No. 25-320

In the Supreme Court of the United States

STATE OF ALASKA, ET AL.,
Petitioners,

v.

UNITED STATES OF AMERICA, ET AL.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT

REPLY BRIEF FOR PETITIONERS

STEPHEN J. COX
Attorney General

JENNA M. LORENCE
Solicitor General

MARGARET PATON-WALSH
AARON C. PETERSON
Assistant Attorneys General
DEPARTMENT OF LAW
1031 W. 4th Ave., Ste. 200
Anchorage, AK 99501
(907) 269-5100

J. MICHAEL CONNOLLY
Counsel of Record
TAYLOR A.R. MEEHAN
STEVEN C. BEGAKIS
ZACHARY P. GROUEV
CONSOVOY MCCARTHY PLLC
1600 Wilson Blvd., Ste. 700
Arlington, VA 22209
(703) 243-9423
mike@consovoymccarthy.com

Counsel for Petitioners

December 19, 2025

TABLE OF CONTENTS

TABLE OF CITED AUTHORITIES

Cases

Statutes

Other Authorities

REPLY BRIEF

Respondents' briefs confirm that this Court should grant review. Tellingly, the United States declines to defend *Katie John* on the merits. For good reason: Alaska's navigable waters are not "public lands" under ANILCA. This interpretation is compelled by *Sturgeon* and was the original position of the United States more than 30 years ago. The Intervenors hold their ground, but they still have no answer to *Sturgeon* or the plain text of ANILCA. Their retreat to ANILCA's supposed "purpose" is the same argument that this Court rejected in *Sturgeon* and the Alaska Supreme Court rejected in *Totemoff*. If the navigable river in *Sturgeon* wasn't "public land," then the navigable river here isn't either.

Respondents cannot dispute the importance of the question presented, so they urge the Court to just look the other way. But this Court does not leave lower court decisions in place when they rely on outdated circuit precedent. Nor do the Ninth Circuit's *Katie John* precedents warrant special deference. Far from creating a "workable" standard, *Katie John* has wreaked havoc on the State's ability to preserve and protect its fishing resources. That Congress hasn't fixed *Katie John* is irrelevant. Congressional *inaction* in the face of a lower court decision isn't silent approval of that decision. If Congress wants to strip Alaska of its right to manage its navigable waters, it must say so expressly. Deferring to Congressional silence would be especially inappropriate here because the reasoning of *Katie John* is so obviously incompatible with *Sturgeon*.

The Intervenors alone raise vehicle arguments, but they are so meritless that the district court rejected them in two pages, and the Ninth Circuit ignored them entirely. Yet this Court need not even reach these arguments because the Ninth Circuit did not address them below. With the wrongness of *Katie John* now squarely presented for this Court for the first time, the Court should grant certiorari and reverse.

I. *Katie John* was wrongly decided and conflicts with *Sturgeon* and *Totemoff*.

1. The United States does not defend *Katie John* on the merits, arguing only that the Ninth Circuit correctly followed that past precedent because it was not "clearly irreconcilable" with *Sturgeon*. *See* USA-Br.21-22 (saying that *Sturgeon* "does not necessarily control" this case and that appropriations acts "can be seen as evidence" that Congress ratified *Katie John*). But the Ninth Circuit's "clear irreconcilability" test applies only to how that court handles its own precedent; it has no application here. *See, e.g.*, *AMG Cap. Mgmt., LLC v. FTC*, 593 U.S. 67, 71 (2021). The United States' silence as to the correctness of *Katie John* speaks volumes.[1]

[1] That the United States will not (it appears) defend *Katie John* on the merits creates no vehicle issues. The United States has not disavowed its intention to enforce ANILCA. *See INS v. Chadha*, 462 U.S. 919, 939-40 (1983). And the Intervenors will defend *Katie John*. Intervenors-Br.26-32; *United States v. Skrmetti*, 605 U.S. 495, 509 n.1 (2025); *see also* Dist.Ct.Dkt.154 at 3-10.

The Intervenors defend *Katie John*, but they still cannot reconcile its holding with *Sturgeon* and the statutory text. Under ANILCA, "public lands" are "lands, waters, and interests therein … the title to which is in the United States." 16 U.S.C. §3102(1)-(3). So, for *Katie John*'s reading of "public lands" to be correct, the United States must be able to have "title" to an "interest" in reserved water rights. But search Respondents' briefs; they never explain how this is possible. *Sturgeon* says it's not. Pet.25-26. Reserved water rights are "'usufructuary' in nature" and thus "'are not the type of property interests to which title can be held.'" *Sturgeon v. Frost*, 587 U.S. 28, 43-44 (2019) (quoting *Totemoff v. State*, 905 P.2d 954, 965 (Alaska 1995)).

