No. 05-1225

In the Supreme Court of the United States

MEMBERS OF THE PEANUT QUOTA HOLDERS ASSOCIATION, INC., ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether Congress's overhaul in 2002 of a statutory program that had previously limited the production of peanuts and made certain benefits available to peanut farmers effected a taking of petitioners' property.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A28) is reported at 421 F.3d 1323. The opinion of the Court of Federal Claims (Pet. App. D1-D22) is reported at 60 Fed. Cl. 524.

JURISDICTION

The judgment of the court of appeals was entered on August 25, 2005. A petition for rehearing was denied on December 23, 2005 (Pet. App. B1-B2). The petition for a writ of certiorari was filed on March 23, 2006. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Petitioners are individuals who owned farms to which peanut marketing quotas had been allocated under the Federal Agriculture Improvement and Reform Act of 1996 (1996 FAIR Act), Pub. L. No. 104-127, § 155, 110 Stat. 922. The peanut quotas allowed producers on petitioners' farms to obtain favorable non-recourse loans for their crops. See Pet. App. A3. The peanut quota program began in 1941 and changed over time through periodic farm bills. See *id.* at A4-A11. Under the program in its original form, producers on farms to which quotas had been allocated were permitted to market specified quantities (or allotments) of peanuts. *Id.* at A5-A6. Farmers who marketed quantities of peanuts in excess of their allotments, or who marketed peanuts without having received allotments, were subject to financial penalties. *Id.* at A6. Beginning in 1967 and extending through the repeal of the quota program in 2002, the applicable federal statutes allowed peanut farmers to sell or lease their quotas. See *id.* at A7-A11.

"The price support for peanut producers under the 1996 FAIR Act took the form of marketing assistance loans" provided by the United States Department of Agriculture (USDA). Pet. App. A10. Under the terms of the program, "if the revenue from the sale of the peanuts did not cover the full amount of the loan, * * * the USDA made up the difference," while "[i]f the revenue from the sale of the peanut crop covered the loan amount, the producer repaid the loan in full." *Ibid.* The amount of the loan thus effectively functioned as a minimum price for the producer's peanut crop. See *ibid.* Because the loan rate for "quota peanuts" was $610 per ton, while the rate for "non-quota peanuts" was $132 per

ton, quota holders received "a considerable financial advantage in the peanut market." *Ibid.* "The 1996 FAIR Act specifically allowed quota holders to sell or lease their quotas to other producers with a farm in the same state," *ibid.*, and it further provided that such a transfer "shall not result in any reduction in the farm poundage quota for the transferring farm if the transferred quota is produced or considered produced on the receiving farm," *id.* at A11.

In 2002, Congress abolished the peanut marketing quota program, established a new program of benefits for peanut producers, and provided for a "buyout" for owners of farms with quotas under prior law. See Farm Security and Rural Investment Act of 2002 (2002 Act), Pub. L. No. 107-171, §§ 1301-1310, 116 Stat. 166-183, 7 U.S.C. 7951-7960 (Supp. III 2003). The 2002 Act's "buyout" provision authorized a one-time payment to "quota holders" (owners of quota farms) of $0.55 per pound. 2002 Act § 1309(b)-(d), 116 Stat. 180 (7 U.S.C. 7959(b)-(d) (Supp. III 2003)). Under the 2002 Act, any producer may "now grow and market unlimited quantities of peanuts without penalty or restriction." Pet. App. D6.

As a result of the 2002 Act, persons who owned farms to which quotas had previously been allocated lost the benefits associated with the former price-support program. The 2002 Act provides, however, for new program benefits. "Rather than grant the new price support program to the same individuals who held quotas under the prior program, Congress crafted a new basis for the price supports that included only those who produced peanuts during the four years before enactment of the 2002 Act." Pet. App. D6-D7. Those who engaged in the production of peanuts during the period 1998-

2001, including lessees of quotas on farms with quotas, were provided a "base" in pounds derived from their 1998-2001 production history. See 7 U.S.C. 7952 (Supp. III 2003); Pet. App. D6-D7. A direct payment (DP) and a countercylical payment (CCP) are calculated on the basis of that poundage base. See *ibid.*

Because petitioners did not produce peanuts during the relevant period, they were not allocated a "base" under the 2002 Act and therefore are ineligible for the DP and CCP payments. By contrast, the lessees to whom petitioners had leased their quotas between 1998-2001 and who had produced peanuts during that period were allocated a base, calculated by reference to their actual peanut production.

