No. 24-

IN THE

Supreme Court of the United States

SAULT STE. MARIE TRIBE OF CHIPPEWA INDIANS,
Petitioner,

v.

DEBRA A. HAALAND, SECRETARY OF THE UNITED STATE DEPARTMENT OF INTERIOR, *et al.*,
Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The Michigan Indian Land Claims Settlement Act ("MILCSA") established a Self-Sufficiency Fund for the Sault Ste. Marie Tribe of Chippewa Indians to receive judgment funds that settled claims against the United States for the unconscionable taking of tribal lands. The statute, which codified a negotiated agreement between the Tribe and the United States, gave the Tribe's Board of Directors exclusive authority over the Self-Sufficiency Fund, including determinations about the proper use of Fund capital and interest. The broad purposes for which the Tribe may expend Fund interest under MILCSA include the "enhancement of tribal lands." §108(c)(5).[1] And MILCSA requires the Secretary of the Interior to hold in trust "[a]ny lands" acquired with Fund interest. §108(f). The questions presented are:

1. Whether Congress delegated to the Department of the Interior under MILCSA the authority to reject a mandatory trust submission based on the agency's own view about whether the purchase of land satisfied §108(c), notwithstanding the statutory command that "[a]ny lands acquired using amounts from interest or other income of the [Tribe's] Self-Sufficiency Fund shall be held in trust by the Secretary [of the Interior] for the benefit of the tribe." §108(f).

2. Whether "enhancement of tribal lands" in §108(c)(5) of MILCSA includes a land acquisition that adds to or augments the size of the Tribe's total landholdings.

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[1] Unless otherwise noted, statutory citations in this petition refer to the Michigan Indian Land Claims Settlement Act, Pub. L. No. 105-143, 111 Stat. 2652 (1997).

PARTIES TO THE PROCEEDING

Petitioner is the Sault Ste. Marie Tribe of Chippewa Indians.

Respondents Debra A. Haaland, in her official capacity as Secretary of the U.S. Department of the Interior, and the U.S. Department of the Interior were defendants in the district court and appellants below.

Respondents MGM Grand Detroit, LLC, Detroit Entertainment, LLC, Greektown Casino, LLC, the Nottawaseppi Huron Band of the Potawatomi, and the Saginaw Chippewa Indian Tribe of Michigan were defendant-intervenors in the district court and appellees below.

DIRECTLY RELATED PROCEEDINGS

Sault Ste. Marie Tribe of Chippewa Indians v. *Haaland*, No. 20-5123 (consolidated with Nos. 20-5125, 20-5127, 20-5128) (D.C. Cir.) (opinion and judgment issued on February 4, 2022; rehearing denied on May 27, 2022).

Sault Ste. Marie Tribe of Chippewa Indians v. *Haaland*, No. 23-5076 (D.C. Cir.) (judgment issued on June 28, 2024).

Sault Ste. Marie Tribe of Chippewa Indians v. *Haaland*, No. 1:18-cv-2035-TNM (D.D.C.) (opinion and order on summary judgment motions issued on March 5, 2020; opinion and order on renewed summary judgment motions issued on March 6, 2023).

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INTRODUCTION

A divided panel of the D.C. Circuit held that the Department of the Interior has implicit authority to decide whether the Sault Ste. Marie Tribe of Chippewa Indians—a sovereign in its own right and the largest tribe east of the Mississippi River—properly spent interest accrued on settlement money that the United States paid the Tribe to satisfy decades-old judgments for the unlawful taking of its ancestral lands. Making matters worse, the majority affirmed Interior's exercise of that authority in a way that ensures the Tribe can never have land taken into trust pursuant to the governing settlement statute outside of Michigan's rural, sparsely populated Upper Peninsula. That decision upends the negotiated bargain at the heart of the Tribe's settlement statute and, if left to stand, will forever impair the Tribe's ability to achieve economic self-sufficiency or meet the pressing needs of its thousands of members in Michigan's Lower Peninsula.

In predictable ways, "this case just tells an old and familiar story." *Washington State Department of Licensing* v. *Cougar Den, Inc.*, 586 U.S. 347, 377 (2019) (Gorsuch, J., concurring). Ancestors of the Sault Tribe occupied vast swaths of land across what is now Michigan's Upper Peninsula, as well as significant portions of the Lower Peninsula. Through a series of treaties in the nineteenth century, the federal government unconscionably took those lands—one treaty, for example, was "rent through with deception, manipulation and double dealing." *United States* v. *Michigan*, 471 F. Supp. 192, 230 (W.D. Mich. 1979). The deception was so significant that some Indians "believe[d] that they were to receive land, not that they were to cede it away." *Id.* at 231. Belatedly recognizing this injustice, the federal Indian

Claims Commission concluded more than a century later, in 1971, that the federal government had coercively taken lands making up a significant part of modern-day Michigan. The Commission ordered payment of damages to recompense descendant tribes for those historic wrongs.

It took decades for the federal government to distribute the promised funds. In 1997, Congress enacted the Michigan Indian Land Claims Settlement Act, or MILCSA, to finally resolve the outstanding lands claims of various tribes located in Michigan, including the Sault Tribe. The settlement statute guaranteed the appropriation of funds "to compensate" covered tribes "for 19th-century takings of [their] ancestral lands." *Michigan* v. *Bay Mills Indian Community*, 572 U.S. 782, 786 (2014). The statute was intensely negotiated by many tribes, including the Sault, and the federal government; indeed, these types of land claims settlement statutes had come to replace treatymaking as the mechanism for embodying sovereign-to-sovereign negotiated commitments between Indian tribes and the federal government.

The relevant terms of MILCSA are straightforward. The statute creates a Self-Sufficiency Fund to collect long-delayed settlement funds, and it authorizes the Tribe's governing body to make decisions regarding the use of Fund principal and interest in ways designed to advance the interests of the Tribe and its now more than 50,000 members. The statute expressly denies Interior any role in superintending the Fund. And consistent with the goal of remedying the taking of tribal ancestral lands, the statute authorizes the Tribe to spend Fund interest to "enhance[]" its tribal land base, §108(c)(5), and imposes a nondiscretionary duty on Interior to take "any" such lands into trust, §108(f).

Interior, however, has refused to read MILCSA to mean what it says. In 2012, the Tribe authorized the use of Self-Sufficiency Fund interest to purchase land near Detroit on which it intends, among other things, to engage in Indian gaming in order to create employment opportunities for the thousands of tribal members who live in that area and generate income for the Tribe to address all of its members' vast unmet needs. In authorizing the expenditure of Fund interest to acquire the land, the Tribe's governing body determined that the purchase would "enhance[]" the tribe's existing land base in critical ways under §108(c)(5) of MILCSA. And because §108(f) commands Interior to take into trust any lands purchased with Fund interest, the Tribe made a submission to Interior to do just that.

