No. 19-1166

IN THE

Supreme Court of the United States

DINÉ CITIZENS AGAINST RUINING OUR ENVIRONMENT, SAN JUAN CITIZENS ALLIANCE; AMIGOS BRAVOS; SIERRA CLUB; AND CENTER BIOLOGICAL DIVERSITY,

Petitioners,

v.

NAVAJO TRANSITIONAL ENERGY COMPANY, LLC; ARIZONA PUBLIC SERVICE COMPANY; BUREAU OF INDIAN AFFAIRS; U.S. DEPARTMENT OF THE INTERIOR; U.S. OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT; U.S. BUREAU OF LAND MANAGEMENT; DAVID BERNHARDT, IN HIS OFFICIAL CAPACITY AS SECRETARY OF THE INTERIOR; U.S. FISH AND WILDLIFE SERVICE,

Respondents.

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

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the Ninth Circuit properly determined that Navajo Transitional Energy—an arm of the Navajo Nation—was a required and indispensable party under Federal Rule of Civil Procedure 19 in an action to void the Navajo Nation's legal right to operate the Navajo Mine on its trust lands, and to invalidate the Navajo Nation's existing lease and rights-of-way agreements for related facilities.

RULE 29.6 STATEMENT

Navajo Transitional Energy Company (Navajo Transitional Energy or NTEC) is a wholly owned Navajo corporation formed under the Navajo Nation Limited Liability Company Act. The Navajo Nation is Navajo Transitional Energy's sole owner.

RELATED PROCEEDINGS

To counsel's knowledge, there are no related proceedings.

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INTRODUCTION

For over 50 years, the Navajo Nation has relied on mining and energy operations on its trust lands as a cornerstone of the Navajo economy and as a means for funding essential public services for the Navajo people. In addition to creating hundreds of well-paying jobs and providing opportunities for tribal members to build stable careers with their families on the Navajo Nation, revenues from those mining and energy operations make up more than a full third of the Navajo Nation's total general fund.

Before the last decade, the Navajo Nation stayed outside of the ownership and operation of the energy facilities on its trust lands. Starting with its first formal tribal energy policy in 1980, however, the Navajo Nation identified greater control over its own natural resources and greater self-determination over its own energy development as critical sovereign interests. In 2013, as an important step towards achieving those interests, the Navajo Nation created a new tribal entity—Navajo Transitional Energy or NTEC—to purchase back and operate the Navajo Mine on its trust lands as part of a comprehensive energy policy "to build true economic sovereignty" and "to promote greater self-determination for future generations of Diné." NTEC App. 16, Navajo Nation Council Resolution No. CAP-50-13 (Oct. 24, 2013).[1] To facilitate the purchase of the Navajo Mine, the Navajo Nation invested millions of dollars into Navajo Transitional Energy and also authorized it to pledge a

[1] "NTEC App." refers to the appendix of Navajo legislative materials submitted with NTEC's brief in the Ninth Circuit. CA9 ECF No. 34. "ER" refers to petitioners' excerpts of record, and "SER" refers to NTEC's supplemental excerpts of record. CA9 ECF Nos. 18, 35.

substantial catalog of tribal assets—including the Navajo Mine itself—as security to obtain necessary financing for its startup and operation costs.

The importance of the Navajo Mine to the Navajo Nation—and also the adjacent Four Corners Power Plant (Plant) with which the Navajo Mine operates—cannot be overstated. In addition to being a major source of revenues for the functioning of Navajo Nation government and the provision of public services for the Navajo people, the Navajo Mine and the Plant are the lifeblood of the Navajo economy. The enormous investments that the Navajo Nation has made into the Navajo Mine and Navajo Transitional Energy also are part of a broader tribal undertaking to diversify and transition the Navajo energy economy to renewable energy development and new clean-coal technologies based on the abundant natural resources on Navajo trust lands. If the operations of the Navajo Mine and the Plant were disrupted at this time, the solvency of the Navajo Nation would be threatened, and the Navajo Nation's investment in the Navajo Mine and Navajo Transitional Energy almost certainly would be lost. Scores of tribal members and their families also likely would be displaced from the Navajo Nation community—perhaps permanently—with there being no other comparable employment opportunities available on the Navajo Nation.

The issue presented in this case is whether the lower courts properly considered the interests of the Navajo Nation and decided that Navajo Transitional Energy, acting as an arm of the Navajo Nation, was a required and indispensable party under Federal Rule of Civil Procedure 19 in an action to halt operations at the Navajo Mine and adjacent Plant. Although petitioners represent that they sought only limited prospective

relief directed at federal agencies and did not seek to invalidate or modify any contracts of the Navajo Nation or Navajo Transitional Energy (Pet. 3, 8, 14), that is not correct. Far from seeking only prospective relief to avoid interference with Navajo rights, the very purpose of this action was to take away Navajo Transitional Energy's legal right to operate the Navajo Mine and to invalidate the Navajo Nation's existing lease and rights-of-way agreements. Petitioners entirely disregard the Navajo Nation's sovereign and economic interests in those legal and contractual rights, making no effort at all to explain why those interests are not substantial.

Instead of addressing the Navajo Nation's substantial interests—and the fact-specific nature of the Rule 19 decision in this case—petitioners attempt to portray the Ninth Circuit's decision as sharply departing from other precedents and as generating a new circuit split about Rule 19's application to cases under the Administrative Procedure Act (APA), 5 U.S.C. § 701 *et seq*. Neither is correct. In reaching its decision, the Ninth Circuit faithfully applied the settled framework for joinder determinations under Rule 19 to the particular facts of this case. Although petitioners seek to rely on different outcomes in other cases as evidence of a circuit split, those different outcomes are simply the result of the fact-specific nature of the Rule 19 inquiry—not the result of different legal tests.

Petitioners also are wrong in asserting that the federal defendants could adequately represent Navajo interests. Although petitioners insist that the federal agencies and Navajo Transitional Energy have completely overlapping interests in the challenged approvals, the lower courts correctly rejected that argument based on the facts of this case. Unlike the federal defendants,

the Navajo Nation and Navajo Transitional Energy have critical sovereign interests in ensuring that the Navajo Mine and the Plant continue to operate without disruption. The federal defendants do not share those same interests—and, indeed, those defendants did not even appear in the Ninth Circuit proceedings. Although the United States appeared as an *amicus curiae*, its brief reflected the very different nature of the federal interests, asserting that invalidating approvals for the Navajo Mine and the Plant would "not necessarily [cause] long-term prejudice to the tribe" in stark contradiction to the undisputed factual findings in the record about the serious risks of irreparable harm to the Navajo Nation and its people. *Amicus* United States C.A. Br. 16; Pet. App. 37a-38a.

