12-1072

No.

IN THE

Supreme Court of the United States

NATIVE VILLAGE OF KIVALINA AND
CITY OF KIVALINA, PETITIONERS,

v.

EXXONMOBIL CORPORATION; ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Petitioners Native Village of Kivalina and the City of Kivalina, a federally-recognized tribe and an Alaskan municipality, are the governing bodies of an Inupiat village located on an Arctic barrier island that is being destroyed by global warming. Greenhouse gases have caused the Earth's temperature to rise, especially in the Arctic, which has melted the land-fast sea ice that protects the village from powerful oceanic storms. Kivalina is thus now exposed to erosion and flooding from the sea and must relocate or face imminent destruction.

Petitioners seek damages – not injunctive relief – from the largest U.S. sources of greenhouses gases under the federal common law of public nuisance. In *American Electric Power Co. v. Connecticut* ("*AEP*"), 131 S. Ct. 2527 (2011), the Court dismissed a federal common law claim for injunctive relief, holding that the Clean Air Act displaces "any federal common law right to seek abatement" of emissions because the Clean Air Act "provides a means to seek limits on emissions of carbon dioxide from domestic power plants – *the same relief* the plaintiffs seek by invoking federal common law." *AEP*, 131 S. Ct. at 2537, 2538 (emphasis added).

The question presented is: Whether the Clean Air Act, which provides no damages remedy to persons harmed by greenhouse gas emissions, displaces federal common-law claims for damages.

PARTIES TO THE PROCEEDINGS

Native Village of Kivalina and the City of Kivalina, Petitioners

ExxonMobil Corporation; BP P.L.C.; BP America, Inc.; BP Products North America, Inc.; Chevron Corp.; Chevron U.S.A., Inc.; ConocoPhillips Company; Royal Dutch Shell PLC; Shell Oil Company; Peabody Energy Corp.; The AES Corporation; American Electric Power Company, Inc.; American Electric Power Services Corp.; DTE Energy Company; Duke Energy Corp; Edison International; MidAmerican Energy Holdings Co.; Pinnacle West Capital Corp.; The Southern Company; Dynegy Holdings, Inc.; Xcel Energy, Inc.; and Genon Energy, Inc., Respondents.

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CONSTITUTIONAL AND STATUTORY PROVISIONS

Native Village of Kivalina and the City of Kivalina respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The court of appeals decision is reported at 696 F.3d 849 (Pet. App. 1a). The district court opinion is reported at 663 F. Supp. 2d. 863 (Pet. App. 42a).

JURISDICTION

The court of appeals' judgment was entered on September 21, 2012. Petitioners filed a timely petition for rehearing, which was denied on November 27, 2012 (Pet. App. 82a).[1] The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). Federal subject matter jurisdiction is proper under 28 U.S.C. § 1331 as the complaint alleges a federal common law claim. *Illinois v. Milwaukee*, 406 U.S. 91, 100 (1972); *Bell v. Hood*, 327 U.S. 678, 682 (1946).

RELEVANT PROVISIONS INVOLVED

The relevant provisions of the Clean Air Act, 42 U.S.C. § 7401 *et seq.* are reproduced in the Petitioners' Appendix at 83a-111a. There are no constitutional provisions involved.

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[1] Petitioners also filed in this Court an application for a motion to extend their time to file a certiorari petition. This application was denied on February 21, 2013.

Introduction

This case presents an opportunity for this Court to resolve a conflict in the Court's precedents as to whether a federal common law claim for *damages* is displaced by a regulatory statute like the Clean Air Act ("CAA"). As the court of appeals acknowledged, this is an apt question for this Court, because of the significance of global warming claims generally and because of "tension" in this Court's precedents on displacement of damages claims by regulatory statutes. Pet. App. 14a (Supreme Court "will doubtless have the opportunity to" consider this question) (majority opinion); *id.* 18a, 33a ("I write separately to address what I view as tension in Supreme Court authority"; Supreme Court precedents are "not entirely clear") (Pro, J., concurring).

