

No. 26-388

IN THE
Supreme Court of the United States

SHARON AUBOL, ET AL.

Petitioners,

v.

ANDEAVOR LOGISTICS, L.P. ET AL.,

Respondent.

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

**BRIEF OF AMICI CURIAE INDIAN LAND
TENURE FOUNDATION, GREAT PLAINS
TRIBAL CHAIRMEN'S ASSOCIATION,
CHEYENNE RIVER SIOUX TRIBE, AND OGLALA
SIOUX TRIBE IN SUPPORT OF PETITIONERS**

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INTEREST OF AMICI CURIAE¹

Amici have a substantial interest in this case because the Eighth Circuit’s decision below threatens to deprive individual Indian landowners and Indian tribes of an essential incident of property ownership: the ability to exclude unauthorized occupants and seek judicial remedies for trespass. Amici are two organizations and two federally recognized Indian tribes with a unique interest and expertise related to Indian lands.

The Indian Land Tenure Foundation (“Foundation”) is a national nonprofit organization dedicated to ensuring that land within the original boundaries of every Indian reservation and other areas of high significance to Indian people is owned and managed by Indian people. The Foundation works to protect and strengthen Indian land ownership through education, legal reform, land recovery, and efforts to address longstanding problems associated with fractionated ownership of Indian trust lands by encouraging consolidation of fractionated interests. Since its establishment in 2002, the Foundation has developed a particularized expertise in the body of federal statutes, regulations, and policies governing Indian land ownership and tenure through its work and engagement with Indian tribes, individual Indian landowners, and other organizations throughout Indian Country.

¹ Per Rule 37.6, *amici curiae* state that no counsel for any party authored this brief in any part, and that no person or entity other than *amicus* or its counsel made a monetary contribution to fund its preparation or submission. Per Rule 37.2, counsel for all parties received timely notice of the intent to file this brief.

The Great Plains Tribal Chairmen’s Association (“Association”) is a coalition of 16 elected tribal leaders representing federally recognized Indian tribes in Nebraska, North Dakota, and South Dakota. The Association advocates for the protection of tribal treaty rights and fulfillment of the United States’ trust obligations to Indian tribes. It also works to advance national policy and legislative initiatives.

The reservations of the Association’s members alone include 2,894,621 acres of Indian trust allotments and approximately 39,334 allotted tracts. Tribal governments own at least a partial interest in 24,576 of those allotted tracts. See BUREAU OF INDIAN AFFS, GREAT PLAINS REGION—ACREAGE INVENTORY 1 (May 2025) (Great Plains Acreage Inventory) (summing the “Allotted Acreage” column for the 16 named Tribal entries in North Dakota, South Dakota, and Nebraska, excluding undesignated acreage); U.S. DEPT OF THE INTERIOR, TEN YEARS OF RESTORING LAND AND BUILDING TRUST, 2012–2022: LAND BUY-BACK PROGRAM FOR TRIBAL NATIONS 74–75 (Dec. 2023) (Land Buy-Back Report).

The Cheyenne River Sioux Tribe and Oglala Sioux Tribe are federally recognized Indian tribes and signatories to the Treaty of Fort Laramie of 1851, 11 Stat. 749 (Sept. 17, 1851), and the Great Sioux Nation Treaty of 1868, 15 Stat. 635 (Apr. 29, 1868). The Cheyenne River Indian Reservation in South Dakota contains more than 2.8 million acres of land, *Solem v. Bartlett*, 465 U.S. 463, 467 n.6 (1984), including 433,778 acres of Indian trust allotments, see Great Plains Acreage Inventory, at 1. The Pine Ridge Indian Reservation in South Dakota and Nebraska contains approximately 3.1 million acres of land, *Oglala Sioux*

Tribe v. United States, 674 F. Supp. 3d 635, 641–42 (D.S.D. 2023), including 999,840 acres of Indian trust allotments, see Great Plains Acreage Inventory, at 1. Amici tribes own at least a partial interest in 8,670 allotted tracts on their respective reservations. Land Buy-Back Report, at 72-74.

Amici seek to ensure that the federal courts remain open to Indian landowners seeking to defend their property rights.

