Nos. 05-982 and 05-978

In The Supreme Court of the United States

CAYUGA INDIAN NATION OF NEW YORK, et al.,

Petitioners,

v.

GEORGE PATAKI, GOVERNOR, et al.,

Respondents.

UNITED STATES,

Petitioner,

v.

GEORGE PATAKI, GOVERNOR, et al.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

AMICUS BRIEF OF ST. REGIS MOHAWK TRIBE AND MOHAWK COUNCIL OF AKWESASNE IN SUPPORT OF PETITIONS FOR A WRIT OF CERTIORARI

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INTEREST OF AMICI

The St. Regis Mohawk Tribe and the Mohawk Council of Akwesasne ("Amici") are two of the three Mohawk plaintiffs with a land claim pending before the Northern District of New York, a claim similar to that filed by the Cayuga Indian Nation and the Seneca-Cayuga Indian Tribe. *See Canadian St. Regis Band of Indians v. New York*, 82-cv-783, 82-cv-1114, 89-cv-829. Amici are likely subject to the Second Circuit's ruling on the Cayuga claims and have an interest in this Court's review of this case. Review of the decision is of extraordinary importance to Amici and all similarly situated tribes seeking a monetary remedy for past trespass on Indian lands. Amici file this brief in support of the petitions for writ of certiorari.[1]

REASONS FOR GRANTING THE PETITION

Review should be granted because the Second Circuit's ruling conflicts with 28 U.S.C. § 2415(b), which sets forth the statute of limitations for Indian claims for money damages, and this Court's interpretation of that statute in *County of Oneida v. Oneida Indian Nation*, 470 U.S. 226 (1985) ("*Oneida II*").

When Congress enacted 28 U.S.C. § 2415(b) and its amendment, the Indian Claims Limitation Act of 1982, 28

[1] Counsel of record for all parties have consented to the filing of this Brief and their consents are filed herewith. No counsel for any party authored this brief in whole or in part, and no one other than amici made any monetary contribution to the preparation or submission of this brief. The St. Regis Mohawk Tribe is a federally recognized tribe. The Mohawk Council of Akwesasne is a tribal government recognized by the government of Canada.

U.S.C. § 2415 note, it imposed for the first time a statute of limitations on tribes and the federal government for Indian land claims for trespass damages. The statute set the deadline for the filing of specific listed Indian claims for money damages and defined the accrual dates for these Indian claims as of the date of the enactment of § 2415. This Act is key in determining whether tribes have the current right to pursue land claims without regard to the operation of the equitable doctrine of laches.

The Indian Claims Limitations Act was enacted after a lengthy policy debate regarding Indian land claims. Congress was well aware of the nature of the claims, the fact that they were old, and the fact that they could have an impact on local communities. Congress also fully understood that Eastern land claims were involved in this effort and, indeed, there are specific references throughout the record to claims pending or about to be filed in New York, including claims for the Cayuga, the Oneida, and the St. Regis Mohawk Tribe. Faced with a choice between leaving tribes without a remedy for violations of federal statutes and treaties, or disturbing the expectations of present-day land owners, Congress opted to preserve the judicial remedy for the tribes. The Second Circuit decision conflicts with, and indeed dismisses out of hand, this very clear and carefully crafted statutory framework Congress devised under § 2415. The Executive and Legislative Branches spent millions of dollars and worked for over 15 years to identify and preserve possible Indian claims. The judicial branches have spent over 30 years addressing these same claims on the assumption that some remedy was due. The Second Circuit's decision to dismiss the same claims on laches grounds renders these efforts a complete waste of time and resources.

The Second Circuit need not have reached this point had it adhered to this Court's holding in *Oneida II* which found that Congress, having spoken in § 2415, precluded the application of common law time bars, such as the borrowing of the state statute of limitations to such claims. This Court reasoned that "[i]t would be a violation of Congress' will were we to hold that a state statute of limitations period should be borrowed in these circumstances." *Oneida II*, 470 U.S. at 244. Yet, the Second Circuit refused to apply the *Oneida II* analysis. In so doing, it violated the principle, which is fully supported by controlling decisions of this Court, that when Congress specifically addresses by statute a question previously governed by common law, the statute controls. *See City of Milwaukee v. Illinois and Michigan*, 451 U.S. 304, 313 (1981); *Middlesex Cty. Sewerage Auth. v. Nat'l Sea Clammers Ass'n*, 453 U.S. 1, 11 (1981); *Mobil Oil Corp. v. Higginbotham*, 436 U.S. 618, 625 (1978).