In *Exxon Shipping Co. v. Baker*, 554 U.S. 471 (2008), this Court unambiguously held that a federal common law *damages* claim was not displaced by the Clean Water Act, a statute that, like the Clean Air Act, provides only injunctive relief and civil penalties. *Id.* at 489 n.7; *see also* 42 U.S.C. § 7604 (Pet. App. 106a). *Exxon Shipping* should control here. The court of appeals, however, relied upon *Middlesex County Sewerage Authority v. National Sea Clammers Ass'n*, 453 U.S. 1 (1981), in which this Court held that a federal common-law damages claim was displaced by the Clean Water Act. *Middlesex*, 453 U.S. at 21-22. As Judge Pro noted in his separate opinion struggling to reconcile the two decisions, *Exxon Shipping* "appears to be a departure from" *Sea Clammers*. Pet App. 25a. Indeed, as Judge Pro frankly acknowledged, *Exxon Shipping*

"suggests a different result" from the one reached by the court of appeals here. Pet. App. 32a. This tension in this Court's precedents must be resolved.

This case also presents matters of exceptional importance. The Court, in granting certiorari in another recent case dealing with global warming, stated that "the unusual importance of the underlying issue persuaded us to grant the writ" notwithstanding "the absence of any conflicting decisions." *Massachusetts v. EPA*, 549 U.S. 497, 506 (2007). The legal issue presented is also of exceptional importance, as shown by the Supreme Court's frequent review of whether a statute displaces federal common law, including in recent cases such as *AEP* and *Exxon Shipping*. And for Kivalina, the exceptional importance of this case cannot be doubted. This Inupiat community's very physical and cultural existence is at stake, a fact the court of appeals acknowledged: "Our conclusion obviously does not aid Kivalina, which itself is being displaced by the rising sea." Pet. App. 16a. For these reasons, further review of the court of appeals' displacement analysis is warranted.

STATEMENT

A. Because of Global Warming, Kivalina Must Be Abandoned.

The Native Village of Kivalina and the City of Kivalina are the governing bodies of an Inupiat Native Alaskan village of approximately 400 people. Pet. App. 7a. Kivalina is located on the tip of a six-mile barrier

island on the northwest coast of Alaska, about 70 miles north of the Arctic Circle. *Id.*

The Kivalina islanders depend on the sea ice that forms around the village in fall, winter, and spring. This landfast sea ice provides vital protection to the island from storms that regularly batter the Chukchi Sea coastline. Pet. App. 47a. Due to global warming, this landfast sea ice forms later in the year, breaks up earlier, and is less extensive and thinner, subjecting Kivalina to greater coastal storm waves, storm surges, and erosion. *Id.* 7a, 47a. This loss of sea ice threatens buildings and infrastructure on Kivalina with "imminent devastation" – in fact, the village may soon "cease to exist" if it is not relocated. *Id.* 7a, 17a n.2. According to the U.S. Government Accountability Office, a storm "could flood the entire village at any time," and "[r]emaining on the island . . . is no longer a viable option." *Id.* The GAO and the Army Corps of Engineers have attributed the problem to global warming and estimated relocation costs at $95 million to $400 million. *Id.* 48a.

B. Proceedings in the District Court and the Court of Appeals.

Kivalina filed this action against oil, energy and utility companies in the U.S. District Court for the Northern District of California, alleging that global warming is responsible for the impending destruction of the island, and that the defendants, through their massive emissions of greenhouse gases ("GHGs"), are substantial contributors to global warming. Pet. App. 47a-49a. Kivalina alleged that the defendants'

emissions constituted a substantial and unreasonable interference with public rights, and sought damages under the federal common law of nuisance. *Id.* Kivalina asserted jurisdiction under longstanding federal common-law decisions such as *Missouri v. Illinois*, 180 U.S. 208, 241-43 (1901), and *Illinois v. Milwaukee*, 406 U.S. 91, 93 (1972) ("*Milwaukee I*"), and under 28 U.S.C. § 1331 (federal question jurisdiction).

The defendants moved to dismiss the action for lack of subject matter jurisdiction, arguing, *inter alia*, that Kivalina lacked standing and that its complaint raised nonjusticiable political questions. Pet. App. 9a. The district court granted the motion on both grounds. *Id.* While the case was on appeal, this Court decided *AEP*, in which an equally divided Court (Justice Sotomayor was recused) sustained the exercise of subject matter jurisdiction over a federal common-law claim seeking injunctive relief against major sources of GHGs. *AEP*, 131 S. Ct. at 2535. *AEP* held that, because the Clean Air Act authorizes EPA to promulgate limits on GHG emissions, the Act displaces the plaintiffs' federal common law claim for an injunction imposing emissions limits. *Id.* at 2540 ("The Second Circuit erred, we hold, in ruling that federal judges may set limits on greenhouse gas emissions in face of a law empowering EPA to set the same limits").