After years of delay, Interior denied the Tribe's trust submission. In so doing, Interior claimed for itself the authority to determine whether the Tribe's land purchase complied with §108(c), despite the absence of any textual basis for that authority and the existence of other provisions of MILCSA expressly divesting Interior of power over the Fund and the Tribe's expenditures. Having concluded that Congress impliedly delegated it the relevant authority, Interior then contorted the plain meaning of "enhancement of tribal lands" under §108(c)(5) to exclude land acquisitions that Interior deemed too far from the Tribe's existing lands in the Upper Peninsula. Interior made little effort to base this conclusion in MILCSA's enacted text. Instead, Interior's principal concern has always been based in policy—namely, that reading MILCSA according to its terms would give the Sault Tribe too good of a deal because §108 contains no geographic limitation on land-into-trust acquisitions.

A district court soundly rejected Interior's position, but a divided panel of the D.C. Circuit reversed. The panel majority first held that Interior could refuse to take land purchased with Fund interest into trust if it disagreed with the Tribe's determination that the purchase would "enhance[]" tribal lands under §108(c)(5). With no sound textual footing for that position, the panel relied on vaguely articulated common-law trust principles and a question-begging rationale that Interior must follow the law. Next, the panel majority held, contrary to the ordinary meaning of "enhancement of tribal lands," that acquisitions that increase the size of the tribe's existing land base do not count unless they are somehow connected to and increase the value of a specific parcel of tribal land already held in trust. The result is to limit the Tribe's ability to have land taken into trust under MILCSA to Michigan's Upper Peninsula.

This Court's review of those two holdings is warranted. Each holding construes critical terms of a sovereign-to-sovereign agreement codified by Congress and has profound consequences for the Sault Tribe and its more than 50,000 members. Absent review by this Court, the panel's decision will rewrite the terms of a settlement statute, forever put the Tribe under Interior's thumb, and leave unremedied historic wrongs that MILCSA sought to redress. Despite the unconscionable taking of millions of acres of ancestral lands across Michigan, the Sault Tribe will have no practical ability to take land into trust in areas that could assist in needed economic development. Indeed, to this day, the Tribe has had absolutely no land taken into trust under MILCSA. What is more, the D.C. Circuit's decision threatens to destabilize numerous other settlement statutes with other tribes by permitting Interior to exercise

freewheeling implied authority when taking land into trust under mandatory trust provisions.

A split panel decision should not be the last word on these issues of lasting and paramount importance to the Sault Tribe, its members, and other similarly situated Indian tribes. The Court should grant the petition to ensure that the federal government is held to its word and honors the "terms of [the] deal" it struck in MILCSA. *Cougar Den*, 586 U.S. at 377 (Gorsuch, J., concurring).

OPINIONS BELOW

The D.C. Circuit's decision (App. 1a-31a) is reported at 25 F.4th 12. The district court's opinion (App.33a-92a) is reported at 442 F. Supp. 3d 53. The D.C. Circuit's order denying rehearing en banc (App.165a-166a) is unreported but available at 2022 WL 1814034.

The district court's opinion on remand (App.109a-142a) is reported at 659 F. Supp. 3d 33. The D.C. Circuit's judgment affirming that opinion (App.95a-108a) is unreported but available at 2024 WL 3219481.

JURISDICTION

The D.C. Circuit issued its final judgment on June 28, 2024. It issued the opinion deciding the questions presented on February 22, 2022, and denied rehearing en banc on May 27, 2022. On September 18, 2024, the Chief Justice granted petitioner's application to extend the time for filing a petition for a writ of certiorari to November 25, 2024. This Court has jurisdiction under 28 U.S.C. §1254(1).

STATUTORY PROVISIONS INVOLVED

This case involves Section 108 of the Michigan Indian Land Claims Settlement Act, which is reproduced in the appendix. App.167a-170a.

STATEMENT

A. Sault Ste. Marie Tribe Of Chippewa Indians

The Sault Ste. Marie Tribe is the largest Indian Tribe east of the Mississippi River, with more than 50,000 enrolled members. The Tribe is economically distressed and acutely land-starved—problems that go hand in hand.

The Tribe's land base is concentrated in Michigan's sparsely populated Upper Peninsula and consists of a former landfill and wetlands surrounded by the small city of Sault Ste. Marie. *Testimony of Jennifer McLeod, Tribal Council Member, Before the Department of the Interior on Proposed Changes to Fee-to-Trust Regulations* (Mar. 15, 2018) ("McLeod Testimony"). Those lands are woefully inadequate to meet the basic economic, social, and cultural needs of the Tribe's members. C.A.J.A.194 (No. 20-5123, Doc. #1885060).

Today, the Tribe "struggl[es] to provide basic services for its members," including "vital services for cultural activities, elder meal programs, education programs, day care, and food assistance for low-income families." C.A.J.A.204. For example, the Tribe faces a "housing shortage" of more than 2,200 homes, HUD, *FY 2024 Formula Response Form* 12, and approximately 1 in every 5 Tribal families lives below the poverty level, Van Norman & Allen, *Sault Ste. Marie Tribe of Chippewa Indians of Michigan Tribal Court Assessment*, at i (Oct. 29, 2015).

Although the Tribe's reservation lands are scattered across the Upper Peninsula, more than one third of the Tribe's members live downstate in the Lower Peninsula of Michigan, including near Detroit. C.A.J.A.201. Those thousands of members alone exceed the population of any other Michigan tribe. *Id.* Yet the Tribe has no meaningful land base in the Lower Peninsula from which to provide support to its members there, who currently "have no tribal employment opportunities." C.A.J.A.203; *see also* C.A.J.A.194.

B. Broken Treaties And Unfulfilled Promises

History explains the Sault Tribe's geographic isolation and poverty. The Tribe descends from a group of Chippewa bands whose ancestral lands include a wide area of the Upper Great Lakes region bordering Lakes Superior, Michigan, and Huron. *See* C.A.J.A.123; *see also, e.g.*, *Sault Ste. Marie Tribe of Chippewa Indians* v. *United States*, 576 F. Supp. 2d 838, 840-841 (W.D. Mich. 2008). Although the Chippewa largely lived in the Upper Peninsula, Ottawa and Chippewa intermarried and lived together in villages in both the Upper and Lower Peninsulas. §102(a)(4).

Through a series of treaties in the nineteenth century, the United States coerced the Tribe's ancestors into relinquishing most of their lands. As a commission created by President Grant concluded in 1869, "[t]he history of the government connections with the Indians is a shameful record of broken treaties and unfulfilled promises." Report of Commissioner of Indian Affairs, H.R. Exec. Doc. No. 1, 41st Cong., 2nd Sess. at 489 (1869) ("1869 Indian Affairs Report"). The story of the Tribe and its ancestors is no exception.

Under the Treaty of March 28, 1836, the Ottawa and Chippewa surrendered approximately twelve million

acres of land to the federal government, including large parts of the Upper Peninsula and the northern half of the Lower Peninsula, for nominal payment. 1836 Treaty, art. I (7 Stat. 491); *Bay Mills Indian Community* v. *United States*, 26 Ind. Cl. Comm. 538, 538 (Dec. 29, 1971) (Dockets 18-E & 58). The volume of the ceded lands was staggering, over one-third of Michigan, as shown in the yellow portion of the map below. C.A.J.A.284.