Finally, there is no merit to petitioners' claim that the Ninth Circuit's decision will operate to foreclose all environmental challenges to federal agency actions related to activities on Indian trust lands. Contrary to petitioners' characterization of the decision as creating some kind of new blanket rule, the Ninth Circuit's decision here was case-specific and was based on the settled precedents applying Rule 19. The Ninth Circuit repeatedly has found that Indian tribes are not required parties under Rule 19 on different facts—either because of the nature of the tribe's interests, or because the tribe's interests could be adequately represented by federal agencies in its absence. In this case, the Ninth Circuit concluded that Navajo Transitional Energy was a required party based on the nature of petitioners' requested relief and the critical legal and sovereign rights at stake. Although petitioners try to argue otherwise, Rule 19 requires that type of case-specific inquiry, and there is no exception to Rule 19's joinder requirements simply because a case implicates some public concern.

As the Ninth Circuit correctly recognized, the Navajo Nation's interests here are "tied to its very ability to govern itself, sustain itself financially, and make decisions about its own natural resources." Pet. App. 22a-23a. Those interests are even more crucial now, with the Navajo Nation and the Navajo people experiencing devastating losses and a still-unfolding crisis as the Nation has become the epicenter of the COVID-19 pandemic with the highest per-capita infection rate in the United States. *See* Navajo Department of Health, *Dikos Ntsaanígíí-19,* https://www.ndoh.navajo-nsn.gov/COVID-19 (last visited June 1, 2020).

The petition should be denied.

STATEMENT

A. History of the Navajo Mine and Plant

1. The Navajo Nation is a sovereign and federally recognized Indian tribe, securing the exclusive occupation and use of its homelands in treaties entered with the United States in 1849 and 1868. *See Treaty with the Navaho* (Sept. 9, 1849), 9 Stat. 974 (Treaty of 1849); *Treaty between United States of America and the Navajo Tribe of Indians* (June 1, 1868), 15 Stat. 667 (Treaty of 1868). Spanning areas of Arizona, New Mexico, and Utah, the Navajo Nation encompasses over 17 million acres of trust lands. Pet. App. 6a; SER246, 387. In addition to being the largest Indian tribe in terms of land size, the Navajo Nation also is the largest Indian tribe in terms of population, with more than 320,000 enrolled tribal members and roughly 174,000 tribal members living on the Navajo Nation. SER314, 406. The Navajo Nation is served by a democratically elected, tripartite form of government with an executive branch (headed by the President of the

Navajo Nation), a legislative branch (Navajo Nation Council), and a judicial branch (Navajo Nation Courts).

2. For decades, the Navajo Nation has relied on energy resources on its trust lands as a critical part of its economy and as a means to ameliorate the very difficult conditions facing the Navajo people. SER50, 134-40. Starting in the late 1950s, the Navajo Nation granted leases for non-Indian entities to undertake mining activities at the Navajo Mine on its trust lands. Pet. App. 6a; SER134. A short time later, with the development of the coal supply from the Navajo Mine, the Navajo Nation entered into leases with respondent Arizona Public Service Company (APS) and others for the construction and operation of the Plant adjacent to the Navajo Mine. *Id*. The Navajo Mine is the sole coal supplier to the Plant, and the Plant is the Navajo Mine's sole customer. Pet. App. 7a. The Navajo Mine and the Plant both are located entirely on Navajo trust lands. Pet. App. 6a.

Today, the Navajo Mine and the Plant generate electricity for the Four Corners region of the southwestern United States. SER2, 134-38. As a result of the enormous investments made in reliance of the federal approvals at issue in this case, the Plant currently operates with state-of-the-art emission controls—called selective catalytic reduction (SCR) devices—that were installed following the issuance of the final Record of Decision (ROD) at the steep cost of roughly $500 million. SER203, 244. The new SCR controls and other operational changes drastically cut the Plant's emissions from previous historical levels cited by petitioners, including an 87-percent reduction in nitrogen oxides emissions, a 79-percent reduction in selenium emissions, and a 58-perecent reduction in particulate matter emissions. SER210. Other improvements

have reduced the Plant's water consumption by roughly 20 percent. SER210. Navajo Transitional Energy and APS also are making investments of $15 to $20 million over the life of the project on different species conservation and recovery measures. APS-SER67-71. None of those costly improvements and conservation efforts would have been undertaken without the federal approvals at issue in this case.

B. Navajo Transitional Energy

Since the Navajo Nation Council adopted its first energy policy in 1980, the Navajo Nation has pursued a goal to obtain greater control over its natural resources and to promote economic development on the Navajo Nation with increased participation in energy markets. NTEC App. 1, Navajo Nation Council Resolution No. CAP-34-80 (April 29, 1980), Navajo Nation Energy Policy of 1980. That goal finally was realized in 2013 when, after decades of leasing its coal resources, the Navajo Nation was presented with an unprecedented opportunity to purchase back the Navajo Mine for its own ownership and operation.

1. The decision to take over the operations of the Navajo Mine was a momentous step for the Navajo Nation. Around this time, the Navajo Nation Council and the President of the Navajo Nation approved the adoption of the Navajo Nation Energy Policy of 2013—the first formally approved Navajo energy policy since 1980—to develop "a comprehensive energy strategy" for the Navajo Nation to "establish energy independence and build its economy for future generations" of the Navajo people. NTEC App. 16, Navajo Nation Council Resolution No. CO-50-13 (Oct. 24, 2013). The policy established a goal of promoting Navajo ownership of energy projects based on a diverse portfolio of sustainable trust resources, including the use of

emerging clean-coal technologies and renewable energy resources, such as wind and solar farms, on Navajo Nation lands. *Id*. at 13-28. The policy additionally created a new executive agency—the Navajo Energy Office—to "facilitate energy development on the Nation" and to develop a long-term strategic plan "to stimulate increased revenues from energy projects, spur energy infrastructure development, and diversify the Navajo energy economy." *Id*. at 27.