After ordering supplemental briefing on the Court's decision in *AEP*, the court of appeals held that the Clean Air Act displaces Kivalina's damages claim. Pet. App. 14a-16a. The majority opinion followed *Middlesex* rather than the more recent decision in *Exxon Shipping*, *see id.* at 14a, even though, as Judge

Pro noted in his opinion concurring in the result, *Exxon Shipping* was "a departure" from *Middlesex* and in fact the explicit outcome of *Exxon Shipping* was that a damages remedy survived, *see id.* at 25a.[2] The majority opinion acknowledged the likelihood that the issue would reach this Court. *Id.* 14a (Supreme Court "will doubtless have the opportunity to" address the question).

REASONS FOR GRANTING THE PETITION

I. This Court Should Clarify Whether a Regulatory Statute Displaces a Federal Common-Law Damages Claim.

The question of whether a regulatory statute like the Clean Air Act or the Clean Water Act displaces a federal common-law damages claim has come up repeatedly in this Court's decisions over the years, but with contradictory results.

This Court has recognized federal nuisance claims since at least 1901. *See, e.g.*, *Missouri v. Illinois*, 180 U.S. 208 (1901) (recognizing claim for public nuisance based on discharges to Mississippi River that

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[2] Judge Pro's concurrence also concluded that Kivalina lacked standing, because its injuries were not traceable to the defendants' particular GHG emissions. Pet. App. 39a. The majority opinion did not address this contention. Petitioners have standing because defendants' massive greenhouse gas emissions contribute to their injury. *See* Complaint ¶ 180; *Massachusetts v. EPA*, 549 U.S. 497, 523-25 (2007) (plaintiffs demonstrated causation sufficient to establish standing when EPA's refusal to regulate new motor vehicle emissions contributed to plaintiffs' injuries from global greenhouse gas emissions).

crossed state lines); *Georgia v. Tennessee Copper Co.*, 206 U.S. 230 (1907) (enjoining emissions of sulphuric acid that crossed state lines). These specialized federal common-law claims survived the demise of "federal *general* common law" announced by *Erie Railroad Co. v. Tompkins*, 304 U.S. 64, 78 (1938) (emphasis added). Such specialized federal common law was based on the "overriding federal interest in the need for a uniform rule of decision" and the desirability of avoiding the "proliferating contentions" that application of "the varying common law of the individual States" would produce when applied to pollution migrating across state lines. *See Illinois v. Milwaukee*, 406 U.S. 91, 105 n.6, 108 n.9 (1972) ("*Milwaukee I*") (citations and quotation marks omitted); *see also AEP*, 131 S. Ct. at 2536 (interstate pollution is "meet for federal law governance"); *Int'l Paper Co. v. Ouellette*, 479 U.S. 481, 492 (1987) ("the control of interstate pollution is primarily a matter of federal law").

This Court first set forth the standard for when a comprehensive regulatory scheme displaces federal common law in *Milwaukee v. Illinois*, 451 U.S. 304 (1981) ("*Milwaukee II*"). Illinois sought to use the federal common law of nuisance to enjoin Milwaukee from discharging effluents into Lake Michigan, even though these discharges were expressly authorized by Milwaukee's CWA permit. Illinois also sought to restrict sewer overflows that the Milwaukee permit addressed through requirements to build new infrastructure. The Court carefully analyzed not the nuisance cause of action generally but each of these two claims for injunctive relief specifically and in detail, and held that each was displaced.