As the Indian Claims Commission recognized in 1971, the signatory tribes ceded land worth almost seven times what the United States paid. *Bay Mills*, 26 Ind. Cl. Comm. at 560-561. In addition, "[t]he negotiation of

this treaty [was] rent through with deception, manipulation and double dealing." *Michigan*, 471 F. Supp. at 230. "The dominant motive appears to have been to cheat the Indians out of their lands and reduce their holdings to the reservations." *Id.* at 226. Obtained through "distortion, extortion and duress, … [t]he Indians' assent to the treaty was … nominal." *Id.* at 230.

The 1836 treaty was neither the beginning nor the end of the United States' dispossession of the Tribe's ancestral lands. "By 1836, much of the Indians' aboriginal title to Michigan land had already been extinguished through various treaties." *Michigan*, 471 F. Supp. at 230. And the Tribe was forced back to the negotiating table many times after 1836 in efforts to hold the United States to its meager promises. Within a year of signing the treaty, for example, a delegation of chiefs met with federal officials to protest the failure to pay promised funds. *See* Keller, *The Chippewa Treaties of 1826 and 1836*, 9 Am. Indian J. 27 (1986). As one Chippewa explained, despite promises of blacksmiths, schools, and money, the Chippewa saw "nothing of these works" and "knew not that [they] were giving so much for so little." *Speech by Chippewa Orator*, in Kohl, *Kitchi-Gami: Wanderings Round Lake Superior* 54, 57 (1865).

Compounding the problems facing the tribes, in the decades that followed, Interior interpreted relevant treaties to allow it to "improperly sever[] the government-to-government relationship between the [Chippewa] and the United States, ceasing to treat [the Chippewa] as … federally recognized tribe[s]." *Grand Traverse Band of Ottawa & Chippewa Indians* v. *U.S. Attorney for Western District of Michigan*, 369 F.3d 960, 961 (6th Cir. 2004). Following that termination, the Chippewa experienced "increasing poverty, loss of land base

and depletion of the resources of its community." *Id.* at 962.

Congress finally took steps to address these historic wrongs in 1946 with the creation of the Indian Claims Commission to adjudicate unconscionability claims and claims for violations of these treaties and thousands like them. *See* Indian Claims Commission Act, Pub. L. No. 79-726, 60 Stat. 1049 (1946). By that time, however, the Sault Tribe was entirely landless. "Virtually all of the Ottawa and Chippewa Bands … lost their land holdings due to fraud and illegal tax sales." *Testimony of Carl Frazier Before the Commission on Indian Affairs on H.R. 1604, a Bill to Provide for the Distribution of Judgment Funds Awarded the Ottawa and Chippewa Indians of Michigan*, 1997 WL 720896 (Nov. 3, 1997).

The lack of a tribal land base resulted in an exodus of tribal members to the Lower Peninsula in pursuit of economic opportunity that was lacking in the Upper Peninsula. C.A.J.A.202. This diaspora was also encouraged by federal policy, specifically the "Voluntary Relocation Program," which actively encouraged Indians, including Sault Tribe members, to leave their rural homes to find work in urban areas. C.A.J.A.203. Deemed a failure, the program ended in 1975. But by that time, many tribal members could not afford to return home, and so remained in the cities, often in cultural isolation and poverty—a major reason that one-third of the Tribe's members today live in the Lower Peninsula. C.A.J.A.202-203.

In 1948, the Tribe's ancestors filed claims in the Indian Claims Commission seeking to hold the federal government to account. *Testimony of Arthur LeBlanc Before the H.R. and S. Comms. on Resources and Indian Affairs*, 1997 WL 345192 (June 24, 1997). But plaintiffs

waited years for a decision—and nearly all initial plaintiffs died before a decision. *Id.* As the son of one plaintiff told Congress, "by the mid-1950's, the three individual plaintiffs had passed on, without knowing whether the claims would ever be honored[.] … I was asked by the people to take my father's place as a plaintiff[.] … I am the last living plaintiff in the Dockets." *Id.*

More than two decades after the claims had been filed, the Commission finally recognized what was obvious: The terms of the 1836 treaty were "unconscionable." *Bay Mills*, 26 Ind. Cl. Comm. at 553. The signatory tribes had ceded land worth approximately $12.1 million for which the United States paid them only $1.8 million. *Id.* at 560-561. To help remedy that injustice, the Commission awarded affected tribes more than $10 million in damages to be held in trust by the Bureau of Indian Affairs. *See id.* at 561; *Bay Mills*, 32 Ind. Cl. Comm. 303, 306, 309 (Dec. 26, 1973) (Docket 18-R); *Ottawa-Chippewa Tribe of Michigan* v. *United States*, 35 Ind. Cl. Comm. 385 (Jan. 27, 1975) (Docket 364). Despite the tribes' pressing economic needs, however, the federal government made no payment of these settlement funds for decades. In the meantime, the award ballooned to more than $70 million with interest while Congress failed to appropriate funds to satisfy the judgments against the United States. *See* H.R. Rep. No. 105-352, at 8 (1997).

C. Michigan Indian Lands Claims Settlement Act

In 1997, Congress enacted MILCSA to "compensate" various tribes and finally settle their claims for the wrongful "19th-century takings of … ancestral lands." *Bay Mills*, 572 U.S. at 786. MILCSA established a formula "for the fair and equitable division of the judgment funds" awarded by the Indian Claims Commission among the tribes and sought to "provide the opportunity

for the tribes to develop plans for the use or distribution of their share of the funds" to promote economic self-sufficiency, including through land acquisitions. §102(b).

Like other settlement statutes, MILCSA was "a negotiated compromise" between the United States and these "tribes to finally bring about the justice and closure they so rightfully deserve." *Testimony of Rep. Dale Kildee on H.R. 1604 Before the S. Comm. on Indian Affairs*, 105th Cong. 27, 1997 WL 702876 (Nov. 3, 1997). Indeed, such settlement statutes are very similar to negotiated treaties. By 1871, the federal government had gotten out of the business of making treaties with tribes, and Congress enacted legislation prohibiting future treaties. Indian Appropriations Act of 1871, 16 Stat. 544, 566 (codified at 25 U.S.C. §71). Since then, the federal government has negotiated settlements with tribes and enacted them as legislation. *See* 1 *Cohen's Handbook of Federal Indian Law* §6.01 (2024). From the 1970s to the 2000s, Congress enacted several acts to memorialize settlements reached with various tribes to resolve land claims, water rights claims, and other disputes. *Id.*; *see also id.* §6.03.

