) 5, 8

Tucker Act:
28 U.S.C. § 1491 1
28 U.S.C. § 1491(a)(1) 5, 8

12 U.S.C. § 1455(*l*)(1)(A) 2

28 U.S.C. § 1291 1

28 U.S.C. § 1295 8

28 U.S.C. § 1331 10

28 U.S.C. § 1500 17

Other Authorities:

Michael P. Goodman, *Taking Back Takings Claims: Why Congress Giving Just Compensation Jurisdiction to the Court of Federal Claims is Unconstitutional,* 60 Vill. L. Rev. 83 (2015) 6

STATEMENT OF JURISDICTION

Plaintiff invoked the district court's jurisdiction "directly under the U.S. Constitution." *See* ROA.14, ¶ 25 (Compl.). The district court dismissed plaintiff's suit for lack of jurisdiction on March 9, 2017. ROA.436. Plaintiff timely filed a notice of appeal on March 9, 2017. ROA.437. This Court has jurisdiction under 28 U.S.C. § 1291.

STATEMENT OF THE ISSUE

Plaintiff alleges that the terms of the government rescue of Fannie Mae and Freddie Mac effected a taking of his property without just compensation. The question presented is whether the Tucker Act, 28 U.S.C. § 1491, is constitutional insofar as it requires plaintiff's claim to be heard in the Court of Federal Claims.

STATEMENT OF THE CASE

1. Congress created the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) to, among other things, "promote access to mortgage credit throughout the Nation . . . by increasing the liquidity of mortgage investments and improving the distribution of investment capital available for residential mortgage financing." 12 U.S.C. § 1716(4). These government-sponsored enterprises provide liquidity to the mortgage market by purchasing residential loans from banks and other lenders, thereby providing lenders with capital to make additional loans. *Perry Capital LLC v. Mnuchin*, 848 F.3d 1072, 1080 (D.C. Cir. 2017).

By September 2008, Fannie Mae and Freddie Mac found themselves on the "brink of collapse." *Perry Capital*, 848 F.3d at 1079. To avert the catastrophic impact on the housing market that would result from the collapse of the enterprises, Congress enacted the Housing and Economic Recovery Act of 2008 (HERA), which created the Federal Housing Finance Agency (FHFA) and empowered it to act as conservator or receiver of the enterprises. 12 U.S.C. §§ 4511, 4617(a); *see also Perry Capital*, 848 F.3d at 1079. Congress recognized that federal assistance of vast proportions could be required, and authorized the Treasury Department (Treasury) to "purchase any obligations and other securities issued by" the enterprises. 12 U.S.C. §§ 1455(*l*)(1)(A), 1719(g)(1)(A).

After FHFA placed Fannie Mae and Freddie Mac into conservatorship, Treasury immediately purchased preferred stock in each entity and committed to provide billions of dollars in taxpayer funds to Fannie Mae and Freddie Mac. *Perry Capital*, 848 F.3d at 1079. As part of the original agreement, Treasury also received dividends equal to 10% of the amount of money Fannie Mae and Freddie Mac had drawn from Treasury. *Id.*

Fannie Mae and Freddie Mac continued to experience financial difficulties in the years following 2008, and FHFA and Treasury amended the preferred stock purchase agreements three times. As relevant to this suit, in 2012 Treasury and FHFA amended the purchase agreement to replace the fixed dividend obligation with a

variable dividend, in "an amount (roughly) equal to [Fannie Mae and Freddie Mac's] quarterly net worth, however much or little that may be." *Perry Capital*, 848 F.3d at 1079.

2. A number of shareholders in Fannie Mae and Freddie Mac brought suit challenging the third amendment to the preferred stock purchase agreements. Some shareholders brought suit in federal district courts against FHFA and Treasury under the Administrative Procedures Act (APA) and various other theories. *See, e.g., Perry Capital,* 848 F.3d at 1084; *see also Robinson v. FHFA*, No. 16-6680 (6th Cir.) (response brief filed April 12, 2017); *Saxton v. FHFA*, No. 17-1727 (8th Cir.) (briefing ongoing). In February 2017, the D.C. Circuit affirmed in large part a district court order dismissing the shareholders' claims. *Perry Capital,* 848 F.3d at 1084-85.