According to *Milwaukee II*, the fundamental inquiry in displacement cases is "whether the legislative scheme spoke directly to a question" posed by the common-law claims at issue. *Id.* at 315 (internal quotation marks omitted). Applying this test, the Court rejected Illinois's claim for two reasons. First, Congress had authorized EPA, not the courts, to solve the problem of both effluent discharges and sewer overflows: "the problem ... has been thoroughly addressed through the administrative scheme," and thus courts lacked authority to "impose more stringent [effluent] limitations" or requirements different from the qualitative measures EPA had selected to "address[] the problem" with overflows. *Id.* at 320, 324.[3] Similarly, the Court emphasized that the CWA had given Illinois "a forum in which to protect its interest," by expressly allowing it to participate in the

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[3] The Court also considered Illinois's argument that its sewer overflow claim should not be displaced because the permit did not set a numeric limit on overflows; instead the permit relied on qualitative instructions. The Court rejected Illinois's argument: "The question is whether the field has been occupied, not whether it has been occupied in a particular manner." *Milwaukee II*, 451 U.S. at 324. This line has been cited by the defendants in this case to show that, under *Milwaukee II*, nearly any federal common-law pollution remedy, including the damages remedy sought here, is displaced by the various regulatory schemes because it is simply another "manner" of regulation. Not so. In context, it is clear that the Court was merely saying that displacement cannot be avoided simply because the proposed injunction would limit pollution using techniques different from the ones selected under the CWA; the passage does not say or imply that damages must be displaced whenever injunctive claims are. *See id.* at 324 n.18 (trial court's injunction was "not 'filling a gap' in the regulatory scheme with respect to overflows, it was simply providing a different regulatory scheme").

issuance of Milwaukee's permit, but Illinois had not done so. *Id.* at 325, 326-27.

In sum, the Court in *Milwaukee II* focused carefully on whether the statutory scheme "spoke directly" to the plaintiff's "problem," and whether the statute gave the plaintiff a means "to protect its interests." This remedy-specific inquiry was consistent with the displacement analysis used in maritime cases, the other major species of federal common law. *See, e.g., Mobil Oil v. Higginbotham*, 436 U.S. 618, 625 (1978) (damages claim for loss of society was displaced by statute that "speak[s] directly" to the question). And the Court emphasized that federal common law still applies when the courts are "compelled to consider federal questions which cannot be answered from federal statutes alone." *Milwaukee II*, 451 U.S. at 314 (quotation marks omitted); *see also id.* at 319 n.14 (federal common law continues to apply where "problems requiring federal answers are not addressed by federal statutory law").

A few months after its decision in *Milwaukee II*, the Court decided *Middlesex County Sewerage Authority v. National Sea Clammers Ass'n*, 453 U.S. 1 (1981), where an organization representing fishermen sought both injunctive and monetary relief under federal common law for ocean dumping that was allegedly in violation of the CWA. After extensively examining the plaintiff's argument for an implied statutory right of action, the Court briefly discussed whether the CWA displaces a federal common law damages claim. Unlike its decision in *Milwaukee II*, the Court did not analyze whether the CWA "spoke

directly" to a damages claim, whether such a claim might challenge EPA's authority, or whether it mattered that the plaintiff had no remedy under the CWA for damage already done to its economic interests. Instead the Court simply cited *Milwaukee II* and summarily concluded that "the federal common law of nuisance in the area of water pollution is entirely pre-empted by the more comprehensive scope" of the CWA. *Id.* at 22. Thus, in one casual line, *Middlesex* seemed to mark a radical departure from *Milwaukee II* and from displacement analysis generally.

But, as Judge Pro acknowledged in his concurrence for the court of appeals here, the Court in *Exxon Shipping Co. v. Baker*, 554 U.S. 471 (2008), sharply departed from any broad reading of *Middlesex* and returned to the more pragmatic and careful analysis of *Milwaukee II*. *See* Pet. App. 25a, 32a (*Exxon Shipping* is a "departure" from *Middlesex* and "suggests a different result"). In *Exxon Shipping*, the plaintiffs asserted federal common-law claims for punitive damages arising from the Valdez oil spill, over and above the large monetary settlement collected from Exxon by EPA. Exxon claimed that the CWA displaced the plaintiffs' entitlement to these damages under maritime law, but the Court disagreed. Contrary to *Middlesex*, the Court concluded that the CWA did *not* entirely displace common-law pollution remedies and in particular that damages remedies (being totally outside the scope of the CWA) were not in conflict with the CWA or with EPA's policy prerogatives. On this basis, the Court held that these common-law remedies were not displaced:

> we see no clear indication of congressional intent to occupy the entire field of pollution remedies. In order to abrogate a common-law principle, the statute must speak directly to the question addressed by the common law; nor for that matter do we perceive that punitive damages for private harms will have any frustrating effect on the CWA remedial scheme.

