

No. \_\_\_\_\_

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In The  
**Supreme Court of the United States**

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SUSAN STANFORD,

*Petitioner,*

v.

THE UNITED STATES OF AMERICA,

*Respondent.*

—◆—  
**On Petition For A Writ Of Certiorari  
To The United States Court Of Appeals  
For The Federal Circuit**

—◆—  
**PETITION FOR WRIT OF CERTIORARI**

—◆—  
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## **QUESTIONS PRESENTED**

- I. Is the prejudgment seizure and sale of private property by a receiver appointed by a Court at the request of the Securities and Exchange Commission a Taking under the Fifth Amendment that entitles Petitioner to make a claim for compensation?
- II. If a Taking occurs by the judicial branch of the Federal government, does the United States Court of Federal Claims have jurisdiction to award compensation?

**PARTIES TO THE PROCEEDING**

The parties to this proceeding are Petitioner Susan Stanford and Respondent United States of America.

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Petitioner Susan Stanford prays that a writ of certiorari be granted to review the opinion of the Court of Appeals for the Federal Circuit issued on July 19, 2017. On October 6, 2017, Petitioner was granted an extension of time within which to apply for writ of certiorari to and including December 1, 2017.



### **OPINIONS BELOW**

On July 19, 2017, the Court of Appeals for the Federal Circuit entered a *per curiam* Order affirming the United States Court of Federal Claims' dismissal of Petitioner's Takings claim. A copy of the Court of Appeals' Order is attached as Appendix A. A copy of the Court of Federal Claims' Order of Dismissal is attached as Appendix B. The Order and Amended Order of the United States District Court for the Northern District of Texas appointing a receiver, which give rise to this action, are attached as Appendix C. A copy of the Judgment of conviction of Robert Allen Stanford granting forfeiture of certain assets tainted by criminal conduct, and denying forfeiture of other assets, is attached as Appendix D.



### **BASIS FOR JURISDICTION**

The judgment of the Court of Appeals for the Federal Circuit was entered on July 19, 2017. (Appendix A). An extension of time to file this petition for writ of certiorari was granted on October 6, 2017 extending

the time for filing this application for writ of certiorari to and including December 1, 2017. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).



### **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

Issue I – that a Taking has occurred by reason of the appointment of a receiver on motion of the Securities and Exchange Commission – is based on the Fifth Amendment to the United States Constitution, which provides: “. . . nor shall private property be taken for public use, without just compensation.” U.S. CONST. AMEND. V, and upon the Securities and Exchange Act Section 2 which provides: “For the reasons hereinafter enumerated, transactions in securities as commonly conducted upon securities exchanges and over-the-counter markets are effected with a national public interest which makes it necessary to provide for regulation and control of such transactions and of practices and matters related thereto . . .” 15 U.S.C. §78b.

Issue II – the jurisdiction of the Court of Federal Claims over Takings claims exceeding \$10,000.00 – is based upon the Tucker Act which provides: “The United States Court of Federal Claims shall have jurisdiction to render judgment on any claim against the United States founded either upon the Constitution, or any act of Congress, or any regulation of an executive department . . .” 28 U.S.C. §1491(a)(1).



## STATEMENT OF THE CASE

This is an appeal from a Court of Appeals judgment affirming a determination of the Court of Federal Claims that it had no jurisdiction under the Tucker Act to hear Petitioner's claim for compensation for property taken and sold by a receiver appointed *ex parte* by the District Court under the Securities and Exchange Act.

### Facts

This case involves the Securities and Exchange Commission's (SEC) seizure of community property belonging to the Petitioner. Petitioner Susan Stanford and Robert Allen Stanford were married on August 16, 1975 in the State of Texas. Susan Stanford lived in the State of Texas at all times during the marriage. She filed for divorce on November 5, 2007. A Final Decree of Divorce was entered by a Texas court on July 12, 2013.

On February 16, 2009, pursuant to its investigation of Robert Allen Stanford for, among other things, securities fraud, the SEC sought and an order, *inter alia*, appointing a receiver to "conserve, martial, protect, and hold" Allen Stanford's assets. On that same day the United States District Court for the Northern District of Texas entered an order that states: "This Court assumes exclusive jurisdiction and takes possession of the assets, monies, properties real and personal, tangible and intangible, of whatever kind and description, wherever located . . ." of Allen Stanford.