ARGUMENT

A. Review Is Warranted Since Congress Addressed the Statute of Limitations for These Claims When Congress Enacted 28 U.S.C. § 2415 and the Indian Claims Limitation Act of 1982.

1. Claims on Behalf of Indian Tribes Had No Limitations Period in Law or Equity Prior to the Passage of 28 U.S.C. § 2415.

Prior to 1966, the United States was not subject to any statute of limitations on claims at law including

Indian claims.[2] Perceiving an inequity, in 1966 Congress enacted 28 U.S.C. § 2415, which set forth for the first time a general statute of limitations for claims made by the United States in contract or tort.[3] The law provides for a six-year statute of limitations measured from the accrual date set by the Act. Section 2415(g) provides that "[a]ny right of action subject to the provisions of this section which accrued prior to the date of the enactment of this Act shall, for purposes of this section, be deemed to have accrued on the date of enactment of this Act." 28 U.S.C. § 2415(g). This language recognizes that claims may have factually accrued much earlier but since the United States was not subject to a limitations cut off, that accrual of

[2] When Congress enacted § 2415, it was considered settled law that neither the statute of limitations nor laches applied to the United States unless Congress had clearly manifested an intention to the contrary. In *United States v. Nashville, C. & St. L. Ry. Co.*, 118 U.S. 120 (1886), this Court considered whether limitations barred an action by the United States to protect securities that were being held in trust by the United States on behalf of the Chickasaw Nation. The Court found the United States was asserting its sovereign rights and that protection of tribal trust assets was "a public use in the highest sense." *Id.* at 126. As such the U.S. was not bound by any statute of limitations "unless congress has clearly manifested its intention that they should be so bound." *Id.* at 125 (citations omitted). In *United States v. Insley*, 130 U.S. 263 (1889), this Court made it clear that, "[t]his doctrine is applicable with equal force, not only to the question of a statute of limitations in a suit at law, but also to the question of laches in a suit in equity." *Id.* at 266 (citing *United States v. Beebe*, 127 U.S. 338 (1888)); *see also Societe Suisse Pour Valeurs De Metaux v. Cummings*, 99 F.2d 387, 395 (D.C. Cir. 1938), *cert. denied*, 306 U.S. 631 (1939) ("We think there is no basis for the claim of laches on the part of the government. No rule is better established than that the United States are not bound by limitations or barred by laches where they are asserting a public right.").

[3] H.R. REP. NO. 96-807, at 3 (1980), *as reprinted in* 1980 U.S.C.C.A.N. 206, 208.

facts had no effect. The statute addressed this problem by providing a time certain from which claims of the United States had to be filed by deeming those claims accrued as of the date of the Act.

Generally, the United States has a trust duty to protect Indian land and this duty includes filing suit when necessary to vindicate Indian land rights under federal law.[4] In 1972, as the initial statute of limitations date approached, the Department of the Interior ("DOI") realized that many substantial Indian claims would be time barred. These Indian claims had not been prosecuted by the federal government despite its trust duty to do so. Once it assessed the situation, the Department asked that the limitations period be extended so that some "very complicated and substantial claims for damages" not become barred. S. REP. NO. 92-1253 (1972), *as reprinted in* 1972 U.S.C.C.A.N. 3592, 3593. The Department feared that, without the extension, it could be liable for a breach of trust for failing to pursue claims on behalf of its Indian wards.[5]

[4] *See* discussion of federal trust duty in regard to these claims in H.R. REP. NO. 96-807, at 2-3 (1980), *as reprinted in* 1980 U.S.C.C.A.N. 206, 207-208.

[5] *See*, *e.g.*, H.R. REP. NO. 96-807, at 4 (1980), *as reprinted in* 1980 U.S.C.C.A.N. 206, 209 ("Finally, it was pointed out that if the statute is not extended, those Indians whose claims would be barred by the statute may have a cause of action against the United States for a breach of its fiduciary duty as trustee for the Indians.").

2. The Government Expended Millions of Dollars and Years of Effort to Investigate Newly Limited Claims, and It Extended the Limitations Period to Preserve Them.