INTRODUCTION AND SUMMARY OF ARGUMENT

Land ownership includes the power to defend one’s land against trespassers. Yet, for individual Indian landowners, a divided Eighth Circuit panel created a second class of property rights that doesn’t include this power. Its decision denies them a federal common law trespass action to enforce their possessory rights. The decision below weakens the ability of Indian landowners to reclaim their land from trespassers. For amici—tribal governments and organizations working to protect Indian lands and advance tribal self-determination—the stakes extend far beyond this case: restoring and consolidating Indian land ownership must carry with it the ability to protect the land and direct its use. This Court should grant review.

For the first century and a half of our nation’s existence, federal law and policy was aimed at acquiring or altering Indian land holdings to make way for national expansion. See, *e.g.*, General Allotment Act of 1887 (Dawes Act), ch. 119, 24 Stat. 388 (25 U.S.C. 334, *et seq.*). But that began to change in the early twentieth century. Congress enacted the

Indian Reorganization Act of 1934 (IRA), ch. 576, 48 Stat. 984, which prohibited the allotment of Indian lands and delegated authority to the Secretary of the Interior to acquire land to be held in trust for Indian tribes and individual Indians. See 25 U.S.C. 5101, 5108.

Congress and the federal courts have worked to ensure that Indian property rights have the same protections enjoyed by all other Americans. See *Hodel v. Irving*, 481 U.S. 704, 734 (1987) (“As the Secretary acknowledges, however, the Government’s plenary power over the property of Indians is subject to constitutional limitations.”) (Stevens, J. concurring) (cleaned up); *Cedar Point Nursery v. Hassid*, 594 U.S. 139, 147 (2021) (“The Founders recognized that the protection of private property is indispensable to the promotion of individual freedom.”). That includes the right of Indian landowners to consent, or withhold consent, to the possession or use of their lands. See, e.g., 25 U.S.C. 324, 5123(e), 5134.

Nevertheless, Andeavor argues that the Petitioners and other Indian landowners are relegated to second-class property ownership whereby they can possess lands, but cannot seek redress in federal courts on their own behalf to eject trespassers. In its view, Indian landowners must simply endure holdover tenants and grantees until they decide to leave or the Federal Government intervenes. See Andeavor C.A. Br. 54. The district court accepted this argument, stating that finding otherwise would “cheapen the rich history of aboriginal lands and constitute a rejection of the Supreme Court’s favored treatment of aboriginal title for two centuries.” *Chase*

v. *Andeavor Logistics, L.P.*, 686 F.Supp.3d 854, 871 (D.N.D. 2023).

Unfortunately, a divided panel of the Eighth Circuit has agreed with that view.

That decision diminishes the Petitioners' property rights and cheapens the value of their real estate. As Judge Grasz noted in dissent, "precedent does not require" this outcome. *Chase v. Andeavor Logistics, L.P.*, 165 F.4th 1102, 1127 (8th Cir. 2026).

By limiting the Petitioners' property rights, the divided panel has diminished their ability to use their lands to shape their own destiny and create their own economic opportunity. See, *Cedar Point Nursery*, at 147 ("This Court [has noted] that protection of property rights is necessary to preserve freedom and empowers persons to shape and to plan their own destiny in a world where governments are always eager to do so for them.") (cleaned up); *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 152 (1973) ("The intent and purpose of the Reorganization Act was to rehabilitate the Indian's economic life and to give him a chance to develop the initiative destroyed by a century of oppression and paternalism.") (cleaned up). The Eighth Circuit's decision virtually eliminates any credible threat of trespass enforcement, curbing Indian landowners' bargaining power when negotiating the terms of leases, rights of way, and other permits.

Amici submit this brief to explain how the Eighth Circuit's decision undermines statutes that Congress has adopted and amended over the past century to regulate the use of Indian lands and protect the right of Indian landowners to consent to the use of their

lands. The decision below is out of step with relevant opinions of this court, as well as recent decisions issued by federal courts of appeal. And its consequences are not limited to the litigants in this case. If left unaddressed, the Eighth Circuit's reasoning could jeopardize the property rights of individual Indian landowners and Indian tribes, diminish the value of Indian lands, and increase the burdens and potential liability of the United States.