2. Petitioners filed suit in the Court of Federal Claims (CFC), alleging that the 2002 Act, by eliminating or reducing the benefits to which they had previously been entitled as quota holders, had effected a taking of their property. The CFC granted the government's motion for summary judgment. Pet. App. D1-D22. While acknowledging that petitioners "do hold protected property interests in their farm land and equipment," *id.* at D14, the court found that the peanut quotas held by petitioners under the prior legal regime did not constitute property interests, *id.* at D15-D16. The CFC further held that, even if the former quotas were determined to be property interests, petitioners still could not establish a taking. *Id.* at D19-D20. The court explained that petitioners "could not have held a reasonable investment-backed expectation that the quotas would continue because the peanut quotas were regulated heavily and had been subject to a litany of reductions and changes by Congress." *Id.* at D20.

3. The court of appeals affirmed. Pet. App. A1-A28.

a. The court of appeals held that petitioners had "established a property interest cognizable under the Fifth Amendment" in the quotas allotted to them under the 1996 FAIR Act. Pet. App. A24; see *id.* at A18-A24. The court based that conclusion on the facts that the quotas were transferable (subject to certain statutory restrictions) under the terms of the prior law, see *id.* at A18-A22, and that each quota holder was given the right to market a specified quantity of peanuts and to receive a guaranteed minimum price for his crop, see *id.* at A22-A24.

b. The court of appeals further held that, although peanut quotas under the 1996 FAIR Act "ha[d] aspects of property," the government was not required to compensate petitioners when changes in the legal regime "render[ed] the quotas less valuable, or even valueless." Pet. App. A24; *id.* at A24-A28. The court explained:

> Peanut quotas are property, but they are a form of property that is subject to alteration or elimination by changes in the government program that gave them value. The peanut quota granted under the 1996 FAIR Act was a privilege extended by Congress to support farmers during times of market stress as a general policy to attenuate and smooth out the fluctuations of the market place. Thus, the holders of peanut quotas, like the holders of food stamps, have no legally protected right against the government's making changes in the underlying program and no right to compensation for the loss in value resulting from the changes.

Id. at A25.

The 1996 FAIR Act specifically provided that the provisions governing the peanut-quota program "shall

be effective only for the 1996 through 2002 crops of peanuts." Pet. App. A27. Relying on that provision, petitioners contended that "the 2002 Act effectuated a taking by impermissibly applying retroactively to the 2002 crop of peanuts for which price supports had already been established under the 1996 Act." *Ibid.* The court of appeals rejected that contention, holding that "[t]he inclusion of a sunset provision does not operate to transform a regulatory scheme for the distribution of subsidies into a compensable property interest under the Fifth Amendment." *Ibid.* "Rather," the court explained, "the sunset provision highlights Congress's intention that the price support provisions be temporary in nature." *Ibid.*

ARGUMENT

The judgment of the court of appeals is correct and does not conflict with any decision of this Court or of any other court of appeals. Further review is not warranted.

1. Petitioners contend (Pet. 8-14) that the court of appeals' ruling is inconsistent with this Court's decision in *Eastern Enterprises* v. *Apfel*, 524 U.S. 498 (1998). Petitioners' argument is premised on the fact that, under the 2002 Act, petitioners' earlier decision to lease their peanut quotas rather than to produce peanuts during the years 1998-2001 renders them ineligible to receive certain benefits (the DP and CCP) that are currently available to the quota lessees. Petitioners contend (Pet. 10) that "the sudden and complete loss of price supports" subjects them to a form of retroactive "liability" for which they are entitled to just compensation.

Petitioners' reliance on *Eastern Enterprises* is misplaced. The plaintiff in *Eastern Enterprises* was re-

quired by the Coal Industry Retiree Health Benefits Act of 1992 (Coal Act), 26 U.S.C. 9701 *et seq*. to make monetary payments totaling an estimated $50-$100 million, based on its employment of certain retired miners before 1966. See 524 U.S. at 517, 529 (plurality opinion). A four-Justice plurality concluded that the Coal Act effected an uncompensated (and therefore unconstitutional) taking of the plaintiff's property because the Act "impose[d] severe retroactive *liability* on a limited class of parties that could not have anticipated the liability, and the extent of that liability [was] substantially disproportionate to the parties' experience." *Id*. at 528-529 (emphasis added); see *id*. at 529-537. Justice Kennedy disagreed with the plurality's application of takings principles. *Id*. at 539-547 (Kennedy, J., concurring in the judgment and dissenting in part). Justice Kennedy concluded, however, that the Coal Act violated the Due Process Clause because it was inconsistent with "our settled tradition against retroactive laws of great severity." *Id*. at 549; see *id*. at 547-550.

