No. 12-1465

In the Supreme Court of the United States

INTERFACE KANNER, LLC, PETITIONER

v.

JPMORGAN CHASE BANK, N.A., ET AL.

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

BRIEF FOR THE FEDERAL RESPONDENT IN OPPOSITION

DONALD B. VERRILLI, JR.
Solicitor General
Counsel of Record
Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

RICHARD J. OSTERMAN, JR.
Acting General Counsel
FLOYD I. ROBINSON
Acting Deputy General Counsel
COLLEEN J. BOLES
Assistant General Counsel
KATHRYN R. NORCROSS
Senior Counsel
JOSEPH BROOKS
Counsel
Federal Deposit Insurance Corporation
Washington, D.C. 20429

QUESTION PRESENTED

Whether the court of appeals correctly held that petitioner lacks standing to enforce its interpretation of an agreement to which petitioner is not a party and that does not name petitioner as a third-party beneficiary.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 3a-16a) is reported at 704 F.3d 927. The order of the district court granting respondent JPMorgan Chase Bank's motion for summary judgment and denying petitioner's motion for summary judgment (Pet. App. 26a-37a), and its order granting respondent Federal Deposit Insurance Corporation's motion for summary judgment and denying petitioner's motions for reconsideration and a new trial (Pet. App. 17a-25a), are unreported.

JURISDICTION

The judgment of the court of appeals was entered on January 10, 2013. A petition for rehearing was denied on March 19, 2013 (Pet. App. 1a-2a). The petition for a writ of certiorari was filed on June 14, 2013. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Congress enacted the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), Pub. L. No. 101-73, 103 Stat. 183, in response to the savings and loan crisis of the 1980s. The statute provides a framework for resolving the assets and liabilities of failed banks. Under Section 212 of FIRREA, when a bank insured by respondent Federal Deposit Insurance Corporation (FDIC) becomes insolvent, the FDIC may be appointed the receiver for the bank and may take control of its assets and liabilities. See 12 U.S.C. 1813(c)(2), 1821(c)(1), (d)(2)(A) and (B).

The statute gives the FDIC as receiver the authority to repudiate a lease to which the bank is a party if the FDIC finds that performance of the lease would be burdensome and that repudiation "will promote the orderly administration of the institution's affairs." 12 U.S.C. 1821(e)(1)(B) and (C). A lessor on such a lease may sue the FDIC for damages arising out of the repudiation, but the relief is generally limited to "rent accruing before the later of the date * * * the notice of disaffirmance or repudiation is mailed; or * * * the disaffirmance or repudiation becomes effective." 12 U.S.C. 1821(e)(4)(A), (B)(i)(I) and (II).

FIRREA requires parties seeking damages for the repudiation of contracts to exhaust administrative remedies before suing the FDIC in court. It provides that the FDIC shall "determine [such] claims," 12 U.S.C. 1821(d)(3)(A), and that "no court shall have jurisdiction over * * * any claim or action for payment from * * * the assets of [the bank]" "[e]xcept as otherwise provided in [Section 1821(d)]," 12 U.S.C. 1821(d)(13)(D)(i). Although the statute does not contain "an explicit mandate for exhaustion of administrative remedies[,] these provisions are accepted by the cases and by Congress as having that meaning." *FDIC* v. *Lacentra Trucking, Inc.*, 157 F.3d 1292, 1294 (11th Cir. 1998) (citing *Marquis* v. *FDIC*, 965 F.2d 1148, 1151-1152 (1st Cir. 1992)), cert. dismissed, 526 U.S. 1083 (1999). The FDIC must "promptly publish a notice to the [bank's] creditors to present their claims * * * by a date" that is at least 90 days after publication of the notice. 12 U.S.C. 1821(d)(3)(B)(i).

In April 2008, petitioner Interface Kanner (Interface) entered into an agreement with Washington Mutual Bank (WaMu), in which Interface agreed to lease to WaMu real property in Florida for the construction of a bank branch (the Interface Lease). Pet. App. 4a-5a. In September 2008, however, before the branch could be built, WaMu suffered the largest bank failure in United States history. It was declared insolvent by the Office of Thrift Supervision of the United States Department of the Treasury. *Id.* at 27a.