Amici urge the Court to grant the Petition, reverse the decision below, and afford Indian landowners the simple dignity of having the ability to defend their property rights in the federal courts.

ARGUMENT

I. The Eighth Circuit's decision creates second class property rights for Indian landowners contrary to federal law.

The Court below held that the owners of Indian allotments (potentially including Indian tribes) do not have a cause of action to address trespass on their lands. *Chase*, 165 F.4th at 1117. In effect, once the owner of an Indian allotment consents to a lease, right-of-way, or other use of their land, they have accepted the risk that their lessees or grantees will remain indefinitely.

This holding is contrary to federal law. It is also inconsistent with the views of other circuit courts that have considered the rights of Indian landowners. This Court should grant the petition, reverse the decision below, and uphold the property rights of Indian landowners that Congress has sought to protect for the past century.

A. Congress has protected the right of landowners to consent to the use of their land, while leaving common law remedies intact.

This Court has consistently affirmed that Congress has the authority to protect Indian lands, and to regulate the disposition, possession, and use of Indian lands, including individual allotments. See *Hodel*, at 712 (noting Congress’s broad authority to regulate descent and devise of Indian trust lands); *United States v. Pelican*, 232 U.S. 442, 447 (1914)(stating that individual allotments continued to be under the jurisdiction of Congress); *Tiger v. Western Inv. Co.*, 221 U.S. 286, 316 (1911) (stating that it is within Congress’s power to require the Secretary of the Interior’s consent to alienation of certain allotments).

Congress has done just that. It has consistently safeguarded the right of Indian landowners to consent to the use of their land. It has enacted laws governing how third parties may obtain rights-of-way across Indian trust lands for different purposes, and delegated authority to the Secretary of the Interior to adopt regulations to carry out those laws. See 25 U.S.C. 311–328. Later amendments to those right-of-way statutes clarified that a right-of-way generally may not be granted across Indian trust lands without the consent of the Indian landowner and “just” compensation. 25 U.S.C. 324–325.

The IRA protects tribal lands and interests in lands by requiring constitutions adopted under the Act to vest in the tribe or its council the power to prevent their sale, disposition, lease, or encumbrance without tribal consent. 25 U.S.C. 5123(e).

In 1955, Congress passed a law regulating the leasing of Indian lands. Act of Aug. 9, 1955, Pub. L. No. 84-255, ch. 615, 69 Stat. 539 (25 U.S.C. 415). That law originally limited the term of leases to twenty-five years, but has been amended repeatedly to authorize specific tribes to lease their lands for longer periods of time, and to restore the ability of tribes to adopt their own laws governing how lands may be leased without further federal approval. See, *e.g.*, HEARTH Act of 2012, Pub. L. No. 112-151, § 2, 126 Stat. 1150–1152 (25 U.S.C. 415(h)). As with rights-of-way, Congress delegated authority to the Secretary of the Interior to adopt regulations to govern the leasing process.

These statutes are comprehensive and make clear that Indian lands generally cannot be encumbered, leased, mortgaged, possessed or used without the consent of Indian landowners and the Secretary of the Interior.² Tribes and individual Indian landowners must obtain the approval of the Department of the Interior (through the Bureau of Indian Affairs) to do anything of consequence with their lands. But the congressional lodestar for possessing or using Indian lands has been “consent.”

Between 2012 and 2024, the Department of the Interior amended its regulations governing leasing of Indian lands (25 C.F.R. Pt. 162), issuing rights-of-way across Indian lands (25 C.F.R. Pt. 169), and acquiring

² Congress has contemplated narrow circumstances where Indian land may be taken or used without consent, and enacted a statute authorizing condemnation of individually owned Indian trust lands for public purposes. See 25 U.S.C. § 357. Even in those circumstances, the Indian landowners must be compensated.