As would be expected of negotiated settlements, different tribes struck different bargains. MILCSA is no exception. Section 108 of MILCSA sets forth the specific plan, approved by Congress, for the Tribe's use of its share of the funds. Central to that plan is the Tribe's "Self Sufficiency Fund," established by the Tribe's Board of Directors to receive settlement funds distributed pursuant to MILCSA. §108(a)(1).[2]

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[2] The Board is the Tribe's "governing body," Const. of the Sault Ste. Marie Tribe of Chippewa art. IV, §1, with the power to "expend funds for public purposes of the tribe" and "manage, lease,

Section 108 provides the Board authority over the Fund. Section 108(a)(2) designates the Board as the sole "trustee," responsible for "administer[ing] the Fund in accordance with [§108's] provisions." Section 108(e)(2) directs Interior to transfer the Tribe's portion of settlement funds to the Tribe and commands that Interior thereafter "shall have no trust responsibility for the investment, administration, or expenditure of the principal or income of the Self-Sufficiency Fund." And §108(e)(2) further specifies that, "[n]otwithstanding any other provision of law, … approval of the Secretary for any payment or distribution from … the Self-Sufficiency Fund shall not be required."

MILCSA authorizes the Board to use Fund principal and interest for several "broad purposes" related to improving the economic and general well-being of the Tribe and its members, including for land acquisition. H.R. Rep. No. 105-352, at 10. In fact, Interior has previously acknowledged that during negotiations, the Tribe emphasized its "land acquisition goals" and secured "significant changes" to original drafts of the settlement statute "for land acquisition purposes." C.A.J.A.104. As relevant here, MILCSA authorizes the Board to spend Fund interest "for consolidation or enhancement of tribal lands." §108(c)(5).

Section 108(f) then mandates that "[a]ny lands acquired using … interest … of the Self-Sufficiency Fund shall be held in trust by the Secretary for the benefit of the tribe." The mandatory language is notable, as Interior has long had general, discretionary authority to take land into trust on behalf of tribes. *See* 25 U.S.C. §5108; 25 C.F.R. Part 151. Indeed, in response to earlier drafts

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sell, acquire or otherwise deal with the tribal lands," *id.* art. VII, §1(d), (k).

of MILCSA, Interior objected to this mandatory language, asking Congress to revise the text so that Interior would "retain[] discretion under existing regulations (25 C.F.R. Part 151)." Letter from Ada Deer, Assistant Secretary of Interior, at 3 (Def.'s MSJ Ex. G, *Bay Mills Indian Community* v. *Snyder*, No. 1:11-cv-729 (W.D. Mich. Jan. 13, 2017), ECF No. 54-8). Congress, however, retained the mandatory trust requirement.

D. The Tribe's Land-Into-Trust Submission

In 2012, to improve its dire financial position and remedy the shortcomings of its current land base, the Tribe's Board voted to use interest from its Self-Sufficiency Fund to purchase property in the Lower Peninsula of Michigan (near Detroit), with the hope that the Tribe would eventually be able to engage in lawful Indian gaming there. The Board "determine[d]" that the purchase would "consolidate or enhance tribal lands" and "generate an economic development opportunity beneficial to the Tribe and its members." C.A.J.A.159.

Consistent with federal policy recognizing "the insuperable (and often state-imposed) barriers Tribes face in raising revenue through more traditional means" and parallel federal efforts "to render Tribes more self-sufficient, and better positioned to fund their own sovereign functions," *Bay Mills*, 572 U.S. at 810 (Sotomayor, J., concurring), the Tribe operates several small casinos in the Upper Peninsula. C.A.J.A.253-254. But the Tribe has suffered economic setbacks as competition from casinos in Western Michigan and the more populated Lower Peninsula has reduced its gaming revenue. C.A.J.A.196; C.A.J.A.253-255. The Tribe generated by far the lowest gaming revenues per tribal member of any tribe in Michigan—a fraction of the revenue generated

by tribes with gaming facilities in the Lower Peninsula. C.A.J.A.198-199.

To secure trust status for the land, the Tribe presented a trust submission to Interior under §108(f) of MILCSA. Pointing out that Congress had "vested exclusively in the Tribe's Board" the power to make "[t]he decision to expend funds" under §108, the Tribe argued that the Board's decision was "not subject to the review or approval of the Secretary." C.A.J.A.125. Even if Interior had a role in determining whether the land purchase satisfied §108(c)(5), the Tribe explained that the acquisition would "enhance tribal lands" because it would "augment [the Tribe's] land base by increasing the total land possessed by the Tribe." C.A.J.A.127. The Tribe also demonstrated that the acquisition would "generate revenues that will be used to improve, restore, or otherwise increase the usefulness or value of the Tribe's existing lands." C.A.J.A.128.

On January 19, 2017—two and a half years after the Tribe asked Interior to fulfill its duty to take the land into trust—Interior responded to the Tribe's submission. Interior agreed that §108(f) imposes a mandatory duty to take land into trust, explaining that "shall" is "ordinarily the language of command." App.157a. But it asserted that the Tribe's entitlement to a mandatory trust acquisition turned not only on §108(f)'s requirement that the land be purchased with interest, but a showing that the parcel was "acquired … in accordance with … [§]108(c)." App.157a-158a. Having claimed authority to determine whether §108(c)(5) was satisfied, Interior stated that the Tribe had not made "a sufficient showing of how [its] lands in the Upper Peninsula will be enhanced by the acquisition of the parcels." App.162a.

Interior issued an order finally denying the Tribe's submission on July 24, 2017. App.145a-152a. Without meaningfully addressing the Tribe's position that the land acquisition would "enhance[]" the Tribe's existing land base by adding to its size, Interior claimed that the acquired land was simply too far from the Tribe's existing Upper Peninsula lands to satisfy §108(c)(5), App.150a-151a; *see also* App.151a n.23.

E. Proceedings Below

The Tribe sued Interior in 2018 under the Administrative Procedure Act, seeking vacatur of the agency's order denying the Tribe's trust submission. The district court granted summary judgment to the Tribe, holding that Interior's interpretation of MILCSA was contrary to law in two respects. App.33a-92a.

First, explaining that the threshold question is whether MILCSA assigns tribal leaders or agency officials the authority to determine compliance with §108(c), the court held that Interior's theory that it had implicit authority to make such a determination had no basis in the statute. "By its plain language," the court explained, §108(f) "imposes a mandatory duty on the Secretary to take land into trust on just one condition: that the Tribe acquired the land 'using amounts from the interest or other income' of the Fund." App.45a. "Congress thus gave the Secretary no authority to scrutinize anything else." App.45a-46a. Interior's contrary reading "upends the remainder of section 108, which entrusts spending decisions to the Tribe," App.46a, and in particular §108(e)(2), which divests Interior of "any say" over Fund expenditures, *id.*, "*[n]otwithstanding any other provision of law*," *id.* (quoting §108(e)(2)).

Second, the district court held that even if Interior did have authority to refuse to take land into trust based

on the Tribe's alleged noncompliance with §108(c), its decision was contrary to law because the Tribe's land purchase "enhanced" tribal lands under §108(c). App.65a-74a. The court held that enhancement of tribal lands "unambiguously includes any land acquisition that increases the Tribe's total landholdings." App.66a.

