NO. 21-_____

In the Supreme Court of the United States

CLARENCE ALEXANDER AND
DEMETRIE (DACHO) ALEXANDER,

Petitioners,

v.

GWITCHYAA ZHEE CORPORATION ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Enacting the Alaska Native Claims Settlement Act ("Act") in 1971, Congress found "an immediate need for a fair and just settlement of all claims by Natives and Native groups of Alaska". 43 U.S.C. § 1601(a). Congress also found "settlement should be accomplished rapidly, with certainty, in conformity with the real economic and social needs of Natives, without litigation, with maximum participation by Natives in decisions affecting their rights and property". 43 U.S.C. § 1601(b).

The Act also states "[d]ecisions made by a Village Corporation to reconvey land under section 14(c) of the Alaska Native Claims Settlement Act [43 U.S.C. § 1613(c)] shall not be subject to judicial review unless such action is initiated" "within one year after the date of the filing of the map of boundaries as provided for in regulations promulgated by the Secretary". 43 U.S.C. § 1632(b).

The Questions Presented Are:

1. Do 43 U.S.C. § 1601(b) "decisions" settling individual Alaska Natives' 14(c) reconveyance claims "with maximum participation by Natives in decisions affecting their rights and property" mean the same as 43 U.S.C. § 1632(b) "[d]ecisions made by a Village Corporation to reconvey land under section 14(c)", construed in harmony with, and not to thwart, the Fifth Amendment?

2. If Fifth Amendment process due to individual Alaska Natives with 14(c) reconveyance claims is "maximum participation by Natives in decisions affecting their rights and property", does the Fifth Amendment restrain federal courts from barring, as untimely under 43 U.S.C. § 1632(b), an illegality affirmative

defense and a compulsory recoupment counterclaim by individual Alaska Natives, challenging a Village Corporation's § 14(c) reconveyance decision denying "participation by Natives in decisions affecting their rights and property", as illegal and unconstitutional?

PARTIES

Petitioners

Clarence Alexander

Demetrie (Dacho) Alexander

Respondents

Gwitchyaa Zhee Corporation

Gwichyaa Zhee Gwich'in Tribal Government

David Bernhardt, Secretary of the Interior,
in his official capacity

LIST OF PROCEEDINGS

United States Court of Appeals for the Ninth Circuit

No. 21-35048

Gwitchyaa Zhee Corporation; Gwichyaa Zhee Gwich'in Tribal Government, *Plaintiffs-Appellees*, v. Clarence Alexander; Demetrie Alexander (Dacho), *Defendants-Third-Party-Plaintiffs-Appellants*, v. David Bernhardt, Secretary of the Interior, in His Official Capacity, *Third-Party-Defendant-Appellee*

Date of Final Opinion: December 15, 2021

Date of Rehearing Denial: January 21, 2022

United States District Court for the District of Alaska

No. 4:18-cv-0016-HRH

Gwitchyaa Zhee Corporation; and Gwichyaa Zhee Gwich'in Tribal Government, *Plaintiffs*, v. Clarence Alexander; Dacho Alexander, *Defendants-Third-Party-Plaintiffs*, v. David Bernhardt, Secretary of the Interior, in His Official Capacity, *Third-Party-Defendant*

Date of Final Order: December 19, 2019

TABLE OF CONTENTS

TABLE OF CONTENTS – Continued

Page

TABLE OF CONTENTS – Continued

Page

APPENDIX TABLE OF CONTENTS

OPINIONS AND ORDERS

REHEARING ORDER

STATUTORY PROVISIONS INVOLVED

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES – Continued

Page

TABLE OF AUTHORITIES – Continued

CONSTITUTIONAL PROVISIONS

TABLE OF AUTHORITIES – Continued

Page

STATUTES

JUDICIAL RULES

REGULATIONS

TABLE OF AUTHORITIES – Continued

Page

OTHER AUTHORITIES

OPINIONS BELOW

The opinion of the Ninth Circuit is unreported and reproduced below at App.1a-4a, *infra*. The summary judgment Order of the district court on the parties' cross-motions for summary judgment, which Order the Ninth Circuit affirmed, is at 2019 WL 6974978 and reproduced below at App.5a-44a, *infra*.

JURISDICTION

The Ninth Circuit's decision and judgment was entered on December 15, 2021 (App.1a-4a, *infra*). A timely petition for rehearing was denied on January 21, 2022 (App.56a-57a, *infra*). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

CONSTITUTIONAL PROVISION

The Fifth Amendment to the Constitution provides in relevant part:

> "No person shall . . . be deprived of life, liberty, or property, without due process of law".

STATUTORY PROVISIONS

The relevant provisions of the Alaska Native Claims Settlement Act, namely 43 U.S.C. §§ 1601, 1613, and 1632, are reproduced below (App.58a-75a, *infra*).

STATEMENT OF THE CASE

A. Background

The Alaska Native Claims Settlement Act ("ANCSA") established a 4-level priority scheme for reconveyance of aboriginal land claims by ANCSA Village Corporations under 43 U.S.C. § 1613(c) [also known as "§ 14(c)"][1]. "Although most of the land that is conveyed to Natives under the settlement act goes to corporations they own, perhaps 10,000 Natives are entitled by the act to become property owners as individuals"[2]. One way this happens is "by reconveyance by a village"[3]. This petition raises important Fifth Amendment issues affecting a large number of individual Alaska Natives having priority § 14(c)(1) reconveyance claims and ANCSA Village Corporations deciding these individual Alaska Natives' § 14(c)(1) reconveyance claims.

Petitioner Clarence Alexander ("Clarence") is an Alaska Native residing in Fort Yukon, Alaska having

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[1] App.61a-63a.

[2] Robert D. Arnold, *Alaska Native Land Claims*, Alaska Native Foundation, at 250 (1978).

[3] *Id.*

a valid § 14(c)(1) reconveyance claim[4]. In 1984 Clarence applied for a § 14(c)(1) reconveyance with Gwitchyaa Zhee Corporation ("GZ")[5], Fort Yukon's ANCSA village corporation. In 1990 GZ approved Clarence's reconveyance application by board resolution[6]. Demetrie Alexander is Clarence's son.