land in trust status for tribes and individual Indian people (25 C.F.R. Pt. 151). See 77 Fed. Reg. 72,440 (Dec. 5, 2012); 80 Fed. Reg. 72,492 (Nov. 19, 2015); 88 Fed. Reg. 86,222 (Dec. 12, 2023). Those regulations generally guide the Department to defer to tribal determinations about whether to acquire land in trust, and how leases and rights-of-way will be granted. They also confirm that the unauthorized use and possession of Indian lands constitutes a trespass. See 25 C.F.R. § 162.023 (“If an individual or entity takes possession of, or uses, Indian land without a lease and a lease is required, the unauthorized possession or use is a ***trespass***) (emphasis added); 25 C.F.R. 169.410 (“If a grantee remains in possession after the expiration, termination, or cancellation of a right-of-way* * *we may treat the unauthorized possession as a trespass under applicable law.”). The Department’s regulations also state that individual Indians may pursue their own remedies under applicable law. 25 C.F.R. 162.023 and 25 C.F.R. 169.413.

Congress built this regime upon a foundation of consent, but it did not speak directly to the question of remedies for trespassing on Indian lands. In doing so, Congress left federal common law intact to provide Indian landowners with the ability to defend their property rights. See *Cnty. Of Oneida v. Oneida Indian Nation of New York State*, 470 U.S. 226, 237–238 (1985) (explaining that the Nonintercourse Act of 1793 did not establish a remedial plan to address violation of Indian property rights, and that the statute does not express intent to preempt common law remedies) (*Oneida II*).

The Eighth Circuit’s decision below does violence to this entire scheme. By stripping Indian landowners of their ability to vindicate and enforce their property rights, the Eighth Circuit has effectively sanctioned the nonconsensual possession and use of Indian lands. This Court should grant the Petition to affirm that consent protections remain effective, even when an authorized occupant stays after its authorization expires.

B. As the dissent below correctly noted, judicial precedent does not require this outcome.

Congress has built an entire regulatory regime around the twin principles that third parties must receive the consent of Indian landowners to use their lands, and that they must provide compensation to do so. A trespass is the possession or use of property without consent. See Restatement (Fourth) of Property § 1.1 reporters’ note to cmt. b (Vol. 2) TD No 2 (A.L.I., Tentative Draft No. 2, 2021) (“...[L]ack of permission is inherent in the concept of a trespass.”) (citing Restatement (Second) of Torts § 158 cmt. c (A.L.I. 1965)). As Judge Grasz explained in dissent below, Supreme Court precedent recognizes that “Indians,” not just “Indian tribes,” can assert common law trespass claims. *Chase*, 165 F.4th at 1127.

Poafpybitty v. Skelly Oil Co., 390 U.S. 365 (1968), considered whether individual Indian landowners could bring claims on their own behalf to protect their property interests in trust lands. The *Poafpybitty* Court held:

The existence of the power of the United States to sue upon a violation of the lease

no more diminishes the right of the Indian to maintain an action to protect that lease than the general power of the United States to safeguard an allotment affected the capacity of the Indian to protect that allotment.

Id. at 373–374. This is consistent with the Court’s later observation in its landmark decision in *United States v. Mitchell*, 445 U.S. 535 (1980) that use of allotted lands was the responsibility of the Indian landowner: “Both of these sections [of the General Allotment Act] indicate that the Indian allottee, and not a representative of the United States, is responsible for using the land for agricultural or grazing purposes.” *Id.* at 542–543.

Oneida II recognized a common law right of action to enforce Indian property interests. The Court did not limit such claims to tribal governments. See 470 U.S. at 239–240 (“Nothing in the statutory formulation of [the Non-Intercourse Act] suggests that the **Indians’** right to pursue common-law remedies was thereby pre-empted.”) (emphasis added).

This Court’s precedents also establish that individual interests in Indian allotments are protected by the Constitution on at least three occasions. See *Choate v. Trapp*, 224 U.S. 665, 677 (1912)(stating that the rights of Indian landowners are protected by the Constitution “in the same way as other residents or citizens of the United States.”); *Hodel*, 481 U.S. at 717–718 (1987); *Babbitt v. Youpee*, 519 U.S. 234, 245 (1997). *Hodel* found that the individual Indian heirs could rely upon federal common law to protect the interests of their decedents

in individual allotments. See *Hodel*, 481 U.S. at 712 (“In short, permitting appellees to raise their decedents’ claims is merely an extension of the common law’s provision for appointment of a decedent’s representative.”).