Under Texas law, all assets acquired by either spouse during marriage are presumed to be community property; that is, each spouse owns an undivided one-half interest in them. All of the seized assets were, therefore, community property of Petitioner and Allen Stanford under Texas law. The District Court made no determination whether the seized assets were tainted by Mr. Stanford's criminal conduct, or, indeed, whether there was any illegal conduct on the part of Mr. Stanford, prior to entering the order quoted above. The order was entered *ex parte* and without making any determination of fault or liability.

The United States subsequently indicted Allen Stanford on charges of mail fraud and wire fraud and sought forfeiture of millions of dollars in funds held in his bank accounts. On March 8, 2012, after finding Allen Stanford guilty on multiple counts of mail fraud and wire fraud, a Federal jury made findings that most, but not all, of the funds in those bank accounts were proceeds of fraudulent activity. *See* Appendix D.

No court, no federal agency, and no private litigant has ever alleged, let alone proven, that Susan Stanford committed any fraud or other tort, or violated any statute, criminal or civil, or was complicit in any such violation by her ex-husband. On the contrary, the U.S. Tax Court has determined that Petitioner is an "innocent spouse" – that is, she has neither committed nor been complicit in any illegal activity.

Petitioner had been separated from Allen Stanford for 15 years at the time the SEC suit was filed. Nevertheless, the receiver initiated proceedings against the Petitioner to have her vacate her home, which he alleged to have been acquired in part with proceeds of her husband's fraud and to disgorge funds he alleged Allen Stanford had paid for her support during the separation. Without funds to fight the receiver, Petitioner settled in October 2011 by agreeing to move out of the home, relinquish her claim to two other specific items of personal property, and she released "the Receivership Estates, the Receiver, and the [Stanford Investor's] Committee . . .".

On February 9, 2015, Susan Stanford sued the United States in the Court of Federal Claims alleging that the United States government had taken her untainted community property interest in the seized property without just compensation in violation of the Takings Clause. The United States moved to dismiss the complaint under Rule 12(b)(1), alleging that the Court of Federal Claims lacked subject matter jurisdiction, and under Rule 12(b)(6), alleging that Ms. Stanford failed to state a claim upon which relief could be granted. The Court granted the United States' motion on two specific grounds: (1) that resolution of Ms. Stanford's claim would require the Court of Federal Claims to review the propriety of the district court's order appointing a receiver which it lacked jurisdiction to do; and (2) that Ms. Stanford's settlement with the receiver in the district court released all her claims against the United States, despite the fact that the

release neither named nor described the United States or the SEC.

Petitioner timely appealed the dismissal to the United States Court of Appeals for the Federal Circuit, which affirmed the dismissal *per curiam* on July 19, 2017.



### REASONS FOR GRANTING THE WRIT

**The Court Should Grant Certiorari to Determine Whether the Takings Clause Applies to Judicial Action that Results in a Taking of Private Property and, if so, Where Jurisdiction Over Such an Action Lies.**

In *Stop the Beach Renourishment v. Florida Department of Environmental Protection*, 560 U.S. 702, 130 S.Ct. 2592, 177 L. Ed. 2d 184 (2010), a plurality of this Court held that the Takings Clause of the Fifth Amendment bars a State from taking private property without paying for it, no matter which branch of government is the instrument of the taking.

Where the United States, rather than a state, takes property worth more than \$10,000.00, the Article III Courts lack jurisdiction to hear the claims. Under the Tucker Act, exclusive jurisdiction over such claims lies in the United States Court of Federal Claims. 28 U.S.C. §1491(a)(1); 28 U.S.C. §1346(a)(2).

The United States Court of Appeals for the Federal Circuit, however, has held that the United States

Court of Federal Claims has no jurisdiction to “review” the decisions of a United States District Court. *Allustiarte v. United States*, 256 F. 3d 1349 (Fed. Cir. 2001); *Vereda v. United States*, 271 F. 3d 1367 (Fed. Cir. 2001). The Court of Federal Claims held, in this case, that the decisions in *Allustiarte* and *Vereda* preclude it from exercising jurisdiction over a claim for compensation based on a judicial taking.

If the Takings Clause applies to judicial takings, a forum must exist in which such claims may be presented. Congress has denied Article III Courts jurisdiction over claims against the United States arising under the Constitution if they exceed \$10,000.00, choosing instead to vest such jurisdiction exclusively in the Court of Federal Claims. If judicial action can result in a Taking, *Allustiarte* and *Vereda* should not be read to abrogate that jurisdiction.