From that moment, a massive effort was undertaken by the Department to identify potential Indian claims and to further determine if the United States needed to file claims prior to the limitations deadline. Evidence was collected throughout the country and litigation reports were prepared by the Department for consideration by the Department of Justice ("DOJ").[6] One major concern was that without this assessment, and without the extension of the statute, protective lawsuits would have to be filed to preserve the claims and to carry out the trust responsibility, a result that would impact thousands of individuals[7]

[6] *See*, *e.g.*, H.R. REP. NO. 95-375, at 3 (1977), *as reprinted in* 1977 U.S.C.C.A.N. 1616, 1618 (" . . . hundreds of the pre-1966 claims are still being researched and identified and cannot all be filed by July 1977."); S. REP. NO. 96-569, at 8 (1980) (An "all-out search . . . was conducted in the summer of 1979. By the end of the summer we had uncovered a large number of potential claims, over 4,500. The potential claims continued to arrive, and by December 1, 1979, our count of identified potential claims reached a grand total of 9,768. * * * We managed to resolve over 2,700 of the grand total mentioned above either by rejection or by successful resolution of the claim to the benefit of the Indian claimants. To date we have referred about 100 litigation reports to the Department of Justice covering about 2,000 claims.")

[7] *See*, *e.g.*, *Statute of Limitations Extension for Indian Claims: Hearings before the U.S. Senate Select Comm. on Indian Affairs on S. 1377*, 95th Cong. 69 (May 3 and 16, 1977) (hereafter "1977 Hearings") (statement of Chairman Abourezk) (Because the statute might lapse, "the Government is presently preparing to file as many claims as possible. The effect of this approach will undoubtedly result in economic hardship in many communities . . . due to the clouded title which will follow the institution of these lawsuits."); 126 CONG. REC. 5746 (1980) (statement of Rep. Mitchell) ("The failure to extend the statute of

(Continued on following page)

and in many instances unnecessarily so since, once investigated, many claims were rejected as without merit.[8] Congress extended the limitations period three times to December 31, 1982, giving the DOI and the DOJ over fifteen years to identify Indian claims so that they would not be time barred.

3. Congress Was Aware of the Nature of the Claims and Acted to Preserve Them.

When addressing how § 2415 would apply to Indian claims, Congress acted at a time when the Eastern land claims based on violations of the Nonintercourse Act were percolating through the courts. This Court had decided *Oneida I* in 1974, which for the first time recognized the right of tribes to sue for violations of the Nonintercourse Act, 25 U.S.C. § 177. *Oneida Indian Nation v. County of Oneida*, 414 U.S. 661 (1974). Claims had been filed in Maine. The record before Congress was replete with references to the Eastern land claims and Congress understood that the claims were controversial, dating back hundreds of years. Yet, Congress never expressed any doubts that these claims remained untouched by any time

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limitations would mean that landowners will be dragged into years of burdensome and costly litigation.")

[8] S. REP. NO. 96-569, at 5 (1980) ("Failure to extend the time limits now provided will, unnecessarily, bar many meritorious claims of Indian tribes and individuals; it will cause the filing of a multitude of lawsuits which might be rejected if adequate time is allowed for administrative review on the merits; and it will deprive the United States of adequate opportunity to negotiate settlements outside of court."). As of 1980, over 4,100 claims were rejected by the DOI "as worthless." H.R. REP. NO. 96-807, at 9 (1980), *as reprinted in* 1980 U.S.C.C.A.N. 206, 213.

bar. Instead, Congress weighed the nature of the claims against the right of the Indians to have their day in court and chose to give the tribes an opportunity to pursue them.

a. Discussion of Eastern Land Claims. When asked in hearings the nature of the claims being considered by the Department, then-Interior Solicitor Leo Krulitz testified, "Probably the largest and most complex are the land claims." 1977 Hearings at 6. Mr. Krulitz also included in the record a list of claims that would be barred by the statute absent an extension. This list includes claims for the Oneida, the Cayuga and "On behalf of: St. Regis Mohawk Tribe; Claim: Non-Intercourse Act claim for recovery of tribal lands; Defendants: New York and individual titleholders." *Id.* at 24. *See also id.* at 33 (testimony of Asst. Attorney General Peter Taft, DOJ) ("[I]f the statute is not extended, we will have no choice but to file this very massive lawsuit in Maine and perhaps similar ones in New York, which we are now working on."). Representative William Cohen noted in 1977 that major land claims were being considered, including claims for the St. Regis Mohawks, the Oneida, and the Cayuga. 123 CONG. REC. 22,165 (1977).