To enable the acquisition of the Navajo Mine and to advance its other energy-related goals, the Navajo Nation Council and the President of the Navajo Nation approved legislation to create Navajo Transitional Energy, or NTEC, as an arm of the Navajo Nation with its tribal sovereign immunity. Pet. App. 24a; SER93-128, Navajo Nation Council Resolution No. CAP-20-13 (April 29, 2013), *amended by*, Navajo Nation Council Resolution No. CAP-58-13 (Oct. 24, 2013). The key purpose of Navajo Transitional Energy is "to protect and promote the economic and financial interest of the Nation and the Navajo people, while remaining dedicated to responsible management of the Nation's natural resources." SER2; *see* SER5-8. Navajo Transitional Energy also serves to advance the broader goal for the Navajo Nation to become a major provider of alternative renewable energy resources for the region, as defined in the Navajo Nation Energy Policy of 2013. NTEC App. 5-28. To fund that goal, Navajo Transitional Energy is required to invest "no less than ten percent (10%) of its available Net Income in a given year into research and development of renewable and alternative sources of energy, storage, and transmission technologies and facilities." SER39.

To create Navajo Transitional Energy, the Navajo Nation contributed millions of dollars to its startup costs. SER6. The Navajo Nation also authorized Navajo

Transitional Energy to purchase the Navajo Mine and related leasehold rights for $85 million. Pet. App. 37a. With authorization from the Navajo Nation, Navajo Transitional Energy then obtained a loan for roughly $115 million to pay off the original note and to secure a line of credit for future working capital. *Id*. The loan is secured by Navajo Transitional Energy's entire catalog of assets, including the Navajo Mine itself. *Id*. A default on the loan would result in the loss of the Navajo Mine and the millions of dollars that the Navajo Nation invested in Navajo Transitional Energy, in addition to the loss of billions of dollars in the unattained future revenues for the Navajo Nation. SER4.

2. With Navajo Transitional Energy's purchase of the Navajo Mine, the Navajo Mine and the Plant are expected to provide stable employment income for hundreds of Navajo people and to maintain funding needed for the Navajo Nation's essential public services. SER155-56, 335-36. In the final ROD at issue in this action, the federal agencies estimated that the Navajo Nation will receive $40 to $60 million annually in direct revenues from the operations at the Navajo Mine and the Plant during the life of the project, with those revenues providing approximately 35 percent of the Navajo Nation's total general fund. SER155. Over the life of the project, "a lower end estimate (*i.e*., unadjusted) of [the] economic activity [generated by the Navajo Mine and the FCPP] is approximately $1-1.5 billion in direct revenue to the Navajo Nation, $4.1 billion in labor income, and $10.8 billion in [gross state product]." *Id*.

If operations at the Navajo Mine and the Plant were stopped before the Navajo Nation's development of viable alternative energy projects, the harm to the

Navajo Nation cannot be overstated. More than 36 percent of Navajo people live below the federal poverty level, with the Navajo Nation persistently having the highest unemployment rate in the region and few private-sector employers. SER45-46; 323-24. Many decades of inadequate funding and support have deprived the Nation of basic infrastructure and access to services, particularly in more remote areas, with "[o]ver 20 percent of Navajos liv[ing] in houses without plumbing, telephones, kitchen facilities, and electricity[.]" SER323. Essential public services—including education, emergency medical services, emergency management, police services, fire and rescue services, and highway safety—are funded through revenues that would be lost if the operations of the Navajo Mine and the Plant were interrupted. SER328-32.

In addition to those impacts on the Navajo Nation's government and Navajo public services, disruption in the operations of the Navajo Mine and the Plant also would have a devastating impact on the already-struggling Navajo economy. If operations at the Navajo Mine and the Plant were halted, the federal agencies estimated that the Navajo Nation would lose approximately $338 million in economic activity, "including the loss of a total of 2,293 jobs and the associated $159 million in lost labor income." SER57. The loss for Navajo tribal members directly employed at the Navajo Mine and the Plant "would include the loss of 606 power plant and mine jobs and $81.5 million (2011 dollars) in income for those workers." *Id*.

Because of the scant employment opportunities currently available on the Navajo Nation, a closure of the Navajo Mine and the Plant would have a huge impact on Navajo families and community stability. Scores of Navajo tribal members and their families

likely would be displaced—perhaps permanently. Such a result would defeat a key objective of the Navajo Nation Energy Policy of 2013 and the creation of Navajo Transitional Energy, which was to enable "Navajos to build stable careers while remaining close to their families" and to "build the strength of our families and communities that have been fragmented by the need for our people to find work" outside of the Navajo Nation. SER48-49; *see also* NTEC App. 14. In addition to losing control over its own natural resources, the Navajo Nation also would lose the critical stream of revenues needed to accomplish its goal to create a diverse and sustainable energy economy. SER4, 405. And the Navajo Nation would lose control of the Navajo Mine and its plan for achieving greater economic sovereignty and self-determination for future generations of Diné. *Id*.

C. Federal Approvals

Because the United States holds the Navajo Nation lands in trust for the tribe, the Bureau of Indian Affairs (BIA) must approve the lease and rights-of-way agreements for the operation of the Plant. *See* 25 U.S.C. §§ 323, 415 (requiring same). The Department of the Interior's (DOI) Office of Surface Mining Reclamation and Enforcement (OSMRE) also is responsible for issuing and renewing federal permits for the Navajo Mine under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. §§ 1201 *et seq*.

1. In 2012, APS and Navajo Transitional Energy's predecessor-in-interest started the process to renew the lease, rights-of-way agreements, and permits for the Navajo Mine and the Plant. Pet. App. 7a-8a.

Because of the federal approvals required by statute for transactions on Indian trust lands, the requests triggered an exhaustive, three-year review involving multiple federal and Navajo agencies under the National Environment Policy Act of 1969 ("NEPA"), 42 U.S.C. §§ 4321 *et seq*. In July 2015—after public input and the issuance of an environmental impact statement and biological opinion confirming that the requested actions would not jeopardize endangered species—the federal defendants issued the final ROD. Pet. App. 9a. The final ROD included approvals by BIA, OSMRE, and other federal agencies for the continued operations of the Navajo Mine and the Plant, with substantial environmental protection measures. Pet. App. 8a-9a.