Even assuming the United States could hold "title" to a reserved water right, *Katie John* requires one more textual leap: that an interest in reserved water rights gives the United States authority to regulate subsistence fishing. Respondents again cannot defend that inference in the wake of *Sturgeon*. Because a "reserved right, by its nature, is limited," this right can never give the United States "plenary authority over the waterway to which it attaches." *Id.* at 44. This "interest" would "merely enabl[e] the Government to take or maintain the specific 'amount of water'—and 'no more'—required to 'fulfill the purpose of [its land] reservation.'" *Id.* Because subsistence fishing does not "'deplet[e] or diver[t]' ... waters in the River," holding title to reserved water rights cannot authorize the general regulation of subsistence fishing or the particular subsistence fishing priority in Title VIII of ANILCA. *Id.*

Faced with these textual problems, Respondents rehash the Ninth Circuit's reasoning. But these arguments fare no better here. Pet.25-34. It is inconceivable that Congress intended for "public lands"—a defined term that is used more than 200 times throughout ANILCA—to have a fluctuating meaning across ANILCA's different titles. Pet.26-29. The purpose of ANILCA was *not* to regulate the State's navigable waters, *see* Pet.28-30, and regardless, *Sturgeon* already rejected the argument that ANILCA's supposed "purpose" can "'override [the] statute's operative language,'" 587 U.S. at 57 (cleaned up); Pet. 28. Nor did Congress ratify or approve of *Katie John* through two appropriations acts—an argument this Court already found unpersuasive in *Sturgeon*. Pet.30-33. And while the Court need not turn to the clear-statement rule given the statute's plain text, ANILCA unquestionably contains no "'exceedingly clear language'" supporting the convoluted interpretation adopted in *Katie John*. *Sackett v. EPA*, 598 U.S. 651, 679 (2023); Pet. 33-34; States-Br.9-11; Ass'n-Fish-Wildlife-Agencies-Br.6-8, 19-20.

2. Respondents cannot dispute that the Alaska Supreme Court's decision in *Totemoff* squarely conflicts with *Katie John*, so they argue that its reasoning was merely dicta. But these were no throwaway lines. The Alaska Supreme Court devoted more than eight pages to explaining why navigable waters are not "public lands" and why *Katie John* was wrong to conclude otherwise. *Totemoff*, 905 P.2d at 961-68. The Alaska Supreme Court also views its decision as binding. In *Totemoff*, it said, "we *hold* that navigable waters are generally not 'public lands' under ANILCA."

Id. at 968 (emphasis added); *see also James v. State*, 950 P.2d 1130, 1132 n.5 (Alaska 1997) ("In *Totemoff*[,] we *held* … that ANILCA does not apply to navigable waters overlying [lands] owned by the State." (emphasis added)). The Alaska Supreme Court plainly "relied on this conclusion of law" when resolving "'the facts before [the] court.'" *Buntin v. Schlumberger Tech. Corp.*, 487 P.3d 595, 601 (Alaska 2021); *see also Woods v. Interstate Realty Co.*, 337 U.S. 535, 537 (1949) ("Where a decision rests on two or more grounds, none can be relegated to the category of obiter dictum.").

That the conflict between *Totemoff* and *Katie John* is between courts with overlapping jurisdiction is all the more reason to grant review. *See, e.g.*, *Hagen v. Utah*, 510 U.S. 399, 409 (1994) (reviewing a "direct conflict between th[e] decisions of the Tenth Circuit and the Utah Supreme Court"). Because of *Katie John*, the State has declined to prosecute individuals in state court when their actions would have been legal in the Ninth Circuit. But this forbearance has not eliminated the confusion. Certain activities (like the hunting on a navigable water that occurred in *Totemoff*) remain illegal under state law. Alaskans should not have to roll the dice as to which court reviews the legality of their conduct. Eliminating this uncertainty strongly supports this Court's review.

II. Whether Alaska's navigable waters are "public lands" is a question of exceptional importance.

Respondents cannot dispute that the question presented is important. Pet.19-25. While every state

has a strong sovereign interest in controlling its navigable waters, *see* States-Br.8-11, none has a greater interest than the State of Alaska, Pet.19-21; AIDEA-Br.6-17. Alaska insisted on the right to control its navigable waters when it joined the Union, and its waters remain the lifeblood of the State's culture and economy. Pet.19-21. Alaska shouldn't be stripped of these rights lightly. Pet. 36-37.

