

No. 21-7098

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In the  
Supreme Court of the United States

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THOMAS G. LANDRETH,

Petitioner

v.

UNITED STATES OF AMERICA et al.,

Respondents

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

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PETITIONERS RESPONSE TO  
OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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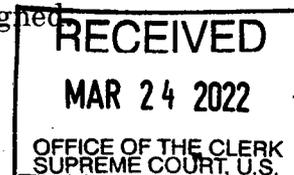


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## JURISDICTION-----INTRODUCTION

Pursuant to 28 U.S. Code @ 2409 (a)

*“The United States may be named as a party defendant in a civil action under this section to adjudicate a disputed title to real property in which the United States claims an interest, other than a security interest or water rights. This section does not apply to trust or restricted Indian lands,”*

The Constitution of the United States provides that all navigable waters of the United States are and remain as common public highways open and free to all people. Petitioner’s complaint is not a water right issue, [water is not trust land, water is not restricted Indian land, water cannot be settled upon,] but a Constitutional Right. (nor does petitioner demonstrate a security interest to the United States)

Navigable water and soil under the water in the United States is the real property of all citizens of the United States and the right to use that navigable water is a Constitutional Right of all people.

Article 7 of the 1887 Dawes Act states:

*“and no other appropriation or grant of water by any riparian proprietor shall permitted to the damage of any other riparian proprietor.”*

## REASONS TO ALLOW WRIT OF CERTIORARI

### A. DEED OR TITLE

The United States nor the Quinault Indian Tribe/Nation has provided a deed, title or conveyance from Congress giving the United States or the Quinault Indian Tribe/Nation ownership of the soil under navigable Lake Quinault or the water that flows over the soil under the 5 mile by 3 mile navigable Lake.

The document used by the United States and the Quinault Indian Tribe/Nation to show ownership of the soil under and water flowing over the soil is the 1873 Presidential Executive Order enlarging the original 5 mile by 9 mile surveyed and

accepted reservation by the Surveyor General of the Washington Territory in 1862 at the mouth of the Quinault River as desired by Chief Taholah in 1855.

The reason for the enlargement of the original reservation was to entice all the non-treaty Indian tribes on the southwest coast of the Washington Territory to re-locate to the newly enlarged reservation and make the reservation their permanent home.

## B. COURTS

Every Court adjudicating petitioner's complaint has given sovereign immunity to the United States and the Quinault Indian Tribe/Nation and has chosen to ignore 3 congressionally approved Presidential Proclamations placing navigable Lake Quinault to be within the Olympic Forest Reserve in 1897, 1902 and 1907.

The Courts have ignored article's 6 and 8 and 13 of the 1856 Treaty of Olympia to which Judges are bound.

The Courts have overlooked the Historical Index of all federal lands maintained by the General Land Office, now, the Federal Bureau of Land Management placing Lake Quinault, to be within the Olympic Forest Reserve, now the Olympic National Forest in 1897, 1902, and 1907.

The Courts have decided, petitioner's Constitutional civil and real property rights of legally deeded and registered privately owned land located within the Olympic National Park, [federal enclave] do not exist.

The Courts have decided, petitioner does not have the right to use navigable Lake Quinault without first asking permission of the Quinault Indian Tribe/Nation and paying the tribe a fee to use the navigable lake.

The Courts have ignored Congressional Acts, such as the 1850 Act authorizing the Negotiations of Treaties with the Indian Tribes in the Territory of Oregon, for the extinguishment of their claims to lands lying west of the cascade Mountains and for other purposes.

The Courts have ignored the establishment of the Lake Quinault Recreational Area with the purpose of recreation and summer cabins.

The Courts have ignored the Olympic National Park is a federal enclave and falls under the jurisdiction of the federal government.

The Courts are ignoring federal common law which is legally binding set of federal rules adopted by the federal courts to govern issues that are not expressly addressed by the terms of a constitutional or statutory provision.

### C. THE HEART

The heart of Petitioner's request for Writ of Certiorari requires interpretation of the Constitution of the United States as it pertains to the civil and real property rights of petitioner's privately owned land abutting navigable Lake Quinault. The real property rights are the accreted shore land of a government lot purchased from the United States under the 1862 Homestead Act given under the supremacy clause of the Constitution of the United States and secondly, petitioners personal civil property rights under the 5<sup>th</sup> and 14<sup>th</sup> Amendments of the Constitution to the full use and enjoyment of his land as given by the Congress of the United States under 16 U.S.C. @ 255 & 256.