The FDIC was appointed receiver for WaMu under FIRREA. The FDIC immediately assigned most of WaMu's assets and liabilities to respondent JPMorgan Chase Bank (JPMorgan). That assignment was accomplished through a Purchase and Assumption Agreement (the Agreement) between the FDIC and JPMorgan. Pet. App. 5a-6a. As particularly relevant here, the Agreement recites that it generally confers no enforceable rights on third parties. The Agreement states that, "[e]xcept as otherwise specifically provided in this Agreement, nothing expressed or referred to in this Agreement is intended or shall be construed to give any Person other than the [FDIC] and [JPMorgan] any legal or equitable right, remedy or claim under or with respect to this Agreement." *Id.* at 5a.

Among the liabilities to which the FDIC succeeded were real-property leases in which WaMu was the lessee. See Pet. App. 4a. The Agreement divides those leases into two categories: "Bank Premises" and "Other Real Estate." *Id.* at 6a. Leases for Other Real Estate were assigned outright to JPMorgan, but the Agreement gave JPMorgan a 90-day option to accept or decline assignments of leases for Bank Premises. *Id.* at 6a & n.1.

Because the parties to the Agreement understood the Interface Lease to fall within the Bank Premises category, JPMorgan received a 90-day option to accept or decline it. Pet. App. 7a; Pet. 5. Within that period, JPMorgan notified the FDIC that it would not assume the Interface Lease. See Pet. App. 7a. It also sent a formal letter to Interface indicating that it would not assume the Interface Lease, pointing to the relevant provisions of the Agreement. *Id.* at 19a-20a. Accordingly, the FDIC never executed a document assigning the Interface Lease to JPMorgan, and it continued to treat the Interface Lease as a retained liability. See *id.* at 7a.

In March 2009, the FDIC notified Interface that it had elected to exercise its right under FIRREA to repudiate the Interface Lease. Pet. App. 7a, 19a-20a; see 12 U.S.C. 1821(e)(1). Although the FDIC paid all pre-repudiation rent to Interface, it did not pay Interface any rent for the period after repudiation, in accordance with FIRREA's limitation on damages, 12 U.S.C. 1821(e)(4)(A) and (B)(i). See Pet. App. 7a. Interface did not file an administrative claim with the FDIC after learning that the Interface Lease had been repudiated. See *id.* at 16a.

In December 2009, Interface provided JPMorgan with a default notice for failure to make payments on the Interface Lease. Pet. App. 7a. JPMorgan did not cure the alleged default. *Ibid.*

2. Interface sued JPMorgan in the United States District Court for the Southern District of Florida, alleging breach, repudiation, or abandonment of the Interface Lease. Pet. App. 7a. Contrary to the notifications it had received from JPMorgan and the FDIC, Interface argued that "the FDIC [had] transferred WaMu's obligations under the Lease to [JPMorgan] via the [Agreement]." *Id.* at 32a.

The FDIC intervened and sought a declaratory judgment that (i) it had not sold, transferred, or otherwise assigned the Interface Lease to JPMorgan, (ii) it had timely repudiated the Interface Lease, and (iii) Interface had failed to timely file an administrative claim with the FDIC and thus was entitled to no damages from the FDIC. Pet. App. 7a. In a motion for summary judgment, JPMorgan stated that it agreed with the FDIC that JPMorgan "was not required to assume, and affirmatively chose not to assume, the rights and obligations to the [Interface] Lease." JPMorgan Mot. for Summ. J. 3.

a. The district court granted summary judgment to JPMorgan on the ground that Interface has "no standing to enforce [the Agreement's] provisions." Pet. App. 36a. The court explained that "[w]hen the FDIC stepped in as receiver for WaMu, it also stepped into the shoes of WaMu under the [Interface] Lease." *Id.* at 32a. Instead of seeking damages from the FDIC, however, Interface had sued JPMorgan, relying on its own interpretation of the Agreement as having assigned the Interface Lease to JPMorgan. *Ibid.* But the Agreement, the court explained, expressly states that it does not confer rights on any third parties, "unequivocally preclud[ing] [Interface's] claim that it is a third party beneficiary of the [Agreement]." *Id.* at 34a-35a. The district court accordingly held that, because Interface is not an intended third-party beneficiary of the Agreement, it lacks standing to enforce its interpretation of the Agreement against JPMorgan. *Id.* at 36a.