The Fifth Amendment is the fulcrum of the district court's federal question ruling denying GZ's motion to remand[7]. The district court cites and quotes *Ogle v. Salamatof Native Ass'n,* 906 F. Supp. 1321, 1339 (D. Alaska 1995)("*Ogle*")[8], a seminal District of Alaska opinion identifying the Fifth Amendment's crucial role in Village Corporations' § 14(c) reconveyance decisions. *Ogle* holds when "Congress creates rights, as it did in the case of 14(c) claimants, the government must make reasonable efforts to alert the possessor of such rights to the risk of loss". *Ogle,* 906 F. Supp. at 1330. *Ogle* also holds "[w]hen Congress and the Secretary delegated to [an ANCSA Village Corporation] initial responsibility to resolve 14(c) claims, [that Village Corporation] became an instrument of the federal government, obligated under the Fifth Amend-

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[4] App.7a; App.8a n.10; App.9a n.10.

[5] Respondents are Gwitchyaa Zhee Corporation ("GZ") and Gwitchyaa Zhee Gwich'in Tribal Government, plaintiffs in the district court. GZ is an ANCSA Village Corporation and the real party in interest under 43 U.S.C.§ 1613 (App. 60a-75a, *infra*). For ease of identification, Petitioners refer to Respondents jointly as "GZ".

[6] App.9a.

[7] App.45a-55a.

[8] App.53a.

ment to give adequate notice before depriving anyone of his or her property rights". *Id.*

Citing and quoting *Ogle* when denying remand, the district court adopted *Ogle's* Fifth Amendment constitutional due process analysis[9]. The district court ruled resolution of correct boundaries for Clarence's § 14(c) reconveyance "will depend on plaintiffs' compliance with the requirements for § 14(c))1) claims"[10], including "[w]hether plaintiffs complied with the notice requirements associated with § 14(c)(1) claims"[11]. The district court's ruling denying remand emphasized "[t]hese are not defenses that [Alexanders] might raise", rather "issues that plaintiffs will have to prove in order to establish a necessary element of their ejectment claim"[12].

B. Parties' Pleadings

GZ's February 23, 2018 state court complaint alleges Tract 19 consists of 5.77 acres and Tract 19A consists of 2.83 acres[13]. GZ's state court complaint prayed for an ejectment order, ejecting Petitioners from Tract 19A[14].

Petitioners' July 13, 2018 Answer denied GZ's ejectment allegations[15], and pleaded affirmative defenses

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[9] App.53a.

[10] App.55a.

[11] App.55a.

[12] App.55a.

[13] App.48a.

[14] App.50a.

[15] Dt. Ct. Dkt. 24, filed 07/13/18, Page 12 of 34, ¶¶ 21-24.

and counterclaims[16]. Petitioners' Answer to GZ's Par. 18 admitted Petitioners "have not removed belongings from . . . Clarence Alexander's . . . valid 1984 § 14(c)(1) claim", stating "sometime after 1990" ""GZ Corporation . . . changed and modified the size and contours of" Clarence's § 14(c)(1) claim" "without notice"; "without affording . . . an opportunity to object or an opportunity to respond"; and "without affording . . . a hearing in violation of" Clarence's "due process rights under the Fifth Amendment"[17].

Petitioners' July 13, 2018 Affirmative Defenses raised GZ's failure to perform conditions precedent "under federal law and the Fifth Amendment"[18], including GZ's "failure to provide actual notice, as required by due process requirements under the Fifth Amendment" "to Defendant Clarence Alexander. either before or after GZ Corporation forwarded its [Fort Yukon Map of Boundaries]("FYMOB") to BLM, as required by federal law"[19]. One of Petitioners' July 13, 2018 counterclaims pleaded "[o]n September 8, 2011 and thereafter Plaintiff GZ Corporation never notified Clarence of any rules or procedures . . . which Clarence could follow . . . to be heard about Clarence's complaint regarding Clarence's altered § 14(c)(1) claim"[20]. That July 13, 2018 counterclaim also pleaded "GZ's § 14(c)(1) processes and procedures were "illegal

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16 Dt. Ct. Dkt 24, filed 7/13/18.

17 Dt. Ct. Dkt. 24, filed 7/13/18, Page 10 of 34, ¶ 18.

18 Dt. Ct. Dkt. 24, filed 7/13/18, Page 15 of 34, ¶ 15.

19 Dt. Ct. Dkt, 24, filed 7/13/18, Page 16 of 34, ¶ 15(c),

20 Dt. Ct. Dkt. 24, filled 7/13/18, Page 23 of 34, ¶ 36.

and unconstitutional"[21] in Clarence's case "in violation of due process requirements under the Fifth Amendment"[22].

GZ's January 8, 2019 Amended Complaint alleges Petitioners "have moved their belongings not only onto Tract 19, but also Tracts 9, 19A, and the triangle-shaped parcel of the land at the end of Barge Landing Road"[23]. GZ's Amended Complaint prayed for an ejectment order, "eject[ing Petitioners] from Tract 9, Tract 19A, and the triangle-shaped parcel of land at the end of the Barge Landing Road where it meets the Yukon River"[24].

Petitioners' February 8, 2019 Answer to GZ's Amended Complaint denied GZ's ejectment allegations[25] and pleaded affirmative defenses and counterclaims[26]. Petitioners Answer pleaded affirmative defenses that "GZ Corp. has failed to perform . . . conditions precedent under federal law and the Fifth Amendment"[27], and that "GZ Corp . . . .never afforded" Clarence "his statutory rights" under 43 U.S.C. § 1601(b) "nor [afforded Clarence] his procedural rights under the Fifth Amendment"[28]. Petitioners' Counter-

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[21] Dt. Ct. Dkt. 24, filed 7/13/18, Page 18 of 34.

[22] Dt Ct. Dkt 24, filed 7/13/18, Pages 24 0f 34, ¶ 40

[23] App.26a.

[24] App.27a.

[25] Dt. Ct. Dkt. 101, filed 02/08/19, Page 15 of 41, ¶¶ 30-33.

[26] Dt. Ct. Dkt. 101, filed 02/08/19, Pages 15-41.

[27] Dt. Ct. Dkt. 101, filed 02/08/19, Page 18 of 41, ¶ 12.

