No. 13-79

In the Supreme Court of the United States

WINKAL HOLDINGS, LLC, ET AL., PETITIONERS

v.

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

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

BRIEF FOR THE FEDERAL RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals correctly held that petitioners lack standing to enforce their interpretation of an agreement to which petitioners are not parties and that does not name petitioners as third-party beneficiaries.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 4a-6a) is not published in the *Federal Reporter* but is reprinted in 505 Fed. Appx. 674, and is available at 2013 WL 226680. The pertinent orders of the district court (Pet. App. 7a-23a) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on January 22, 2013. A petition for rehearing was denied on April 15, 2013 (Pet. App. 1a-3a). The petition for a writ of certiorari was filed on July 12, 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 December 2007, petitioner Winkal Holdings, LLC (Winkal) entered into an agreement with Washington Mutual Bank (WaMu), in which Winkal agreed to lease to WaMu real property in California to be used as a bank branch (the Winkal Lease). Pet. App. 12a. When the Winkal Lease was executed, there was an older building on the property that had to be renovated and remodeled before it could serve as a bank branch. *Id.* at 14a. In September 2008, however, before the renovation and remodeling were completed, 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 13a.

Similarly, in April 2008, petitioners Elba, Inc. (Elba) and Sierra Slover, LLC (Sierra) entered into an agreement with WaMu in which Elba and Sierra agreed to lease to WaMu real property in California to be used as a bank branch (the Elba/Sierra Lease). Pet. App. 17a-18a. In September 2008, when WaMu failed and was placed in FDIC receivership, the property that was the subject of the Elba/Sierra Lease was a vacant lot. *Id.* at 19a n.3.

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. 13a. As particularly relevant here, the Agreement recites that it generally confers no enforceable rights on third parties. The Agreement "disclaims 'any legal or equitable right, remedy or claim under or with respect to this Agreement' held by any third-party unless 'otherwise specifically provided.'" *Id*. at 21a; see Pet. 5.

Among the liabilities to which the FDIC succeeded were real-property leases in which WaMu was the lessee. See Pet. App. 13a-14a. The Agreement divides those leases into two categories: "Bank Premises" and "Other Real Estate." See *id.* at 13a; Pet. 4. 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. Pet. App. 13a-14a.

Because the parties to the Agreement understood the Winkal Lease and the Elba/Sierra Lease to fall within the Bank Premises category, JPMorgan received a 90-day option to accept or decline assignments of those leases. Pet. App. 13a; Pet. 5. Within that period, JPMorgan notified the FDIC that it would not assume either lease. See Pet. App. 13a, 19a. Accordingly, the FDIC never executed documents assigning either lease to JPMorgan, and it continued to treat the leases as retained liabilities. See *id.* at 14a, 19a.

The FDIC notified Winkal, Elba, and Sierra that it had elected to exercise its right under FIRREA to repudiate their leases. Pet. App. 13a, 19a; see 12 U.S.C. 1821(e)(1). The FDIC paid all prerepudiation rent due under the leases. In accordance with FIRREA's limitation on damages, 12 U.S.C. 1821(e)(4)(A) and (B)(i), however, it did not pay petitioners any rent for the period after repudiation of their respective leases. None of the plaintiffs filed an administrative claim with the FDIC.

2. In separate actions filed in the United States District Court for the Central District of California, petitioners sued JPMorgan for breaching the Winkal Lease and the Elba/Sierra Lease. Pet. App. 7a-16a, 17a-23a; Pet. 6. After the FDIC intervened in both actions, all parties in both suits filed dispositive motions. *Ibid.*

a. The district court in the Winkal case (No. 10-4267) granted summary judgment to JPMorgan on the ground that "Winkal is not an intended third party beneficiary of the [Agreement]." Pet. App. 15a. The court explained that, "given that the only two parties to the [Agreement] agree on JPMorgan's interpretation, the [c]ourt applies the general rule that a third party cannot enforce the terms in a contract unless it is an intended beneficiary." *Ibid.* The district court also denied Winkal's motion for summary judgment and denied the FDIC's motion to dismiss for lack of subject matter jurisdiction. *Id.* at 11a, 16a.

b. The district court in the Elba/Sierra case (No. 10-9367) similarly granted JPMorgan and the FDIC's motions for summary judgment on the ground that Elba and Sierra were not "intended third-party beneficiar[ies] under the [Agreement] and do[] not

have standing to enforce the alleged assignment of the lease to JPMorgan Chase against the will of the parties to the [Agreement]." Pet. App. 23a. The court explained that, "[a]s there is no dispute between JPMorgan Chase and the FDIC that the FDIC retained the lease, and no dispute at all that the FDIC repudiated the lease, [Elba and Sierra's] claims fail." *Ibid.*

3. In a consolidated appeal, the court of appeals summarily affirmed both district court judgments in a two-sentence order, finding that petitioners' claims were foreclosed by the court's prior decision in *GECCMC 2005-C1 Plummer Street Office Ltd. Partnership* v. *JPMorgan Chase Bank, N.A.*, 671 F.3d 1027 (9th Cir. 2012) (*GECCMC*). See Pet. App. 6a.

a. *GECCMC* involved the same agreement at issue here. In that case, a lessor on two leases that a predecessor in interest had entered into with WaMu sued JPMorgan for breaching the leases. 671 F.3d at 1029. Like petitioners, the lessor alleged that JPMorgan had assumed those leases under the Agreement. *Ibid.* The court of appeals held that the lessor did not have standing to allege that the lease had been assigned to JPMorgan. *Id.* at 1032.