Finally, although §108(f) and §108(c) are unambiguous, the district court held that the Indian canon of construction would require any ambiguity in either provision to be construed in the Tribe's favor. App.65a.

A divided panel of the D.C. Circuit reversed. App.1a-31a. With respect to the antecedent question of Interior's authority, Interior argued that it possesses "inherent authority" to police the Tribe's expenditures under §108(c) of MILCSA when it exercises a mandatory duty to take land into trust under §108(f). C.A. Interior Br. 15 (No. 20-5123, Doc #1886311). The majority agreed with a version of that novel view of agency authority. Although it failed to identify any specific provision of MILCSA that empowers Interior to refuse to take land purchased with Fund interest into trust under §108(f), the majority grounded the agency's authority in generalized Indian trust principles, the Constitution's Take Care Clause, and "background principles drawn from the common law of trusts." App.7a-12a.

Next, the majority recognized that "'enhance' is sometimes defined as 'augmenting,' which typically refers to a quantitative increase," but nonetheless held that "enhancement" of tribal lands "does not include an acquisition of lands with no connection to increasing the quality or value of existing tribal lands." App.17a, 21a. The majority declined to define "enhancement" and did not explain how an acquisition not contiguous to the

Tribe's current lands, App.21a-22a, could ever "improve the quality or value" of such lands, App.3a.

Despite the district court's holding that the Tribe's interpretations of both §108(f) and §108(c) were unambiguously correct and the contrary view of the dissent, the majority held that both readings were unambiguously wrong and thus declined to apply the Indian canon. App.16a & n.7.

Judge Henderson dissented. App.23a-31a. The statute, she explained, provides that "the Secretary 'shall'—mandatorily—hold in trust any lands 'acquired using amounts from interest or other income' of the Fund," and "[t]here is no second condition." App.24a (quoting §108(f)). Judge Henderson agreed that the plain meaning of §108(f) is bolstered by §108(e)(2), which denies Interior any authority over expenditures of Fund interest, and by the broader structure of §108. App.25a-27a. And she rejected the majority's reliance on "general trust principles" to "depart from the text's plain meaning" and infer authority not granted by MILCSA. App.28a. At a minimum, she would have adopted the Tribe's "permissible and reasonable" reading of §108(f), as the Indian canon requires. App.31a.

The D.C. Circuit denied the Tribe's petition for rehearing, after calling for a response. App.165a-166a. On remand, the district court granted summary judgment to Interior on the Tribe's remaining challenges to Interior's order, App.109a-142a, and a panel of the court of appeals affirmed, App.95a-108a.

The Tribe now seeks review of the issues decided in the first summary judgment opinion and appeal.

REASONS FOR GRANTING THE PETITION

I. THE D.C. CIRCUIT'S IMPLIED AGENCY AUTHORITY HOLDING WARRANTS REVIEW

Interior argued below that it is has "inherent authority" to second-guess the lawfulness of the Sault Tribe's expenditures under §108(c) of MILCSA when it exercises its mandatory duty to take land into trust under §108(f). C.A. Interior Br. 15. A divided panel of the D.C. Circuit embraced a version of Interior's novel theory, locating agency authority not in MILCSA's text, but in vaguely defined background principles of law. That decision warrants this Court's review because it raises a question of great importance and conflicts with multiple decisions of this Court.

A. The Implied Agency Authority Holding Has Immediate And Far-Reaching Consequences For The Tribe And For Federal Indian Law Generally

The immediate and broader consequences of the D.C. Circuit's decision alone warrant this Court's review. The upshot of the panel's decision is that Interior, not the Tribe, is vested with the power to determine whether a land purchase "enhance[s] … tribal lands" under §108(c)(5) of MILCSA, and that such acquisitions are forever confined to Michigan's Upper Peninsula. That decision has vast consequences for not only the Sault Tribe and its members but also other tribes with settlement statutes involving mandatory trust provisions.

With respect to the Sault Tribe, the decision abrogates the terms of the bargain reflected in MILCSA's text and defeats that statute's animating goal of remedying historic injustices. Indeed, by adopting Interior's breach of statutory commitments to the Tribe, the panel

decision represents another broken promise. Only this Court can redress that wrong. The practical implications for the Tribe and its more than 50,000 members are overwhelming: By seizing the Tribe's power to determine compliance with MILCSA and limiting land acquisitions under that settlement act to the Upper Peninsula, Interior's interpretation guarantees that the Tribe has no ability to take land into trust in areas that would allow it to achieve meaningful economic development or meet the needs of more than 14,000 members living in downstate Michigan.

More broadly, the D.C. Circuit's decision threatens an expansion of Interior's authority over other Indian tribes under similar settlement statutes. Left uncorrected, Interior's inherent authority theory would give the agency roving license to effectively rewrite the terms of dozens of settlement statutes. Those consequences also justify this Court's review.

1. The decision below subverts Congress's promises to the Tribe and will have significant, long-term consequences for the Tribe and its members

The D.C. Circuit's holding that Interior has implied authority to reject the Tribe's trust submission disregards the Sault Tribe's sovereignty and unwinds a carefully negotiated settlement agreement—at great cost to the Tribe and its more than 50,000 members.

The resulting harm to the Sault Tribe alone merits certiorari. A tribe is no ordinary litigant. Indian tribes are "'distinct, independent political communities, retaining their original natural rights' in matters of local self-government." *Santa Clara Pueblo* v. *Martinez*, 436 U.S. 49, 55 (1978) (citing *Worcester* v. *Georgia*, 31 U.S. (6 Pet.) 515, 559 (1832)). The Sault Tribe and its ancestors have

thus long engaged with the United States as sovereigns. Those prior dealings often resulted in a "shameful record of broken treaties and unfulfilled promises," but MILCSA was intended to help remedy those injustices, support tribal self-sufficiency, and redress centuries of "unjust and iniquitous [treatment] beyond the power of words to express." 1869 Indian Affairs Report at 489. By embracing Interior's reading of §108, the D.C. Circuit's decision hollows out the statutory commitments Congress made to the Tribe in MILCSA. This Court's review is necessary to "hold the government to its word." *McGirt* v. *Oklahoma*, 591 U.S. 894, 898 (2020). At the least, the United States' solemn obligations to the Tribe as a sovereign require more than a split decision reversing a district court's interpretation of MILCSA. The final word on these important questions should come from this Court.

Certiorari is also warranted because of the real-world damage the decision below inflicts on the Sault Tribe. The panel's decision will confine the Tribe to its lands in the Upper Peninsula, imposing a lasting ceiling on its economic development and ability to meet the needs of its members. Although the Sault Tribe is the largest tribe east of the Mississippi River, the Tribe and its ancestors have spent centuries attempting to rebuild a land base after deceptive or failed federal policies left them landless. But the Tribe's lands remain isolated and scattered across the Upper Peninsula in a sparsely populated area with few natural resources. McLeod Testimony at 1; C.A.J.A.286. Those lands are not sufficient to support members in the Upper Peninsula, let alone the more than 14,000 members in the Lower Peninsula. C.A.J.A.194-195. The Tribe is thus unable to meet the basic needs of its most disadvantaged members across

Michigan, including for housing and food. C.A.J.A.204-205.