Respondents urge the Court to close its eyes and not get involved "at this late date." USA-Br.17. None of their arguments for leaving bad precedent in place is persuasive. Respondents first assert (without evidence) that *Katie John* has created a "workable standard" for providing a subsistence priority. *Id.* Not so. *Katie John* has been an administrative nightmare for the State. Pet.22-23. To achieve its sustainability and subsistence goals, the State must manage the entire river system. Pet.22. But *Katie John* strips the State of authority as soon as the river flows through a federal conservation system unit. This "'balkanized regulatory regime'" has "led to overfishing within the conservation system unit and has deprived communities living upstream of an equal 'opportunity to share in the harvest.'" Pet.22-23. Respondents dispute none of this.

While the Intervenors acknowledge that the administration of Alaska's waters has been "messy" (to say the least), Intervenors-Br.23, they insist that federal regulators always "coordinat[e] closely with the State, and no federal closure has ever been done without state consultation," Intervenors-Br.22. The Intervenors cite nothing to support this statement because

it isn't correct. *See* CA9.ER-377 (federal government acknowledging that "consultation [with the State] is not always possible"). Indeed, federal orders *in this case* occurred without adequate consultation. *See, e.g.*, Dist.Ct.Dkt.9-3 at 7 (State learning about federal orders from the media). Despite the State's expertise in these areas, Pet.22, it is simply "being told what actions are going to be taken" on its waters. CA9.ER-389.

The State agrees that "[r]ural subsistence communities in Alaska have long depended on subsistence fishing in navigable waters as part of their traditional way of life." USA-Br.19. But overturning *Katie John* will not "deprive [them] of any real ability to engage in subsistence fishing." Intervenors-Br.28. Rural Alaskans will continue to have a legal priority to engage in subsistence fishing under state law; the only difference is that they will share that priority with non-rural residents (typically Alaska Natives and others with cultural connections to an area) who are able to return home to engage in subsistence fishing. Pet.23-24. Allowing these limited individuals to also participate in subsistence fishing has "no meaningful impact on subsistence fishing for rural residents." App.95a-96a. True, the State as a regulator is more likely to prevent overfishing within federal refuges and preserves, since Alaska law requires the State to provide subsistence fishing opportunities along the *entire* river system, not just within federal conservation system units. But this is a reason to grant the petition, not to deny it. Pet.22-24.

Respondents insist that Congress approves of *Katie John* because it has not amended ANILCA to override the Ninth Circuit's decisions. USA-Br.19-21; Intervenors-Br.29-30. But such "[c]ongressional silence is meaningless." Amy Coney Barrett, *Statutory Stare Decisis in the Courts of Appeals*, 73 Geo. Wash. L. Rev. 317, 335 (2005). A "host of explanations other than congressional approval of an opinion may account for legislative inaction." *Id.* "Equating the failure to act with agreement reflects a simple and complete misunderstanding of the legislative process." *Id.* at 336; Pet.31-32.

What Respondents are really seeking is for *Katie John* to be treated like it was a decision of this Court. But "[w]hatever the merits of statutory stare decisis in the Supreme Court," there is "no sound basis" for giving this heightened deference to lower court decisions. Barrett, *supra*, 318; *see Petteway v. Galveston Cty.*, 111 F.4th 596, 613 (5th Cir. 2024) (en banc). Circuit courts play a different role in our federal system, and their opinions lack the finality of this Court's decisions. If a lower court decision is wrong and the question is important, this Court should fix it.

Keeping *Katie John* in place because it's old would be especially inappropriate after *Sturgeon*. When this Court has overruled its own statutory precedent, one of the "primary reason[s] … has been the intervening development of the law." *Patterson v. McLean Credit Union*, 491 U.S. 164, 173 (1989). When a judicial opinion has "removed or weakened the conceptual underpinnings from the prior decision" or "rendered the decision irreconcilable with competing legal doctrines,"

this Court "has not hesitated to overrule an earlier decision." *Id.* *Sturgeon* has done so for *Katie John*, which was not on solid grounds in the first place, *see* Pet.7-11.

Respondents note that this Court denied certiorari in *Katie John I* and *Katie John III*. Of course, "[t]he denial of a writ of certiorari imports no expression of opinion upon the merits of the case." *United States v. Carver*, 260 U.S. 482, 490 (1923). More important, those cases had vehicle issues that aren't present here. Pet.35-36. *Katie John I* was an interlocutory decision, which the Court rarely reviews. Pet.35. *Katie John III* didn't address the question presented here at all, *see* Pet.36, and the United States (unlike here) made multiple procedural arguments for why the case was "an inappropriate vehicle for consideration of the" *Katie John* question, *see* BIO 22-23, *Alaska v. Jewell*, 2014 WL 690256 (U.S.). The United States also argued that "the *Katie John* cases were correct," *id.* at 23, a position it has now abandoned after *Sturgeon*.