[28] Dt. Ct. Dkt. 101, filed 02/08/19, Page 19 of 41, ¶ 13.

claim II pleaded "that GZ Corporation's conduct as it related to the FYMOB and in 2013-2014 as it related to the alleged 'replatting' process was "illegal and unconstitutional"[29]. Counterclaim II also quoted Congressional findings under 43 U.S.C. § 1601(b)[30]. Counterclaim II pleaded that GZ's 2008 FYMOB conduct and GZ's 2013-2014 replatting conduct were done without notice to or participation by Petitioners, thus depriving Clarence of "maximum participation in decisions affecting [his] rights and property" in violation of 43 U.S.C. § 1601(b)[31]. Counterclaim II pleaded GZ's 2013-2014 replatting conduct significantly reduced the size of Clarence's Tract 19[32] without notice to Petitioners "in violation of the Fifth Amendment Due Process Clause"[33].

C. The District Court's Order On Cross-Motions for Summary Judgment

On December 19, 2019 the district court's Order granted GZ's motion for summary judgment based on 43 U.S.C. § 1632(b) and denied Petitioners' cross-motion for summary judgment[34]. The district court's Order found in 2008 GZ assembled its FYMOB documents under federal regulation 43 C.F.R. § 2650.5-4, then forwarded them to the Department of the

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[29] App. 27a.

[30] Dt. Ct. Dkt. 101, filed 02/08/19, Page 25 of 41, ¶ 27.

[31] Dt. Ct. Dkt. 101, filed 02/08/19, Page 25 of 41, ¶¶ 25-26; 28.

[32] Dt. Ct. Dkt. 101, filed 02/08/19, Pages 26-27 of 41, ¶¶ 31-32; 34; 36-37.

[33] Dt. Ct. Dkt. 101, filed 02/08/19, Page 27 of 41, ¶¶ 36, 39.

[34] App.5a-44a.

Interior, Bureau of Land Management ("BLM") in Anchorage. One of GZ's FYMOB documents, supporting Clarence's Tract 19, was an aerial photo showing Tract 19's triangular boundaries. Clarence's affidavit stated Tract 19's boundaries shown on that GZ aerial photo accurately depicted boundaries of Clarence's § 14(c)(1) claim.

In October 2010 BLM documents identified Clarence's § 14(c)(1) reconveyance claim (Tract 19) as consisting of 8.79+/-acres[35]. Sheet 5 in BLM's Plan of Survey showed Tract 19 as being a triangular shaped parcel similar to that shown in GZ's aerial photo, but without the very tip of the triangle included in the tract[36].

The district court found in 2008 GZ denied Clarence due process by not affording Clarence actual notice about Tract 19 in GZ's 2008 FYMOB documents, quoting *Ogle's* Fifth Amendment due process notice holding with approval[37]. On September 8, 2011 Alexanders appeared before GZ's board, inquiring about the size and contours of Tract 19. GZ did not respond and did nothing. In 2011 GZ, along with the Tribe, BLM, and a local native organization, informed Petitioners they had no legal recourse because 43 U.S.C. § 1632(b)'s 1-year limitations period had expired.

The district court's Order outlines the 2013/2014 "replatting" process between GZ and BLM regarding

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[35] App.15a.

[36] App.16a.

[37] App.34a.

Tract 19, but not involving Petitioners[38]. In April 2013 GZ complained to BLM about Tract 19's configuration[39]. In April 2013 BLM responded, informing GZ that BLM had replatted Tract 19 "as 2 Tracts, Tract 19 and Tract 19A"[40]. In response to GZ's continuing objections, in July 2013 BLM emailed GZ, explaining that "Tract 19A was created to identify the parcel removed from Tract 19 and does not imply a valid claimant for Tract 19A", adding "Tract 19A will be retained by the Corporation"[41].

In September 2013 GZ also objected to BLM about the configuration of Tract 9, a § 14(c)(3)[42] municipal reconveyance next to Clarence's Tract 19[43] and subordinate to § 14(c)(1) reconveyances[44]. In January 2014 GZ involved Congressman Young's office in the replatting issue[45], again not involving Petitioners. BLM notified Congressman Young's office that BLM would "make one last modification to the ANCSA 14(c) plat for the Fort Yukon area (as shown in the series of 3 diagrams)[46]. Those three BLM diagrams showed Tract 19 as 5.83 acres, Tract 19A

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38 App.20a.

39 App.20a.

40 App 20a.

41 App.21a-22a.

42 App.61a—63a.

43 *Id.*

44 App.22a.

45 App.23a.

46 App.23a.

as 2.77 acres, and the tip of the triangle as not part of any tract[47].

The district court granted GZ's motion for summary judgment based on 43 U.S.C. 1632(b)[48]. The district court tolled 43 U.S.C. § 1632(b) between 2008 and late 2011 because of GZ's lack of actual due process notice to Clarence about Tract 19[49]. The district court also ruled "the [lack of due process] notice problem was cured by 2011, which means that the one-year statute of limitations in Section 1632(b) was triggered by at least November 2011"[50].

When denying Petitioners' cross-motion, the district court identified Petitioners' Counterclaim II contesting GZ's 2008 and 2013-2014 replatting conduct as "illegal and unconstitutional". The district court noted Petitioners' position that plaintiffs "later changed their position about the boundaries of the Tract 19 without notifying Clarence"[51], and that "plaintiffs should have told Clarence that they were working on getting the boundaries of Tract 19 changed in 2013/2014"[52]. Conceding "[w]hile GZ Corporation could have notified Clarence about its contact with the BLM in 2013/2014", the district court concluded "there was no requirement that [GZ] do so"[53]. The district

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47 App.23a.

48 App.44a.

49 App.34a.

50 App.34a.

51 App.36a.; Dt. Ct. Dkt. 101, filed 02/08/19, ¶ 39.

52 App.36a.

53 App.36a.

court reasoned GZ did not need to notify Clarence in 2013-2014 about replatting changes to Tract 19 because "GZ Corporation was not working with the BLM to reduce the size of Clarence's § 14(c) claim"[54], "[r]ather, GZ Corporation was working with the BLM to ensure that the boundaries for Tract 19 matched what was shown on the FYMOB"[55].

The district court's Order ruled "[a]s for the counterclaims that [Petitioners] have pled, it is undisputed that [Petitioners] had actual knowledge by 2011 that Clarence's § 14(c) claim did not include all of the land that he believed it should"[56]; and "[t]he Alexanders' counterclaims had thus accrued long before they received documents pursuant to their FOIA request"[57]. The district court's Order barred Petitioners' Fed. R. Civ. P. 8(c) illegality defense and Petitioners' Fed. R. Civ. P. 13(a)(1) compulsory counterclaim, challenging GZ's 2008 FYMOB conduct and GZ's 2013-2014 replatting' process with BLM [as] 'illegal and unconstitutional'" in violation of the Fifth Amendment Due Process Clause[58].