Petitioner has provided the merits of the case to every Court. Every court has allowed the United States and the Quinault Indian Tribe sovereign immunity without ruling on the merits involved in the deprivation of civil/real property rights of petitioner by the Quinault Indian Tribe/Nation in 2013.

The Constitution of the United States requires all Judges to be bound by all treaties made by the United States.

### FEDERAL QUESTION

Did the 1850 Treaty Commission have the authority to treat away a function of the government?

Ownership of navigable Lake Quinault is a federal question. To determine the legality of the taking of accreted shore land and the taking of civil/real property rights of petitioner by the Quinault Indian Tribe/Nation in April of 2013 requires a Constitutional review of the ownership of navigable water of the United States.

Water and navigable water is not considered to be disposable land and the 1850 Commission to make treaties with the Indian tribes was not authorized to treat away any function of the government.

Petitioner was promised the full use and enjoyment of his land as promised by the 1906 Homestead Land Patent, Constitution and the Congress of the United States in 16 U.S.C. 255 and 256.

Two things were taken from Petitioner; [A no decision of this case will forever take away Petitioners civil/real property rights. The Treaty of Olympia did not reserve sovereign immunity to the signatory to that treaty.]

25 U.S.C @ 1302 does not provide sovereign immunity to self governing Indian Tribes.

#### D. TAKEN

Petitioner's, personal Constitutional civil right to use a navigable water of the United States by the Quinault Indian Tribe/Nation using intimidation, harassment with their armed police patrols enforcing the deprivation of that right under color of the law.

The, taking of accreted shore land.

#### **United States Reserves Land as the Olympic Forest Reserve**

The United States reserved all the land on the north shore of navigable Lake Quinault in 1897, 1902, and 1907 by Presidential Proclamation as well as the land under the lake as part of the Olympic Forest Reserve. The navigable water contained in the lake was held in trust for the future states that would be formed from the Territorial Government formed in 1853 and in 1899 the State of Washington entered the Union under the same enabling act that allowed North Dakota, South Dakota and Montana into the Union under the equal footing doctrine. These named States became the owner of all navigable water within their boundaries on an equal footing as the original states.

The Quinault Indian Tribe admits the Quinault River and Lake were used by their ancestors for thousands of years as a highway to get from one place to another and for commerce.

When the United States sold the government lots in 1906, on the north shore of navigable Lake Quinault by Homestead Land Patent, all the land surveyed, approved and accepted by the General Land Office and reserved by the United States in 1897, 1902, and 1907 included the shore land and any accretions to that shore land.

The State of Washington requires all federally reserved land surveyed by the Federal Government to be registered within the County the land is within. The requirements for filing ownership documents include field notes, survey plats, deed, title, conveyance from Congress, approved and accepted survey maps from the General Land Office or Bureau of Land Management.

The United States nor the Quinault Indian Tribe/Nation have produced a deed, title or conveyance from Congress giving the Quinault Indian Tribe/Nation ownership of water or land under the water. The entire Quinault Indian Reservation is land held in trust for the occupancy and use of the Indians and now, non-Indian owners of allotments.

The Quinault Indian Tribe/Nation declares:

“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”(I Kapp. 923 (1904)

**1904** is the year the General Land Office accepted the first complete survey of the Quinault Indian Reservation which included the first meander survey of the west shore of navigable Lake Quinault at the ordinary high water mark.

It is established law that original meander surveys are not boundary surveys the water is the actual boundary.

### E. COMPLAINT

The subject of Petitioner's complaint is ownership of the shore land abutting Petitioner's privately owned land within the Olympic National Park. In order to determine the legality of the Quinault Indian Tribe's claim of ownership of that shore land, ownership of the water and the soil under the water needs to be determined.

When the United States claims it is the owner of the soil under the navigable water flowing across the soil under the water and is holding it in trust for the Indians of the Quinault Indian Reservation, then the United States is now depriving Petitioner, Petitioner's children, grand children and other family members deprivation of Constitutional Rights as well as Congressional promises to private land owners.