It would be incongruent for individual Indians to have access to the federal courts to protect their property interests from impairment by the Federal Government, see *Hodel*, 481 U.S. at 717–718; *Youpee*, 519 U.S. at 245; and to have the right to sue to enforce those property rights under a lease *Poafpybitty*, 390 U.S. 373–374; but then lose the ability to protect their rights the moment a third party uses their land without consent. Controlling precedent does not require that interpretation of federal common law. See *Chase*, 165 F.4th at 1127 (Grasz, J. dissenting). But that is precisely what follows from the Eighth Circuit’s decisions below.³

Several other courts of appeals have expressed a different understanding that is consistent with the statutes and policies of Congress, and common law Indian property rights.

During the pendency of this litigation, the Seventh Circuit considered a tribal trespass claim stemming from an expired right-of-way on individual allotments in which a tribe had an ownership interest in *Bad*

³ In its brief to the Eighth Circuit, Andeavor effectively urged the Court to give effect to the goal of the allotment policy “to separate the individual Indian from the tribe in an effort to weaken tribal power.” Andeavor C.A. Br. 24 (quoting 1 Cohen’s Handbook of Federal Indian Law, § 1.03 (2023 ed.)(cleaned up). Congress abandoned this policy long ago, and nothing in this Court’s precedent requires the courts to revive this policy to weaken the property rights of Indian landowners.

River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Rsrv. v. Enbridge Energy Co., Inc., 184 F.4th 874 (7th Cir. 2026) (*Bad River Band*). There, the Seventh Circuit noted that the common law right to enforce aboriginal land rights extended to tribal ownership interests in allotments. *Id.* at 886. This acknowledgment is important, because the Tribe in *Bad River* was enforcing ownership interests created by statute, rather than its aboriginal title. See *id.* at 885 (noting that the Tribe acquired interests in allotted parcels under the Indian Land Consolidation Act (ILCA), Pub. L. No. 97-459, 96 Stat. 2515 (1983)).

The Petitioners cite several cases in their petition that demonstrate a conflict among the courts of appeals. Pet. for Cert. 28 – 29. Two of the cited Tenth Circuit decisions are worth emphasizing.

Davilla v. Enable Midstream Partners L.P., 913 F.3d 959 (10th Cir. 2019) involved facts very similar to those in this case. In *Davilla*, individual Indian landowners filed a suit in federal district court to enjoin a trespass where a private third party was operating a pipeline across the allotments following the expiration of an easement. *Id.* at 962. The Tenth Circuit noted, “...although no act of Congress expressly creates a right of action for trespass on Indian allotted land, the parties agree such a right exists.” *Id.* at 965. It ultimately held that “federal common law” governed the resolution of the landowners’ claims. *Id.*

Likewise, in *Nahno-Lopez v. Houser*, 625 F.3d 1279 (10th Cir. 2010), the Tenth Circuit held that trespass claims brought by individual Indian landowners could be heard in the federal courts. It noted that a federal statute granting jurisdiction over

lawsuits involving the interests of allottees “does not create a cause of action or a standard for liability.” *Id.* at 1281 (citing 25 U.S.C. 345). Nevertheless, the Tenth Circuit held that the landowners could advance a common-law trespass claim, and that section 345 supplies the federal courts with jurisdiction to hear such claims. *Id.*

The Petitioners have cited several decisions from the Ninth Circuit that diverge from the Eighth Circuit’s decision below. In addition to those cases, the Ninth Circuit has applied common law principles to determine the remedies for a county government’s trespass on individually owned allotments. See *Hammond v. County of Madera*, 859 F.2d 797 (9th Cir. 1988). While *Hammond* did not analyze the extent to which Indian landowners have a cause of action, the decision rests upon that assumption. See *id.* at 800 (“The District Court for the Eastern District of California granted [appellants’] motion, ruling that Madera County was liable for a common law trespass.”).