2. Almost a year later—after Navajo Transitional Energy and APS already had undertaken significant investments in reliance of the federal approvals—petitioners filed their complaint, "challenging the opinions and approvals that authorized continued operations at the [Navajo] Mine and the Power Plant." Pet. App. 10a. As requested relief, petitioners asked the district court to set aside the ROD and to vacate the federal approvals. *Id*. Petitioners also asked the district court to enjoin the federal defendants "from authorizing any elements of the Project pending their compliance with NEPA." ER69; Pet. App. 10a. If the approvals were set aside and the requested injunctive relief were granted, both the Navajo Mine and the Plant would be required to initiate closure procedures and to discontinue operations until the completion of another full, multi-year NEPA review.

Given the potential impact of petitioners' requested relief on the on-going operations of the Plant, APS intervened in support of the federal defendants. Pet.

App. 10a. Navajo Transitional Energy also intervened for the limited purpose of moving to dismiss under Rules 19 and 12(b)(7). Pet. App. 11a.

D. Lower Court Decisions

Under Rule 19(a), a party is "required" and must be joined in an action, if feasible, when (1) the party has a legally protected interest in the subject matter of the action, and (2) the party's interest "as a practical matter" might be impaired or impacted if the action were to proceed in its absence. Fed. R. Civ. P. 19(a)(1)(B). If the joinder of a required party is not feasible—such as where a party cannot be joined due to sovereign immunity—Rule 19(b) requires a court to "determine whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed." Fed. R. Civ. P. 19(b).

1. Here, after careful review, the district court granted Navajo Transitional Energy's motion to dismiss under Rule 19 based on its determination that NTEC was a required and indispensable party. In applying Rule 19(a), the district court first had no trouble concluding that Navajo Transitional Energy—acting as an arm of the Navajo Nation—had a legally protected interest in the subject matter of petitioners' action to set aside the ROD and void the approvals needed for the ongoing operations at the Navajo Mine and the Plant. Pet. App. 37a. Among other things, the district court observed that petitioners' requested relief would invalidate Navajo Transitional Energy's "interests in its lease agreements and the ability to obtain the bargained-for royalties and jobs." Pet. App. 37a (internal citation and quotation marks omitted). The district court also found that, if successful, petitioners' "challenges to Federal Defendants' actions—which the continued operation of the Navajo Mine and [the Plant] are

conditioned upon—could simultaneously jeopardize the solvency of the Navajo Nation and challenge the economic development strategies it has chosen to pursue." Pet. App. 37a-38a. The district court determined that "[s]uch affronts to the Nation's sovereignty represent a legally protected interest" sufficient to satisfy the standards of Rule 19(a). Pet. App. 38a.

Next, the district court concluded that the federal defendants could not adequately represent Navajo Transitional Energy's interests in its absence. Pet. App. 38a-39a. Citing the "sizeable investments" that the Navajo Nation and Navajo Transitional Energy had made in the continued operations of the Navajo Mine and the Plant, the district court found that the federal defendants lacked the same interests in defending the approvals and resisting the requested relief to set aside the ROD. Pet. App. 39a. Finally, after holding that Navajo Transitional Energy could not be joined because of its tribal sovereign immunity, the district court determined that the action could not "in equity and good conscience" proceed in the tribe's absence in view of its sovereign immunity and the substantial interests at stake. Pet. App. 39a-42a.

2. Petitioners appealed. On appeal, petitioners urged the Ninth Circuit to adopt a categorical rule that "tribal sovereign immunity is not a sufficient basis for dismissing public interest lawsuits against federal agencies for violating NEPA and the ESA." Pet. C.A. Br. 20. Rejecting such an approach, the Ninth Circuit unanimously affirmed the district court's dismissal under Rule 19 based on a careful review of the particular facts of this case.

In affirming the district court, the Ninth Circuit explained that whether a party has a legally protected interest sufficient to be a "required" party under Rule

19(a) is a "practical" and "fact specific" inquiry, with "few categorical rules." Pet. App. 14a (quoting *White v. Univ. of Cal.*, 765 F.3d 1010, 1026 (9th Cir. 2014), and *Cachil Dehe Band of Wintun Indians of the Colusa Indian Cmty. v. California*, 547 F.3d 962, 973 (9th Cir. 2008) (*Colusa*)).

a. Applying the "fact specific" and "practical" inquiry under Rule 19(a) to this case, the Ninth Circuit unanimously agreed that Navajo Transitional Energy—acting for the Navajo Nation—had legally protected interests that could be impaired in its absence. Pet. App. 15a. In doing so, the Ninth Circuit affirmed that an absent party generally "has no legally protected interest at stake in a suit merely to enforce compliance with administrative procedures." Pet. App. 14a (quoting *Colusa*, 547 F.3d at 971). Where such a suit would impair bargained-for contracts or take away existing legal entitlements or rights, however, longstanding case law "makes clear" that an absent party may have legally protected interests under Rule 19(a). *Id.*

Here, after carefully examining the facts of this case and the nature of petitioners' requested relief, the Ninth Circuit followed those precedents and determined that Navajo Transitional Energy had legally protected interests under Rule 19(a) in the challenged approvals for the ongoing operations. Pet. App. 15a-18a. Among other things, the Ninth Circuit noted that "the litigation could affect already-negotiated lease agreements and expected jobs and revenues" and that "the Navajo Nation would lose a key source of revenue in which NTEC has already substantially invested" in reliance on the approvals. Pet. App. 18a. The Ninth Circuit also agreed that no other party could adequately represent Navajo Transitional Energy's interests because the Navajo Nation had vital

sovereign interests implicated in the action, and the federal defendants had different overriding interests that might diverge from Navajo interests. Pet. App. 21a-23a. In reaching those conclusions, the Ninth Circuit specifically distinguished other precedents involving Indian tribes under Rule 19(a), stressing that Indian tribes may not always be required parties in cases affecting their interests and holding that Navajo Transitional Energy was a required party based on the facts of this case. Pet. App. 17a-23a.