The district court's Order reasoned because Petitioners knew in 2011 that Clarence's § 14(c)(1) claim did not include all the property it should, that meant: (1) "any challenges to the FYMOB and the boundaries of Clarence's § 14(c) claim had to be

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[54] App.36a.

[55] App.36a.

[56] App.39a.

[57] *Id.*

[58] App.27a; App.44a.

brought by November 2012"; (2) "[t]he challenges to the FYMOB and the boundaries of Clarence's § 14(c) claim that the Alexanders raise in this action were brought too late"; and (3) "[t]he challenges are barred by the one-year statute of limitations in Section 1632(b)"[59].

At the district court's direction, GZ filed a motion for ejectment. Petitioners opposed GZ's motion. The district court granted GZ's motion, entering an ejectment judgment. The district court then awarded GZ reasonable costs and attorney fees as prevailing party. Petitioners timely appealed to the Ninth Circuit.

D. The Ninth Circuit's Decision

On appeal the Ninth Circuit "review[ed] de novo the district court's order granting summary judgment"[60]. Following de novo review, the Ninth Circuit ruled "[t]he district court properly granted summary judgment to GZ on the Alexanders' claims under § 14(c) of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1613(c)(1)"[61]. The Ninth Circuit further ruled "[i]n any event, the Alexanders' claim (sic) was barred by the one-year statute of limitations in 43 U.S.C. § 1632(b)"[62]. The Ninth Circuit ruled "[e]ven if the period were tolled because the 2008 notice was inadequate, the [43 U.S.C. § 1632(b)] limitations period has still expired", based on Alexanders' 2011 conduct "showing that they were on actual notice that Clarence's

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[59] App.44a.

[60] App.2a.

[61] App.2a

[62] App.2a (italics added).

§ 14(c) claim did not include all the land that he thought it should"[63]. The Ninth Circuit further ruled "[t]he law of the case doctrine did not require the district court to reach a contrary result"[64]. The Ninth Circuit affirmed the district court's fees award to GZ as the prevailing party, ruling "the district court's rulings on the merits were not erroneous"[65].

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[63] App.3a.

[64] App.3a.

[65] App.4a.

REASONS FOR GRANTING THE PETITION

I. THE FIRST QUESTION PRESENTS AN ISSUE OF EXCEPTIONAL IMPORTANCE TO INDIVIDUAL ALASKA NATIVE § 14(C)(1) CLAIMANTS AND TO ANCSA VILLAGE CORPORATIONS ACTING AS FEDERAL INSTRUMENTS.

A. How the Government and ANCSA Village Corporations as Federal Instruments Deal with Aboriginal Citizens Presents a Question of National Importance.

How the government and ANCSA Village Corporations, as instruments of the federal government, deal with aboriginal Alaska Native citizens in settlement of aboriginal land claims presents an issue of national importance. Historically the government and its instruments have considered dealings with aboriginal citizens as a trust responsibility. It would be a cruel and unfortunate irony if Congress' enactment of ANCSA-a beneficent Act intended to fulfill the government's trust responsibilities by settling Alaskan aboriginal land claims-is construed to deprive individual aboriginal Alaska Natives of Fifth Amendment due process rights which other citizens enjoy.

B. The Focus of ANCSA Makes a Circuit Split Unlikely.

ANCSA's main focus is Alaska. No other Circuit has ruled whether Village Corporations' decisions under 43 U.S.C § 1601(b) mean the same as Village Corporations' reconveyance decisions under 43 U.S.C. 1632(b). No other Circuit has ruled whether Congress,

when enacting ANCSA, intended to change judicially-created Fifth Amendment due process principles. It is highly unlikely these important ANCSA statutory construction issues will arise in any Circuit outside the Ninth Circuit.

C. Lower Courts' Decisions Thwart the Fifth Amendment and Call for Exercise of the Court's Supervisory Power.

1. The lower courts have so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power. Federal courts routinely apply canons of statutory construction when interpreting a comprehensive Congressional legislative enactment like ANCSA. "It is always appropriate to assume that our elected representative, like other citizens, know the law". *Cannon v. University of Chicago,* 441 U.S. 677, 696-697 (1979). The lower courts flout the commonly invoked substantive canon of statutory construction that Congress does not intend to change judge-made law. The district court's ruling on the merits that "there was no [legal] requirement" that GZ notify Clarence about 2013-2014 replatting reductions to Tract 19 is mistaken as a matter of constitutional law. "An essential principle of due process is that a deprivation of life, liberty, or property 'be preceded by notice and an opportunity for hearing appropriate to the nature of the case". *Cleveland Board of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985) (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950)). "'[M]inimum [procedural due process] requirements [are] a matter of federal law'". *Loudermill,* 470 U.S. at 541 (quoting *Vitek v. Jone*s, 445 U.S. 489, 491 (1980)). "[T]he Due Process Clause provides that certain

substantive rights-life, liberty, and property—cannot be deprived except pursuant constitutionally adequate procedures". *Id.* While the Fourteenth Amendment due process clause and the Fifth Amendment due process clause were adopted at different times under different circumstances, both due process clauses should be given similar interpretations. *French v. Barber Asphalt Paving Co.,* 181 U.S. 324, 328 (1901).

2. "The normal rule of statutory construction is that if Congress intends for legislation to change the interpretation of a judicially created concept, it makes that intent specific". *Midlantic Nat'l Bank v. New Jersey Dep't of Envt'l Protection*, 474 U.S. 494, 501 (1986) ("*Midlantic*") (quoting *Edmonds v. Compagnie Generale Transatlantique*, 443 U.S. 256, 266-67 (1979)). When enacting ANCSA, Congress expressed no specific intent to abrogate judicially-created procedural due process principles. Lower courts' decisions disregard *Midlantic*'s "normal rule of statutory construction".

