No. 21-7098

IN THE

Supreme Court of the United States

THOMAS G. LANDRETH,

Petitioner,

v.

UNITED STATES OF AMERICA *et al.*,

Respondents.

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

RESPONDENT QUINAULT INDIAN NATION'S OPPOSITION TO PETITIONER'S PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The questions presented are as follows:

(1) Whether the Ninth Circuit Court of Appeals correctly applied the doctrine of tribal sovereign immunity to bar Petitioner's fourth attempt to contest ownership of Lake Quinault for lack of subject matter jurisdiction.

(2) Whether the Ninth Circuit Court of Appeals correctly determined that Petitioner could not state a claim under the Quiet Title Act.

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JURISDICTION

The judgment of the Court of Appeals was entered on September 21, 2021. The petition for writ of certiorari was filed in No. 21-7098 on October 23, 2021, and, upon amendment, was placed on the docket on February 10, 2022. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATEMENT

Respondent, Quinault Indian Nation ("Nation"), respectfully requests that the Petition for Writ of Certiorari ("Petition") be denied.

INTRODUCTION

Pro se Petitioner Thomas Landreth ("Petitioner" or "Landreth") seeks review of an unpublished August 2021 decision of the Ninth Circuit rejecting on jurisdictional grounds his most recent challenge to the ownership of Lake Quinault in his quest to remove it and its shores from the Nation's jurisdiction through multiple suits against the Nation, the United States, and the State of Washington. Importantly, Petitioner does not allege, and this case does not present, an important question requiring this Court's review. The Ninth Circuit's narrow opinion on tribal sovereign immunity does not conflict with decisions of this Court, and Petitioner does not make any such allegation. Nor does Petitioner allege that there is any conflict among the circuits, and the Ninth Circuit's narrow opinion on tribal sovereign immunity in the context of this litigation is not in conflict with any decision of a state court of last resort.

The Ninth Circuit correctly dismissed Petitioner's claims as to the Nation on the grounds that the Nation is immune from suit, that there is no waiver of its inherent sovereign immunity, and that there is no relief available to Petitioner under the Quiet Title Act ("QTA"). The Ninth Circuit found the question so straightforward it submitted the case on the briefs and then issued an unpublished memorandum disposition. Every court (federal and state) to consider Petitioner's claims since 2014 has reached the same conclusion: that they lack jurisdiction. Undeterred by these decisions, Petitioner seeks this Court's review of the merits of his contentions.

Further consideration of this case will not resolve a circuit conflict, clarify unsettled law, or fix an error of law. For the reasons discussed further below, there is no basis for further review, and the Petition should be denied.

BACKGROUND

This Court demands "clear, definite, and complete disclosures concerning the controversy when applying for certiorari." *S. Power Co. v. N.C. Pub. Serv. Co.*, 263 U.S. 508, 509 (1924). Petitioner ignores that admonition. Petitioner's characterization of the case does not capture the issues posed, argued, and decided in the proceedings below.

At the heart of Petitioner's grievance is his belief that the Nation lacks ownership of Lake Quinault. Thus, this case is correctly framed as a quiet title claim which falls outside the scope of the QTA immunity waiver because it concerns Indian trust land. *See Alaska Dep't of Nat. Res. v. United States*, 816 F.3d 580, 585 (9th Cir. 2016)

("The Indian lands exception applies if the federal government has a 'colorable claim' that the lands in question are trust or restricted Indian lands."); *Quinaielt Tribe of Indians v. United States*, 102 Ct. Cl. 822, 832–35 (1945) (finding that Lake Quinault is within Nation's reservation).

The Nation is a federally recognized sovereign Indian tribe and is a signatory to the Treaty of Olympia (12 Stat. 971 (1856)) in which it reserved to itself certain rights and ceded certain lands in exchange for permanent settlement on the Quinault Indian Reservation and other reserved rights. Acting pursuant to the Treaty of Olympia, President Grant signed an Executive Order on November 4, 1873 (I Kapp. 923 (1904)) setting aside 350 square miles of land that became known as the Quinault Indian Reservation. Lake Quinault, which is the subject of Petitioner's complaint, lies entirely within the exterior boundaries of the area set aside by the Executive Order as the Quinault Indian Reservation.

