No. _____

In the Supreme Court of the United States

THE MICCOSUKEE TRIBE OF INDIANS OF FLORIDA,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

The 2014 Tribal General Welfare Exclusion Act states that, for income tax purposes, "[g]ross income does not include the value of any Indian general welfare benefit."

The question presented is whether contrary to that plain command, gross income includes "Indian general welfare benefits" when those benefits are derived from gaming revenue pursuant to the 1988 Indian Gaming Regulatory Act.

PARTIES TO THE PROCEEDINGS

Petitioner is the Miccosukee Tribe of Indians of Florida, intervenor and appellant below. Sally Jim was also defendant and appellant below and is filing a separate petition.

Respondent is the United States of America, plaintiff and appellee below.

CORPORATE DISCLOSURE STATEMENT

The Miccosukee Tribe of Indians of Florida is a federally recognized sovereign Indian tribe. As a result, it has no parent company and no public company owns any interest in it.

Sally Jim is an individual.

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INTRODUCTION

This Court should grant certiorari to provide clear guidance to Indian tribes in administering their general welfare programs and eliminate the confusion sewn by the Eleventh Circuit's holding that payments the Miccosukee Tribe of Indians of Florida ("Miccosukee Tribe" or the "Tribe") made to its member, Sally Jim, could not be excluded from income as general welfare benefits under the 2014 Tribal General Welfare Exclusion Act ("GWEA") because it believed such payments were derived from the "net revenues" of class II Indian gaming, as defined in the 1988 Indian Gaming Regulatory Act ("IGRA"). Specifically, the Eleventh Circuit stated: "The distribution payments cannot qualify as Indian general welfare benefits under [the 2014] GWEA because Congress specifically subjected such payments to federal taxation in [the 1988] IGRA." (App. at 4.)

The Eleventh Circuit's holding impacts not just the Miccosukee Tribe and Sally Jim. Rather, it impacts all of the 238 federally recognized Indian tribes engaged in gaming who provide welfare payments to their members.

If the ruling stands, it would be an arbitrary and capricious limitation on the GWEA—which was enacted 26 years after IGRA and has no pertinent exception—and would undermine the Miccosukee Tribe's long-standing cultural practice of all members sharing equally in tribal resources. (R. Tr. Aug. 15, 2016 at 30:20-31:14.) Equal payments to Indians for their general welfare has a long and deep history in this country, going back to the removal of the Cherokee Indians from east of the Mississippi. *See United States*

v. Old Settlers, 148 U.S. 427, 479 (1893) ("the lands west of the Mississippi were held as communal property, not vested in the Cherokees as individuals, as tenants in common or joint tenants; but by the treaties of 1835 and 1846 the communal character of the property was terminated as to both eastern and western Cherokees, and the fund, taking the place of the realty, was invested in the various ways we have mentioned, leaving the remainder to be distributed per capita.").

The Eleventh Circuit's holding has injected confusion into the distribution of tribal welfare benefits and effectively written the GWEA out of the law for any tribe deriving revenue from gaming. This will, in turn, subject those tribes to aggressive IRS auditing, which is precisely the administrative behavior that led to the bipartisan passage of the GWEA in the first place.

OPINIONS BELOW

The Eleventh Circuit opinion affirming the District Court judgment is reported as *United States of America v. Sally Jim, Miccosukee Tribe of Indians of Fla., Intervenor*, 891 F.3d 1242 (11th Cir. 2018), rehearing denied, No. 16-17109-GG, 2018 U.S. App. LEXIS 22201 (11th Cir. Aug. 9, 2018), and reproduced at App. A. The District Court's opinion granting in part Respondent's Motion for Summary Judgment is reported as *United States v. Jim*, No. 14-22441-CIV-ALTONAGA/O'Sullivan, 2016 U.S. Dist. LEXIS 188255 (S.D. Fla. 2016), and reproduced at App. E. The District Court's order setting forth findings of fact and conclusions of law is reported as *United States v. Jim*, No. 14-22441-CIV-ALTONAGA/O'Sullivan, 2016 U.S. Dist. LEXIS

170213 (S.D. Fla. 2016), and reproduced at App. D. The District Court's final judgment is reported as *United States v. Jim*, 2016 U.S. Dist. LEXIS 114118 (S.D. Fla. Aug. 24, 2016), and reproduced at App. C.

JURISDICTION

This petition seeks review of the order of the United States Court of Appeals for the Eleventh Circuit dated June 4, 2018, reported at 891 F.3d 1242. The Circuit denied rehearing on August 9, 2018, reported at 2018 U.S. App. LEXIS 22201 (11th Cir. 2018). Justice Thomas issued an order extending time to file the petition to January 6, 2019. Jurisdiction is conferred by 28 U.S.C. § 1254(1).