3. The district court's Order broadly bars "any challenges to the FYMOB and the boundaries of Clarence's § 14(c) claim" not "brought by November 2012"[66]. The Order thus bars Petitioners' Fed. R. Civ. P. 8(c) illegality defense and Petitioners' Fed. R. Civ. P. 13(a) compulsory recoupment counterclaim, contesting GZ's 2008 FYMOB conduct and GZ's 2013/2014 "replatting" process as "illegal and unconstitutional" in violation of the Fifth Amendment Due Process Clause[67]. The district court's Order, barring Petitioners' illegality defense and compulsory Fifth

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66 App.44a.

67 App.27a; App.36a.; Dt. Ct. Dkt. 101, filed February 8, 2019, ¶¶ 25-26, 36-37, 39.

Amendment recoupment counterclaim as untimely under 43 U.S.C. § 1632(b), is grievously mistaken. 43 U.S.C. § 1632(b) does not explicitly bar judicial review of constitutional challenges to ANCSA Village Corporations' § 14(c) reconveyance decisions. 43 U.S.C. § 1632(b) does not explicitly bar judicial review of a Fed. R. Civ. P. 8(b) illegality defense or a Fed. R. Civ. P. 13(a)(1) compulsory recoupment counterclaim. The Ninth Circuit affirmed the district court's procedurally and constitutionally infirm summary judgment Order.

4. "Acts of Congress are to be construed and applied in harmony with, and not to thwart, the purpose of the Constitution". *Phelps v. United States*, 274 U.S. 341, 344 (1927). Granting summary judgment to GZ based on 43 U.S.C. § 1632(b), the district court's Order mistakenly applies 43 U.S.C. § 1632(b) to negate and supersede Fifth Amendment due process principles and Fed. R. Civ. P. 8(c) and Fed. R. Civ. P. 13(a) pleading requirements. By affirming the district court's summary judgment Order, the Ninth Circuit affirmed the district court's procedurally and constitutionally infirm ruling that 43 U.S.C. § 1632(b) bars Petitioners' illegality defense and Petitioners' compulsory recoupment counterclaim II. "The Fifth Amendment gives to each owner of property his individual right". *Russian Volunteer Fleet v. United States*, 282 U.S. 481, 491 (1931). This Fifth Amendment principle applies to Clarence's § 14(c)(1) reconveyance claim and to thousands of other individual Alaska Natives' § 14(c)(1) reconveyance claims. Contrary to *Phelps*, lower courts' decisions fail to construe and apply 43 U.S.C. § 1632(b) "in harmony with, and not to thwart, the purpose of the Constitution". Lower courts' decisions are not in

harmony with the Fifth Amendment: lower courts' decisions thwart the Fifth Amendment.

5. Lower courts' decisions incorrectly immunize GZ's post-November 2012 illegal and unconstitutional conduct regarding Tract 19 from any defense or counterclaim. It is factually undisputed GZ's 2013-2014 replatting conduct—which reduced Tract 19's contours and size without notifying Clarence-all occurred many months after November 2012. Ruling November 2012 marked the expiration date for "any challenges" to be brought by Alexanders under 43 U.S.C. § 1632(b)[68], the district court wrongly immunized GZ's unconstitutional 2013/2014 replatting conduct regarding Tract 19. In effect the district court ruled GZ was free to do whatever it wished with Tract 19 after November 2012, including substantially reducing Tract 19's size, with no notice to or participation by Petitioners. This grievously mistaken ruling inexplicably contradicts *Ogle,* the District of Alaska seminal decision the district court quoted in its Order denying remand[69] and in its Order on the parties' cross-motions for summary judgment[70]. *Ogle* holds ANCSA Village Corporations are Fifth Amendment § 14(c) federal instruments and, as such, must afford Fifth Amendment due process notice before depriving individual Alaska Natives of § 14(c)(1) property. *Ogle,* 906 F. Supp. at 1330.

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[68] App.44a.

[69] App.53a.

[70] App.33a.

D. Lower Courts' Decisions Conflict with Statutory Construction Decisions of This Court.

1. Petitioners' Counterclaim II quotes Congressional findings under 43 U.S.C. § 1601(b)[71] and pleads GZ's 2008 FYMOB conduct and GZ's 2013-2014 replatting conduct were done without notice to or participation by Petitioners, thus depriving Clarence of "maximum participation in decisions affecting [his] rights and property" in violation of 43 U.S.C. § 1601 (b)"[72]. Neither the district court's Order nor the Ninth Circuit's decision gives effect to 43 U.S.C. § 1601(b)'s statutory clause "with maximum participation by Natives in decisions affecting their rights and property". A statute's policy section is entitled to "great respect" and is available to clarify ambiguous provisions of the statute. *Block v. Hirsch,* 256 U.S. 135, 154 (1921). Lower court's important omissions of statutory construction conflict with decisions of this Court. Federal courts should "give effect, if possible, to every clause and word of a statute, avoiding, if it may be, any construction which implies that the legislature was ignorant of the meaning of language it employed". *Montclair v. Ramsdell*, 107 U.S. 147, 152 (1883). Federal courts should approach statutory construction in that way "so that no part will be inoperative or superfluous, void, or insignificant". *Corly v. United States*, 556 U.S. 303, 314 (2009) (quoting *Hibbs v. Winn*, 542 U.S. 88, 101 (2004)). Lower courts' mistaken interpretation and application of 43 U.S.C. § 1632(b) renders 43 U.S.C. § 1601(b)'s

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[71] Dt. Ct. Dkt. 101, filed 02/08/19, Page 25 of 41, ¶ 27.

[72] *Id.*, ¶¶ 25-26; 28.

statutory clause—"with maximum participation by Natives in decisions affecting their rights and property" –inoperative, superfluous, and void. 43 U.S.C § 1601 (b)'s clause is "plain and unambiguous" and "must" be enforced "according to its terms". *Hardt v. Reliance Standard Life Ins. Co.,* 560 U.S. 242, 251 (2010). 43 U.S.C. § 1601(b)'s statutory clause—"with maximum participation by Natives in decisions affecting their rights and property-cannot reasonably be construed to authorize no "participation" by individual Alaska Natives in Village Corporations' § 14(c)(1) reconveyance decisions.