In *Tahoe-Sierra Presidential Council v. Tahoe Regional Planning Agency*, 535 U.S. 302, 322 (2002),<sup>1</sup> the Court held: “When the government physically takes possession of an interest in property for some public purpose it has a categorical duty to compensate the former owner . . .”. In *Horne v. Department of Agriculture*, 135 S.Ct. 2419, 2429 (2015),<sup>2</sup> the Court held that this categorical duty extends to personal property as well as realty, whether or not the owner retains a contingent reversionary interest of indeterminate value. When the government physically occupies property, it

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<sup>1</sup> 122 S.Ct. 1465, 152 L. Ed. 2d 517

<sup>2</sup> 192 L. Ed. 2d 388

is considered a *per se* taking because the owner is deprived of the ability “to possess, use, and dispose of it.” When such a physical occupation serves any public interest compensation is required. *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 426 (1982).<sup>3</sup>

The District Court’s February 16, 2009 order expressly provided that the Court “takes possession of the assets, monies, properties real and personal, tangible and intangible, of whatever kind and description, wherever located . . .”. The Court appointed a receiver to physically carry out the order. Petitioner contends the action of the District Court was a *per se* taking of property in which she owned an undivided one-half interest.

The Circuit Courts have held that a District Court has broad powers and wide discretionary authority in cases brought by the SEC to take control of property, appoint receivers, and authorize other ancillary measures. *SEC v. Safety Finance Service, Inc.*, 674 F. 2d 368 (5th Cir. 1982); *SEC v. Wencke*, 622 F. 2d 1369 (9th Cir. 1980); *SEC v. Arkansas Loan & Thrift Association*, 427 F. 2d 1171 (8th Cir. 1970). Decisions of the District Courts disposing of assets in such cases are reviewable only for abuse of discretion, and are not reversed even though they may be imprudent. *Safety Finance Service* at 373. In this case, the District Court for the Northern District of Texas exercised its discretion to authorize the receiver to sell assets worth hundreds of millions

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<sup>3</sup> 102 S.Ct. 3164, 73 L. Ed. 2d 868

of dollars before ever holding a hearing to determine which of the assets were tainted by fraud. Such an exercise of control over assets is the clearest case of a *per se* taking, and the District Courts are empowered to exercise that control by law. Because review over such decisions is limited, and because assets may be seized and sold without giving the owner a meaningful opportunity to be heard, the Due Process Clause affords no protection. Compensation should therefore be paid under the Takings Clause.

The alternative ground upon which the Court of Federal Claims dismissed Petitioner's claim was that "even if the Court had jurisdiction over takings claim [sic] alleged in the February 9, 2015 complaint, Plaintiff has no cognizable interest in the 'Receivership Estate' because Plaintiff released 'all claims or causes of action' against the Receiver and the Committee" in the October 2011 settlement agreement.

The release language quoted by the Court of Federal Claims omits significant language that follows immediately after. That language limits the application of the release to nine specific categories of claims and to the "Settling Parties" as defined in the release. The Settling Parties were Susan Stanford, Ralph Janvey in his capacity as Receiver, and the Official Stanford Investors Committee.

The Court of Federal Claims' dismissal based on the release was not proper under either Rule 12(b)(1) nor Rule 12(b)(6). The release is an affirmative defense. It does not implicate the Court of Federal

Claims' subject matter jurisdiction. Whether a complaint may be dismissed under Rule 12(b)(6) on the basis of an affirmative defense depends on whether the allegations in the complaint suffice to establish that ground. *Jones v. Brock*, 549 U.S. 199, 127 S.Ct. 910, 166 L. Ed. 2d 798 (2007). While some affirmative defenses, such as statute of limitations, may be resolved on a Rule 12(b)(6) motion, others such as the interpretation of the language of a release should not.

The release in question expressly provides that it is to be interpreted under Texas law. Texas law limits the application of a release to persons expressly named or described in the document itself, and holds that the intent of the parties controls the scope of the release. The United States is not named or described in the release, and Petitioner contends that she did not intend to release her takings claims against the United States. By law, her claims under the Takings Clause lie exclusively against the United States and not against the receiver himself. The Court of Federal Claims should resolve questions concerning the scope of the release as questions of fact because the affirmative defense of release does not appear from the allegations in the complaint.

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## CONCLUSION

For the foregoing reasons, Petitioner Susan Stanford respectfully requests that this Court grant certiorari

and reverse the Court of Appeals for the Federal Circuit.

DATED: December 1, 2017

Respectfully submitted,

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