b. After concluding that Navajo Transitional Energy was a required party under Rule 19(a) and that its joinder was not feasible due to tribal sovereign immunity, the Ninth Circuit turned to the inquiry whether the action could proceed "in equity and good conscience" in the tribe's absence under Rule 19(b). Pet. App. 25a. In undertaking that inquiry, the Ninth Circuit weighed the equitable considerations prescribed under Rule 19(b), including the potential prejudice to the absent party and the availability of other potential remedies. *See* Fed. R. Civ. P. 19(b)(1)-(4) (prescribing nonexclusive list of equitable factors). As to potential prejudice, the Ninth Circuit found that the action threatened critical sovereign interests for Navajo Transitional Energy and the Navajo Nation, observing that "at stake is an estimated 40 to 60 million dollars per year in revenue for the Navajo Nation, as well as its ability to use its natural resources how it chooses." Pet. App. 26a. The Ninth Circuit ultimately did not decide whether petitioners would have an adequate remedy under Navajo law in Navajo courts, deciding that dismissal was proper even if there was no other alternative remedy. Pet. App. 27a-28a; *see also Republic of Philippines v. Pimentel*, 553 U.S. 851, 867 (2008) ("where sovereign immunity is asserted, and

the claims of the sovereign are not frivolous, dismissal of the action must be ordered where there is a potential for injury to the interests of the absent sovereign").

c. Finally, the Ninth Circuit considered the argument that the "public rights" exception applied to the facts of this case. Pet. App. 28a. As the Ninth Circuit observed, the "public rights" exception to Rule 19's normal joinder requirements applies only in limited cases where the requested relief is "narrowly restricted to the protection and enforcement of public rights[.]" *Nat'l Licorice Co. v. Nat'l Labor Relations Board*, 309 U.S. 350, 363 (1940). For the limited "public rights" exception to apply, "the litigation must not destroy the legal entitlements of the absent parties." *Kescoli v. Babbitt*, 101 F.3d 1304, 1311 (9th Cir. 1996) (internal citation and quotation marks omitted). Where an action seeks relief that creates threats to "the absent tribes' legal entitlements, and indeed to their sovereignty," the "application of the public rights exception to the joinder rules would be inappropriate." *Shermoen v. United States*, 982 F.2d 1312, 1319 (9th Cir. 1992).

Looking at the facts and relief requested in this case, the Ninth Circuit held that the "public rights" exception did not apply because petitioners sought "to destroy NTEC's existing legal entitlements" to operate the Navajo Mine and to maintain the existing contracts related to the Plant. Pet. App. 31a-32a. Unlike other cases where the litigation was tailored to avoid harm to the interests of absent parties, the Ninth Circuit observed that "the activities approved by the Record of Decision here are already taking place" and that Navajo Transitional Energy and the Navajo Nation would lose existing legal rights to continue

operations on which they had already relied to make substantial investments. *Id*.

Based on those case-specific considerations, the Ninth Circuit unanimously agreed with the district court that this case could not proceed, "in equity and good conscience," under Rule 19 without Navajo Transitional Energy. In so holding, the Ninth Circuit observed that the legally protected interests at stake were tied to the Navajo Nation's "very ability to govern itself, sustain itself financially, and make decisions about its own natural resources." Pet. App. 23a.

3. Petitioners subsequently petitioned for rehearing en banc. No judge requested a vote to hear the petition, and rehearing was denied.

REASONS FOR DENYING THE PETITION

The decision below was correct, and it does not conflict with any decision of this Court or of another court of appeals. Rather than announce some new approach to joinder under Rule 19 in APA cases involving tribal interests, the Ninth Circuit applied the established, case-specific framework mandated under Rule 19 to the particular facts of this case. There is nothing novel about the analysis, there is no circuit split, and further review is not warranted.

I. The Decision Below Is Correct

To start, there is no merit to petitioners' assertion that the decision below is a departure from other precedents under Rule 19. In their efforts to spark interest in this fact-bound case, petitioners make significant overstatements about the holdings of the decision and invent a circuit split that does not exist.

1. Joinder requirements under Rule 19 serve "to protect interested parties and avoid waste of judicial

resources." *Askew v. Sheriff of Cook County, Ill.*, 568 F.3d 632, 634 (7th Cir. 2009) (internal citation and quotation marks omitted). In evaluating a motion to dismiss for failure to join a party under Rule 19, the Ninth Circuit—like every other court of appeals—applies a "fact specific" and "practical" analysis that ultimately turns on the equitable considerations at issue in the particular case. *Kescoli*, 101 F.3d at 1309; *Pimentel*, 553 U.S. at 863 ("the issue of joinder can be complex, and determinations are case specific"); *see also*, *e.g.*, *Baker Group, L.C. v. Burlington N. & Santa Fe Ry. Co.*, 451 F.3d 484, 491 (8th Cir. 2006) ("Rule 19(b) is a pragmatic rule whose application turns on considerations of efficiency and fairness in the particular case.").

That familiar analysis is what the Ninth Circuit applied here. The inquiry under Rule 19 first asks whether an absent party is a "required" party that must be joined if feasible. Fed. R. Civ. P. 19(a). As the decision below recognized, an absent party may be "required" if that party has a "legally protected interest" at stake in the subject matter of the suit. Pet. App. 14a (quoting *Colusa*, 547 F.3d at 971). To qualify as a legally protected interest under Rule 19, an interest "must be 'more than a financial stake.'" *Id*. (quoting *Makah Indian Tribe v. Verity*, 910 F.2d 555, 558 (9th Cir. 1990)). Generally, there also is "no legally protected interest at stake in a suit merely to enforce compliance with administrative procedures." *Id*. (quoting *Colusa,* 547 F.3d at 971). An interest in the terms of a bargained-for contract, however, may be legally protected where that interest is "substantial." *Id*. An absent party also may have a legally protected interest at stake where an action seeks relief that would invalidate or impair that party's existing legal rights or entitlements. Pet. App. 15a-17a (listing cases); *Confederated Tribes of*

of Chehalis Indian Reservation v. Lujan, 928 F.2d 1496, 1499 (9th Cir. 1991) ("Indian tribes are necessary parties to actions affecting their legal interests.").