2. Like the district court, the Ninth Circuit failed to interpret the word "decisions" under 43 U.S.C § 1601 (b) to mean the same as the identical word "decisions" under 43 U.S.C § 1632(b). The Ninth Circuit "review[ed] de novo the district court's order granting summary judgment"[73]. Following de novo review, the Ninth Circuit ruled "[t]he district court properly granted summary judgment to the GZ on the Alexanders' claims under § 14(c) of the Alaska Native Claims Settlement Act. 43 U.S.C. § 1613(c)(1)"[74]. In arriving at this mistaken ANSCA conclusion, the Ninth Circuit incorrectly affirmed the district court's failure to interpret the word "decisions" in 43 U.S.C. § 1601(b) to have the same as the identical word "decisions" in 43 U.S.C. § 1632(b). Normal canons of statutory construction call for that statutory interpretation. "One ordinarily assumes that identical words used in different parts of the same act are intended to have the same meaning". *Utility Air Regulatory Group*

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[73] App.2a.

[74] App.2a.

v. E.P.A., 573 U.S. 302, 319-320 (2014). However, courts must still bear in mind the "fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme". *FDA v. Brown & Williamson Tobacco Corp*., 529 U.S. 120, 133 (2000). Even when read in context and with a view to their place in the overall statutory scheme, 43 U.S.C § 1601(b)'s word "decisions" and 43 U.S.C § 1632(b)'s identical word "decisions" should be read together to have the same meaning. *Sullivan v. Stroop*, 496 U.S. 478, 484 (1990) (applying "the normal rule of statutory construction that 'identical words used in different parts of the same act are intended to have the same meaning'").

II. THE SECOND QUESTION–WHEN THE FIFTH AMENDMENT RESTRAINS JUDICIAL POWER-PRESENTS A QUESTION OF NATIONAL IMPORTANCE.

A. Lower Courts' Decisions Conflict with Federal Rules of Civil Procedure 8(c), 13(a) And 13(c).

1. The Federal Rules of Civil Procedure distinguish among claims, defenses, and counterclaims. A "claim" is a legal entitlement to relief that a plaintiff "states" in its initial "pleading". Fed. R. Civ. P. 8(a). A defense is a fact or argument that a defendant asserts "[i]n responding to a pleading", Fed. R. Civ. P. 8(b)-(c). "Illegality" is a specific affirmative defense which must be pleaded. Fed. R. Civ. 8(c). A counterclaim is a claim that "may . . . diminish or defeat the recovery by the [plaintiff]", Fed. R. Civ. P. 13(c), or "may claim relief exceeding in amount or different in kind from that sought in the pleading of the [plaintiff]". *Id*.

2. The Federal Rules have long distinguished between compulsory counterclaims and permissive counterclaims. Compulsory counterclaims are defined as those that "arise[] out of the transaction or occurrence that is the subject matter of the [plaintiff's] claim". Fed. R. Civ. P. 13(a)(1). The reduction of Tract 19, by creating and extracting of Tract 19A from Tract 19, during GZ's 2013-2014 replatting contacts with BLM, are essential part of the subject matter of GZ's pleaded ejectment action. If a compulsory counterclaim "is not brought" at the first opportunity, the defendant will be "barred" from raising it in any later proceeding, whether in an affirmative pleading or in a responsive pleading. *Baker v. Gold Seal Liquors, Inc.*, 417 U.S. 467, 469 n.1 (1974) ("*Baker*"). "[A] defendant having a cause of action may—indeed, often must—assert that cause of action as a counterclaim". *Reiter v. Cooper*, 507 U.S. 258, 263 (1993). The requirement of Fed. R. Civ. P. 13(a) that counterclaims arising out of the same transaction or occurrence as the opposing party's claim "shall" be stated in the pleadings was designed to prevent multiplicity of actions and to achieve resolution in a single lawsuit of all disputes arising out of common matters. *Southern Constr. Co. v. Pickard*, 371 U.S. 57, 60 (1962). Petitioners raised GZ's illegality and violation of the Fifth Amendment at the first opportunity in Petitioners' July 13, 2018 Answer, Affirmative Defenses, and Counterclaims.

3. Counterclaims are a combination of claims and defenses. Counterclaims are similar to claims in that they "may request relief that exceeds in amount or differs in kind from the relief sought by the opposing party". Fed. R. Civ. P. 13(c). But, like a

defense, a counterclaim may also "diminish or defeat the recovery by the [plaintiff]". Fed. R. Civ. P. 13(c). The Federal Rules make clear that allegations that constitute an affirmative defense—like illegality-may be treated as such even though erroneously denominated as a counterclaim, Fed. R. Civ. P. 8(c), and counterclaims that do not arise out of the same transaction or occurrence as the plaintiff's claim are not "compulsory", *compare* Fed. R. Civ. P. 13(a) *with* Fed. R. Civ. P. 13(b). Counterclaims are similar to defenses in that they are raised in response to a plaintiff's pleading and cannot be used to support arising under jurisdiction. *Holmes Group., Inc. v. Vornado Air Circulation Systems, Inc.*, 535 U.S. 826, 831 (2003).

4. Petitioners pleaded GZ's illegality and GZ's violation of the Fifth Amendment Due Process Clause at the first opportunity in a compulsory counterclaim in Petitioners' July 13, 2018 Answer to GZ's original complaint. Petitioners pleaded GZ's illegality and GZ's violation of the Fifth Amendment Due Process Clause again in a compulsory recoupment counterclaim in Petitioners' Answer to GZ's Amended Complaint. Lower courts' decisions violate Fed. R. Civ. P. 8(c), Fed. R. Civ. P. 13(a), .and Fed. R. Civ. P. 13(c) by not recognizing Petitioners' Counterclaim II as an illegality defense and as a timely pleaded compulsory recoupment counterclaim.

B. Lower Courts' Decisions Conflict with Recoupment Decisions of this Court.

1. Petitioners' Counterclaim II is an illegality defense and a timely compulsory recoupment counterclaim under Fed. R. Civ. P. 8(c), Fed. R. Civ. P. 13(a),

and Fed. R. Civ. P. 13(c). Petitioners' Counterclaim II "diminish[es] or defeat[s]" GZ's ejectment relief under Fed. R. Civ. P. 13(c). "[R]ecoupment is in the nature of a defense arising out of some feature of the transaction upon which the plaintiff's action is grounded". *Bull v. United States,* 295 U.S. 247, 262 (1935). Petitioners' recoupment Counterclaim II arises out of GZ's 2013/2014 replatting of Tract 19 transactions with BLM. Within the context of recoupment, "transaction" is a word of flexible meaning". *Moore v. New York Cotton Exchange*, 270 U.S. 593, 610 (1926), "Transaction" "may comprehend a series of many occurrences, depending not so much upon the immediateness of their connection as upon their logical relationship". *Moore*, 270 U.S. at 610. Petitioners' Counterclaim II is based on GZ's illegal 2013/2014 replatting conduct and transactions regarding Tract 19, which transactions reduced Tract 19's size and contours in violation of Clarence's Fifth Amendment due process rights.