Together, the Eighth, Ninth, and Tenth Circuits are home to hundreds of federally recognized Indian tribes and some of the largest reservations in the country. The divergent application of federal common law to Indian property rights across these circuits will only add to the transaction costs for Indian homeowners, farmers and ranchers, and businessowners looking to improve the lives of people in their communities. To the extent the Eighth Circuit’s view takes root, the monetary value of those property rights will be severely diminished — limiting economic opportunity in some of the communities that need it the most. Protecting the value of those

property rights would do nothing to “cheapen the rich history of aboriginal lands,” or otherwise reject this Court’s understanding of aboriginal title. See *Chase*, 686 F.Supp.3d at 871.

The Court should resolve the different views among the courts of appeals and protect the ability of Indian landowners to protect their lands themselves.

II. The decision below threatens tribal and individual Indian property rights nationwide.

The divided Eighth Circuit’s decision below has the potential to leave many Indian tribes and individual Indian landowners across the United States with no recourse to protect their lands from trespassers.

The Court below laid out a two-element test for Indian landowners to bring a common law trespass claim in federal courts, based upon its interpretation of this Court’s decision in *Oneida Indian Nation of New York v. County of Oneida*, 414 U.S. 661 (1974) (*Oneida I*). First, the plaintiff must be an Indian tribe. Second, the claim must assert possessory interests under aboriginal title. See *Chase*, 165 F.4th at 1116. (“[F]ederal common law claims arise when a tribe asserts a present right to possession based on their aboriginal right of occupancy which was not terminable except by act of the United States) (quotation omitted).

If this is indeed the standard for asserting common law trespass claims in federal court, many Indian *tribes* could also lose the ability to seek remedies for trespass.

Indian tribes themselves often own shares of individual allotments. In fact, Congress has expressly authorized and encouraged Indian tribes to acquire interests in individual allotments and require the Secretary to hold those interests in trust. 25 U.S.C. 2216(c). Tribal ownership interests are often shared with individual Indian landowners. The Eighth Circuit’s decision could deny Indian tribes the ability to seek remedies for trespass occurring on allotments where they share ownership with individual Indians, because they may be said to occupy the land under “federal statutory limitations”. This would undermine the value of land consolidation under the ILCA: the more fractionated interests purchased by the tribe in a given parcel of allotted land, the less likely that the tribe would be able to legally protect the parcel from third party encroachment through a trespass action. Such an outcome is contrary to Congress’s intent in enacting the ILCA.

The challenges of fractional ownership of Indian allotments have confounded individual Indians, Indian tribes, and the Federal Government for nearly a century, and Congress has repeatedly amended ILCA to attempt to address these problems. See MARIEL J. MURRAY, CONG. RSCH. SERV., R48360, *TRIBAL LANDS: OVERVIEW AND ISSUES FOR CONGRESS* 22–23 (2025). The United States has settled litigation that grew out of the near impossibility of administering its trust obligations to individual Indian landowners. See Claims Resolution Act of 2010, Pub. L. No. 111-291, tit. I, 124 Stat. 3064, 3066–3076.

The Eighth Circuit’s holding below could leave both individual Indians and Indian tribes without the

ability to enforce their own property rights against private trespassers on allotments, resulting in an even greater burden on the Bureau of Indian Affairs to protect those rights. As history has repeatedly shown, this is a recipe for chaos (and potential federal liability).

Indian tribes may have exclusive beneficial ownership of lands that no longer retain aspects of their aboriginal title. This Court has explained that lands that have passed out of tribal ownership do not automatically regain their Indian country status when reacquired by Indian tribes. See *City of Sherrill v. Oneida Indian Nation of New York*, 544 U.S. 197, 219 (2005) (“[T]his Court has recognized the impracticability of returning to Indian control land that generations earlier passed into numerous private hands.”) (citing *Yankton Sioux Tribe v. United States*, 272 U.S. 351, 357 (1926)).

The IRA authorizes the Secretary of the Interior to acquire land in trust for both Indian tribes and individual Indians, and to proclaim new Indian reservations. 25 U.S.C. 5108, 5110. Where a tribe reacquires land owned in fee title by non-Indians pursuant to the IRA, the Eighth Circuit’s decision below could deprive it of the ability to bring a federal lawsuit to enforce its property rights if it cannot first establish aboriginal title to the land.