In 1980, Forrest Gerard, then-Assistant Secretary for Indian Affairs, stated in a letter to the Senate Committee on Indian Affairs, that "The so-called eastern land claims, like many of the smaller land title cases, have tort damage aspects subject to the statute of limitations. These claims are also included in our claims program. This committee is well aware of the magnitude of the eastern land claims and the effect such claims are having in the jurisdictions where they may be litigated." S. REP. NO. 96-569, at 9 (1980).

b. Discussion of the Age of the Claims. One of the important issues cited by the DOI in recommending an extension of the statute of limitations was the complication of factual and legal development for claims that "go back to the 18th and 19th centuries." *See* H.R. REP. NO. 95-375, at 6 (1977), *as reprinted in* 1977 U.S.C.C.A.N. 1616, 1621 (letter from the DOI stating the agency's views). During the debate, Representative Danielson noted that "as recently as 1966 there was no statute of limitations whatever upon actions brought by the U.S. Government on behalf of its wards, the Indians, none whatsoever. A claim could be 1 year old, or 10 years old, or 50 years old, or 100 years old. The statute of limitations did not run against the U.S. Government in actions which it brought." 126 CONG. REC. 5744-5745 (1980).

On the House floor, in 1977, Representative Foley argued against the extension of the limitations period on the ground that "[l]ong after the statute of limitations would have barred any possible actions for trespass . . . we are keeping alive Indian claims, and we are allowing their resuscitation and indeed their prosecution by the full weight of the Federal Government . . . " 123 CONG. REC. 22,500 (1977). He further stated that "I believe that even among those who for various reasons feel compelled to support the bill are concerned about the basic inequity and injustice of reaching back as far as 180 years in prosecuting Indian claims that long ago would have been extinguished by any other rule of law against any other citizens in this country." *Id.* at 22,502. This sentiment did not prevail.

The prevailing sentiment was articulated by Representative Weiss who supported the bill because "as a result of the numerous injustices suffered by American Indians

during the last 150 years – many at the hands of the American Government – it is incumbent on the United States to give these people – our country's first inhabitants – a full chance to redress their grievances. . . .[T]his measure does not side with the Indian nations on these claims; it merely helps assure that these claims are decided fairly and equitably." *Id.* at 22,171 (statement of Rep. Weiss). Similarly, Representative Risenhoover stated, "We should not let this artificial, man-made barrier – the statute of limitations – run out until we are satisfied that all claims are fully reviewed and until this Government has faithfully performed its stewardship." *Id.* at 22,504.

c. Discussion of the Local Impacts. The fact that these lawsuits could impact the local communities was made clear throughout the debates. For example, Representative Hanley referred to the Oneida claims and the fact that long years of litigation could "wreck the economy of the region." *Id.* at 22,170. Opponents of the extension proclaimed that "[t]he situation would be ludicrous if it were not so serious and if the very homes and property of the people in this country were not affected and were not endangered." *Id.* at 22,169 (statement of Rep. Moorhead). *See also* Testimony of Maine Attorney General Joseph Brennan, 1977 Hearings at 77 ("[P]ending litigation has resulted in economic hardship and clouded titles in areas subject to claims.") (internal quotes omitted). (Notably, money damages were not discussed as one of the factors of concern.)

Despite the age of the claims, the stated objections, and the knowledge of these hardships, Congress continued the extensions without ever questioning the timeliness of these claims or the fact that, in its judgment, the Indians who would be impacted by the statute of limitations

deserved the opportunity to have their claims heard. "Certainly, the position of the Congress should be that if wrongs have been committed under the laws of the United States, those wrongs ought to be investigated and prosecuted to judgment, especially if it is the responsibility of the United States to prosecute such wrongs." 123 CONG. REC. 22,171 (1977) (statement of Rep. Johnson). *See also* S. REP. NO. 96-569, at 5 (1980) ("Failure to extend the time limits now provided will, unnecessarily, bar many meritorious claims of Indian tribes. . . .* * *In addition to providing additional time for the processing of those claims thus far identified, fairness to the Indian people dictates that additional time be provided for the orderly investigation, identification and processing of remaining claims.").