The district court also rejected Interface's alternative argument that it has standing based on "privity of estate" with JPMorgan. See Pet. App. 36a. The court found that argument "circular," because it "rel[ies] on [Interface's] own interpretation of the [Agreement]" as having assigned the Interface Lease to JPMorgan. *Ibid.*

b. In a separate order, the district court granted the FDIC's motion for summary judgment. See Pet. App. 17a-25a. It accordingly issued a declaratory judgment that Interface was not entitled to damages from the FDIC because Interface had not filed a timely administrative claim. *Id.* at 24a.

3. The court of appeals vacated the district court's orders, holding that the district court lacked subject matter jurisdiction over the claims of both Interface and the FDIC. See Pet. App. 3a-16a.

a. The court of appeals held that Interface lacks standing to enforce its interpretation of the Agreement because it is not a party or an intended third-party beneficiary. See Pet. App. 11a-14a (citing *Bochese* v. *Town of Ponce Inlet*, 405 F.3d 964, 981 (11th Cir.), cert. denied, 546 U.S. 872 (2005)). The court first construed the choice-of-law clause in the Agreement to mandate the application of federal common law. See *id.* at 9a-10a (citing clause providing that the agreement "shall be governed by and construed in accordance with the federal law of the United States of America"). The court then explained that, "[u]nder federal common law," it was required to "look[] to general contract principles in interpreting the * * * Agreement." *Id.* at 12a. "One such principle," the court continued, "is that only a party to a contract or an intended third-party beneficiary may sue to enforce the terms of a contract." *Ibid.* (citing, *inter alia*, Restatement (Second) of Contracts § 304 (1981)). The court also explained that, because government contracts are intended to benefit the public as a whole, they are presumed not to treat specific members of the public as third-party beneficiaries absent a clear indication that the contracting parties intended that result. See *id.* at 12a-13a (citing *Beckett* v. *Air Line Pilots Ass'n*, 995 F.2d 280, 288 (D.C. Cir. 1993), and *Montana* v. *United States*, 124 F.3d 1269, 1273 (Fed. Cir. 1997)).

Applying those general principles to the Agreement, the court of appeals "conclude[d] that Interface is not an intended third-party beneficiary to the * * * Agreement and cannot sue to enforce it." Pet. App. 14a. The court relied principally on the provision of the Agreement "expressly disclaim[ing] any intent to create third-party beneficiaries." *Id.* at 13a. It also found support in the Ninth Circuit's decision in *GECCMC 2005-C1 Plummer Street Office L.P.* v. *JPMorgan Chase Bank, N.A.*, 671 F.3d 1027 (2012), which had "rejected the same argument" with respect to the Agreement. Pet. App. 13a (citing *GECCMC*, 671 F.3d at 1034).

The court of appeals rejected Interface's alternative argument that it has standing to sue JPMorgan for breach of the Interface Lease because Interface and JPMorgan are in privity of estate. "This argument fails," the court concluded, "because it is dependent on

Interface's ability to enforce its interpretation of the * * * Agreement, which * * * Interface lacks standing to do." *Id.* at 14a.

b. The court of appeals also held that the district court lacked jurisdiction over the FDIC's declaratory-judgment claim. Pet. App. 14a-16a. Because FIRREA deprives courts of "subject matter jurisdiction unless the claimant has exhausted the administrative remedies," and because Interface had not submitted a claim to the FDIC, the court concluded that the district court lacked jurisdiction to determine whether the FDIC was liable to Interface for damages arising from the repudiation of the Interface Lease. *Id.* at 15a-16a (citation omitted).