Other shareholders brought suit against the United States in the Court of Federal Claims. *See, e.g., Fairholme Funds, Inc. v. United States*, No. 1:13-cv-00465. These shareholders alleged that the third amendment to the preferred stock purchase agreements constituted an unconstitutional taking of the value of their shares, for which they sought just compensation. These suits are still pending in the Court of Federal Claims.

Instead of filing suit in the Court of Federal Claims, as other shareholders had done, plaintiff did two things: first, plaintiff attempted to intervene in the lead case in the Court of Federal Clams. The Court of Federal Claims denied intervention.

Fairholme Funds, Inc. v. United States, No. 1:13-cv-00465 (Fed. Cl. Sept. 30, 2016). On appeal of the denial of intervention, the Federal Circuit affirmed the Court of Federal Claims' denial of intervention, but noted that "to the extent" plaintiff's argument was a "jurisdictional one, [it] must be addressed by the Court of Federal Claims" even though plaintiff was not a party. *Fairholme Funds v. United States*, No. 2017-1015, __ F. App'x __, 2017 WL 991077, at *3 (Fed. Cir. Mar. 14, 2017) (per curiam) (unpublished). On April 28, the Court of Federal Claims denied plaintiff's motion to file an amicus brief in the *Fairholme Funds* suit and observed "that it is able to address the constitutional issue" raised by plaintiff "without Mr. Sammons's proposed brief." *Fairholme Funds, Inc. v. United States*, 2017 WL 1533568, at *5 (Fed. Cl. April 28, 2017).

Second, after intervention was denied in the Court of Federal Claims, plaintiff filed this suit in the United States District Court for the Western District of Texas, seeking $900,000 as compensation for an alleged taking. ROA.40, ¶ 104. Plaintiff's complaint alleges that Treasury and FHFA, through the third amendment to the preferred stock purchase agreements, permanently deprived him of the economic value of his shares. *See* ROA. 14, ¶ 22, ROA.40, ¶ 102.

The same day he filed his complaint, plaintiff moved for declaratory judgment regarding the district court's jurisdiction. In that filing, plaintiff requested that the district court declare that "[t[he Tucker Act, insofar as it mandates that the Article I Court of Federal Claims has *exclusive* jurisdiction over constitutional takings claims

seeking over $10,000 from the United States, is unconstitutional 'as applied.'" ROA.60. The government opposed the motion and moved to dismiss the suit for lack of jurisdiction. *See* ROA.95

The case was referred to a magistrate judge and, on February 7, 2017, the magistrate judge recommended dismissal of the suit for lack of jurisdiction. ROA.411-12. The recommended order proceeded from the principle that "sovereign immunity shields the United States from suit absent a consent to be sued that is 'unequivocally expressed.'" ROA.416 (quoting *United States v. Nordic Village, Inc.*, 503 U.S. 30, 33-34 (1992). The magistrate judge observed that the United States has waived its sovereign immunity for money damages "founded either upon the Constitution, or any Act of Congress" through the Tucker Act. *Id.* (quoting 28 U.S.C. §§ 1346(a)(2), 1491(a)(1)). As the judge explained, under the Tucker Act, claims exceeding $10,000 must be brought in the Court of Federal Claims, not the district court. ROA.416-17.