4. The 1982 Limitations Act Identified Indian Claims and Preserved Them.

Finally, in 1982, Congressional patience with the Department's continued requests for extensions of the limitations period had worn thin.[9] A plan emerged to bring finality to the claims identification process and to set a limitations period once and for all for Indian claims seeking money damages for claims such as trespass.

The Indian Claims Limitation Act of 1982 carries out that plan. The provisions of § 2415 and the Indian Claims Limitation Act establish Congress' considered policy

[9] H.R. REP. NO. 97-954, at 5, 9 (1982) ("Because of the repeated failure of the United States in fulfilling its responsibility to identify, research, evaluate, and process such Indian claims, Congress extended the statute two additional times – once in 1977 and again in 1980. * * * [T]he Committee was not persuaded that [another] simple extension of the Statute for suits by the United States would be adequate.").

judgment, after years of hearings and debate, that it was necessary to bring finality to pre-1966 Indian claims sounding in tort for money damages. The Act directed the Department to compile and publish in the Federal Register a list of pre-1966 damages claims. The claims on this list were preserved. All other claims are barred.[10]

> "*Any right of action shall be barred sixty days after the date of the publication of the list* required by section 4(c) of this Act for those pre-1966 claims which, but for the provisions of this Act, would have been barred by section 2415 of title 28, United States Code, *unless such claims are included on either of the lists* required by section 3 or 4(c) of this Act."

28 U.S.C. § 2415 note, Sec. 5 (emphasis added). Significantly, § 2415(b) establishes the accrual date for these claims. Section 2415(b) permits claims to be brought "within six years and ninety days after the right of action accrues, except that such actions for or on behalf of a recognized tribe . . . which accrued on the date of enactment of this Act in accordance with subsection (g) may be brought on or before sixty days after the date of the publication of the list required by section 4(c) of the Indian Claims Limitation Act of 1982." 28 U.S.C. § 2415(b). By setting this accrual date, Congress provided a date certain from which to measure their timeliness for limitations purposes. By operation of law, even if the events surrounding the land claims occurred many years ago, such claims are deemed to have accrued in 1982 if that claim appears on the list compiled by the Secretary. If Congress did not

[10] Claims for title are not covered by the list but are governed by 28 U.S.C. § 2415(c).

intend that these claims be protected or deemed newly accrued, then it knew how to prevent it.[11]

Once identified and placed on the list, the statute of limitations is tolled for those claims until the Secretary acts. Petitioners' and Amici's land claims appear on this list and thus fall within the parameters of the Act. 48 Fed. Reg. 13,698, 13,920 (Mar. 31, 1983).

With the list set, the Secretary has the option of filing suit on behalf of a tribe as part of its trust duty. It has done so on behalf of the Petitioners and the Amici. The Secretary may also either reject a claim for litigation, in which case the claim is barred unless a tribe files suit within one year, 28 U.S.C. § 2415 note, Sec. 5(b), or the Secretary may submit a proposed legislative solution to Congress, in which case the claim will be barred unless suit is filed within three years. *Id.* at Sec. 6. When the first list was published in 1983, the Secretary noted "It is important to remember that for claims contained on either of the lists, the statute of limitations does not begin to run until such time as the Secretary formally rejects a claim or submits to Congress a legislative proposal or report." 48 Fed. Reg. 13,698 (Mar. 31, 1983). Indeed, this Court recognized that "[s]o long as a listed claim is neither acted upon nor formally rejected by the Secretary, it remains live." *Oneida II*, 470 U.S. at 243.

[11] *See*, *e.g.*, 15 U.S.C. § 15b, in which Congress specifically provided that the establishment of a new statute of limitations would not reset the accrual date up to the effective date of the Act ("No cause of action barred under existing law on the effective date of this Act shall be revived by this Act.").

B. The Second Circuit's Ruling Conflicts with *Oneida II* and Settled Law that Precludes the Adoption of Common Law Contrary to a Federal Statute.