If a legally protected interest exists—and if the action may, "as a practical matter," impair or impede the party's ability to protect that interest, Fed. R. Civ. P. 19(a)(1)—Rule 19(b) next asks whether the action, "in equity and good conscience," should proceed without the absent party or, instead, be dismissed. Pet. App. 25a; Fed. R. Civ. P. 19(b). As the decision below recognized, among other equitable factors, Rule 19(b) directs courts to consider the potential risk of prejudice to the absent party and the availability of alternative remedies for the plaintiff. Pet. App. 25a; Fed. R. Civ. P. 19(b)(1)-(4). Although courts consider all equitable factors prescribed under Rule 19(b), it is well established that tribal sovereign immunity "itself may be viewed as the compelling factor." Pet. App. 26a (quoting *Kescoli*, 101 F.3d at 1311); *see also Pimentel*, 553 U.S. at 867 ("dismissal of the action must be ordered [under Rule 19] where there is a potential for injury to the interests of the absent sovereign"). Indeed, because of the importance of the right of sovereign immunity, "virtually all the cases" are in favor of dismissal under Rule 19(b), "regardless of whether [an alternative] remedy is available, if the absent parties are Indian tribes invested with sovereign immunity." Pet. App. 26a (quoting *White,* 765 F.3d at 1028); *see, e.g.*, *Am. Greyhound Racing, Inc. v. Hull,* 305 F.3d 1015, 1025 (9th Cir. 2002) ("interest in maintaining [the absent party's] sovereign immunity outweighs the plaintiffs' interest in litigating their claims"); *Fluent v. Salamanca Indian Lease Auth.,* 928 F.2d 542, 548 (2d Cir. 1991) ("[t]he rationale behind the emphasis placed on immunity in the weighing of rule 19(b) factors is . . . the fact that society has consciously opted to shield

Indian tribes from suit without congressional or tribal consent").

Following those longstanding precedents under Rule 19, the decision below correctly concluded that dismissal was proper under the facts of this case. Although petitioners repeatedly claim that this suit sought only "prospective" relief and did not seek "to cancel or to modify any contract" (Pet. 3, 8, 13), that is not correct. As the Ninth Circuit found, in moving to set aside the final ROD and to undo the already-issued approvals, petitioners' requested relief sought to take away Navajo Transitional Energy's existing legal right to continue operations at the Navajo Mine, and to void the Navajo Nation's existing lease and rights-of-way agreements. Pet. App. 18a. In seeking to invalidate those legal and contractual rights, petitioners' suit threatened "a key source of revenue" for the Navajo Nation, in which it "already substantially invested" to advance critical sovereign interests. *Id*. Petitioners' requested relief also would overturn "already-negotiated lease agreements and expected jobs and revenues" for the Navajo Nation from the ongoing operations. *Id*.

2. In challenging the Ninth Circuit's application of Rule 19 to these facts, petitioners fail to address the legal interests of Navajo Transitional Energy in any way, much less explain why those interests are not substantial. Instead, petitioners baldly assert that the decision below "is a departure from ordinary rules applicable to actions" challenging federal decisional processes under the APA. Pet. 14. But APA cases are not exempt from Rule 19's joinder requirements—and, tellingly, petitioners fail to cite even a single case in support of such a position. No court has eschewed the normal, case-specific approach to joinder under Rule 19 in this context, nor has any court adopted a

categorical rule that federal defendants always are the only required defendants in APA challenges. In addition to wrongly focusing on only the nature of the plaintiff's claim—as opposed to the nature of the absent party's interests under Rule 19—such a rule would be entirely inconsistent with the case-by-case approach that Rule 19 mandates.

3. In seeking a different result, petitioners also argue that the decision below is erroneous because, according to petitioners, the Ninth Circuit should have concluded that the federal defendants could adequately represent Navajo interests in this case. Pet. 15, 29-30. In making that argument, petitioners claim that there is no potential for differences between the legal positions of the federal defendants and Navajo Transitional Energy because both have interests in defending the final ROD. Pet. 16. Petitioners again, however, disregard the specific facts and reasoning of the decision below.

In applying Rule 19(a), the Ninth Circuit recognized that, in cases where an existing party will adequately represent an absent party's interests in the action, "an absent party's ability to protect its interests will not be impaired" as "a practical matter" to require joinder. Pet. App. 14a (quoting *Alto v. Black*, 738 F.3d 1111, 1127 (9th Cir. 2013)). Thus, in circumstances where the government's interests and an Indian tribe's interests are identical in nature and are not in conflict, the government may adequately represent an Indian tribe's interests, and the tribe is not a required party under Rule 19. Pet. App. 19a-22a; *see, e.g., Southwest Center for Biological Diversity v. Babbitt*, 150 F.3d 1152, 1154 (9th Cir. 1998) (holding same).

Here, however, the Ninth Circuit distinguished those circumstances and correctly found that the

federal defendants' overriding interests were fundamentally different in nature from those of the Navajo Nation and Navajo Transitional Energy. Although the federal defendants share "an interest in defending their own analyses that formed the basis of the approvals," those defendants also are obligated to represent the broader interests of the public, and they "do not share an interest in the *outcome* of the approvals—the continued operation of the Mine and Power Plant." Pet. App. 22a (italics in original); *see also, e.g., Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 539 (1972) (recognizing that such competing interests "may not always dictate precisely the same approach to the conduct of the litigation" to allow adequate representation). For the Navajo Nation and Navajo Transitional Energy, in contrast, a loss of the existing legal rights to operate the Navajo Mine and to maintain the current lease and rights-of-way agreements would have potentially devastating impacts—threatening the very solvency of the Navajo Nation, its control over its own natural resources, and its ability to govern and provide vital public services and support for its people, among other things. Pet. App. 22a-23a.

Rather than address those divergent interests, petitioners argue that the Ninth Circuit should have simply discounted the Navajo interests as irrelevant. Pet. 16, 29-30. But the decision below was rightly not so dismissive. Because of the different nature of the federal interests at stake, it is entirely foreseeable that the federal defendants would not approach this action with the same vigor to protect Navajo interests—or would take different positions on the proper legal standards governing the approvals, or the proper remedy for any identified violations. Pet. App. 22a. Indeed, the federal defendants failed to even appear at all in the proceedings before the Ninth Circuit.

Although the United States appeared as an *amicus curiae,* its brief reflected a very different outlook than Navajo Transitional Energy. Among other things, in flat contradiction of the undisputed factual findings about the serious risk of irreparable harm to the Navajo Nation and the Navajo people, the United States as *amicus curiae* asserted that invalidating the approvals for the Navajo Mine and the Plant would "not necessarily [cause] long-term prejudice to the tribe." U.S. *Amicus* Br. 16. The United States as *amicus curiae* also asserted that vacatur of the approvals would leave the Navajo Nation and Navajo Transitional Energy "in a state no different from that in which [they] would have found themselves had the agency never taken the challenged action in the first place," in disregard of the substantial Navajo investments already made in reliance of the approvals. *Id*. at 9. Those positions—and other case-specific facts—show the different interests of the federal defendants in this case and confirm that those defendants could not adequately represent the crucial Navajo interests.