The magistrate judge held that plaintiff's separation of powers challenge was without support in Supreme Court precedent. The magistrate judge noted that the Supreme Court found a separation of powers violation in two cases, "both of which involved congressional grants of jurisdiction to bankruptcy courts to hear state common law claims between private individuals." ROA.419. And, "[o]utside of these narrow exceptions, the Court has made clear that the Constitution 'does not confer on litigants an absolute right to the plenary consideration of every nature of claim by

an Article III court." *Id.* (quoting *Commodity Futures Trading Comm'n v. Schor*, 478 U.S. 833, 848 (1986)). The magistrate judge explained that "Congress may set the terms of adjudicating a suit when the suit could not otherwise proceed at all." ROA.420 (quoting *Stern v. Marshall*, 564 U.S. 462, 489 (2011)).

On March 9, 2017, the district court overruled plaintiff's objections to the recommended order (which relied almost exclusively on a law review article: Michael P. Goodman, *Taking Back Takings Claims: Why Congress Giving Just Compensation Jurisdiction to the Court of Federal Claims is Unconstitutional,* 60 Vill. L. Rev. 83 (2015)), adopted the magistrate judge's recommendation, and dismissed the suit. ROA.435. Plaintiff filed a notice of appeal the same day. ROA.437.

SUMMARY OF ARGUMENT

Plaintiff Michael Sammons does not dispute that under the Tucker Act his suit belongs in the Court of Federal Claims because it seeks compensation for an alleged taking in an amount in excess of $10,000. Plaintiff nonetheless urges that the district court had jurisdiction to entertain his suit because the Tucker Act is unconstitutional. Plaintiff contends that separation of powers principles require that a takings claim be heard by an Article III court.

As the decision below correctly recognized, no court has found a violation of the separation of powers in an analogous case, and *Stern v. Marshall*, 564 U.S. 462 (2011), heavily relied on by plaintiff, only underscores the constitutionality of the Tucker Act.

The Supreme Court in *Stern* affirmed the principle that Congress may direct suits concerning "public rights"—that is, rights held against the government that historically have been understood to be subject to limitations imposed by Congress—to non-Article III fora.

A suit seeking compensation for a taking of property under the Fifth Amendment asserts such a "public right"; indeed, prior to the passage of the Tucker Act in 1887, there was no judicial mechanism to recover monetary compensation for government takings of property, and determinations of just compensation were made by Congress. Although the Tucker Act waived the government's sovereign immunity for such claims, suits seeking just compensation are subject to the terms of that waiver, which includes initial adjudication by an Article I court. To hold otherwise would upend decades of settled jurisprudence and call into question scores of just compensation determinations made by the Court of Federal Claims. The district court therefore correctly concluded that it lacked jurisdiction over plaintiff's suit.

STANDARD OF REVIEW

This Court reviews a district court's grant of a motion to dismiss de novo. *In re Katrina Canal Breaches Litig.*, 495 F.3d 191, 205 (5th Cir. 2007).

ARGUMENT

The District Court Properly Dismissed Plaintiff's Suit For Lack of Jurisdiction.

A. Because plaintiff's suit seeks more than $10,000, the Court of Federal Claims has exclusive jurisdiction.

The Tucker Act and the "Little Tucker Act" together establish a comprehensive scheme for seeking just compensation from the United States for alleged government takings under the Fifth Amendment. The Little Tucker Act provides that "district courts shall have original jurisdiction, concurrent with the United States Court of Federal Claims," over "[a]ny . . . civil action or claim against the United States, not exceeding $10,000 in amount, founded . . . upon the Constitution" and not sounding in tort. 28 U.S.C. § 1346(a)(2).[1] Using similar language, but without any monetary limitation, the Tucker Act states: "The United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim against the United States founded . . . upon the Constitution" and not sounding in tort. 28 U.S.C. § 1491(a)(1).

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[1] Plaintiff does not appear to urge that the Little Tucker Act should apply to this case regardless of the amount of compensation he seeks. Such an argument could present a question regarding this Court's jurisdiction because appeals of Little Tucker Act claims proceed in the Federal Circuit. *See* 28 U.S.C. § 1295. In any event, this Court has jurisdiction to determine whether the district court had jurisdiction under the Little Tucker Act. *See Smith v. Orr,* 855 F.2d 1544, 1547-52 (Fed. Cir. 1988) (cited in *American Fed'n of Gov't Emps. v. Stone*, 146 F. App'x 704 (5th Cir. 2005) (unpublished)).