ARGUMENT

Interface challenges the court of appeals' holding that, under the particular language of the Agreement, Interface is not an intended third-party beneficiary and therefore lacks standing to enforce its own interpretation of the Agreement against JPMorgan. The court of appeals correctly applied settled principles of prudential standing and contract interpretation, and its decision does not conflict with any decision of this Court or another court of appeals. Further review is not warranted.

1. a. The court of appeals correctly held that Interface lacks standing to enforce its interpretation of the Agreement. The doctrine of prudential standing includes a "general prohibition on a litigant's raising another person's legal rights." *Devlin* v. *Scardelletti*, 536 U.S. 1, 7 (2002) (quoting *Allen* v. *Wright*, 468 U.S. 737, 751 (1984)). Thus, a plaintiff "generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties." *Warth* v. *Seldin*, 422 U.S. 490, 499 (1975). For that

reason, a plaintiff who is neither a party to a contract nor an intended third-party beneficiary lacks standing to enforce the contract, at least absent some other source of law conferring an enforceable right upon him. See, *e.g.*, *Deutsche Bank Nat'l Trust Co.* v. *FDIC*, 717 F.3d 189, 194 (D.C. Cir. 2013).

Interface is not a party to the Agreement, so it could have standing to enforce the Agreement only if it were an intended third-party beneficiary. But as the court of appeals explained, the Agreement expressly recites that there are no third-party beneficiaries other than as "specifically provided in this Agreement." Pet. App. 5a, 13a-14a. Because no other provision of the Agreement identifies Interface as a third-party beneficiary, Interface lacks standing to enforce its interpretation of the Agreement.

The other two courts of appeals that have construed the contractual language at issue here have reached the same conclusion as the court below. Like Interface, the plaintiff in *GECCMC 2005-C1 Plummer Street Office L.P.* v. *JPMorgan Chase Bank, N.A.*, 671 F.3d 1027 (9th Cir. 2012), "allege[d] that [JPMorgan] assumed * * * [its] leases under the terms of the * * * Agreement" and was therefore "liable for unpaid rent on the leases." *Id.* at 1030. The Ninth Circuit held that, because "the Agreement expressly disclaims any intent to create third-party beneficiaries" absent an express statement, the plaintiff lacked standing to enforce its interpretation of the Agreement. *Id.* at 1033-1035. The Ninth Circuit found that "FIRREA's statutory framework further support[ed] [that] conclusion," because "[a]llowing [a plaintiff] to enforce rights under the * * * Agreement would impede FIRREA's mandate to 'preserve and conserve the assets and property of [the Failed Bank].'"

Id. at 1035 (quoting 12 U.S.C. 1821(d)(2)(B)(iv)) (fourth brackets in original).

In *Deutsche Bank*, *supra*, the D.C. Circuit similarly held (in a case that did not involve a real-estate lease) that creditors of WaMu lacked prudential standing to enforce their interpretation of the Agreement. See 717 F.3d at 194 & n.4 (citing the decision below and *GECCMC*, *supra*). Because the creditors were "not intended beneficiaries" of the Agreement, the court concluded, they were "effectively seeking to enforce the rights of third parties (here, the FDIC), which the doctrine of prudential standing prohibits." *Id.* at 194.[1]

b. Interface asserts (Pet. 8) that "a 'no third-party beneficiary' clause * * * cannot deprive a lessor of standing under privity of estate to rely on the assignment of the lease executed by its lessee in order to enforce its property rights against the lessee's transferee." According to Interface, "[r]eal property law has always recognized the lessor's right to prove the assignment of the lease, even when the lessor is not a party to, or a beneficiary of, the written instrument of assignment between the lessee and its assignee." Pet. 11.