Unlike the plaintiff in *Eastern Enterprises*, petitioners do not challenge a "severe retroactive liability," or indeed a liability of any kind. Rather, petitioners' complaint is that they are ineligible to receive certain federal *benefits* (the DP and CCP) under the 2002 Act as a result of conduct (*i.e.*, their decision to lease their peanut quotas during crop years 1998-2001 rather than produce peanuts themselves) in which they engaged before the 2002 Act was enacted.[1] Petitioners identify no deci-

[1] Although petitioners are not eligible for the DP or the CCP, they were entitled under the 2002 Act to a one-time buyout of $.55 per pound ($1100 per ton), see 2002 Act § 1309(b)-(d), 116 Stat. 180 (7 U.S.C. 7959(b)-(d) (Supp. III 2003)), nearly twice the amount of the support level ($610 per ton, see Pet. App. A10-A11) available to quota holders

sion of this Court or any other court suggesting that the Just Compensation Clause is implicated when continued entitlement to a government *subsidy* is made contingent on a potential recipient's prior conduct. Cf. *Bowen* v. *Gilliard*, 483 U.S. 587, 604-605 (1987) (explaining that, for purposes of takings analysis, Congress's decision to reduce the level of public-assistance benefits under an existing program raises no greater concern than would Congress's enactment of a new benefit program incorporating equivalent limitations).

Petitioners rely in part on a provision of the 1996 FAIR Act that stated that a quota holder's lease of his "farm poundage quota" would not "result in any reduction in the farm poundage quota for the transferring farm." Pet. 6 (quoting 1996 FAIR Act, § 155(i)(6)(A), 110 Stat. 930); see Pet. 11-12 (discussing similar provisions of prior law). That provision, however, simply stated a rule of law that applied for as long as the FAIR Act remained in effect; it did not purport to guarantee that the law would remain unchanged. See Pet. App. A26 ("Since Congress at all times retains the ability to amend statutes, a power which inheres in its authority to legislate, Congress at all times retains the right to revoke legislatively created entitlements."). Even under the 2002 Act, moreover, petitioners' prior lease arrangements did not have the effect of reducing their future "quotas." Because the 2002 Act eliminated the prior peanut quota system, see 7 U.S.C. 7959 (Supp. III 2003), petitioners (like all other peanut farmers) are currently free to produce and market *unlimited* quantities of peanuts without financial penalty. Because petitioners did not produce peanuts during crop years 1998-2001, they

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under the prior legal regime.

are not eligible for the DP and CCP under the 2002 Act. Petitioners offer no basis, however, for characterizing their ineligibility for those benefits as a reduction in their "quotas."

2. Petitioners contend (Pet. 15-20) that the court of appeals' ruling conflicts with this Court's decision in *Kelo* v. *City of New London*, 125 S. Ct. 2655 (2005). Petitioners do not rely on the Court's *holding* in *Kelo*, which sustained the challenged taking against a Fifth Amendment challenge. See *id.* at 2668. Rather, petitioners invoke the Court's reiteration of the established principle that "the sovereign may not take the property of *A* for the sole purpose of transferring it to another private party *B*, even though *A* is paid just compensation." *Id.* at 2661; see Pet. 16. Petitioners' reliance on *Kelo* is misplaced.

To begin with, the Court in *Kelo* addressed an issue quite distinct from the one presented here. The question in *Kelo* was whether an *acknowledged* taking—a local government's exercise of the power of eminent domain—would be unconstitutional despite the government's willingness to pay just compensation. See 125 S. Ct. at 2658. The question in the instant case, by contrast, is whether Congress's modification of the peanut subsidy program effects a compensable taking to begin with. The decision in *Kelo* sheds no meaningful light on that issue.

In any event, the 2002 Act did not "take the property of *A* for the sole purpose of transferring it to another private party *B*." *Kelo*, 125 S. Ct. at 2661. Rather, Congress simply abolished one subsidy program in its entirety and established another in which petitioners are free to participate. In allocating benefits under the new program, Congress determined that eligibility for the

DP and CCP should be restricted to persons who had "share[d] in the risk of producing a crop on a farm" during crop years 1998-2001. 2002 Act § 1301(8), 116 Stat. 166-167 (7 U.S.C. 7951(8) (Supp. III 2003)); see Pet. App. D7. But the fact that the benefits available to former quota lessors are less generous under the new program than under the prior legal regime, while those available to former lessees are more generous, does not mean that a transfer of property has occurred. Cf. *Gilliard*, 483 U.S. at 604 (Congress does not effect a taking when it alters an existing benefit program "to distribute limited resources more fairly"). Nor do the DP and CCP eligibility criteria established by the 2002 Act "raise a suspicion that a private purpose was afoot." *Kelo*, 125 S. Ct. at 2667. It was manifestly reasonable for Congress, in fashioning the new peanut subsidy program, to make certain benefits available only to persons who had produced peanuts during the most recent crop years.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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