No. 24-622

IN THE

Supreme Court of the United States

SAULT STE. MARIE TRIBE OF CHIPPEWA INDIANS,
Petitioner,

v.

DOUG BURGUM, SECRETARY OF THE UNITED STATES 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

REPLY BRIEF FOR PETITIONER

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INTRODUCTION

The government does not dispute that Congress and Indian tribes have negotiated scores of settlement statutes to redress historic injustices, including the wrongful dispossession of tribal lands. Nor does it dispute that many of these settlement statutes—the modern-day analog to treaties—contain negotiated provisions that award settlement funds to Indian tribes and obligate the federal government to take land acquired with those funds into trust. Under the divided D.C. Circuit panel decision here, however, Interior's mandatory trust *obligation* now comes with implied *authority* to decide whether a tribe has properly spent its own settlement funds. That decision is grievously wrong, and it has disastrous consequences for the Sault Tribe, its more than 50,000 members, and similarly situated tribes across the country, as the Tribe has explained. Indeed, the D.C. Circuit's decision draws a blueprint for Interior to upset the negotiated bargains struck in various settlement statutes by arrogating to the agency the power to substitute its own views on questions that Congress left to tribes themselves. These consequential issues warrant this Court's review.

On the merits, the government's brief boils down to one claim, repeated many times: that Interior properly denied the Sault Tribe's land-into-trust submission under §108(f) of MILCSA because the land at issue, in Interior's judgment, had not been "lawfully acquired" under §108(c). *E.g.*, Opp.2, 7, 10. There are two fundamental problems with that contention. First, it races past the foundational question—"who decides" whether the land acquisition was lawful? Pet.App.33a. MILCSA assigns the Tribe's leaders, not Interior, the power to determine the lawfulness of using Self-Sufficiency Fund

interest to acquire land. Section 108(f)'s directive to Interior—to take into trust "[a]ny lands acquired using … interest"—does not change that. In claiming that Interior has authority to determine whether land was "*lawfully* acquired … under [§]108(c)," Opp.11, the government "edits the statute to make its point," Slip Op. 7, *Medical Marijuana, Inc.* v. *Horn*, No. 23-365 (U.S. Apr. 2, 2025). Second, the land at issue was, in fact, "lawfully acquired" under §108(c)(5) because the land purchase "enhance[d]" the size of the Tribe's landholdings.

Independently and certainly when combined, the D.C. Circuit's contrary holdings abrogate critical statutory promises Congress made to the Tribe in MILCSA. The government's refusal to read MILCSA's text to mean what it says would be impermissible in any context. But because the government's interpretation effectively nullifies key provisions of MILCSA's belated effort to remedy the wrongful dispossession of vast swaths of the tribe's ancestral lands across what is now Michigan, Interior's appeal to policy concerns as a reason to abandon plain meaning (Opp.12) is especially weak.

This Court's review is needed to make clear that there is no Indian tribe exception to limits on the authority of executive agencies. In Indian affairs, as in any other context, Interior is a creature of statute and has no roving common-law authority over tribes. This Court's review is also needed because the questions presented are of profound importance to the Sault Tribe—the largest tribe east of the Mississippi—and all other tribes who have negotiated sovereign-to-sovereign settlements with the federal government. A divided panel decision that reversed a district court judgment should not be the last word on these significant questions. Only this Court can "hold the government to its word" under MILCSA. *McGirt* v. *Oklahoma*, 591 U.S. 894, 898 (2020).

ARGUMENT

I. THE QUESTIONS PRESENTED ARE IMPORTANT, AND THIS CASE IS THE ONLY VEHICLE TO DECIDE THEM

The government barely contests the Tribe's showing that the decision below risks long-lasting and far-reaching consequences for the Tribe as a sovereign, its more than 50,000 members, and similarly situated tribes. Pet.19-27. This Court has granted review in similar circumstances, *e.g.*, *Oneida County* v. *Oneida Indian Nation of New York*, 470 U.S. 226, 230 (1985) (granting certiorari to address "importance" of an appellate decision for one tribe, and "potentially" for other similarly situated tribes), and it should do so here.