Applying federal common law, as called for by the Agreement's choice-of-law provision, the court in *GECCMC* explained that "only a party to a contract or an intended third-party beneficiary may sue to enforce the terms of a contract." 671 F.3d at 1033. It further explained "[d]emonstrating third-party beneficiary status in the context of a government contract is a comparatively difficult task." *Ibid.* (brackets in original) (citation omitted). That is because, the court held, "[p]arties that benefit from a government con-

tract are generally assumed to be incidental beneficiaries, rather than intended beneficiaries, and so may not enforce the contract absent a clear intent to the contrary." *Ibid.* (internal quotation marks and citation omitted).

Applying those general principles to the Agreement, the court of appeals in *GECCMC* concluded that the lessor was only an "incidental beneficiary" of the Agreement. 671 F.3d at 1035. The court relied principally on the provision of the Agreement "expressly disclaim[ing] any intent to create third-party beneficiaries" generally. *Id.* at 1034. The court held that, "[b]ecause [the lessor] is not an intended third-party beneficiary of the * * * Agreement, [the lessor] has no enforceable rights under that contract." *Id.* at 1036. It also 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 (third brackets in original) (quoting 12 U.S.C. 1821(d)(2)(B)(iv)).

b. Citing *GECCMC*, the order below explained that "[b]ecause [petitioners] are not intended third-party beneficiaries of the * * * Agreement between [JPMorgan] and the FDIC, they have no right under the federal common law to enforce the terms of the contract against [JPMorgan]." Pet. App. 6a.

ARGUMENT

Petitioners challenge the court of appeals' holding that, under the particular language of the Agreement, they are not intended third-party beneficiaries and therefore lack standing to enforce their own interpretation of the Agreement against JPMorgan. The court

of appeals correctly applied settled principles of prudential standing and contract interpretation, its decision does not conflict with any decision of this Court or another court of appeals, and this Court recently denied a petition for a writ of certiorari that presented substantially the same question. See *Interface Kanner, LLC* v. *JPMorgan Chase Bank*, No. 12-1465 (Oct. 7, 2013). Further review is not warranted.

1. a. The court of appeals correctly held that petitioners lack standing to enforce their 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).

Petitioners are not parties to the Agreement, so they could have standing to enforce the Agreement only if they were intended third-party beneficiaries. But as the court of appeals explained in its earlier decision in *GECCMC 2005-C1 Plummer Street Office Ltd. Partnership* v. *JPMorgan Chase Bank, N.A.*, 671 F.3d 1027 (9th Cir. 2012) (*GECCMC*), the Agreement expressly recites that there are no third-party beneficiaries other than as "specifically provided in this

Agreement." *Id.* at 1034; Pet. 5. Because no other provision of the Agreement identifies petitioners as third-party beneficiaries, they lack standing to enforce their 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 petitioners, the plaintiff lessor in *Interface Kanner, LLC* v. *JPMorgan Chase Bank, N.A.*, 704 F.3d 927 (11th Cir. 2013), cert. denied, No. 12-1465 (Oct. 7, 2013), "argue[d] that JPMorgan assumed the Lease automatically under the * * * Agreement as 'Other Real Estate,' while JPMorgan and the FDIC argue[d] that JPMorgan had 90 days to accept or reject the Lease as a 'Bank Premises.'" *Id.* at 930. The Eleventh Circuit held that the lessor "lack[ed] standing to enforce its interpretation of that agreement" because it was "not an intended third-party beneficiary of the * * * Agreement." *Id.* at 934.

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 *Interface Kanner, supra,* 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]

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[1] In addition to the Ninth Circuit's decisions in this case and in *GECCMC*, and the recent decisions of the Eleventh and D.C. Circuits discussed in the text, the same issue is currently pending before the Second and Fifth Circuits. See *Hillside Metro Assocs.,*

b. Petitioners assert (Pet. 9) that "a 'no third-party beneficiary' clause * * * cannot deprive a lessor of standing under privity of estate to prove the assignment of the lease executed by its lessee in order to enforce its property rights against the lessee's transferee." According to petitioners, "[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. 12.

Apart from recent unpublished district-court decisions interpreting the same Agreement that is at issue in this case, see Pet. 11-12 nn.9-10, 15 n.12, petitioners cite 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 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, . . .

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).

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).