The Tucker Acts "do not themselves 'creat[e] substantive rights,' but 'are simply jurisdictional provisions that operate to waive sovereign immunity for claims premised on other sources of law.'" *United States v. Bormes*, 133 S. Ct. 12, 16-17 (2012) (alteration in original) (quoting *United States v. Navajo Nation*, 556 U.S. 287, 290 (2009)). A Tucker Act claimant must, therefore, "demonstrate that the source of substantive law he relies upon 'can fairly be interpreted as mandating compensation by the Federal Government for the damages sustained.'" *United States v. Mitchell*, 463 U.S. 206, 216-17 (1983) (quoting *United States v. Testan*, 424 U.S. 392, 400 (1976)). It is "undisputed that the Takings Clause of the Fifth Amendment is a money-mandating source for purposes of Tucker Act jurisdiction." *Jan's Helicopter Serv., Inc. v. FAA*, 525 F.3d 1299, 1309 (Fed. Cir. 2008); *see also Wilkerson v. United States*, 67 F.3d 112, 118-19 (5th Cir. 1995). Accordingly, just compensation claims seeking more than $10,000 are subject to the exclusive jurisdiction of the Court of Federal Claims, with appeal to the United States Court of Appeals for the Federal Circuit. *See Eastern Enters. v. Apfel*, 524 U.S. 498, 520 (1998); *Wilkerson*, 67 F.3d at 118–19; *Ware v. United States*, 626 F.2d 1278, 1287 (5th Cir. 1980).

Plaintiff seeks compensation for an alleged taking of his property in excess of $10,000. Exclusive jurisdiction over plaintiff's claim therefore rests with the Court of Federal Claims, "even though," as this Court has explained, "the claim would otherwise fall within the coverage of some other statute conferring jurisdiction on the

district court." *Amoco Prod. Co. v. Hodel*, 815 F.2d 352, 358 (5th Cir. 1987) (citing *Graham v. Henegar*, 640 F.2d 732, 734-35 (5th Cir. 1981)). The district court therefore correctly concluded that it lacked jurisdiction over plaintiff's suit.

B. The Tucker Act is constitutional as applied to plaintiff's takings suit.

Plaintiff does not appear to dispute that, under the terms of the Tucker Act and this Court's precedent, his suit belongs in the Court of Federal Claims. Instead he attacks the constitutionality of the Tucker Act itself. Plaintiff claims that only an Article III judge, "appointed for life, subject only to removal by impeachment," *United States ex. rel. Toth v. Quarles*, 350 U.S. 11, 16 (1955), may hear a claim alleging an unconstitutional taking in violation of the Fifth Amendment. *See* Pl. Br. 7. Because the Court of Federal Claims is not an Article III court, plaintiff argues, the Tucker Act's requirement that he file his suit in that court is unconstitutional. Plaintiff alleges that the district court therefore had jurisdiction to hear his claim.[2]

1.a. "Article III does not confer on litigants an absolute right to the plenary consideration of every nature of claim by an Article III court." *Commodity Futures Trading Comm'n v. Schor*, 478 U.S. 833, 848 (1986). The Supreme Court has explained that "[n]either this Court nor Congress has read the Constitution as requiring every

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[2] Because plaintiff did not rely on 28 U.S.C. § 1331 in his complaint, it is not clear under what theory plaintiff believes the district court would have jurisdiction.

federal question arising under the federal law . . . to be tried in an Art. III court before a judge enjoying life tenure and protection against salary reduction." *Thomas v. Union Carbide Agric. Prods. Co.*, 473 U.S. 568, 583 (1985). Congress may permissibly "act[] pursuant to its powers under Article I to vest decisionmaking authority in tribunals that lack the attributes of Article III courts." *Thomas*, 473 U.S. at 583.