Recoupment "has never been thought to allow one transaction to be offset against another, but only to permit a transaction which is made the subject of suit by plaintiff to be examined in all its aspects, and judgment to be rendered that does justice in view of the one transaction as a whole". *United States v. Dalm*, 494 U.S. 596, 611 (1990).'" [R]ecoupment' is "the setting off against asserted liability of a counterclaim arising out of the same transaction". *Reiter v. Cooper*, 507 U.S. 258, 264 (1993). "Recoupment is in the nature of a defense arising out of some feature of the transaction upon which the plaintiff's claim is grounded". *Rothensies v. Electric Storage Battery Co*., 329 U.S. 296, 299 (1946) (citing *Bull*). An equitable recoupment defense diminishes or defeats the suing party's "right

to recover". *Stone v. White*, 301 U.S. 532, 539 (1937). A recoupment "defense is never barred by the statute of limitations so long as the main action itself is timely". *Bull,* 295 U.S. at 262. Since 1938 there has been only "one form of action—the civil action". Fed. R. Civ. P. 2. "But 'the substantive and remedial principles [applicable] prior to the advent of the federal rules [have] not changed'". *Petrella v. Metro-Goldwyn-Mayer, Inc.*, 572 U.S. 663, 679 (2014) (quoting 4 C. Wright & A. Miller, FEDERAL PRACTICE AND PROCEDURE).

2. Recoupment is the ancestor of the compulsory counterclaim in Fed. R. Civ. P. 13(a). *Frederick v. United States,* 386 F.2d 481, 487, 489 (5th Cir. 1967) ("Rule 13 counterclaims include recoupment and set-off"). "Common law recoupment was equitable in nature, resting on the principle that it was equitable to settle in one action all claims growing out of the same contract or transaction". *Frederick*, 386 F.2d at 487. Recoupment "was for defensive use only" and "a defendant could not use it as the basis for an affirmative judgment in his favor". *Id*.

3. The district court's Order commits clear legal error by applying the wrong legal standard when barring Petitioners' illegality defense and Petitioners' compulsory recoupment counterclaim II. The Order barred Petitioners' illegality defense and compulsory counterclaim II because of Petitioners' "actual knowledge by 2011 that Clarence's § 14(c)(1) claim did not include all of the land that [Clarence] believed it should"[75]. But Petitioners' 2011 knowledge is immaterial to the illegality of GZ's 2013-2014 replatting conduct regarding Tract 19. Petitioners' 2011 scienter

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[75] App.39a.

has nothing to do with the illegality of GZ's separate 2013-2014 replatting conduct reducing Tract 19 and creating Tract 19A without notice to or participation by Petitioners. The correct legal standard to apply to Petitioners' compulsory recoupment counterclaim II is whether Petitioners' counterclaim "ar[ose] out of some feature of the transaction upon which [GZ's ejectment] claim is grounded" under *Bull,* 295 U.S. at 265, and Fed. R. Civ. P. 13(a)(1). Again Petitioners' 2011 scienter is immaterial to this legal test. The correct legal test for a compulsory recoupment defense thus identifies "feature[s] of the transaction upon which [GZ's ejectment] claim is grounded". *Bull*, 295 U.S. at 265. "[F]eature[s] of the transaction upon which [GZ's ejectment] claim is grounded" here are GZ's 2013/2014 reduction of Tract 19's size and contours, by the creation of Tract 19A, with GZ retaining Tract 19A. These changes to Tract 19 occurred during GZ's challenged 2013/2014 replatting contacts with BLM. Once the reduction of Tract 19's size and contours, by the creation of Tract 19A, combined with GZ's retention of Tract 19A, are identified as "feature[]" of the underlying "transaction upon which [GZ's ejectment] claim is grounded", it is clear Petitioners' illegality defense and compulsory recoupment counterclaim II satisfy *Bull's*' standard, Fed. R. Civ. P. 8(c) and Fed. R. Civ. P. 13(a).

4. The district court's Order nonetheless ruled all counterclaims "had . . . accrued long before [Petitioners] received documents pursuant to their FOIA request"[76]. But an "accrual" analysis is inapposite and immaterial to the illegality of GZ's 2013-2014 replatting conduct

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[76] App.39a.

regarding Tract 19. "Accrual" is likewise immaterial to *Bull's* test whether Petitioners' compulsory recoupment counterclaim II "a[rose] out of some feature of the transaction upon which [GZ's ejectment'] claim is grounded". *Bull,* 295 UI.S. at 265. As a compulsory recoupment counterclaim, Petitioners' counterclaim II is defensive in nature and does not request affirmative relief against GZ. Instead Petitioners' recoupment counterclaim II "diminish[es] or defeat[s]" GZ's ejectment relief under Fed. R. Civ. P. 13(c). As such Petitioners' recoupment counterclaim is not subject to a limitations defense, so long as GZ"s ejectment action was timely filed. *Bull,* 295 U.S. at 262. GZ's ejectment action was timely filed.

C. The Fifth Amendment Restrains Judicial Power to Invoke 43 U.S.C. § 1632(b) Where a Village Corporation's Fifth Amendment Violation is the Gravamen of Petitioners' Illegality Defense and Compulsory Recoupment Counterclaim.

1. The Fifth Amendment acts as "a restraint on the legislative as well as the executive and judicial powers of the government". *Den ex. Dem. Murray's Lessee v. Hoboken Land & Improvement Co.,* 59 U.S. (18 How.) 272, 276 (1856). *Murray's Lessee* left open when, and under what circumstances, the Fifth Amendment acts as a restraint on judicial power. Here the Fifth Amendment restrains judicial power by precluding lower courts from barring Petitioners' illegality defense and compulsory recoupment counterclaim II as untimely under 43 U.S.C. § 1632(b). This extremely important issue arises from lower courts' misapplication of 43 U.S.C. § 1632(b).