III. There is no obstacle to this Court's review.

Intervenors (but not the United States) claim that there are "serious vehicle problems" because the State's *Katie John* argument is barred by issue preclusion and judicial estoppel. Intervenors-Br.2, 24-26. These arguments were rejected by the district court, App.57a-58a, and are so weak that the Ninth Circuit never addressed them, App.24a-25a. The State's *Katie John* argument is not barred by issue preclusion because, among other reasons, "*Sturgeon* constitutes a 'change in the legal context.'" App.57a; *see also*

CA9.Dkt.63.1 at 7-20. And it isn't barred by judicial estoppel because, among other reasons, "the State was not a party in *Sturgeon*." App.58a; *see also* CA9.Dkt.63.1 at 26-33.

Yet this Court need not even reach these issues because the Ninth Circuit did not address them below. Because the Court is "a court of review, not of first view," it need not consider arguments that were "not addressed by the Court of Appeals." *Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005). This rule holds true for the preclusion and estoppel arguments that the Intervenors raise here. *See, e.g.*, *Marshall v. Marshall*, 547 U.S. 293, 313 n.5, 315 (2006) ("The Court of Appeals ... did [not] address Pierce's arguments concerning claim and issue preclusion. These issues remain open for consideration on remand." (citation omitted)); *United States v. Locke*, 471 U.S. 84, 89 n.7 (1985) ("The District Court did not consider [the equitable] estoppel claim. … [W]e leave any further treatment of this issue … to the District Court on remand."). These arguments thus present no obstacle to this Court's review.[2]

Respondents make much of the fact that Alaska, under a different administration, argued in *Sturgeon* that *Katie John* shouldn't be disturbed. But the State's primary argument in *Sturgeon* was that "[t]he

[2] To the extent the Intervenors are asserting claim preclusion, *see* Intervenors-Br.25-26, that argument was not "properly raised in the Court of Appeals and was not addressed by that court," and so this Court need not address it. *Rogers v. Lodge*, 458 U.S. 613, 628 n.10 (1982); App.24a-25a. This new argument would fail in any event. CA9.Dkt.63.1 at 26; *see also id.* at 20-26.

Katie John decisions [were] not at issue in [Sturgeon's] appeal" and so this Court didn't need to "directly address the prior circuit holdings in order to resolve th[e] appeal." Alaska Amicus Br. 29, *Sturgeon*, 2018 WL 4063284 (U.S.). This Court correctly agreed, noting that the subsistence fishing provisions were "not at issue in th[e] case" and so there was no reason to "disturb the Ninth Circuit's holdings." *Sturgeon*, 587 U.S. at 45 n.2. The point of the State's brief was not that *Katie John* was correctly decided; it was that this Court shouldn't decide an issue that wasn't before it. *See* Alaska Amicus Br. 16-17, *Sturgeon*, 2018 WL 776096 (U.S.) (calling *Katie John* a "muddled" decision that shouldn't be "broaden[ed] … beyond the subsistence context"); *see also* Oral Arg. Tr. 30-31, *Sturgeon*, 2018 WL 5792149 (Nov. 5, 2018) (State declining to answer whether it "agree[s] with the *Katie John* decisions"). Indeed, the State's longstanding position has been that navigable waters are not public lands and that *Katie John* was wrongly decided. *See* Pet.8-11.

Now, for the first time, the *Katie John* issue is squarely presented for the Court's review. Pet.35-36. *Katie John* was wrongly decided, it is undermining sustainability and subsistence fishing in Alaska, and it should be overruled.

CONCLUSION

The Court should grant certiorari.

Respectfully submitted,

STEPHEN J. COX
Attorney General

JENNA M. LORENCE
Solicitor General

MARGARET PATON-WALSH
AARON C. PETERSON
Assistant Attorneys General
DEPARTMENT OF LAW
1031 W. 4th Ave., Ste. 200
Anchorage, AK 99501
(907) 269-5100

J. MICHAEL CONNOLLY
Counsel of Record
TAYLOR A.R. MEEHAN
STEVEN C. BEGAKIS
ZACHARY P. GROUEV
CONSOVOY MCCARTHY PLLC
1600 Wilson Blvd., Ste. 700
Arlington, VA 22209
(703) 243-9423
mike@consovoymccarthy.com

Counsel for Petitioners

December 19, 2025