4. Petitioners fare no better with their half-hearted challenge to the Ninth Circuit's application of the "public rights" exception to Rule 19's joinder requirements. Pet. App. 16, 30. Rather than apply in every case implicating some public concern, the public-rights exception arises only in cases where the requested relief is "narrowly restricted to the protection and enforcement of public rights," such that there is no need for joinder rules to protect the interests of absent parties. *Nat'l Licorice Co*., 309 U.S. at 363. For the exception to apply, "the litigation must transcend the private interests of the litigants and seek to vindicate a public right." *Kescoli*, 101 F.3d at 1311. In addition, "although the litigation may adversely affect the

absent parties' interests, the litigation must not destroy the legal entitlements of the absent parties." *Id.* (citation and quotation marks omitted); *see also, e.g., Kettle Range Conservation Group v. United States BLM*, 150 F.3d 1083, 1087 (9th Cir. 1998) (for public-rights exception to apply, the absent "parties [must be] left free to assert such legal rights as they might have acquired" (quoting *Nat'l Licorice Co.*, 309 U.S. at 366, alteration in original)).

Petitioners do not contend that the Ninth Circuit misstated the test for the "public interest" exception. Pet. 16, 30-31. Instead, petitioners argue only that the court should have applied the exception to allow the action to proceed without any representation of Navajo interests—asserting that, if petitioners were successful in invalidating the approvals, that would mean that the "approvals were issued in violation of the law" and so there never was any legally protected interest in the approvals. Pet. 16. But that "kind of circularity" in reasoning disregards the very purpose of Rule 19's joinder requirements. *Am. Greyhound Racing, Inc.*, 305 F.3d at 1024. Rule 19 serves "to preserve the right of parties to make known their interests and legal theories," ensuring that those interests are not destroyed in an adjudication without full and fair representation. *Keweenaw Bay Indian Comm. v. Michigan,* 11 F.3d 1341, 1347 (6th Cir. 1993) (internal quotation marks omitted); *see also Shermoen*, 982 F.2d at 1317 (Rule 19 protects "a party's right to be heard and to participate in adjudication of a claimed interest, even if the dispute is ultimately resolved to the detriment of that party"). Petitioners fail to identify a single case applying the "public interest" exception to Rule 19 where private rights are threatened—and no case exists.

5. Finally, there is no merit to petitioners' claims that the decision below announced some broad new rule under Rule 19 that "private litigants are foreclosed from challenging federal agency action that benefits entities that cannot be made parties to an APA action or other actions seeking relief only against the federal government." Pet. 12. Far from stating such a rule, the decision below was based on the specific facts of this case and the critical sovereign interests at stake. The Ninth Circuit repeatedly has found that Indian tribes, or other absent parties, are not required parties in APA actions under different facts. *See, e.g., Alto*, 738 F.3d at 1128 (holding BIA could adequately represent interest of absent tribe in APA challenge to disenrollment decision); *Makah*, 910 F.2d at 559 (Indian tribe was not required party in APA action to compel federal defendant to follow certain procedures in setting future fishing quotas); *Northern Alaska Environmental Ctr. v. Hodel*, 803 F.2d 466, 468-69 (9th Cir. 1986) (absent party not required in APA litigation to enjoin approval of pending mining plans until compliance with NEPA). Rather than overrule those precedents, the Ninth Circuit cited them with approval and distinguished this case based on its facts and requested relief. Pet. App. 15a-17a. Although petitioners complain that applying Rule 19's joinder requirements to APA actions involving tribal interests will foreclose review in some cases, that is an ordinary and predictable consequence of sovereign immunity. *See Wichita & Affiliated Tribes of Okla. v. Hodel*, 788 F.2d 765, 777 (D.C. Cir. 1986) ("society has consciously opted to shield Indian tribes from suit without congressional or tribal consent"). Petitioners show no legal error.

II. There Is No Circuit Split

Petitioners also are wrong that the decision below creates a new split among the circuit courts. None of the cases cited by petitioners conflicts with the decision in this case; instead, the cited decisions apply the same case-specific test for compulsory joinder under Rule 19 to their different facts.

Citing *Thomas v. United States*, 189 F.3d 662 (7th Cir. 1999), petitioners first assert that the decision below creates a new split with the Seventh Circuit. But even a cursory review of the major factual differences between the cases shows that there is no conflict. In *Thomas*, 189 F.3d at 668-69, the Seventh Circuit found that a tribal governing board was not a "required" party under Rule 19(a) in an APA challenge to the federal administration of a tribal election. Accepting that tribes generally have an interest in matters affecting their membership, the Seventh Circuit explained that the tribal board there nevertheless had no sovereign interests in the election process because the governing statute in the circumstances at issue "explicitly reserve[ed] to the federal government the power to hold and approve" the election. *Id*. at 667. As a result, the board had "no special legal status" related to the election not held by any other group of tribal voters. *Id*. at 668-69. In this case—in sharp contrast—there is no dispute that the Navajo Nation has vital sovereign interests and legally protected rights at stake.

Although petitioners insist that *Thomas* would come out differently in the Ninth Circuit as a result of the decision below (Pet. 18), that is plainly incorrect. In *Alto,* 758 F.3d 1111, the Ninth Circuit considered facts analogous to *Thomas* and similarly concluded that an absent tribe was not a required party. Specifically,

Alto involved an action to challenge a tribal member disenrollment decision by BIA. Although member disenrollment decisions ordinarily implicate tribal sovereign interests and would require joinder of the tribe, the Ninth Circuit held that joinder was not required under the facts of the case because "[t]he Tribe itself [had] delegated its authority over enrollment to the BIA" and, thus, it had no sovereignty rights at issue. *Id*. at 1129. The decision below cited *Alto* and affirmed its reasoning. Pet. App. 20a-21a. There is no conflict.

Petitioners also claim that the decision below creates a new split with the Tenth Circuit, citing *Kansas v. United States*, 249 F.3d 1213 (10th Cir. 2001), *Sac and Fox Nation of Missouri v. Norton*, 240 F.3d 1250 (10th Cir. 2001), and *Manygoats v. Kleppe*, 558 F.2d 556 (10th Cir. 1977). Again, that is not correct. Rather than resulting from any differences in the legal tests under Rule 19, the different outcomes in each of those cases turn on their different facts.