Petitioner owns property abutting Lake Quinault. He has filed four lawsuits since 2014 seeking to challenge the Nation's ownership of, and jurisdiction over, Lake Quinault. First, in 2014, Landreth and other plaintiffs filed *North Quinault Properties LLC, et al. v. Quinault Indian Nation, et al.*, 3:14-cv-06025 (W.D. Wash. Dec. 30, 2014). In that action, Landreth filed suit against both the Nation and the State of Washington, seeking a "court determination as to the status of Lake Quinault and the property rights of non-tribal property owners abutting the Lake" and a "court determination as to the public's right to access of the Lake, its shore and lakebed." SER 131. Specifically, Landreth sought a declaration that the United States and the

Tribe have "no right, title or interest in the lakebed or waters of Lake Quinault," (SER 157) and an injunction prohibiting the Nation from regulating conduct on the Lake. SER 157-159. The District Court dismissed the case because neither the Nation nor the State had waived their immunity from suit. SER 125-129.

Following the dismissal of *North Quinault Properties*, Landreth brought suit in state court against only the State of Washington. *See North Quinault Properties, LLC v. State of Washington*, No. 76017-3-1, 2017 WL 401397, at *1 (Wash. Ct. App. Jan. 30, 2017) (unpublished). Similar to the earlier *North Quinault Properties* case, Landreth, joined by a handful of other landowners, sought a "court determination as to the status of Lake Quinault and the property rights of non-tribal property owners abutting the Lake," and a "determination as to the public's right to access of the Lake, its shore and lakebed." *See id.* As with the first federal action, the state court suit was dismissed, this time for failure to join the Nation and the United States, and an appeal of that decision was unsuccessful. *Id.* (affirming dismissal of action with prejudice on summary judgment).

In 2018, Landreth took a third bite at the apple when he filed a complaint in the United States Court of Federal Claims. *Landreth v. United States*, 144 Fed.Cl. 52 (2019). That case was again dismissed due to a lack of subject matter jurisdiction because none of the claims he alleged were against the United States and because he sought equitable relief (a declaration as to his rights to Lake Quinault) that the Court of Federal Claims is without jurisdiction to grant. *Id.* at 55. The Court of Federal

Claims' dismissal was upheld by the United States Court of Appeals for the Federal Circuit. *Landreth v. United States*, 797 Fed. Appx. 521 (2020) (unpublished).

Landreth is presently litigating his fourth challenge to the Nation's ownership of Lake Quinault. Landreth filed the instant case in the Western District of Washington on April 6, 2020 against both the Nation and the United States. SER 93-123. The nature of Landreth's Complaint was not entirely clear, as he made a variety of claims and sought several forms of relief. *Id.* For example, although he pleaded a claim for conversion of property, he cited many other legal authorities including, but not limited to, the Equal Footing Doctrine, the Public Trust Doctrine, the Indian Civil Rights Act, the Equal Protection Amendment, and 16 U.S.C. § 474 pertaining to national forest surveys. SER 93, 95-96. Landreth also styled the Complaint as, in part, a quiet title action by listing 28 U.S.C. § 2409a, (the Quiet Title Act) as a relevant statute and seeking relief through "removal of the cloud of ownership of the 75 by about 40 feet of shore land below the Ordinary High Water Mark, abutting my lake front property on the north shore of Lake Quinault." SER 93, 116. Landreth also sought "redress for the crimes committed by the Quinault Indian Tribe," and "redress in the amount of 250,000.00 dollars." SER 119. Adding to the confusion, Landreth further asked the Court to "consider re-negotiation of the 1856 Treaty of Olympia," (SER 120) and to "review" *United States v. Washington*, 294 F. 2d 830 (9th Cir. 1961) regarding the doctrine of accretion. SER 122. In sum, Landreth's Complaint ran the gamut both in terms of his claims and the requested relief.

The Nation filed a motion to dismiss on June 19, 2020, arguing that the District Court lacked subject matter jurisdiction to hear the case based on the Nation's immunity from suit as a federally recognized sovereign Indian tribe, and that the relief sought by Landreth was barred by the QTA. SER 68-92. On June 24, 2020, the United States also filed a motion to dismiss, similarly asserting that the District Court lacked subject matter jurisdiction. SER 56-67. On July 29, 2020, the District Court granted both the Nation's and the United States' motions, and dismissed Landreth's claims. SER 3-10.