2. 43 U.S.C. § 1632(b) is a combined judicial no-review statute and a limitations statute. Federal judicial no-review statutes, which do not explicitly bar judicial review of constitutional challenges, do not preclude judicial review of constitutional challenges. *Johnson v. Robison*, 415 U.S. 361, 367 (1974) ("*Johnson*"). 43 U.S.C. § 1632(b) does not explicitly bar judicial review of individual Alaska Natives' constitutional challenges to Village Corporations' § 14(c) reconveyance decisions. Thus *Johnson* permits judicial review of individual Alaska Natives' Fifth Amendment compulsory constitutional counterclaims challenging § 14(c) reconveyance decisions made by Village Corporations with no participation by individual Alaska Natives in violation of the Fifth Amendment Due Process Clause. The Fifth Amendment's Due Process Clause imposes a "constitutional limitations upon power of the courts, even in aid of their own valid processes, to dismiss an action without affording a party the opportunity for a hearing on the merits of his cause". *Societe Internationale Pour Participations Industrielles et Commerciales, S.A. etc. v. Rogers*, 357 U.S. 197, 209 (1958).

3. Lower courts' decisions conflict with commonly-understood summary judgment principles. "Because the summary judgment motion is designed to pierce the formal allegations of the pleadings, it normally is not made or opposed on the basis of the pleadings alone". 10A Charles Alan Wright, Arthur R. Miller, and Mary Kay Kane, FEDERAL PRACTICE AND PROCEDURE, § 2722, at 386-387 (2016). "Nonetheless, the pleadings often are very important and are carefully perused on a Rule 56 proceeding". *Id.* "The court is required to view the pleadings in their entirety when

passing on a request for summary judgment". *Id.* The district court did review Petitioners' Answer to GZ's Amended Complaint, including Petitioners' Counterclaim II. As moving party GZ had to identify those portions of the pleadings when demonstrate an absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). "One of the principal purposes of the summary judgment rule is to isolate and dispose of factually unsupported claims and defenses". *Id.* at 323-324. Petitioners' Counterclaim II is a factually supported illegality defense and a timely compulsory recoupment counterclaim.

4. "Summary judgment will not lie if the dispute about a material fact is 'genuine', that is, if the evidence is such that reasonable jury could return a verdict for the non-moving party". *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). "As to materiality, the substantive law will identify which facts are material". *Id.* "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of judgment". *Id.* Denial of participation to individual Alaska Native § 14(c) claimants by Village Corporations in § 14(c) reconveyance decisions is a substantive material fact under 43 U.S.C. §§ 1601(b) and 1632(b) as a matter of normal statutory construction. Denial of participation to individual Alaska Native § 14(c) claimants by Village Corporations in Village Corporations' § 14(c) reconveyance decisions violates the Fifth Amendment Due Process Clause as a matter of constitutional law.

5. "The very essence of civil liberty certainly consists of the right of every individual to claim the protection of the laws, whenever he receives an injury". *Marbury v. Madison*, 1 Cranch 137, 5 U.S. 137, 163

(1803). "One of the first duties of government is to afford that protection". *Id*. An individual Alaska Native with a valid § 14(c)(1) claim, Clarence had (has) a Fifth Amendment Due Process right to "maximum participation by Natives in decisions affecting [his] rights and property" under 43 U.S.C. §§ 1601(b) and 1632(b) This Petition identifies the right of individual Alaska Natives having valid § 14(c)(1) reconveyance claims to "maximum participation . . . in decisions affecting their rights and property".

6. Absent clear and convincing evidence of Congressional intent preventing judicial review of constitutional challenges, judicial review of constitutional challenges are presumed. *Califano v. Sanders*, 430 U.S. 99, 109 (1977). ANCSA contains no clear and convincing evidence of Congressional intent preventing constitutional challenges by individual Alaska Natives to Village Corporations' § 14(c) reconveyance decisions made without participation by individual Alaska Natives in these decisions. To the contrary, Congress expressly found that "settlement" of individual Alaska Natives' § 14(c) reconveyances claims "should be accomplished . . . with certainty", and "with maximum participation by Natives in decisions affecting their rights and property" under 43 U.S. C. § 1601(b). While Congress wanted aboriginal claims settled "rapidly" and "without litigation", no evidence shows Congress wanted settlement of individual Alaska Natives' § 14(c)(1) claims to be "accomplished" in violation of individual Alaska Natives' Fifth Amendment due process rights. Individual Alaska Natives' ANCSA "rights and property" include Fifth Amendment due process rights. "Wherever one is assailed in his person or his property, there he may defend, for

the liability and the right are inseparable". *Windsor v. McVeigh,* 93 U.S. 274, 277 (1876) (quoting 11 Wall. 78 US. 267). This long-standing principle applies to valid § 14(c)(1) claims by individual Alaska Natives, when decided by Village Corporations without participation in these decisions by individual Alaska Natives.

III. THIS PETITION IS THE IDEAL VEHICLE TO DECIDE THESE EXTREMELY IMPORTANT QUESTIONS.

A. A Complete Factual Record Exists to Decide These Important Questions.

Viewed together, the district court's Order denying remand, plus the district court's Order on the parties' cross-motions for summary judgment, present a complete factual record. The district court's Order granting summary judgment to GZ on the parties' cross-motions for summary judgment was outcome-dispositive.

B. The Petition Presents Clear, Concrete Legal Questions.

Whether the word "decisions" in 43 U.S.C. § 1601 (b) should be given the same meaning as the identical word "decisions" in 43 U.S.C. § 1632(b) is a legal question. Whether lower courts' decisions interpret and apply ANCSA reconveyance provisions in harmony with the Fifth Amendment, not to thwart the Fifth Amendment, is a legal question. Whether GZ had a legal obligation to notify Clarence to participate in GZ's 2013-2014 replatting efforts to reduce Tract 19's size and contours is a legal question. Whether the Fifth Amendment restrains lower courts from invoking 43 U.S.C. § 1632(b) to bar Petitioners' illegality defense and compulsory recoupment counterclaim II, based

on GZ's violation of the Fifth Amendment due process clause, is a legal question.

This Petition is the ideal vehicle to decide these important Fifth Amendment and ANSCA statutory construction questions. This Petition is the ideal vehicle to decide important Federal Civil Rules procedural questions, intertwined with these Fifth Amendment and ANCSA statutory construction questions. This Petition presents a clear, concrete case to resolve these nationally important questions.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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APRIL 21, 2022