The scale of the potential problem is enormous. Moreover, the sheer volume of leases and rights-of-way on Indian lands over decades, combined with federal staffing shortages and inconsistent record-

keeping, means that the scale and scope of trespassing on Indian lands is unknown.⁴

The United States holds trust title to approximately 67 million acres of land across the United States for Indian tribes and individuals. U.S. GOV'T ACCOUNTABILITY OFF., GAO-24-105875, TRIBAL ISSUES: BUREAU OF INDIAN AFFAIRS SHOULD TAKE ADDITIONAL STEPS TO IMPROVE REAL ESTATE SERVICES 6 (2023). That includes 10 million acres of land that was once allotted by Congress, portions of which are owned by individuals and Indian tribes. *Id.* The Bureau of Indian Affairs often acquires additional lands in trust status for Indian tribes pursuant to its authority under the IRA – much of which is used for housing and economic development. See U.S. Dep't of the Interior, Bureau of Indian Affs., Dear Tribal Leader Letter on 2020 Indian Affairs Accomplishments (Sept. 30, 2020).

The title to a significant portion of this land may no longer qualify as “aboriginal title.” As a result of the Eighth Circuit’s decision below, trespass enforcement responsibility on those lands may fall

⁴ Congress enacted the Indian Claims Limitation Act of 1982, Pub. L. No. 97-394, 96 Stat. 1966, 1976-1977, which required the Secretary of the Interior to publish in the Federal Register lists of potential claims accruing to Indian tribes and individual Indians that had been identified by or submitted to the Department of the Interior. In publishing one such list, the Department explained that “[t]he vast majority of the listed claims involve trespasses to Indian land.” Statute of Limitations Claims List, 48 Fed. Reg. 51,204 (Nov. 7, 1983). Congress extended the applicable limitations periods until after the Secretary rejected a claim or submitted legislation or a legislative report to Congress to resolve it. 28 U.S.C. 2415(a)–(b). Accordingly, those claims may be viable today.

entirely on the Bureau of Indian Affairs. Regardless of its willingness to take enforcement action, the Bureau of Indian Affairs simply is not capable of keeping watch.

Felix Cohen described the challenges associated with federal administration of trust responsibilities in 1941. Felix S. Cohen, *Handbook of Federal Indian Law* 216 (1st ed. 1941) (describing the “administrative impossibility created by the allotment system.”). Two decades later, this Court noted the limitations on the Federal Government’s ability to enforce allottees’ property rights in *Poafpybitty*. See *Poafpybitty*, 390 U.S. at 374 ([T]he Bureau of Indian Affairs* * *is faced ‘with an almost staggering problem in attempting to discharge its trust obligations with respect to thousands upon thousands of scattered Indian allotments.’) (quoting H.R. Rep. No 82,2503 at 23 (1952)). Forty-three years after *Poafpybitty*, the Department of the Interior’s Inspector General testified before the House Committee on Oversight and Government Reform that there were “gross program inefficiencies” related to tribal land management at the Bureau of Indian Affairs, and that fractionation of land presents complex challenges. *Regulatory Barriers to American Indian Job Creation: Hearing Before the Subcomm. on Tech., Info. Pol’y, Intergovernmental Rels. & Procurement Reform of the H. Comm. on Oversight & Gov’t Reform*, 112th Cong. 5 (2011) (statement of Mary L. Kendall, Acting Inspector General, U.S. Department of the Interior). This has been a constant challenge for the Bureau of Indian Affairs for nearly a century.

The Government Accountability Office (GAO) has published several reports in recent years highlighting

the Bureau of Indian Affairs’ challenges in maintaining accurate real estate records and sufficient staffing. For example, in 2015 the GAO reported that the BIA was unable to verify ownership of mineral resources and noted an instance of Indian minerals being developed without an approved lease. See, U.S. GOV’T ACCOUNTABILITY OFF., GAO-15-502, INDIAN ENERGY DEVELOPMENT: POOR MANAGEMENT BY BIA HAS HINDERED ENERGY DEVELOPMENT ON INDIAN LANDS 19 (2015). It stated, “BIA does not have the data it needs to verify ownership of some oil and gas resources, easily identify resources available for lease, or identify where leases are in effect,” as called for in Secretarial Order 3215 and internal guidance. *Id.* at 18.