Without the ability to have land taken into trust in Michigan's Lower Peninsula, the reality is that the Tribe will never be able to provide meaningful employment opportunities or services to a substantial component of its membership, and it will be severely limited in its ability to pursue economic development vital to the welfare of the Tribe and its members. These ongoing injuries to tribal welfare and self-sufficiency are an affront to federal policy. "A key goal of the Federal Government is to render Tribes more self-sufficient, and better positioned to fund their own sovereign functions, rather than relying on federal funding." *Bay Mills*, 572 U.S. at 810 (Sotomayor, J., concurring). Properly read, §108 of MILCSA advances those self-sufficiency objectives. But the panel's decision—by arrogating authority to Interior Congress did not delegate and then narrowly construing §108(c)—defeats them.

This Court has granted review to address similar questions of exceptional importance to individual tribes. In *Mountain States Telephone & Telegraph Co.* v. *Pueblo of Santa Ana*, 472 U.S. 237 (1985), for example, this Court granted certiorari to address whether an easement was valid under the Pueblo Lands Act of 1924, which was enacted "to provide for the final adjudication and settlement of … conflicting titles affecting lands claimed by the Pueblo Indians of New Mexico." *Id.* at 240. The Court granted certiorari because the opinion below might have had a significant effect on other titles acquired pursuant to the statute. *Id.* at 249. Similarly, the Court granted certiorari in *Kerr-McGee Corp.* v. *Navajo Tribe of Indians*, 471 U.S. 195 (1985), "to decide whether the Navajo Tribe of Indians may tax business activities conducted on its land without first obtaining

the approval of the Secretary of the Interior." *Id.* at 196. The Court recognized the importance of the issue and held that the "legitimacy of the Navajo Tribal Council, the freely elected governing body of the Navajos, is beyond question," and "that neither Congress nor the Navajos have found it necessary to subject the Tribal Council's tax laws to review by the Secretary of the Interior." *Id.* at 201. This case calls for the same result.

The Court has also granted review in cases addressing tribe-specific questions regarding land disputes. For example, the Court has regularly granted review to determine whether a specific tribe's reservation has been diminished or disestablished. *See, e.g.*, *Seymour* v. *Superintendent*, 368 U.S. 351 (1962) (addressing Colville Indian Reservation); *Mattz* v. *Arnett*, 412 U.S. 481 (1973) (Klamath Indian Reservation); *Rosebud Sioux Tribe* v. *Kneip*, 430 U.S. 584, 585 (1977) (Rosebud Sioux lands); *Solem* v. *Bartlett*, 465 U.S. 463 (1984) (Cheyenne River Sioux). This case presents an analogous question of equal importance to the Sault Tribe—namely, whether the Sault Tribe may spend its own settlement funds to address severe land shortages by securing trust land to add to the size of its land base.

In sum, the profound consequences of the D.C. Circuit's decision with respect to the Sault Tribe and its members merit this Court's review. The federal government's taking of the Tribe's ancestral lands and decades of failed federal policy have left the Tribe economically distressed and land-starved, with no land base to provide services and employment opportunities to its members in downstate Michigan. MILCSA was intended to cure those injustices and enable the Tribe to become self-sufficient. Yet more than a quarter century since MILCSA's enactment, the Tribe has been unable to acquire additional trust land despite Congress's mandate

that "any land" acquired with Fund interest "shall be held in trust" by Interior. §108(f). This Court's review is necessary to ensure that the federal government is held to "the terms of [the] deal." *Cougar Den*, 586 U.S. at 377 (Gorsuch, J., concurring).

2. The decision below threatens to upend the bargains struck in other settlement statutes

The decision below also provides a blueprint for an expansion of Interior's authority over other Indian tribes, both under settlement statutes and more broadly. Those implications, too, compel this Court's review.

Numerous other tribes have negotiated agreements with states and the federal government, enacted into law by Congress, to resolve disputes and establish each sovereign's rights and responsibilities. *See* Skibine, *Incorporation Without Assimilation*, 67 UCLA L. Rev. Discourse 166, 194 (2019). Many of these statutes contain provisions similar to §108(f) that require Interior to take land into trust under specified conditions. *E.g.*, Gila Bend Indian Reservation Lands Replacement Act, §6(d), 100 Stat. 1798, 1799-1800 (1986); Fallon Paiute Shoshone Indian Tribes Water Rights Settlement Act, §102(F)(2), 104 Stat. 3289, 3291 (1990); Aroostook Band of Micmacs Settlement Act, §5(a), 105 Stat. 1143, 1145 (1991); Cherokee, Choctaw, and Chickasaw Nations Claims Settlement Act, §606(b)(1), 116 Stat. 2834, 2851 (2002). Like MILCSA, these statutes typically identify any conditions on trust land in the specific provision establishing Interior's duty to take acquired lands into trust, while specifying other conditions on the

administration and expenditure of settlement money in other provisions.[3]

The D.C. Circuit's holding imperils the negotiated allocation of responsibilities in all these statutes. Under the panel's reasoning, every settlement statute now contains an implied condition that Interior must agree that the tribe's land purchase "compl[ied] with all relevant laws." App.14a. And Interior is empowered to make an *independent* judgment about such compliance—regardless of whether Congress assigned that judgment to the tribe's government. Absent this Court's intervention, Interior will be free to disregard the specific assignments of responsibilities in settlement statutes by invoking a freewheeling common-law duty "to ensure a lawful trusteeship." App.10a. And rather than limiting its review to the conditions on trust land that Congress identified, Interior can survey the entire legal corpus and refuse to take land into trust if it believes that any collateral condition was not satisfied. That threatens to upend the bargains struck in dozens of settlement statutes beyond MILCSA.

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[3] Some land-into-trust provisions in other tribes' settlement statutes contain more specific limitations than §108(f) of MILCSA. For example, the Fallon Paiute Shoshone Indian Tribes Water Rights Settlement Act includes several conditions contained within the mandatory land-into-trust provision, including that lands must be "acquired under" a particular subsection of the agreement, lie within one of two counties, and not exceed a specified total acreage amount. 104 Stat. at 3290 (§103(A)). And the Aroostook Band of Micmacs Settlement Act extends trust status only to lands acquired "within the State of Maine." 105 Stat. at 1145-1146 (§5(a)). The fact that §108(f) contains no similar limitations confirms that there are none; those other statutes make clear that Congress "knows how to impose such a requirement when it wishes to do so." *Whitfield* v. *United States*, 543 U.S. 209, 216 (2005).