Petitioners argue (Pet. 14-15) that, regardless of whether they have rights under the contract, "the privity of estate between a lessor and lessee of property provides an *independent* basis for standing." As the Eleventh Circuit explained in *Interface Kanner*, however, that argument is question-begging, because the issue in this case is whether privity of estate in fact exists between petitioners and JPMorgan. 704 F.3d at 933. 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 Winkal Lease or the Elba/Sierra Lease to JPMorgan (and the FDIC executed no such assignments 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 Winkal Lease and the Elba/Sierra Lease were not required by the Agreement to be assigned (and were not in fact assigned) to JPMorgan, and that petitioners therefore should seek relief from the FDIC for any damages to which they believe they are entitled.

Petitioners are therefore incorrect in speculating (Pet. 22-23) 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 petitioners' suits, such a claim would not involve any attempt by the plaintiff to enforce its own interpretation of the Agreement. Like-

wise, 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 the FDIC, unless the plaintiff is an intended third-party beneficiary of the Agreement. That is what petitioners sought to do in this case, and the court of appeals therefore properly dismissed their claims for lack of standing.[2]

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[2] Petitioners cite (Pet. 20-21) 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.").

Petitioners also assert (Pet. 18 n.15) without citation that "[r]espondents assumed in the Ninth Circuit that the Leases had been transferred to JPMorgan and made no argument to the contrary." That is incorrect. See 11-55807 FDIC C.A. Br. 1-2 ("It is undisputed that the FDIC and [JPMorgan] have always understood that Winkal's lease with WaMu * * * was retained by the FDIC under their [Agreement] and then repudiated by the FDIC. Because the FDIC replaced WaMu as lessee by operation of law, and because the FDIC then repudiated the Lease, Winkal's only remedy is against the FDIC for the damages FIRREA expressly provides for repudiated leases."); *id.* at 4-5 ("[T]he only

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. Petitioners cite unpublished district-court decisions adopting their position, see Pet. 15 n.12, but the only other courts of appeals to address the issue have reached the same conclusion as the court below. See *Interface Kanner*, *supra*; *Deutsche Bank*, *supra*.

a. Petitioners contend 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. 14 ("If the Ninth Circuit's holding that Petitioners lack standing to rely on the [Agreement] to prove the FDIC's assignment of the Leases 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 principally base its holding that petitioner lacks standing to enforce the Agreement on any provision of FIRREA. Indeed, the *GECCMC* decision on which the court relied did not even mention FIRREA in the sections of the opinion addressing federal common law or third-party beneficiary law. See 671 F.3d at 1032-1035. The court's holding rested instead on standing

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way Winkal can have a breach-of-lease claim against [JPMorgan] is if Winkal can show that the [Agreement] assigned the Lease to [JPMorgan]. The FDIC and [JPMorgan] agree, however, that their [Agreement] did *not* assign the Lease to [JPMorgan].").

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] Although the court found further support for its position in the underlying objectives of FIRREA, see *id.* at 1035-1036, that was not the primary rationale for its decision.

b. Petitioners argue (Pet. 19-24) that the decision below "is contrary to established federal common law." Yet they identify no relevant circuit conflict. They cite *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. 21. But the court of appeals applied precisely that standard in *GECCMC*, and the court relied on that earlier decision here. See *GECCMC*, 671 F.3d at 1033 ("The contract need not name a beneficiary specifically or individually in the contract; instead, it can specify a 'class clearly intended by the parties to benefit from the contract.'") (citation omitted).

Petitioners essentially object 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 petition-

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[3] Petitioners also argue (Pet. 24-25) that the court of appeals' application of federal common law conflicts with *O'Melveny & Myers*. But the Court in *O'Melveny & Myers* said nothing about the effect of a contractual choice-of-law clause requiring the application of federal common law.

ers were intended third-party beneficiaries. See Pet. 19-24. At least in the absence of any circuit conflict, that question does not warrant this Court's review.

c. Finally, petitioners argue (Pet. 24) that they "are not claiming that JPMorgan breached the [Agreement], but rather that the [Agreement] is the documentary evidence which shows the assignment of their Leases from the FDIC to JPMorgan." That argument is misdirected. Petitioners' view that JPMorgan assumed the leases is premised on an interpretation of the Agreement that has been disavowed by both parties to the contract. Because petitioners are not parties to or third-party beneficiaries of the Agreement, they lack standing to seek a judicial decision adopting their interpretation.

3. Petitioners contend (Pet. 7-8) 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. 11-13, *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. If it is unclear in a particular case 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 by their contract. See, *e.g.*, *Deutsche Bank*, 717 F.3d at 191.

This Court recently denied the petition for a writ of certiorari in *Interface Kanner, LLC* v. *JPMorgan Chase Bank*, No. 12-1465 (Oct. 7, 2013), which raised a substantially similar challenge to the court of appeals' holding in that case that persons in petitioners' position lack standing to enforce their interpretation of the Agreement. There is no reason for a different result here.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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