In *Oneida II*, this Court detailed the history of § 2415 and the extent of the actions taken by Congress to protect these claims from a time bar. 470 U.S. at 241-244. This Court recognized that "the statutory framework adopted in 1982 presumes the existence of an Indian right of action not otherwise subject to any statute of limitations," *id.* at 244, and concluded that it could not impose a judicially crafted time bar by borrowing the state statute of limitations since to do so "would be inconsistent with federal policy." *Id.* at 241. *See* Petition for Writ of Certiorari of Petitioner Cayuga Indian Nation, et al. at 20, Cayuga Indian Nation of New York, et al. v. Pataki, et al., No. 05-982 (U.S. Feb. 3, 2006); Petition for Writ of Certiorari of Petitioner United States at 21-24, United States v. Pataki, et al., No. 05-978 (U.S. Feb. 3, 2006). While this Court formally reserved its judgment as to laches because the defendants had waived the issue, its reasoning applies equally to the laches doctrine.

Immediately after the initial adoption of § 2415 in 1966, lower courts rejected the assertion of the laches defense for claims accruing prior to its enactment because of the statutorily mandated later accrual date. *See*, *e.g.*, *Cassidy Commission Co. v. United States*, 387 F.2d 875, 880 n.9 (10th Cir. 1967) (action not barred by laches either under common law rule or because under § 2415, Congress provided for date when claims accrue); *United States v. Sabine Towing and Transp. Co.*, 289 F. Supp. 250, 253 (E.D. La. 1968) (argument that United States should be subject to laches is "without merit" because § 2415 defined

the coverage of the statute by setting an accrual date and claim was filed within the statutory timeline).

This Court's reasoning in *Oneida II* implicitly confirms these decisions since they recognize that common law cannot be applied in the face of § 2415. The Second Circuit's ruling conflicts with this Court's clear instruction to defer to Congressional judgment on the matter of limitations for these claims.

The Second Circuit not only ignored the Court's reasoning in *Oneida II*, it also declined to recognize the longstanding rule that federal common law may not apply when it conflicts with statutory law. Once Congress has established a federal limitations period for Indian trespass claims for money damages, the Second Circuit is not now free to adopt common law rules that conflict with this statutory scheme. This Court has long recognized "that federal common law is 'subject to the paramount authority of Congress.'" *City of Milwaukee v. Illinois and Michigan*, 451 U.S. 304, 313 (1981) (quoting *New Jersey v. New York*, 283 U.S. 336, 348 (1931)). "[W]hen Congress addresses a question previously governed by a decision rested on federal common law the need for such an unusual exercise of lawmaking by federal courts disappears." *Id.* at 314. In adopting the doctrine of laches to dismiss the claims, the Second Circuit raised federal common law above an Act of Congress usurping the legislative will of Congress.

When an Act of Congress "speak[s] directly to a question, the courts are not free to 'supplement' Congress' answer so thoroughly that the Act becomes meaningless." *Higginbotham*, 436 U.S. at 625. "There is a basic difference between filling a gap left by Congress' silence and rewriting rules that Congress has affirmatively and

specifically enacted." *Id.* In a statement that can only be considered prescient, this Court recognized that "[i]n the area covered by the statute, it would be no more appropriate to prescribe a different measure of damages than to prescribe a different statute of limitations, or a different class of beneficiaries." *Id.* Yet this is precisely what the Second Circuit did. As this Court has recognized, it has "no authority to substitute our views for those expressed by Congress in a duly enacted statute." *Id.* at 626.

Nowhere is this more true than when Congress is acting in the area of Indian affairs. This Court has consistently recognized that "the Constitution grants Congress broad general powers to legislate in respect to Indian tribes, powers that we have consistently described as 'plenary and exclusive.'" *United States v. Lara*, 541 U.S. 193, 200 (2004) (citations omitted). That power "is drawn both explicitly and implicitly from the Constitution itself" and in particular, from the Indian Commerce Clause, U.S. CONST. art. I, § 8, cl. 3, and the Treaty Power, U.S. CONST. art. II, § 2, cl. 2. *Morton v. Mancari*, 417 U.S. 535, 551-552 (1974). As this Court has said, "[t]he 'central function of the Indian Commerce Clause . . . is to provide Congress with plenary power to legislate in the field of Indian affairs.'" *Lara*, 541 U.S. at 200 (citations omitted).

Yet by invoking the common law doctrine of laches, the Second Circuit has completely disregarded and, indeed, overridden, the will of the Congress, a result expressly rejected by this Court in *Oneida II*, 470 U.S. at 244.

CONCLUSION

The petitions for writ of certiorari should be granted.

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