Apart from recent unpublished district-court decisions interpreting the Agreement in this case, see Pet. 11 nn.7-8, 14 n.10, Interface cites no decision endorsing a rule that a lessor may enforce its interpretation of an assignment agreement when the agreement specifically denies the lessor third-party beneficiary status. Such a

[1] In addition to the recent decisions of the Ninth and D.C. Circuits discussed in the text, the same issue is currently pending before the Second and Fifth Circuits. See *Hillside Metro Assocs., LLC* v. *JPMorgan Chase Bank, N.A.*, No. 12-3302 (2d Cir. argued June 13, 2013); *Excel Willowbrook, LLC* v. *JPMorgan Chase Bank, N.A.*, No. 12-20367 (5th Cir. argued Aug. 6, 2013).

rule is wrong as a matter of the common law. Lessors may enforce their interpretations of assignment agreements to which they are not parties only where they are intended third-party beneficiaries of the agreements. See Robert S. Schoshinski, *American Law of Landlord and Tenant* § 8.12, at 567 (1980) ("Where an assignee assumes by contract the obligations of the lease, the lessor, *as third party beneficiary of that contract* * * * may enforce all of the terms of the lease contract against him." (emphasis added)). And it is an accepted principle of contract law that "[w]here a provision exists in an agreement expressly negating an intent to permit enforcement by third parties, . . . that provision is decisive." *Katz* v. *Pershing, LLC*, 672 F.3d 64, 73 (1st Cir. 2012) (applying New York law) (citation omitted). Consequently, even when a particular third party would otherwise be "a classic creditor beneficiary" under a contract, the third party lacks standing to enforce the contract if the contract has "a clause forbidding a third-party to claim under it." *Talman Home Fed. Savs. & Loan Ass'n* v. *American Bankers Ins.*, 924 F.2d 1347, 1352, 1353 (5th Cir. 1991).

Interface argues (Pet. 14) that, regardless of whether it has rights under the contract, "the privity of estate between a lessor and lessee of property provides an *independent* basis for standing." As the court below explained, however, that argument is question-begging, because the issue in this case is whether privity of estate in fact exists between Interface and JPMorgan. That turns on the meaning of a contract between the FDIC and JPMorgan, and the only parties with rights under that contract have both concluded that it did not require the FDIC to assign the Interface Lease to JPMorgan (and the FDIC executed no such assignment in any event). Under settled standing principles, a lessor has no right to obtain a judicial declaration of the meaning of an assignment agreement under which it is not a third-party beneficiary. See *Deutsche Bank*, 717 F.3d at 194. That does not "extinguish the landlord's right to enforce the terms of the lease" (Pet. 11), because the lessor may still (absent other barriers to suit) enforce the lease against the original lessee.

Thus, as the Ninth Circuit explained in *GECCMC* in the specific context of the Agreement, "[t]o the extent [a party whose contract has been repudiated] seeks recovery for its losses, that remedy is best sought in [a] claim against the FDIC." 671 F.3d at 1036. If there exists uncertainty about whether the FDIC and JPMorgan interpret the Agreement to require the assignment of a particular liability to JPMorgan, a plaintiff may sue both parties, because one of them will be liable for any damages to which the plaintiff is legally entitled. If the FDIC and JPMorgan then disagree over whether the Agreement required an assignment of the liability to JPMorgan, the court would have jurisdiction to resolve that dispute because each of those parties has standing to enforce its own interpretation.

In this case, by contrast, there is no dispute between the FDIC and JPMorgan concerning the proper interpretation of the Agreement. Both those parties concur that the Interface Lease was not required by the Agreement to be assigned (and was not in fact assigned) to JPMorgan, and that Interface therefore should seek relief from the FDIC for any damages to which it believes it is entitled. That course of action was not available to Interface because it failed to file a timely administrative claim with the FDIC. See Pet. App. 16a. Interface's failure to satisfy the statutory preconditions to suit, however, does not permit it to circumvent settled rules of prudential standing and contract interpretation.