STATUTES

The Tribal General Welfare Exclusion Act of 2014, P.L. 113-168, 128 Stat. 1884, enacted Sept. 26, 2014, as amended 2018,[1] an addition to the Internal Revenue Code, provides in relevant part:

> 26 U.S.C. § 139E. Indian general welfare benefits.
>
> (a) In general. Gross income does not include the value of any Indian general welfare benefit.
>
> (b) Indian general welfare benefit. For purposes of this section, the term "Indian general welfare benefit" includes any payment made or services provided to or on behalf of a member of an Indian tribe (or any spouse or

[1] Consolidated Appropriations Act of 2018, Title IV, Section 401(a)(41) – (45), which made technical corrections that did not change the Act as relevant to this case.

dependent of such a member) pursuant to an Indian tribal government program, but only if-

(1) the program is administered under specified guidelines and does not discriminate in favor of members of the governing body of the tribe, and

(2) the benefits provided under such program--

(A) are available to any tribal member who meets such guidelines,

(B) are for the promotion of general welfare,

(C) are not lavish or extravagant, and

(D) are not compensation for services.

The Indian Gaming Regulatory Act of 1988, P.L. 100-497, 102 Stat. 2467, provides in relevant part:

25 U.S.C. § 2703. Definitions

….

(9) The term "net revenues" means gross revenues of an Indian gaming activity less amounts paid out as, or paid for, prizes and total operating expenses, excluding management fees.

25 U.S.C. § 2710. Tribal gaming ordinances

….

(b) Regulation of class II gaming activity; net revenue allocation; audits; contracts.

….

(2) The Chairman shall approve any tribal ordinance or resolution concerning the conduct, or regulation of class II gaming on the Indian lands within the tribe's jurisdiction if such ordinance or resolution provides that--

….

(B) net revenues from any tribal gaming are not to be used for purposes other than--

(i) to fund tribal government operations or programs;

(ii) to provide for the general welfare of the Indian tribe and its members;

(iii) to promote tribal economic development;

(iv) to donate to charitable organizations; or

(v) to help fund operations of local government agencies;

….

(3) Net revenues from any class II gaming activities conducted or licensed by any Indian tribe may be used to make per capita payments to members of the Indian tribe only if—

….

(D) the per capita payments are subject to Federal taxation and tribes notify members of such tax liability when payments are made.

Title 26 U.S.C. § 3402(r):

(r) Extension of withholding to certain taxable payments of Indian casino profits.

(1) In general. Every person, including an Indian tribe, making a payment to a member of an Indian tribe from the net revenues of any class II or class III gaming activity conducted or licensed by such tribe shall deduct and withhold from such payment a tax in an amount equal to such payment's proportionate share of the annualized tax.

Article VI, Section 1, of the Constitution of the Miccosukee Tribe of Indians of Florida (Dec. 17, 1961), provides:

> All members of the Miccosukee Tribe shall be accorded equal political rights and equal opportunities to participate in the economic resources and activities of the tribe, and no person shall be denied freedom of conscience, speech, association or assembly, or due process of law, or the right to petition for the redress of grievances.

STATEMENT OF THE CASE

This case originated with the IRS audit of Sally Jim, an enrolled member of the Miccosukee Tribe, a federally recognized Indian Tribe. The Miccosukee Tribe has a long history of supporting its members. Since at least 1984, the Tribe has imposed a tax on all the gross receipts of all businesses operating on tribal lands. (R. Pl. Ex. 75.) The Tribe uses the proceeds of its gross receipts tax to provide direct financial support to its members. In the early 1990's the Tribe began operating a gaming facility on its lands. Like all other tribal and non-tribal businesses, the gaming facility is subject to the Tribe's gross receipts tax. (R. Defs. Ex. 7.) As the Eleventh Circuit's opinion stated, "[t]he Government, after catching wind of the tribe's distribution program, assessed taxes, penalties, and interest against [Sally Jim] for the distributions." (App. at 2-3.)

When the IRS failed to take collection action against Ms. Jim during the applicable ten-year statute of limitations period, the Government filed a one-count

complaint against her seeking to reduce its tax assessment for the year 2001 to a money judgment. (App. at 3.)[2] The Tribe intervened because the outcome of Ms. Jim's case would potentially impair its welfare program and require it to report and withhold taxes on all or a portion of its general welfare payments to its members. (*Id*.)

The trial court assumed for purposes of summary judgment, without finding, that the Tribe's payments to Ms. Jim might be for the promotion of general welfare, but ruled as a matter of law they could not be excluded from income because IGRA stated that per capita payments of "net revenues" from gaming, as defined in IGRA, were "subject to" federal taxation.[3] The Eleventh Circuit affirmed on that same basis. (App. at 4.)

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[2] The government agrees that the 2014 Act applied to the year at issue. (R. Response to Court Inquiry of Oct. 13, 2017, dated Oct. 23, 2017 ("[T]he GWE is applicable to Ms. Jim's 2001 tax liability.")); *see also* 128 Stat. 1884, § 2(d)(1) ("The amendments made by this section shall apply to taxable years for which the period of limitation on refund or credit under section 6511 of the Internal Revenue Code of 1986 has not expired.")

[3] "Analyzing the two statutes in conjunction indicates the Tribal GWEA Act was not meant to supplant the IGRA; that is, per capita distributions of gaming revenue remain taxable income, even if these distributions arguably promote the general welfare of a tribe." (App. at 57-58.) "The Court concluded at summary judgment the Tribe's distributions, derived from gaming proceeds, are not exempted from federal taxation as general welfare payments or income from the land." (App. at 42.)