The Supreme Court has held that a lack of adjudication by an Article III court violates separation of powers principles on two occasions. *See Stern v. Marshall*, 564 U.S. 462 (2011); *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982). As the magistrate judge correctly observed, both *Stern* and *Northern Pipeline* "involved congressional grants of jurisdiction to bankruptcy courts to hear state common law claims between private individuals." ROA.419. And both cases arise from the principle that "Congress may not 'withdraw from judicial cognizance any matter which, from its nature, is the subject of a suit at the common law, or in equity, or admiralty'" *Stern*, 564 U.S. at 484 (quoting *Murray's Lessee v. Hoboken Land & Improvement Co.*, 59 U.S. (18 How.) 272, 284 (1856)).

As the Supreme Court explained in *Stern*, suits concerning common law claims between private individuals stand in contrast to disputes concerning "public rights." "Public rights" are those rights "integrally related to particular federal government action" that historically have been understood to be subject to limitations imposed by Congress. *Stern*, 564 U.S. at 490-91. When a matter concerns "public rights," Congress

may authorize adjudication by a non-Article III entity. *See, e.g.*, *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 54-55 (1989); *see also Ex parte Bakelite Corp.*, 279 U.S 438, 451-52 (1929); *Murray's Lessee*, 59 U.S. (18 How.) at 284.

A suit to recover compensation for an alleged taking does not concern a matter "of private right, that is, of the liability of one individual to another under the law as defined," as was at issue in *Stern* and *Northern Pipeline*. *Crowell v. Benson*, 285 U.S. 22, 51 (1932). Instead, such suits determine the eligibility of an individual to receive compensation from the federal government and concern therefore the kind of "public right" "which may be presented in such form that the judicial power is capable of acting on them, and which are susceptible of judicial determination, but which congress may or may not bring within the cognizance of the courts of the United States, as it may deem proper." *Murray's Lessee*, 59 U.S. (18 How.) at 284.

1.b. The history of the treatment of just compensation claims makes plain that such claims are not matters which "from [their] nature" require adjudication by an Article III court, *Stern,* 564 U.S. at 484; such claims "historically could have been" and, indeed, were "determined exclusively by" the legislative branch, *id.* at 485 (quoting *Northern Pipeline*, 458 U.S. at 68). There is therefore a "firmly established historical practice" of determinations of just compensation by non-Article III entities. *Stern*, 564 U.S. at 504-05 (Scalia, J., concurring).

Before the enactment of the Tucker Act in 1887, Congress had not waived the sovereign immunity of the United States with respect to suits for just compensation. "[A] citizen's only means of obtaining recompense from the Government," including for Fifth Amendment takings, "was by requesting individually tailored waivers of sovereign immunity, through private Acts of Congress." *Library of Congress v. Shaw*, 478 U.S. 310, 316 n.3 (1986); *see also United States v. Bormes*, 133 S. Ct. 12, 17 (2012).

The Court of Claims was created in the years before the Civil War, and it began entertaining just compensation claims following passage of the Tucker Act in 1877. It was unsettled whether the Court of Claims was a product of Congress's power under Article I or an Article III until the Supreme Court's decision in *Williams v. United States* in 1933, which held that the Court of Claims was an Article I court. *See* 289 U.S. 533, 579-80 (1933); *but see Glidden Co. v. Zdanok*, 370 U.S. 530, 550 (1962) (holding that the *Williams* Court erred because it "assumed that because Congress might have assigned specified jurisdiction to an administrative agency, it must be deemed to have done so even though it assigned that jurisdiction to a tribunal having every appearance of a court and composed of judges enjoying statutory assurances of life tenure and undiminished compensation"). In 1953 Congress declared that the Court of Claims was an Article III court, Act of July 28, 1953, ch. 253, 67 Stat. 226. And in 1982, Congress created the Court of Federal Claims as an Article I court. *See* Federal Courts

Improvement Act of 1982, Pub. L. No. 97-164, 96 Stat. 25; *Bormes*, 133 S. Ct. at 18 n.4.