#### Merits

The Quinault Indian Tribe/Nation acknowledges the merits of Petitioner's complaint have not been adjudicated by any of the previous courts. The lack of consideration of the merits of petitioner's complaint by the courts (under supplemental jurisdiction), violate the Treaty of Olympia, Northwest Ordinance, Constitution, Bill of rights and eliminates petitioner's civil/real property rights. The lack of adjudication shows the Judges felt they were not bound by the Treaty of Olympia, Joint Occupancy Treaty, Constitution, Northwest Ordinance, Congressional Acts or Presidential Proclamations approved by Congress.

### UN-REFUTED FACTS

#### F. Discovery Doctrine

Prior to the Constitution of the United States and the 1787 Northwest Ordinance all Indian Tribes on the northwest coast of America were Inhabitants of the foreign

nations claiming ownership of the northwest coast under the Discovery Doctrine. The Indian tribes were allowed occupancy of the land and did not retain sovereign immunity from those foreign nations.

The Northwest Coast of America remained under the control and ownership of foreign nations until the United States and England signed the 1846 Oregon Territory Treaty giving the United States ownership of all things below the 49<sup>th</sup> parallel.

All Inhabitants of the northwest coast of America were Inhabitants of the United States, but considered wards of the United States, and governance was the Constitution of the United States and all its laws.

The title to lands depends entirely on the laws of the nation in which they lie.

The United States Congress enacted laws to dispose of all the land to support the government and demonstrate possession of the newly acquired northwest coast of America known as the Oregon Territory in the Act of May 18, 1796..

Discovery constitutes the original title to lands on the American continent, as between the different European nations.

The title was to be consummated by possession.

#### G. 1787 Northwest Ordinance

The 1787 Northwest Ordinance states the utmost care must be given to the Indians and nothing shall be taken from them without their consent.

*“no man shall be deprived of his liberty or property” “The navigable waters.....and the carrying places shall be common highways, and forever free, as well as to the Inhabitants of the said territory, as to the citizens of the United States,”*

The Northwest Ordinance adopted into the Constitution of the United States did not apply to the northwest coast of America until the signing of the 1846 Oregon Territory Treaty.

Between 1818 and 1846 the navigable waters of the northwest coast of America was governed by the 1818 Joint Occupancy Treaty between England and the United

States to allow the free and open use of all navigable waters to allow travel and commerce between nations.

When the United States and England signed the Oregon Territory Treaty the Constitution of the United States and all its laws were now applicable to all citizens and Inhabitants of the territory.

#### H. Act of May 18, 1796

After the signing of the 1846 Oregon Territory Treaty, disposal of the land was governed by this Congressional Act. The 1887 Dawes Act confirms the land laws of the United States are the land laws used when surveying all Indian lands.

*Chap. XXIX.—An Act providing for the Sale of the lands of the United States, in the territory northwest of the river Ohio, and above the mouth of the Kentucky river.*

*Sec. 9: "That all navigable rivers, within the territory to be disposed of by virtue of this act, shall be deemed to be, and remain public highways;*

#### 1818 Joint Occupancy Treaty with England

This 1818 Treaty was made after the acceptance of the Constitution of the United States and the adoption of the 1787 Northwest Ordinance into that Constitution. The treaty states

*"It is agreed, that any Country that may be claimed by either party on the North West Coast of America, Westward of the Stony Mountains, shall, together with its Harbours, Bays, Creeks, and the Navigation of all Rivers within the same be free and open,"*

#### DISCOVERY DOCTRINE

All Indian tribes on the Northwest Coast of America are now considered wards of the United States as Inhabitants of the United States within the Oregon Territory.

They were not Citizens of any Country.

The United States Supreme Court uses the Discovery Doctrine today due to the fact that all Indian Tribes are dependent Indian Nations reliant upon the Congress of the United States funding responsibilities. Indian tribes do not own trust land. The Treaty of Olympia authorizes the use and occupancy of a tract or tracts of land. Flowing water is not land but is real property belonging to all citizens of the United States.

#### I. 1846 Oregon Territory Treaty

“Certified federal land patents were given free and clear title with no encumbrances, then or now.”

*“This treaty with Great Britain was signed on June 12, 1846 [9 Stat. 869], and all federal land patents of these states flow from the treaty and fall under the supremacy clause of the Constitution,”*

The 1906 Homestead Land Patent [under the 1862 Homestead Act] issued to Mr. Higley was issued with water rights appurtenant to the land and falls under the supremacy clause of the Constitution.