The collateral risks the decision below poses to Congressional-tribal settlement statutes alone support that conclusion. Pet.24-25. Although it is true that those statutes would need to be "interpreted on [their] own terms," Opp.18, that overlooks that the D.C. Circuit's decision was not fairly based on the text of §108 but, as Judge Henderson explained, on "general" background "trust principles," Pet.App.28a; *see* Pet.App.8a, 12a (relying on general "take Care" obligations and "common law of trusts"). What is more, the government does not dispute that many other settlement statutes have the same structure as MILCSA: a set of spending conditions governing use of settlement funds coupled with a mandatory land-into-trust provision. For example, the Gila Bend Indian Reservation Lands Replacement Act, Pub. L. No. 99-503, 100 Stat. 1798, 1799 (1986), authorizes the Tohono O'Odham's governing body to spend fund interest for certain specified uses (§6(a)), divests Interior of authority for "review, approval or audit of the use [of funds]" (§6(b)), and directs that the Secretary

"shall" take lands acquired with interest funds into trust, (§6(d)). Pet.24 (listing other examples). Under the panel's decision, Interior now has implied background authority to decide whether land has been "lawfully acquired," whether or not Interior has been assigned any authority to make that determination.[1]

The immediate, concrete consequences to the Sault Tribe and its members amplify the need for this Court's review. Pet.20-24. The D.C. Circuit's dual holdings—that Interior has implied authority to decide whether the Tribe has "lawfully" spent its Fund interest under §108(c) and that any permissible land acquisitions under §108(c)(5) are effectively confined to the Upper Peninsula—warrants certiorari because they eradicate the land-replacement purposes of MILCSA, an outcome that matters greatly to the Tribe.

Attempting to downplay the significance of this issue to the Tribe and its members, the government halfheartedly suggests that the Tribe can, in fact, use Fund interest to "acquire land … including possibly land in the Lower Peninsula." Opp.16. But even assuming that land acquisitions fit within the D.C. Circuit's flawed interpretation of §108(c)(5), *cf.* Pet.App.16a-17a (suggesting "enhancement" means only qualitative improvements to existing lands), the fig-leaf of "Lower Peninsula" acquisitions is impossible to square with its consistent litigating position. Interior has repeatedly argued that §108(c)(5) "limit[s] new trust acquisitions to areas in proximity to

[1] Although "another court of appeals" could decline to follow the panel decision, Opp.18, many tribes will surely be deterred from undertaking the expensive, time-consuming process of acquiring land and making land-into-trust submissions given uncertainty about whether Interior will later decide the acquisition was unlawful.

existing tribal lands" in the Upper Peninsula "and not somewhere distant." C.A. Interior Br. 13, 23 (No. 20-5123, Doc #1886311); *see id.* at 18 ("Congress cannot reasonably be said to have contemplated purchases hundreds of miles away from the Tribe's land base"). Indeed, Interior relied on geographic distance from the Upper Peninsula in determining that the purchase did not enhance tribal lands, Pet.App.151a, and it has argued as much at every stage of the case, D.Ct. Interior Br. 28 (No. 18-2035, Dkt.53-1); D.Ct. Interior Renewed Br. 1, 24 (No. 18-2035, Dkt.96); C.A. Interior Br. 13-14, 18, 22-23, including in the government's formulation of the second question presented here, Opp.i (referring to a parcel that "is a significant distance" from existing lands).

The suggestion (Opp.17) that the Tribe might acquire trust land downstate under §108(c)(4)—which authorizes interest expenditures "for educational, social welfare, health, cultural, or charitable purposes"—is weaker still. The D.C. Circuit's most recent opinion reserved judgment on whether land for downstate economic development could ever "qualify as an approved expenditure under [§]108(c)(4)." Pet.App.105a. It certainly did not decide that question. And the government's apparent belief that the Tribe could dedicate scarce resources to additional Lower Peninsula land purchases as test cases blinks reality. Between the panel's holding that Interior, not the Tribe, is the ultimate arbiter of the lawfulness of spending decisions under §108(c) and Interior's evident hostility to Lower Peninsula land acquisitions, that is simply not a practical option for the Tribe.

For those reasons, this case fits comfortably into the mold of cases involving "questions of exceptional importance" to tribes in which this Court has granted certiorari, even absent a circuit split. Opp.17. The fact that

the decision below "does not conflict with any decision of … any other court of appeals," Opp.10, overlooks that there is no meaningful possibility of a circuit split on this question, Pet.34. Because §108 of MILCSA applies only to the Tribe, as the government itself points out (Opp.10), there is no real possibility of a split on either question presented.