Id. at 489 (citation and internal quotation marks omitted). The Court explained that the claims in *Milwaukee II* and *Middlesex* "amounted to arguments for effluent-discharge standards different from those provided by the CWA. Here Baker's private claims for economic injury do not threaten similar interference with federal regulatory goals." *Id.* at 489 n.7.[4]

To be sure, it is possible to read *Middlesex* narrowly so as to reconcile the decision with *Exxon Shipping*. Given *Exxon Shipping's* statement that *Middlesex* is limited to situations where "plaintiffs' common law nuisance claims amounted to arguments for effluent-discharge standards different from those provided by the CWA," *id.*, then it appears that a federal common law damages claim is displaced only where it is so inextricably intertwined with claims for injunctive relief that it amounts to second-guessing of

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[4] *Exxon Shipping* and *Middlesex* cannot be reconciled on the basis that the former involved the federal common law of maritime while the latter involved federal common law *simpliciter*. *See United States v. Texas*, 507 U.S. 529, 534 (1993) (holding "there is no support in our cases" for such a distinction in applying displacement test); *see also Yamaha Motor Corp., U.S.A. v. Calhoun*, 516 U.S. 199, 206 (1996) (maritime law is "a species of judge-made federal common law").

the prospective statutory standards. In this regard it is notable that the plaintiff in *Middlesex* was seeking damages for alleged *violations* of the CWA. *See Middlesex*, 453 U.S. at 12. But here, the court of appeals clearly viewed the two decisions as contradictory. Indeed, one of the judges on the panel openly acknowledged that *Exxon Shipping* "suggests a different result" from the one reached by the majority yet – caught in the thicket of apparently conflicting decisions – it ultimately decided to follow *Middlesex* instead of the more recent *Exxon Shipping*.

Three years after *Exxon Shipping*, the Court held in *AEP* that the CAA displaces a federal nuisance claim for injunctive relief. In so doing, the Court focused on conflicts that might actually arise with EPA policy if a court granted the requested emissions injunction, as in *Milwaukee II* and *Exxon Shipping*. And *AEP* pointedly did not follow *Middlesex* in concluding that the whole "federal common law of nuisance" is "entirely" displaced by a "comprehensive" regulatory scheme, which would have made for a much shorter, and very different, *AEP* opinion.[5] *See Middlesex*, 453 U.S. at 22. Again and again, the Court in *AEP* was careful to say that the purpose of displacement is to prevent interference with EPA's

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[5] *AEP* also cited *Milwaukee II* for the proposition that, "[t]he question is whether the field has been occupied, not whether it has been occupied in a particular manner." *AEP*, 131 S. Ct. at 2539 (quoting *Milwaukee II*, 451 U.S. at 324) . But as in *Milwaukee II*, the Court was merely observing that it was immaterial whether the injunction sought under the common law was consistent or inconsistent with the regulatory scheme – it was *not* a statement suggesting that if an injunctive claim is displaced then a damages claim must be as well.

prerogatives and that the statute gives the plaintiffs redress; the Court consistently qualified its analysis to specify that the Clean Air Act displaces injunctive relief claims which interfere with EPA's authority. *See, e.g.*, *AEP*, 131 S. Ct. at 2537 ("We hold that the Clean Air Act and the EPA actions it authorizes displace any federal common law right to seek *abatement* of carbon-dioxide emissions.") (emphasis added); *id.* at 2538 ("The Act itself thus provides a means to seek limits on emissions ... – the same relief the plaintiffs seek by invoking federal common law. We see no room for a parallel track."); *id.* at 2539-40 (citing agency's authority and expertise in setting appropriate emissions levels). The Court's analysis demonstrates that the displacement analysis focuses on whether remedies conflict because, as the Court noted, the "reach of remedial provisions is important to [the] determination whether [a] statute displaces federal common law." *Id.* at 2538 (*citing County of Oneida v. Oneida Indian Nation*, 470 U.S. 226, 237-39 (1985)).