In 2023, the GAO reported that staffing shortages at the Bureau of Indian Affairs led to an inability to consistently meet regulatory deadlines for processing leases and rights-of-way, and that critical information was missing from its real estate management system. U.S. GOV’T ACCOUNTABILITY OFF., GAO-24-105875, TRIBAL ISSUES: BUREAU OF INDIAN AFFAIRS SHOULD TAKE ADDITIONAL STEPS TO IMPROVE TIMELY DELIVERY OF REAL ESTATE SERVICES 23–25 (2023). A separate 2024 GAO report indicated that the Bureau of Indian Affairs and tribes “do not have the information needed to understand the risk the Tribes, and potentially the federal government, face if [oil and gas] lessees do not plug and reclaim the wells.” U.S. GOV’T ACCOUNTABILITY OFF., GAO-25-106307, OIL AND GAS: BUREAU OF INDIAN AFFAIRS COULD IMPROVE LEASE MANAGEMENT OF TRUST AND RESTRICTED LAND 34 (2024).

This history shows that, despite the considerable efforts of Indian tribes, Congress, and federal agencies, management of Indian lands is extraordinarily difficult.

Even in instances where trespasses are discovered, tribes and individual Indians can wait years for the Federal Government to act – sometimes leading to conflict on the ground in local communities. See *United States v. Town of Lac du Flambeau*, 797 F.Supp. 3d 894 (W.D. Wisc. 2025) (describing a ten-year delay between the expiration of a right-of-way and federal enforcement action following a tribal blockade of the right-of-way) (*Lac du Flambeau*). This problem will compound as a result of staff reductions at the BIA. U.S. Gov’t Accountability Off., GAO-26-108673, INDIAN AFFAIRS: INFORMATION ON 2025 WORKFORCE REDUCTIONS (2026). The Federal Government has proven an unreliable protector in this regard.

Without the ability to defend their property rights, Indian landowners will be at the mercy of their lessees and grantees. Even where a lessee or grantee seeks to negotiate for an extended period to operate on Indian lands, the lack of a credible threat of enforcement will dramatically reduce the bargaining power of Indian landowners – diminishing their ability to receive fair compensation for the use of their lands. See *e.g.*, *Davilla*, 913 F.3d at 976 (“In particular, why should the Indian landowners have less bargaining power to negotiate a new easement price than do the other landowners, who can rely on Oklahoma state law when Enable trespasses on their land?”) (Hartz, J. concurring in part and dissenting in part); *Water Wheel Camp Recreational Area, Inc. v.*

LaRance, 642 F.3d 802, 819 (9th Cir. 2011) (“If tribes lacked authority to evict holdover tenants and their agents, tribes would be discouraged from entering into financially beneficial leases with nonmembers for fear of losing control over tribal land.”) (*Water Wheel Camp*).

III. The Court should grant the petition without delay.

The problems associated with trespass on Indian lands are not going away anytime soon. The recent spate of cases in federal courts—*Swinomish Indian Tribal Cmty. v. BNSF Ry. Co.*, 951 F.3d 1142 (9th Cir. 2020); *Water Wheel Camp*, 642 F.3d 802; *Davilla*, 913 F.3d 959; *Bad River Band*, 184 F.4th 874; *Lac du Flambeau*, 797 F.Supp. 3d 894—emphasizes this fact. Many of these cases involve large sums of money (as does this case). Without clarity from this Court, Indian landowners and others will continue to meet each other in the courtroom to fight over who gets to possess Indian lands.

Indian landowners depend on their ability to generate income from their lands. Many landowners cannot afford the cost of hiring attorneys to guard their property rights, which will result in their lands being unproductive. This holds especially true for individual Indian landowners. The longer the Eighth Circuit’s rationale is applied to these types of disputes, the greater the harm that will come to Indian landowners. Clarity is needed.

CONCLUSION

For the foregoing reasons, amici curiae respectfully urge this Court to grant the petition for certiorari.

Respectfully submitted,

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