Interface is therefore incorrect in speculating (Pet. 19-21) that, under the court of appeals' holding, other former creditors of WaMu would lack the ability to recover damages to which they are entitled. If the parties to the Agreement do not dispute that a liability has been assigned to JPMorgan (such as where JPMorgan has notified the plaintiff of the assignment), the proper course for a plaintiff is to sue JPMorgan. Unlike Interface's suit, such a claim would not involve any attempt by the plaintiff to enforce its own interpretation of the Agreement. Likewise, if there is no dispute that the liability was retained by the FDIC, the proper course is to sue the FDIC after complying with the administrative-exhaustion requirement of FIRREA. And if any ambiguity exists as to whether an assignment was executed, the plaintiff has the option of suing both parties. What a plaintiff cannot do is attempt to enforce an interpretation of the Agreement that is directly contrary to the understanding of both JPMorgan and FDIC, unless the plaintiff is an intended third-party beneficiary of the Agreement.[2] That is what Interface sought

[2] Interface cites (Pet. 19) the FDIC's memorandum of law in *Deutsche Bank National Trust Co.* v. *FDIC*, 09-cv-1656-RMC Docket entry No. 20-1 (D.D.C. June 17, 2010), for the proposition that the FDIC has conceded elsewhere that third parties may sue JPMorgan under the Agreement. But the plaintiff in *Deutsche Bank* ultimately sued both the FDIC and JPMorgan, which was the proper course of action. See 717 F.3d at 191 ("Deutsche Bank * * * filed an amended complaint adding J.P. Morgan as a defendant and seeking a declaratory judgment from the district court as to whether FDIC or [JPMorgan] had assumed these liabilities, or whether both assumed them in whole or in part.").

to do in this case, and the court of appeals therefore properly dismissed its claim for lack of standing.

2. The court of appeals' decision does not conflict with any holding of this Court or another court of appeals or present any other ground warranting further review. Interface cites unpublished district-court decisions adopting its position, see Pet. 14 n.10, but the only other courts of appeals to address the issue have reached the same conclusion as the court below. See *GECCMC*, *supra*; *Deutsche Bank*, *supra*.

a. Interface contends that, "to the extent that [the court of appeals'] decision is based on FIRREA," the decision conflicts with *O'Melveny & Myers* v. *FDIC*, 512 U.S. 79 (1994). Pet. 7; see Pet. 13 ("If the Eleventh Circuit's holding that Interface lacks standing to rely on the [Agreement] to prove the FDIC's assignment of the Lease to JPMorgan is based on some judicially-created right of the FDIC under FIRREA, then that holding violates *O'Melveny*."). In *O'Melveny & Myers*, this Court held that state-law rules of decision are not displaced by FIRREA "except where some provision in the extensive framework of FIRREA provides otherwise." 512 U.S. at 87.

The court of appeals, however, did not base its holding that petitioner lacks standing to enforce the Agreement on any provision of FIRREA. Indeed, the court did not even mention FIRREA in the section of its decision addressing standing. See Pet. App. 9a-14a. The court's holding rested instead on standing and contract-law principles that long predated FIRREA, and on the particular provisions of the Agreement that direct courts to apply federal common law and disclaim any third-party beneficiaries. *O'Melveny & Myers* has no bearing on that holding.[3]

b. Interface briefly argues (Pet. 17-18) that the decision below "conflicts with this Court's standing jurisprudence." That is also wrong. As explained above, a party lacks standing to enforce another party's legal rights. *Devlin*, 536 U.S. at 7. The court of appeals thus correctly held that "Interface can only establish standing if it is an intended third-party beneficiary of the * * * Agreement." Pet. App. 11a. The court's determination that Interface is not a third-party beneficiary under the particular terms of the Agreement does not conflict with any of this Court's standing decisions.

Interface suggests that the court of appeals viewed Interface as lacking the prerequisites for "Article III standing" (*i.e.*, injury-in-fact, traceability, and redressability). Pet. 17. That position reflects a misreading of the decision below. In holding that Interface lacked standing, the court of appeals cited its prior precedent applying the core principle of *prudential* standing that plaintiffs can assert only their own legal rights. See Pet. App. 11a (citing *Bochese* v. *Town of Ponce Inlet*, 405 F.3d 964, 981 (11th Cir.), cert. denied, 546 U.S. 872 (2005)); see also *Bochese*, 405 F.3d at 984 (quoting *Warth* v. *Seldin*, 422 U.S. 490, 499 (1975), for the principle that a "plaintiff generally must assert his *own* legal rights and interests"). Even assuming that "the basic elements of Article III standing are met" in this case (Pet. 17), the general prohibition against rais-