#### J. 1848 Congressional Act establishing the Oregon Territorial Government

Section 14 of the Act establishing the Oregon Territorial Government states: *“That the Inhabitants of said Territory shall be entitled to enjoy all and singular the rights, privileges, and advantages granted and secured to the people of the territory of the United States north-west of the River Ohio, by the articles of compact contained in the ordinance for the government of said territory, on the thirteenth day of July, seventeen hundred and eighty-seven; (1887).....and the laws of the United States are hereby extended over, and declared to be in force in, said territory, so far as the same, or any provision thereof, may be applicable.”*

Article the Fourth of the Northwest Ordinance declares all navigable rivers will remain open and free to all people forever.

**K. 1850 Congressional Act authorizing the Negotiations of Treaties with the  
Indian Tribes in the Territory of Oregon,**

*“That the President be authorized to appoint one or more commissioners to negotiate treaties with the several Indian tribes in the Territory of Oregon, for the extinguishment of their claims to lands lying west of the Cascade Mountains:.....also, for obtaining their assent and submission to the existing laws regulating trade and intercourse with the Indian tribes in the other Territories of the United States,”*

**L. 1853 Congressional Act establishing the Washington Territorial Government  
Section 12 of the Act;**

*“That the laws now in force in said Territory of Washington, by virtue of the legislation of Congress in reference to the Territory of Oregon, which have been enacted and passed subsequent to the first day of September, eighteen hundred and forty-eight, applicable to the said Territory of Washington, together with the legislative enactments of the Territory of Oregon,.....and they are hereby, continued in force in said Territory of Washington until they shall be repealed or amended by future legislation.”*

**M. 1855 Chehalis River Council**

Chief Taholah states to Governor Isaac Stevens;

*“Wanted the mouth of their river. Would give up the upper part. There was no whites there. He don’t want to lie to the white chief. He had heard what the governor says, and will remember it.”*

July of 1855 the Quinault Indian Tribe signs the Treaty of Olympia somewhere on the Quinault River.

January of 1856 Governor Stevens signs the Treaty of Olympia in Olympia.

In 1859 the Congress of the United States ratifies the Treaty of Olympia.

**N. 1856 Treaty of Olympia**

Data Element	Definition	IP's Information
IPOne ID	ProviderOne ID (9 Digit)	
FirstName	IP's First Name	
LastName	IP's Last Name	
Email	IP's Email Address	
Date of Birth	IP's Birth Date	
SSN	IP's Social Security Number	
Gender	IP's Gender - Male, Female, Unknown	
Union Type	Union Membership Type; e.g., Member or Non Member	
AddressLine1	Physical Address - Address Line 1	
AddressLine2	Physical Address - Address Line 2	
City	Physical Address - City	
State	Physical Address - State	
PipCode	Physical Address - Zip Code (5 digit)	
AddressLine1	Mailing Address - Address Line 1	
AddressLine2	Mailing Address - Address Line 2	
City	Mailing Address - City	
State	Mailing Address - State	
ZipCode	Mailing Address - Zip Code (5 digit)	
HomePhone	Home Phone Number - (10 digit, no formatting)	
CellPhone	Cell Phone Number - (10 digit, no formatting)	
Preferred Language	Preferred Communication Language	
Client Name:		
Client IPOne ID		

In accordance with Treaty Commission, the agreed upon Treaty of Olympia between the Quinault, Quileute Tribes and the Hoh and Queets bands of Indians was agreed to and ratified by Congress.

The National Congress of American Indians defines Nation

*" as the very term generally applied to them mean's a people distinct from others."*

The signing of the agreed upon Treaty of Olympia finalizes the extinguishment of claims of ownership of the lands defined in the treaty.

The Treaty of Olympia became a part of the law of the land and required the signatory to the treaty and the United States to abide by that obligatory treaty.

To satisfy the Treaty of Olympia which required the signatory to relocate to a tract of land reserved for their occupancy and use the Superintendent of Indian Affairs established 5 mile by 9 mile reservation at the mouth of the Quinault River where it enters the Pacific Ocean per the wishes of Chief Taholah.