In short, *Milwaukee II*, *Middlesex*, *Exxon Shipping* and *AEP* cannot all be correctly decided, yet all of them are viewed as good law – a conundrum that Judge Pro acknowledged in his opinion concurring in the result and that ultimately led him, and the other members of the panel, to a result in this case that is at odds with the fundamental rationale for displacement and with basic fairness. Petitioners respectfully request that the Court grant this petition so that the correct rule of decision can be clearly articulated.

II. The Importance of the Issues and Legal Questions Merits Review by this Court.

This case also presents matters of exceptional importance. First, the question of whether a federal statute displaces a federal common law claim arises regularly in the lower federal courts and has frequently merited review in this Court, including in *AEP*, *Exxon Shipping*, *Middlesex*, *Milwaukee I*, and *Milwaukee II*. *See also Oneida v. Oneida Indian Nation*, 470 U.S. 226, 237-39 (1985); *Michigan v. United States Army Corps of Eng'rs*, 667 F.3d 765 (7th Cir. 2011) (applying *AEP* and holding that federal statutes do not displace federal common law of public nuisance arising from interstate harms caused by an invasive species); *Mattoon v. City of Pittsfield*, 980 F.2d 1, 5 (1st Cir. 1992) (Safe Drinking Water Act displaced federal common law claim); *In re Complaint of Oswego Barge Corp.*, 664 F.2d 327, 339 (2d Cir. 1981) (finding displacement of federal common law tort claims by the United States). As the defendants in *AEP* (some of whom are also defendants here) stated in their petition for certiorari: "The questions presented by this case are recurring and of exceptional importance to the Nation." Petition for a Writ of Certiorari, *American Electric Power Co. v. Connecticut*, U.S. Supreme Court No. 10-174, 2010 U.S. Briefs 174, at *12 (Aug. 2, 2010). And many of the displacement cases meriting the Court's attention, including *Exxon Shipping*, *Oneida Indian Nation*, and *Middlesex*, have been damages cases; this case presents a recurring issue of recognized importance.

Yet the Court's displacement analysis has generated substantial confusion, as evidenced by Judge

Pro's separate opinion below openly struggling to make sense of the conflicting decisions from this Court. And if the court of appeals is right that *Middlesex*, not *Exxon Shipping*, is the law, then there is essentially no federal common law of public nuisance anymore – and victims damaged in their business or person by even conventional pollution (like the Valdez oil spill in *Exxon Shipping* or the sulphur pollution that denuded the Georgia forests in *Tennessee Copper)* have no federal remedy. This state of affairs would be contrary to the Court's recurring emphasis that common-law remedies for interstate pollution should be federal, to ensure fairness and the smooth functioning of the federal system. *Milwaukee I*, 406 U.S. at 105 n.6, 107 n.9 (1972); *see also AEP*, 131 S. Ct. at 2536 (interstate pollution is "meet for federal law governance").

Second, the displacement issue presents a fundamental question as to the proper boundaries between two branches of the federal government – legislative and judicial. *See Milwaukee II*, 451 U.S. at 315 (displacement issue is one of separation of powers). A question of such importance should be resolved by this Court, particularly where the opinion below evidences confusion as to the meaning of this Court's decisions on the matter.

Third, the Court has recognized that claims seeking redress for GHG emissions are inherently important because of the extraordinary nature of global warming. For example, the Court previously granted certiorari in a case dealing with global warming because "the unusual importance of the underlying issue persuaded us to grant the writ" – notwithstanding

"the absence of any conflicting decisions." *Massachusetts v. EPA*, 549 U.S. 497, 506 (2007). So too here.

Finally, for Kivalina, the importance of this case could not be greater. Kivalina's existence as a community is at stake, a fact the court of appeal acknowledged: "Our conclusion obviously does not aid Kivalina, which itself is being displaced by the rising sea." Pet. App. 16a. Indeed, unlike the residents of New Orleans, New York City and New Jersey, many of whom could evacuate when faced with storm surge flooding, Kivalina residents cannot flee: there are no roads, no means of evacuation during a storm, and no place to go on their tiny and remote island to find refuge from a major storm surge. If the law truly holds that Kivalina is entitled to no compensation under federal law because its federal remedy has been displaced by a statute that provides no remedy at all, then the answer to this question of overriding importance should come from this Court.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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