In *Kansas* and *Sac & Fox Nation*, the Tenth Circuit concluded that absent tribes were not required and indispensable parties under Rule 19 in actions challenging federal decisions to designate certain lands as "Indian lands" under the Indian Gaming Regulatory Act, 25 U.S.C. § 2701 *et seq*. Rather than adopt some rule that federal defendants always are the only required and indispensable parties in APA actions challenging federal actions, the Tenth Circuit applied a case-specific analysis under Rule 19 in each case. In *Kansas*, the Tenth Circuit held that the action could proceed as an equitable matter without the absent tribe under the facts of the case because "the potential for prejudice . . . is largely nonexistent" due to the presence of tribal officials in the action in addition to

the federal defendants. 249 F.3d at 1227. In *Sac & Fox Nation*, the Tenth Circuit similarly concluded that an absent tribe was not a required and indispensable party based on the facts of the case, including the "virtually identical" interest of the federal defendant, and the tribe's participation at all stages of the litigation expressing complete agreement with the federal defendant. 240 F.3d at 1258-59. Notably, unlike this case, neither of those cases involved challenges to take away rights to continue operations at existing casinos, or to invalidate existing contracts for such operations.

In *Manygoats*, the Tenth Circuit applied the same case-specific analysis. In that case, the Tenth Circuit held—similar to this case—that federal defendants could not adequately represent an absent tribe's interests in an action challenging federal approval under NEPA of a contract for mining exploration on tribal trust lands. *Manygoats*, 558 F.2d at 558. Despite finding that the absent tribe was a required party with legally protected interests, however, the Tenth Circuit ultimately held that the action still could proceed "in equity and good conscience" without the absent tribe under Rule 19(b). *Id.* at 558-59. That equitable determination hinged on the fact that the tribe was not currently engaged in mining activities and, thus, further review and delay did "not necessarily result in prejudice" to the tribe. *Id*. at 558-59. Here, in sharp contrast to those facts, the Navajo Nation and Navajo Transitional Energy already are engaged in the challenged activities, with existing legal entitlements that would be impaired. The different outcome in *Manygoats* was based on the different equitable considerations at issue, and it was specifically cited in the decision below. Pet. App. 21a.

There also is no conflict with the D.C. Circuit. Petitioners rely on *Ramah Navajo School Board, Inc. v. Babbitt*, 87 F.3d 1338 (D.C. Cir. 1996). In that case, the D.C. Circuit held that absent tribes were not required and indispensable parties in an action challenging a federal agency's plan for disbursing certain funds to tribes. Rejecting the federal agency's argument that the case could not proceed under Rule 19 without the absent tribes, the D.C. Circuit held that the absent tribes lacked any legally protected interests in the funds because of undisputed facts showing that future benefits to the tribes "would be negligible" and "most definitely" would not result in any higher funding levels in contracts. *Id*. at 1351. The court went on to find that the federal defendant also could adequately represent the absent tribes' interests, if any interests existed, because there was no discretion in the disbursements and each tribe would receive an "estimated *pro rata* share amounting to less than $100." *Id*. at 1351-52. The *Ramah* decision, like the decision below, was based on specific facts of the case. Most notably, unlike the critical sovereign interests at stake in this case, the absent tribes in *Ramah* had no legally protected interests impaired in the challenged disbursement plan.

Finally, petitioners argue that the decision below is "in tension" with two other cases—*School District of Pontiac v. Secretary of the U.S. Department of Education*, 584 F.3d 253 (6th Cir. 2009) (en banc), and *Jeffries v. Ga. Residential Fin. Auth*., 678 F.2d 919 (11th Cir. 1982). Those cases, however, also employ the same case-specific analysis under Rule 19 as the Ninth Circuit's decision—and there are no conflicts.

In *Pontiac*, 584 F.3d 253, the Sixth Circuit considered whether certain states were required and indispensable parties under Rule 19 in an action challenging certain

funding requirements of the No Child Left Behind Act, 20 U.S.C. § 6301 *et seq*. In concluding that the states were not required parties, the Sixth Circuit determined that the states had no legally protected interests in play because the states merely "act as intermediaries through which federal funds flow to local schools" to fund the statute's initiatives. *Id*. at 265-66. The court also summarily concluded that the existing parties would adequately represent the states' interests to the extent that the states had any interests. *Id*. at 266-67. That case differs entirely from the facts and requested relief at issue in this case, which threaten the solvency of the Navajo Nation and involve critical sovereign interests.

The decision in *Jeffries*, 678 F.2d 919, is similarly inapposite. In *Jeffries*, the Eleventh Circuit applied a case-specific analysis under Rule 19 to consider whether absent landlords were required and indispensable parties in a class action challenging certain eviction regulations related to public housing. In holding that the presence of the landlords was not required, the Eleventh Circuit found that the case related solely to the rights under the governing statutes, and the relevant state housing authority had sole authority over eviction decisions. *Id*. at 929. Because no legal entitlements of the landlords were at issue, the court also concluded that the public-interest exception would apply in any event. *Id*. In contrast to *Jeffries,* petitioners' requested relief here would nullify the existing legal rights of the Navajo Nation and Navajo Transitional Energy to operate the Navajo Mine and maintain lease and rights-of-way agreements, threatening vital sovereign interests.

All circuits agree with the case-specific and practical approach to Rule 19's joinder requirements that the

Ninth Circuit applied in its decision here. Petitioners have shown no legal error, and there is no new circuit split.

III. This Case Is a Poor Vehicle for Review

Finally, even if this Court were interested in addressing Rule 19 in the context of APA claims despite the absence of any legal error or circuit split, this case is not the proper vehicle to do so.

The legal rights at issue in this case are essential to the Navajo Nation and its ability to govern and serve the Navajo people. Rather than affect only a future development plan, the challenged approvals concern existing operations at the Navajo Mine and the Plant that have been a vital part of the Navajo economy for many decades, generating a full third of the Navajo Nation's general fund. It is hard to imagine a case with more important sovereign interests at stake, or with greater risks for serious prejudice from uncertainty. Given those issues, this case is not the appropriate vehicle to consider challenges to Rule 19's joinder rules, and the petition should be denied.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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