2. Plaintiff's contention that the Tucker Act is unconstitutional as applied to claims seeking just compensation under the Fifth Amendment is without merit.

Plaintiff's primary argument on this score is that the Supreme Court's decision in *Stern v. Marshall*, 564 U.S. 462 (2011), created new law and opened the door to suits, such as his, challenging the constitutionality of the Tucker Act as applied to claims for just compensation under the Takings Clause. As an initial matter, this reading of *Stern* would mark a significant departure from a long line of precedent from the Supreme Court and the Federal Circuit that has never questioned the Court of Federal Claims' ability to adjudicate takings claims. *See, e.g.*, *Preseault v. Interstate Commerce Comm'n*, 494 U.S. 1, 11, 12 (1990) (requiring that takings claims against the federal government be litigated pursuant to the "process provided by the Tucker Act," and noting that where there is a taking, the resulting claim is "founded upon the Constitution and within the jurisdiction of the [Court of Federal Claims] to hear and determine" (quotation marks omitted)); *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1020 (1984) ("Once a taking has occurred, the proper forum for Monsanto's claim is the Claims Court."); *Morris v. United States*, 392 F.3d 1372, 1375 (Fed. Cir. 2004) ("Absent an express statutory grant of jurisdiction to the contrary, the Tucker Act provides the Court of Federal Claims exclusive jurisdiction over takings claims for amounts greater than $10,000.").

Nothing in the *Stern* decision suggests that the Supreme Court intended to alter the legal landscape. *See Stern*, 564 U.S. at 490-91 ("*It is still the case* that what makes a right 'public' rather than private is that the right is integrally related to particular federal government action.") (emphasis added). Consistent with this understanding of *Stern*, the Supreme Court has continued to remark that Takings Clause plaintiffs are "free to seek compensation for any taking by bringing a damages action under the Tucker Act in the Court of Federal Claims." *Horne v. Department of Agric.*, 135 S. Ct. 2419, 2431 (2015). The Federal Circuit has similarly reviewed takings claims post-*Stern* without comment. *See, e.g., McGuire v. United States*, 707 F.3d 1351, 1356 (Fed. Cir. 2013) ("Because McGuire's takings claim fell within the scope of the Tucker Act (and was a claim for over $10,000), jurisdiction was proper only in the Claims Court.").

Nor does the holding of *Stern* call into question the Court of Federal Claims' jurisdiction over takings suits. As explained, the holding in *Stern* was narrow: as it had done in *Northern Pipeline,* the Supreme Court found a violation of separation of powers with respect to a federal bankruptcy court's adjudication of state common law claims. But the decision in *Stern* emphasized the continuing vitality of the distinction between "private" and "public" rights. *Stern,* 564 U.S. at 484-92. And, as explained, this case concerns a public right, not the kind of private right that by "its nature, is the subject of a suit at the common law, or in equity, or admiralty"' *Id.* at 484.

Similarly unpersuasive is plaintiff's contention that this suit must be heard before an Article III court because his claim is based on the Constitution. *See* Pl. Br. 17-18 ("Congress can no more require such a constitutional case be heard in only an Article I legislative court, than it could decide the matter itself."). As explained, for nearly 100 years after the founding, there existed no judicial mechanism for seeking just compensation for alleged government takings. *See supra* p. 13. Moreover, there is no general principle that cases raising constitutional claims require initial review in an Article III court. *See, e.g., Elgin v. Department of Treasury*, 132 S. Ct. 2126, 2132 (2012) (holding that proceedings before the Merit Systems Protection Board provided exclusive route for judicial review of constitutional claim by federal employee); *Thunder Basin Coal Co. v. Reich*, 510 U.S. 200, 215 (1994) (holding that Congress can limit the forum for review of a Due Process challenge to agency enforcement proceeding to an administrative tribunal).