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[3] Interface relatedly argues (Pet. 22-23) that the court of appeals' application of federal common law conflicts with *O'Melveny & Myers*. But *O'Melveny & Myers* said nothing about the effect of a contractual choice-of-law clause requiring the application of federal common law.

ing the rights of third parties independently bars the suit. See *Elk Grove Unified Sch. Dist.* v. *Newdow*, 542 U.S. 1, 12 (2004) (quoting *Warth*, 422 U.S. at 500).

Interface's reliance (Pet. 18) on *Dean* v. *Blumenthal*, 577 F.3d 60 (2d Cir. 2009) (per curiam), cert. denied, 130 S. Ct. 2347 (2010), is also misplaced. That decision involved a First Amendment challenge to certain contracts entered into between the state government and private law firms. Those contracts contained clauses barring the firms from giving campaign contributions to candidates for state Attorney General. See *id.* at 62-64. Although the contractual provisions were no longer in effect at the time of the suit, the Second Circuit held that it had subject matter jurisdiction over the plaintiff's damages claim arising out of the past enforcement of the provisions. See *id.* at 66 & n.4. The plaintiff in *Dean*, however, did not seek to enforce rights created or conferred *by* the contract; her claim instead was that "the Attorney General's policy [of including the challenged provision in state government contracts] violated her purported First Amendment right to receive campaign contributions." *Id.* at 66. Thus, although the plaintiff in *Dean* was not a party to the relevant contracts, her suit asserted her own legal rights rather than the rights of a third party.

c. Finally, Interface argues (Pet. 18-22) that the decision below "is contrary to established federal common law." Yet it identifies no relevant circuit conflict. It cites *Montana* v. *United States*, 124 F.3d 1269 (Fed. Cir. 1997), for the proposition that an intended third-party beneficiary "need not be specifically or individually identified in the contract, but must fall within a class clearly intended to be benefited thereby." *Id.* at 1273; see Pet. 19-20. But the court of appeals applied precisely that standard, quoting the same Federal Circuit decision. See Pet. App. 12a-13a.

Interface essentially objects to the court of appeals' construction of the Agreement, arguing that the court "failed to examine all the [Agreement's] provisions" in conducting the inquiry into whether Interface was an intended third-party beneficiary. See Pet. 18-22. At least in the absence of any circuit conflict, that question does not warrant this Court's review.

3. Interface contends (Pet. 7) that the question presented has "exceptional importance," suggesting that the decision below would permit the FDIC and other government agencies to leave lessors without judicial recourse to enforce lease obligations. As discussed above (pp. 12-14, *supra*), however, the decision does not prevent parties from obtaining relief for repudiated contracts. Whenever it is clear (as it was here) that a lease has been retained by the FDIC, the plaintiff must sue the FDIC directly to recover any damages permitted by FIRREA. See *GECCMC*, 671 F.3d at 1036. Although FIRREA imposes administrative-exhaustion requirements and limitations on recovery, those features reflect a congressional choice about the best way to resolve the liabilities of failed banks. In a case in which it is ambiguous whether the FDIC has assigned a lease to another party, a plaintiff, after exhausting FIRREA's administrative-claim process, may sue both the FDIC and the putative assignee, and the district court will have jurisdiction to resolve any dispute between those parties about whether an assignment was made. See, *e.g.*, *Deutsche Bank*, 717 F.3d at 191.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

DONALD B. VERRILLI, JR.
Solicitor General

RICHARD J. OSTERMAN, JR.
Acting General Counsel
FLOYD I. ROBINSON
Acting Deputy General Counsel
COLLEEN J. BOLES
Assistant General Counsel
KATHRYN R. NORCROSS
Senior Counsel
JOSEPH BROOKS
Counsel
Federal Deposit Insurance Corporation

AUGUST 2013