The District Court found that the Nation was immune from suit, that Landreth's claims that the Court had jurisdiction because Lake Quinault is navigable and the public has an interest in its use were "inconsistent with settled law," and that Landreth could not state a claim under the QTA to "remove the cloud of ownership on his property" because of its Indian lands exception. SER 9-10. The District Court also concluded that Landreth's remaining claims were "baseless." SER 10. As it was without power to adjudicate the matter, the District Court dismissed Landreth's claims without prejudice but emphasized that Landreth "should not view that legal determination as an invitation to file a fifth lawsuit on this topic." *Id*.

On appeal to the Ninth Circuit, Landreth sought review as to whether Lake Quinault is a navigable waterway; Landreth's property rights as to ownership of shore land and ingress/egress to Lake Quinault; whether the Nation has violated the Administrative Procedure Act; whether the Court of Federal Claims properly decided *Quinault v. United States*, 102 Ct. Cl. 823 (1945); and whether the Bureau of Land

Management's Historical Index of public lands is accurate. Opening Br. at 51–55. Similar to his approach in the Petition, Landreth did not squarely ask the Ninth Circuit to determine whether the District Court properly found that the Nation was immune from suit, or whether it properly determined that he could not seek relief under the QTA, which were the two primary decisions actually made by the District Court. *Id.*

In an unpublished decision issued August 6, 2021, the Ninth Circuit affirmed the District Court. With respect to the Nation, the Ninth Circuit held that "[t]he district court correctly dismissed Landreth's claims against QIN on sovereign immunity grounds. Federally recognized tribes such as QIN are immune from suit absent an explicit waiver or congressional abrogation, neither of which is present in this case." *Landreth v. United States*, 855 Fed. Appx. 410, 411 (9th Cir. 2021) (citing *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58 (1978)). The Ninth Circuit further declined to consider various issues raised by Landreth for the first time on appeal or to reach the merits of the claims. *Id.* This Petition followed.

REASONS TO DENY THE PETITION

I. The Ninth Circuit's Decision Is Correct and Consistent With This Court's Well-Settled Precedent on Tribal Sovereign Immunity.

This Court should deny certiorari because the Ninth Circuit's decision follows directly from Supreme Court precedent on tribal sovereign immunity and does not conflict with the existing precedent of any other circuit court; therefore, the Petition does not raise questions within the scope of Rule 10(c). Petitioner seeks little more than error correction, but there is no error to correct.

To be clear, despite Petitioner's claim that this is about the "illegal taking of accreted shore land" of Petitioner, Pet. at 9, the issue decided by the District Court and Ninth Circuit below has nothing to do with that question. Rather, those decisions rest squarely on the jurisdictional ground of sovereign immunity in a manner that is completely consistent with the Court's decision in *Michigan v. Bay Mills Indian Community*, 572 U.S. 782 (2014).

The Nation is a federally recognized Indian tribe. Tribes are "separate sovereigns pre-existing the Constitution." *Bay Mills Indian Cmty.*, 572 U.S. at 788 (quoting *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58 (1978)). While Indian tribes are "domestic dependent nations," they continue to "exercise 'inherent sovereign authority.'" *Id.* (quoting *Okla. Tax Comm'n v. Citizen Band Potawatomi Indian Tribe of Okla.*, 498 U.S. 505, 509 (1991)). One of the "core aspects of sovereignty that tribes possess" is their sovereign immunity, which this Court has regarded as "a necessary corollary to Indian sovereignty and self-governance." *Id.* (quoting *Three Affiliated Tribes of Fort Berthold Reservation v. Wold Eng'g*, 476 U.S. 877, 890 (1986)); *see id.* at 789 ("It is 'inherent in the nature of sovereignty not to be amenable' to suit without consent." (quoting The Federalist No. 81, at 511 (Alexander Hamilton) (Benjamin Wright ed. 1961)).

In *Bay Mills*, this Court reaffirmed that the "baseline position . . . is tribal immunity." 572 U.S. at 790. There are only two exceptions to tribal sovereign immunity: (1) where "Congress has authorized [a] suit," and (2) where the tribe has "waived" its immunity. *Id.* at 789. Based on these limited exceptions, this Court has

"time and again treated the 'doctrine of tribal immunity [as] settled law' and dismissed any suit against a tribe absent congressional authorization (or a waiver)." *Id*. Following this settled precedent, this Court has "sustained tribal immunity from suit without drawing a distinction based on where the tribal activities occurred"—applying tribal sovereign immunity "both on and off [a] reservation" and declining to distinguish "between governmental and commercial activities of a tribe." *Kiowa Tribe of Okla. v. Manufacturing Technologies,* 523, U.S. 751, 754-55 (1998); *Puyallup Tribe, Inc. v. Dep't of Game of State of Wash.,* 433 U.S. 165, 167 (1977).