Because the decision below has grave implications not only for the Sault Tribe, but also for dozens of other tribes that have negotiated settlement statutes with the federal government, the question merits this Court's review. *See*, *e.g.*, *Oneida County* v. *Oneida Indian Nation of New York*, 470 U.S. 226, 230 (1985) ("Recognizing the importance of the Court of Appeals' decision not only for the Oneidas, but potentially for many eastern Indian land claims, we granted certiorari.").

The holding that Interior has implied authority over tribes, untethered to specific statutory delegations, also has consequences for tribal sovereignty more broadly. Even were the D.C. Circuit's reasoning cabined to the tribal trust context, issues relating to the government's trust relationship with tribes arise in every major sphere of government regulation, from climate and health to housing and education. For example, *Michigan* v. *EPA*, 268 F.3d 1075 (D.C. Cir. 2001), which held that agencies have "no constitutional or common law existence or authority," addressed environmental regulation of "Indian country," *id.* at 1081. And it rejected any notion that the EPA could have asserted a "sovereign obligation" (App.15a), independent of any statutory grant of power, to regulate disputed trust lands. *See* 268 F.3d at 1081. Under the decision below, however, Interior may now rely on purported sovereign obligations and common-law duties to exercise power over Indian country without congressional authorization.

This Court has intervened in comparable circumstances, granting certiorari "in view of the [lower court] decision's significant impact on relations between Indian tribes and the government," *Department of Interior* v. *Klamath Water Users Protective Association*, 532 U.S. 1, 7 (2001), and "[b]ecause [a decision] was a doubtful determination of the important question of state power

over Indian affairs," *Williams* v. *Lee*, 358 U.S. 217, 218 (1959). It should do the same here.

B. The Decision Below Conflicts With This Court's Precedent And Is Incorrect

Review is also warranted because the panel's decision, in holding that Interior (an executive agency) has implied statutory authority to decide a legal question Congress assigned to the Sault Tribe, decides "an important federal question in a way that conflicts with relevant decisions of this Court." S. Ct. R. 10(c).

First, the decision clashes with numerous decisions of this Court limiting agencies to congressionally delegated authority. As this Court has held, an agency's action "must always be grounded in a valid grant of authority from Congress," *FDA* v. *Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 161 (2000), because agencies are "creatures of statute" and "possess only the authority that Congress has provided," *NFIB* v. *OSHA*, 595 U.S. 109, 117 (2022). "[N]o matter how 'important, conspicuous, and controversial' the issue," an agency's action "must always be grounded in a valid grant of authority from Congress." *Brown & Williamson*, 529 U.S. at 161.

The D.C. Circuit's decision countermands those precedents. MILCSA's text and structure make plain that tribal leaders, not agency bureaucrats, determine the propriety of expenditures of Fund interest under §108(c) and that Interior is bound to follow those determinations. The statute designates the Tribe's "board of directors" as the Fund's sole "trustee" and assigns the "board of directors" the responsibility to "administer" the Fund "in accordance with [§108's] provisions." §108(a)(2). The mandatory trust provision, in turn, obligates Interior to take into trust "any lands acquired

using amounts from interest" of the Fund. §108(f). The statute puts an exclamation point on Interior's lack of authority over compliance with §108(c) by mandating that its "approval" of "any payment or distribution from the principal or income" of the Fund "shall not be required," and that it "shall have no trust responsibility for the [Fund's] investment, administration, or expenditure." §108(e)(2).

In the face of those statutory provisions, the D.C. Circuit located Interior's authority to police compliance with §108(c) outside MILCSA's text—in the federal government's "trust obligation[s]" to Indian tribes, App.8a; its "sovereign obligations … to ensure the faithful execution of the laws," *id.* (citing U.S. Const. art. II, §3); and "background principles drawn from the common law of trusts," App.12a. That contravenes the first principle of administrative authority that executive agencies are "creatures of statute," *NFIB*, 595 U.S. at 117—no more, no less.

Second, the decision departs from this Court's precedents regarding the federal government's trust obligation to Indian tribes. In concluding that Interior had implied authority, the panel relied on general trust responsibility principles, citing *United States* v. *Jicarilla Apache Nation*, 564 U.S. 162 (2011). App.8a, 11a, 13a n.6. But *Jicarilla* confirms that the United States' trust obligations to Indian tribes are "defined and governed by statutes rather than the common law." 564 U.S. at 173-174. It follows that Congress can structure the trust relationship as it sees fit. Congress did precisely that in MILCSA: It specified that the Tribe's Board is the "trustee" responsible for determining compliance with §108(c), and it disclaimed Interior's "trust responsibility," §108(e). Under this Court's decisions, "[t]he 'general trust relationship'" relied upon by the panel "does

not override [that] clear [statutory] language." *Menominee Indian Tribe of Wisconsin* v. *United States*, 577 U.S. 250, 259 (2016).

The panel's observation that "government must follow the law" (App.13a) does not change this analysis. Of course, the government must follow the law in taking land into trust, and otherwise. But the question is who determines compliance with §108(c): tribal leaders or agency officials? As the district court put it, "MILCSA gives the Tribe, but not [Interior], authority to determine compliance with §108(c)—*that* is the law." App.62a. Because MILCSA authorizes the Board to decide whether purchasing land with Fund interest will "enhance[]" tribal lands, while divesting Interior of any say over the Tribe's expenditures, Interior follows "the law" by respecting the Tribe's judgment.[4]

Third, the decision below conflicts with this Court's precedent requiring any statutory infringement of tribal sovereignty to be clear and unequivocal. Absent congressional abrogation, tribes "retain" their historic

[4] The D.C. Circuit claimed that agency authority to determine §108(c) compliance when taking land into trust did not entail the power to review or approve tribal expenditures under §108(c). But that distinction does not withstand scrutiny. The panel's core holding was that §108(f) "includes the authority to determine whether lands have been lawfully acquired under [§108(c)]." App.8a. Determining whether land was "lawfully acquired" under §108(c) necessarily entails the power to "approv[e]" expenditures of Fund interest, §108(e)(2)—the very power Congress chose to withhold from the agency. If Interior has the authority it claims, as a practical matter the Board would need to seek Interior's prior approval or risk that Interior could subsequently decline to take the land into trust based on its view that the expenditure of interest did not comply with §108(c), exactly as occurred here. More fundamentally, the panel never explains how its holding does not amount to an after-the-fact veto of the lawfulness of the Tribe's land purchase.

character as "self-governing sovereign political communities," *United States* v. *Wheeler*, 435 U.S. 313, 322-323 (1978), with "extensive powers over their property," *Cohen's Handbook* §5.01. It is thus "an enduring principle of Indian law" that "courts will not lightly assume that Congress … intends to undermine Indian self-government." *Bay Mills*, 572 U.S. at 790. Under those precedents, even if §108 were silent on the question of agency authority, the "proper inference from silence" would be that the Tribe's "sovereign power … remains intact," and that the Tribe retains the authority to control expenditures of its own money. *Iowa Mutual Insurance Co.* v. *LaPlante*, 480 U.S. 9, 18 (1987). The panel decision flouts that precedent.