Plaintiff is also quite wrong to suggest that the Federal Circuit was "troubled" by the separation of powers issue he raised in attempting to intervene in the takings suit currently ongoing in the Court of Federal Claims. Pl. Br. 13. Every court has a duty to assess its jurisdiction, and the Federal Circuit simply reminded the Court of Federal Claims that even without an intervenor raising the argument, it was required to assure itself that it possessed jurisdiction. *Fairholme Funds, Inc. v. United States*, No.

2017-1015, __ F. App'x __, 2017 WL 991077, at *3 (Fed. Cir. Mar. 14, 2017) (per curiam) (unpublished).

Plaintiff's reliance on the "self-executing," nature of the Takings Clause similarly misses the mark. Pl. Br. 18-19 (emphasis omitted). The Fifth Amendment requires that the government pay "just compensation" for any taking, but "[a]ll that is required is the existence of a 'reasonable, certain and adequate provision for obtaining compensation,' at the time of the taking." *Preseault*, 494 U.S. at 11 (quoting *Regional Rail Reorganization Act Cases*, 419 U.S. 102, 124-25 (1974)). This case does not concern the question of whether plaintiff has a forum in which to seek just compensation for any alleged taking. As explained, plaintiff has available to him a suit in the Court of Federal Claims under the Tucker Act,[3] and courts have long recognized that the Tucker Act provides a satisfactory means for obtaining compensation under the Fifth Amendment. *See id.* (noting that an individual has no takings claim against the government where it provides an adequate process for obtaining compensation and that the Tucker Act provides a remedy for any takings claim against the federal government for damages); *Rose Acre Farms, Inc. v. Madigan*, 956 F.2d 670, 673 (7th Cir. 1992) ("The Tucker Act offers whatever compensation the Constitution requires.").

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[3] Plaintiff cannot file such a suit, however, while this suit is pending. *See* 28 U.S.C. § 1500; *Fairholme Funds, Inc. v. United States*, 2017 WL 1533568, at *5 (Fed. Cl. April 28, 2017).

CONCLUSION

For the foregoing reasons, the district court's judgment should be affirmed.

Respectfully submitted,

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MAY 2017

CERTIFICATE OF SERVICE

I hereby certify that on May 10, 2017, I filed the foregoing Brief by causing a digital version to be filed electronically via the ECF system. I also certify that I will file paper copies with the Court, via Federal Express overnight delivery, when the court requests them.

I further certify that on May 10, 2017, I caused an electronic copy to be served on pro se plaintiff at michaelsammons@yahoo.com. I also caused a paper copy to be mailed by First Class Mail to his address:

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 32(a)(7)(C) of the Federal Rules of Appellate Procedure, I hereby certify that the foregoing brief was prepared using Microsoft Word 2010 and complies with the type and volume limitations set forth in Rule 32 of the Federal Rules of Appellate Procedure. I further certify that the font used is 14 point Garamond, for text and footnotes, and that the computerized word count for the foregoing brief (excluding exempt material) is 4,256.

I further certify that 1) all required privacy redactions have been made; 2) the electronic submission will be an exact copy of the paper copy; and 3) the document is free from viruses and has been scanned by the current version of Symantec Endpoint Protection.

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May 15, 2017

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No. 17-50201 Michael Sammons v. USA
USDC No. 5:16-CV-1054

Dear Ms. Wright,

The following pertains to your brief electronically filed on May 10, 2017.

You must submit the 7 paper copies of your brief required by 5TH CIR. R. 31.1 within 5 days of the date of this notice pursuant to 5th Cir. ECF Filing Standard E.1.

Sincerely,

LYLE W. CAYCE, Clerk

By: ____________________________
Casey A. Sullivan, Deputy Clerk
(504)310-7642

cc:
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Mr. Michael Sammons
Mr. Gerard J. Sinzdak