#### **O. 1861 Survey and acceptance of Quinault Reservation**

Field notes of the survey of the Quintle and Quilitute Indian Reservation by Alleck C. Smith, under contract with William W. Miller, Superintendent of Indian Affairs, Washington Territory.

On June 10, 1862 the Surveyor General of the Washington Territory, Anson G. Henry, accepted and approved the reservation survey with:

*"The foregoing field notes and survey of the Quinitle Indian Reservation in Washington Territory is strictly in accordance with the field notes of the survey thereof on file in this office which have been approved."*

Anson G. Henry was appointed by the President and spoke for the President.

#### **P. 1866/1872 Mining Act**

The Congressional Mining Act and amendments severed all navigable water from being considered to be disposable land. Ownership of land under all navigable water is an incident of sovereignty and was held in trust for any future state to be created out of the Territorial governments established by Congress. The United States retained the paramount power over all navigable water to ensure that such waters remain free to interstate and foreign commerce.

#### **Q. 1873 Executive Order Enlarging the Quinault Indian Reservation**

The 1873 Presidential Executive Order was written in accordance with the 1856 Treaty of Olympia. The Treaty of Olympia did not give sovereign immunity, ownership of land, ownership of water or jurisdiction over non Indian people,

The E.O. did reserve a larger tract of land for the use and occupancy of the non-treaty Indian tribes and the signatory to the Treaty of Olympia. The Treaty of Olympia nor the E.O. gave the President the authority to give away civil or real property rights of citizens of the United States.

Article 8 of the Treaty of Olympia provides the pathway for citizens of the United States to achieve redress for all depredations committed upon them by the Indians signatory to the Treaty of Olympia. The same as 25 U.S.C. @ 1302

#### **R. 1887 Dawes Act**

The Dawes Act enacted by the Congress of the United States to give land to the Indians residing within the reservations established for them. All surplus lands not given to the Indians would be sold to settlers and the proceeds from the sale of the land would benefit the Indian Tribes within the reservation.

The Quinault Indian Reservation was not open for allotments to the Indians until after the reservation was surveyed by the General Land Office. The reservation survey was not accepted or approved until after the General Land Office completed the entire survey of the land to be allotted in 1904.

#### **S. Washington Territory entered the Union in November of 1889**

South Dakota, North Dakota, Montana and Washington entered the Union under the same enabling act giving each State, ownership of all things within their borders on an equal footing with the original States. This included the ownership of all navigable water and the land under those navigable waters.

All land surveys performed by the General Land Office ended at the boundary of an Indian Reservation or navigable water. When the United States reserves land abutting any navigable water, the United States also reserved to itself any and all accreted land that may appear on that waterway.

The Constitution of the State of Washington asserts its ownership of all navigable water within its boundaries which would include navigable Lake Quinault.

**T. 1897 Presidential Proclamation establishing the Olympic Forest Reserve  
superseding/modifying the 1873 Executive Order enlarging the Quinault  
Indian Reservation**

Now, therefore, I, Grover **Cleveland**, President of the United States, by virtue of the power in me vested by section 24 of the aforesaid act of Congress, do hereby make known and proclaim that there is hereby reserved from entry or settlement and set apart as a public reservation all those certain tracts, pieces, or parcels of land lying and being situate in the State of Washington and within the boundaries particularly described as follows, to wit:

*“thence southerly along the east boundary to the southeast corner of said reservation and westerly along the south boundary thereof to the high water mark on the Pacific Ocean; thence southerly along said line to the north to the north boundary of the Quinaielt Indian Reservation; thence southeasterly along the north boundary to the eastern point of said reservation and southwesterly along the south boundary thereof to the point of intersection with the fifth (5<sup>th</sup>) standard parallel north;”*

## CONCLUSION

The Constitution of the United States gives all citizens the right to peaceably assemble, and to petition the Government for a redress of grievances.

(Amendment 1)

*Amendment IV: "The right of the people to be secure in their persons,"*

*Amendment V: "be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."*

*Amendment XIV: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."*

The Courts have decided that federally recognized Indian Tribes claiming sovereign immunity for deprivations against the Petitioner and like citizens are not wards of the United States but separate Indian nations within the United States forcing tribal law upon non-Indian people.

The request for Writ of Certiorari should be reviewed by the Supreme Court of the United States to fulfill and establish equal justice for petitioner.



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