This is, therefore, one of the unique contexts in which traditional circuit splits are unlikely and this Court must exercise searching review even absent a circuit divide. Two lines of precedent drive home that point. First, this Court has not hesitated to grant review in cases involving treaty rights of individual tribes. Pet.34 (collecting cases); *see also McGirt*, 591 U.S. at 897-898. MILCSA, as a settlement statute, is the modern-day analog to a treaty. *E.g.*, *Antoine* v. *Washington*, 420 U.S. 194, 201-202 (1975). Second, this Court's decision to review cases involving individual reservation diminishment or disestablishment are also instructive. Pet.23. The government claims (Opp.17) this case does not "involve any issue as significant" as diminishment or disestablishment. But whether the Sault Tribe can *augment* its existing lands by having land taken into trust is the flip-side of *diminishment*. This case thus implicates analogous interests to diminishment disputes. *E.g.*, *Solem* v. *Bartlett*, 465 U.S. 463, 464 (1984) (deciding whether Cheyenne River Sioux Reservation has been diminished by Interior decision).

II. THE D.C. CIRCUIT'S IMPLIED AGENCY AUTHORITY HOLDING IS WRONG AND WARRANTS REVIEW

The government further argues that the first question presented "warrants no further review" because the D.C. Circuit was "correct" to conclude that Interior has implied authority to determine whether "the Tribe has

lawfully acquired" land using Fund interest under §108(c). Opp.10-11. But perhaps the most glaring omission from the government's submission is anything resembling a "textual commitment of authority," *Whitman* v. *American Trucking Associations*, 531 U.S. 457, 468 (2001), for Interior to determine the lawfulness of the Tribe's expenditures of Fund interest under §108(c).

Section 108(f)'s command is simple: "Any lands acquired using amounts from [Fund] interest … shall be held in trust by the Secretary for the benefit of the tribe." The statute thus imposes a mandatory duty on Interior when one condition is satisfied: the land was purchased with Fund interest. "There is no second condition." Pet.App.24a (Henderson, J., dissenting). The notion that, in directing Interior to act when a single *factual* condition is satisfied, Congress impliedly authorized Interior to make a *legal* determination about whether the Tribe's use of Fund interest was lawful under §108(c) beggars belief. More importantly, it clashes with multiple decisions of this Court, Pet.27-31, and defies the first principle of administrative law that executive agencies "possess only the authority that Congress has provided," *NFIB* v. *OSHA*, 595 U.S. 109, 117 (2022) (per curiam)—no more, no less.

Of course, proper statutory construction must account for "statutory context," Opp.12, but all relevant context supports the plain meaning of §108(f). Section 108(a)(2), for example, makes the Tribe's Board the Fund's sole "trustee" and assigns the Board the responsibility to "administer" the Fund "in accordance with [§108's] provisions." As trustee, the Board has "the comprehensive powers … to manage the trust property and to carry out the terms and purposes of the trust." *Restatement (Third) of Trusts* §70(a) (2007). Section 108(a) does not mention Interior, much less "authorize

[Interior] to review the Sault's use of Fund income before taking acquired land into trust." Pet.App.27a (Henderson, J., dissenting). And Congress's decision to assign the Tribe, not Interior, the power to administer the Fund and approve expenditures forecloses the view that Interior has implied authority to second-guess the lawfulness of those expenditures. *See Gonzales* v. *Oregon*, 546 U.S. 243, 265 (2006) (rejecting claimed authority by Attorney General as "inconsistent with the design of [a] statute" that "allocates decisionmaking powers" to another agency).

In addition, as Judge Henderson reasoned, §108(e) "further support[s]" the Tribe's reading of §108(f). Pet.App.25a. Indeed, §108(e)(2) provides that Interior's "approval" of "any … distribution from … income" of the Fund "shall not be required," and that Interior "shall have no trust responsibility for the [Fund's] investment, administration, or expenditure." "In stark terms," as the district court explained, "this provision strips [Interior] of any say over how the Tribe spends Fund income under §108(c)." Pet.App.46a.

The government has no good answer to §108(e). It insists that Interior's purported power to determine the lawfulness of a Fund expenditure when taking land into trust "does not affect prior … action by the Tribe." Opp.15. But this makes little sense. *See* Pet.29 n.4. Authority to decide whether a land purchase is "lawful[]" under §108(c) necessarily entails the power to "approv[e]" expenditures of Fund interest—the very power Congress withheld from the agency. *Id.* If Interior has the authority it claims, as a practical matter, the Board needs Interior's prior approval of §108(c) expenditures for land, or it risks Interior ruling those expenditures "unlawful" years later. Moreover, the government's convoluted theory—that the Tribe generally determines

the lawfulness of Fund expenditures under §108(c), but when a Tribe seeks to have land taken into trust under §108(f), Interior's power to make a separate determination of lawfulness springs into being—has no textual basis. As the district court put it, "that is not the statute Congress wrote." Pet.App.47a.