It is undisputed that the Nation did not waive its tribal sovereign immunity for the instant action. Petitioner does not, and cannot, point to any congressional abrogation of tribal sovereign immunity. As the Ninth Circuit concluded, in the absence of a congressional abrogation of immunity or a tribal waiver, the Nation is entitled to tribal sovereign immunity and the case was appropriately dismissed. Petitioner does not argue that the Ninth Circuit's decision is inconsistent with this Court's well-settled precedent on tribal sovereign immunity, nor does he point to any relevant circuit split of authority. No such split of authority exists. Rather, Petitioner asks this Court to simply ignore the correct tribal sovereign immunity ruling below and reach the merits of his claim which he acknowledges have never been reached by any court during the last seven years of his vexatious litigation against the United States and the Nation. This Court should refuse such an invitation.

II. The Ninth Circuit Correctly Concluded that Landreth Could Not State a Claim Under the Quiet Title Act.

Contrary to Petitioner's assertions, there is no credible dispute about the status of Lake Quinault or that the United States holds title to the bed and banks in trust for the Nation.

Lake Quinault lies entirely within the boundaries of the area set aside by Executive Order, in plain language, as the Quinault Indian Reservation. It is also well-established that, contrary to Petitioner's statements, Lake Quinault has long been recognized to lie within the Nation's Reservation boundaries. *See United States v. Washington*, 626 F. Supp. 1405, 1428 (W.D. Wash. 1981) (finding that the "Quinault Reservation . . . tapers to Lake Quinault about 21 miles inland, which is contained within the reservation and represents its easternmost portion."), *aff'd* 694 F.2d 188 (9th Cir. 1982) (Canby, J. concurring), *cert. denied*, 463 U.S. 1207 (1983) (emphasis added); *Quinaielt Tribe of Indians v. United States*, 102 Ct. Cl. 822, 835 (1945) (finding that northwest boundary point of the Reservation was such as to include the entire Lake within the Reservation); Dep't of Interior Sol. Op. at 2 (July 21, 1961) (concluding that the "boundaries of the reservation include the entire lake [and] the United States holds title to the bed of the entire lake in trust for the Indians of the Quinault Reservation."). The nature of the land is dispositive as to the QTA claim.

The relief that Landreth seeks is only available by bringing suit against the United States, which—like the Nation—is immune from suit absent a waiver. *See F.D.I.C. v. Meyer*, 510 U.S. 471, 475 (1994). With regard to suits to quiet title to land

in which the United States claims an interest, that waiver comes exclusively through the QTA. *See Block v. North Dakota*, 461 U.S. 273, 286 (1983) (The QTA is "the exclusive means by which adverse claimants [can] challenge the United States' title to real property."). However, even with a waiver of the United States' immunity for the QTA, such a waiver "does not apply to trust or restricted Indian lands." *See* 28 U.S.C. § 2409a(a); *see also United States v. Mottaz*, 476 U.S. 834, 842, 843 (1986) (noting that the Indian lands exception "operates solely to retain the United States' immunity from suit by third parties challenging the United States' title to land held in trust for Indians" and that "when the United States claims an interest in real property based on that property's status as trust or restricted Indian lands, the Quiet Title Act does not waive the Government's immunity."). The Court of Appeals' decision was clearly in line with Ninth Circuit and this Court's precedent. The Indian lands exception to the QTA's waiver of the United States' immunity creates another insurmountable obstacle to Petitioner's case.

Certiorari should not be granted in light of the consistency of the holding below with this Court's existing precedent. There is no decision of this Court in conflict with the Ninth Circuit's holding. Petitioner's attempts to reframe this issue as one worthy of this Court's review fail, and a mere "misapplication of a properly stated rule of law" is not grounds for granting a petition for writ of certiorari. Petitioner can show no other "compelling reason" for this Court's review. Sup. Ct. R. 10.

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted.

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