It likewise defies this Court's decisions regarding the Indian canon of construction for related reasons. This Court has "consistently admonished that federal statutes … relating to tribes and tribal activities must be 'construed generously in order to comport with … traditional notions of [Indian] sovereignty and with the federal policy of encouraging tribal independence.'" *Ramah Navajo School Board, Inc.* v. *Bureau of Revenue of New Mexico*, 458 U.S. 832, 846 (1982) (alterations in original). To borrow from a unanimous opinion by Justice Scalia in another case involving the Indian canon, even were there "two possible constructions" of Interior's authority under §108(f), the Indian canon would dictate the "choice between them" and compel the Tribe's reading. *County of Yakima* v. *Confederated Tribes & Bands of Yakima Indian Nation*, 502 U.S. 251, 269 (1992).

The panel sidestepped that result only by "find[ing] no ambiguity." App.16a n.7. But the majority did not identify any statutory text supporting its interpretation of §108(f), much less explain why that text is

unambiguous. By inferring from statutory silence agency authority that allows Interior to superintend the Tribe's spending decisions and diminish its rights under MILCSA, the decision below eviscerates this longstanding canon of statutory interpretation on which Indian tribes and Congress have long relied. As the United States explained in another case, "such a strikingly parsimonious understanding of ambiguity … would effectively deprive the Indian canons of nearly all their substantive force with respect to the Settlement Acts that Congress ratified to resolve past violations of the rights of … Indian tribes." Pet. 18, *United States* v. *Frey*, No. 21-840 (U.S. Dec. 3, 2021). The same reasoning justifies review here.

II. THE D.C. CIRCUIT'S INTERPRETATION OF "ENHANCEMENT OF TRIBAL LANDS" WARRANTS REVIEW

For many of the same reasons set forth in Part I.A.1, above, the D.C. Circuit's holding that "enhancement of tribal lands" does not include land acquisitions that augment the size of the Tribe's land base merits this Court's review. At the least, if the Court grants review on the first question presented, it should grant review on the second to ensure that these closely related questions are before the Court.

Moreover, this Court's review is warranted because the decision below is gravely wrong, and it reads §108(c)(5) in a strained, counter-textual fashion that reneges on MILCSA's manifest purpose of permitting the Tribe to take land into trust as a remedy for the wholesale dispossession of lands of the Tribe's ancestors. Indeed, all tools of statutory construction establish that "enhancement of tribal lands" in §108(c)(5) encompasses a land acquisition that adds to the size of the Tribe's landholdings.

Because the Settlement Act does not define "enhancement of tribal lands," the phrase must be given its "ordinary, contemporary, common meaning." *Sandifer* v. *U.S. Steel Corp.*, 571 U.S. 220, 227 (2014). The ordinary meaning of "enhance" is "advance, augment, elevate, heighten, [or] increase." *Webster's Third New International Dictionary of the English Language* 753 (1981 ed.). MILCSA also makes clear *what* must be augmented, modifying the word "enhancement" with the phrase "of tribal lands." "Lands," in the plural, means "[t]erritorial possessions." *Oxford English Dictionary* 617 (2d ed. 1989); *accord American Heritage Dictionary* 987 (5th ed. 2011). Land acquisitions that augment the size of the Tribe's total land possessions thus enhance tribal lands under §108(c)(5), as the district court held. App.66a-67a.

That is how the only other federal court to address the issue has interpreted "enhancement of tribal lands" in a different provision of MILCSA governing the Bay Mills tribe. *Michigan* v. *Bay Mills Indian Community*, 2011 WL 13186010, at *5 (W.D. Mich. Mar. 29, 2011), *vacated on other grounds*, 695 F.3d 406 (6th Cir. 2012), *aff'd*, 572 U.S. 782 (2014). As that court explained, "'enhance' means 'to improve or make greater' or 'to augment.'" *Id.* It followed that the land purchase at issue there was "[o]bviously … an enhancement of tribal landholdings, as the additional land augmented, or made greater, the total land possessed by" Bay Mills. *Id.*

Although "enhancement" may also encompass an increase in other attributes—such as cost, value, or attractiveness, as the panel observed, App.16a-18a—nothing in the ordinary usage of "enhancement" restricts its meaning to an increase in those qualitative attributes. Rather, "enhancement" can refer to an increase in any

number of attributes—including utility, size, number, or amount.

The panel's decision disregards those statutory points and reads §108 of MILCSA in a way that gravely impairs the interests of the Tribe and its members by confining land acquisitions to the Upper Peninsula of Michigan. In doing so, the panel expressly declined to define "enhancement of tribal lands," beyond saying that the acquisition at issue here would not qualify. App.21a-22a. By limiting "enhancement" to qualitative improvements to existing lands, App.16a-17a, the panel effectively limited any permissible land acquisitions to the Upper Peninsula, all the while offering no instruction on what acquisitions could possibly meet this test. This Court should grant review to decide that consequential question.

III. THIS CASE IS THE RIGHT—INDEED ONLY PLAUSIBLE—VEHICLE TO RESOLVE THESE QUESTIONS

This case is an appropriate vehicle to decide both questions presented. The case has now been litigated to final judgment on all issues in the district court and the D.C. Circuit. The questions presented are pure questions of law that have been fully preserved, with no relevant factual disputes. They also admit of only a discrete set of answers: Section 108(f) either impliedly grants Interior the authority it claims, or it does not. "Enhancement of tribal lands" under §108(c)(5) either includes acquisitions that increase the Tribe's total landholdings, or it does not. Resolving these questions will not produce complex multi-factor balancing tests; rather, it will provide straightforward answers to questions of great importance to the Tribe and other similarly situated tribes.

And this case is almost certainly the only vehicle to decide these important questions. The statutory

provision at issue—§108 of MILCSA—applies only to the Sault Tribe. Absent this Court's review, there is no obvious path for further ventilation of these issues in the lower courts or before Interior. Instead, a divided panel of the D.C. Circuit will have the final word on the meaning of §108, and the Tribe will be faced with a controlling legal interpretation that severely impairs its ability to meet the vast, pressing social and economic needs of its more than 50,000 members. There will never be a circuit split on these questions; only this Court is positioned, now, to provide an authoritative construction of MILCSA that holds the United States to its commitments.

In analogous circumstances, this Court has granted certiorari, even absent a split of circuit authority, to resolve questions involving statutory or treaty rights of Indian tribes where paramount tribal interests at stake. *See, e.g.*, *Ysleta del Sur Pueblo* v. *Texas*, 596 U.S. 685, 685 (2022) (involving statutory rights of the Pueblo under the Restoration Act); *Minnesota* v. *Mille Lacs Band of Chippewa Indians*, 526 U.S. 172, 188 (1999) (involving treaty rights of Chippewa bands). Equity compels the same result here to ensure a fair and faithful construction of the Tribe's settlement statute.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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