Finally, in arguing that interpreting MILCSA according to its terms would lead to "bizarre result[s]," Opp.12, the government "fall[s] back to the last line of defense for all failing statutory interpretation arguments: naked policy appeals." *Bostock* v. *Clayton Cnty.*, 590 U.S. 644, 680 (2020). And conjecture that the Tribe's reading of §108 would permit the Tribe to acquire "land near Atlanta, Portland, or Washington D.C., for a gaming casino," Opp.12, is rhetoric, not reality. The vast majority of the Tribe's members reside in Michigan, and almost one-half of its Michigan members reside in the Lower Peninsula. The Tribe seeks to take land into trust and to pursue gaming operations to create direct economic opportunities for *those* members. *See California* v. *Cabazon Band of Mission Indians*, 480 U.S. 202, 205, 218-219 (1987).

Beyond that, policy concerns about proliferating tribal gaming ignore that taking land into trust would not entitle the Tribe to game on it. To conduct gaming, the Tribe would need to establish that a statutory exception permits gaming, 25 U.S.C. §2719(a), and the Tribe could conduct casino gaming only in accordance with the terms of a compact negotiated with Michigan and approved by Interior, *id.* §2710(d).

In short, this Court's review of the first question is necessary because the panel's decision is hugely consequential, as explained in Part I; is deeply flawed; and conflicts with multiple decisions of this Court—on

questions of agency authority, tribal sovereignty, and the Indian canon. Pet.27-31.

III. THE D.C. CIRCUIT'S "ENHANCEMENT OF TRIBAL LANDS" INTERPRETATION IS WRONG AND WARRANTS REVIEW

Finally, the government argues that the second question presented does not warrant review because the D.C. Circuit "correct[ly]" held that "enhancement of tribal lands" under §108(c)(5) excludes land acquisitions that do not "improve[] the quality or value of existing tribal lands." Opp.19. That is profoundly wrong, as the Tribe has shown. Pet.31-33.

The government defends the D.C. Circuit's decision on the theory that, although "one definition" of enhancement "could in isolation potentially refer to an increase in the amount of tribal land possessions," Opp.20, "'enhancement' does not carry [that] meaning" under §108(c)(5). *Id.* But the government's attempted rehabilitation of the panel's statutory interpretation illustrates how misguided it is.

Put simply: this case is not about choosing "one definition" of a term over another. All agree that 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.); *American Heritage Dictionary* 611 (3d ed. 1996) (defining "enhance" as "[t]o make greater, as in value, beauty, or reputation; augment"); *Black's Law Dictionary* 646 (10th ed. 2014) (defining "enhancement" as "[t]he act of augmenting"). Enhance is a broad term, which means to augment or increase an attribute of a person or thing, whether size, value, or otherwise.

"Enhancement" thus does not have two competing definitions, an increase *either* in value or size. It is not, for example, like the word "bank," which could mean either a financial institution or the side of a river. Under the "general-terms" canon, "general words"—such as enhancement—"are to be accorded their full and fair scope," not "arbitrarily limited." Scalia & Garner, *Reading Law: The Interpretation of Legal Texts* 101 (2012). That canon controls here. MILCSA allows the Tribe to use Fund interest to "enhance[] … tribal lands"—a phrase that naturally includes augmenting a variety of attributes of tribal lands, whether size, value, or amount. The D.C. Circuit's decision, however, manufactures a new, previously unknown definition of the term under which "enhance" means "to increase, but *only* in value." That is not how statutory interpretation works.

Setting aside that problem, the government is wrong to argue that its reading of "enhancement" is necessary to avoid rendering §108(c)(5)'s reference to "consolidation" superfluous. Opp.20. "Enhancement" and "consolidation" do different work in §108(c)(5). An enhancement increases the size or value of tribal lands, while consolidation "combine[s]" lands "into a single more effective or coherent whole." *New Oxford American Dictionary* 363 (2d ed. 2005). Obviously, not all enhancements would combine lands. And not all consolidations would increase the value or size of tribal landholdings. For example, Congress would have understood that the Tribe could use interest to fund a land exchange to consolidate lands by swapping a distant, larger piece of land for a smaller piece of land closer to existing tribal lands. Pet.App.69a-70a n.15.

This Court's review of the second question is warranted because the panel decision drains MILCSA's

land-replacement promise of force, *see* Part I, and is deeply flawed.

CONCLUSION

This Court should grant the petition.

Respectfully submitted.

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