REASONS FOR GRANTING THE PETITION

I. This Case Presents an Important Question Impacting the Ability of Indian Tribes to Provide for the General Welfare of their Members, and this Question is Likely to Recur.

The Eleventh Circuit is the first federal appellate court to hold that the GWEA's blanket rule that "[g]ross income does not include the value of any Indian general welfare benefit" has an unwritten exception for Indian general welfare benefits derived from gaming revenue. This case thus involves the important question of how Indian tribes fund their general welfare programs to support their members. And there is urgency to clarify the issue now. Specifically, against the backdrop of the Eleventh Circuit's ruling, there is significant uncertainty for approximately 238 federally recognized Indian tribes engaged in gaming, along with the members of those tribes.[4] They face uncertainty because the clear rule from the GWEA has been made unclear by the Eleventh Circuit's new unwritten exception regarding how to structure and fund a general welfare program supported in part by gaming revenue. This Court should provide clarity to those tribes.

The primary goal of the GWEA was to give "necessary deference and flexibility to these *tribal governments* so that they can develop programs and

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[4] *See Facts at a Glance*, National Indian Gaming Commission, published in 2016, https://www.nigc.gov/images/uploads/NIGC%20Uploads/aboutus/2016FactSheet-web.pdf

determine priorities that promote the general welfare in their own communities."[5] The Eleventh Circuit's ruling strips the ability of tribal governments to administer their general welfare programs as they see fit. Most obviously, the ruling eliminates tribes' ability to use gaming revenue for general welfare payments without suffering tax consequences. But that limitation is not found anywhere in the statute.

Congress placed minimal restrictions on general welfare payments made by tribes to their members. Under the GWEA, general welfare payments cannot constitute "compensation for services" and cannot be "lavish or extravagant." The Eleventh Circuit, however, created a new and extra-statutory restriction: general welfare payments cannot be derived from gaming revenue. This Court's attention is necessary so tribes will know whether their general welfare programs will be constrained by the GWEA's restrictions, or by the additional restriction imposed by the Eleventh Circuit.

Moreover, Congress intended for the GWEA to eliminate aggressive IRS auditing tactics that had arisen against Indian tribes.[6] The Eleventh Circuit's

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[5] 160 Cong. Rec. H7601 (2014) (statement of Rep. Kind) (emphasis added).

[6] "These [general welfare] programs were traditionally tax-exempt, but in recent years the IRS has informally reinterpreted the rules in order to tax more and more of these programs. Simultaneously, the agency had subjected tribes to expensive and intrusive audits. With their unique history of tribal sovereignty, Native Americans should not be subjected to arbitrary tax enforcement. This bill would . . . end unwarranted intrusions into tribal self-government." CONG. REC., H7600 (Sept. 16, 2014) (Statement of Rep. Nunes).

decision jeopardizes that goal by incentivizing the IRS to audit tribes that derive income from gaming revenue and use that revenue to make general welfare payments to their members. Tribes and their members will then be required to either: (a) expend significant resources defending against the IRS, or (b) succumb to IRS pressure and pay the questionable tax assessments. Thus, the Eleventh Circuit's ruling raises an important question with widespread, ongoing, and pernicious effect on Indian tribes and their members.

II. The Eleventh Circuit's Holding is Irreconcilable with Congress' Recent and Unequivocal Statement that Any Payment for General Welfare Purposes is Excluded from Income.

A. The GWEA Excludes from Income Any Payment made for General Welfare Purposes, Including Equal Payments Made by a Tribe to Each of its Members.

When it enacted the GWEA, Congress chose pellucid language: "Gross income does not include the value of any Indian general welfare benefit." This unequivocal language was intended, in part, to end the IRS' long-standing refusal to exclude from income substantially equal benefits provided by an Indian Tribe to each of its members as general welfare benefit payments.[7]

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[7] "[T]he IRS has frequently insisted that tribal benefits be based on individualized determination of need. This stipulation prevents the general welfare exclusion from covering programs designed to

The IRS attempted to preempt the GWEA, issuing on June 3, 2014 guidance in Rev. Proc. 2014-35, 2014-1 C.B. 1110, which made the seemingly inconsistent statements that (1) excludable general welfare benefit payments could be made from gaming revenues, and (2) that "per capita payments to tribal members of tribal gaming revenues that are subject to the Indian Gaming Regulatory Act . . . are not excludable from gross income under the general welfare exclusion or this revenue procedure."

With the IRS' guidance available to it, Congress chose not to reassert IGRA above the GWEA, and this omission should not be ignored. *See Iselin v. United States*, 270 U.S. 245, 251 (1926) ("To supply omissions transcends the judicial function."); *Ebert v. Poston*, 266 U.S. 548, 554 (1925) ("A casus omissus does not justify judicial legislation."); *United States v. Ron Pair Enters., Inc.,* 489 U.S. 235, 241 (1989) ("[W]here, as here, the statute's language is plain, 'the sole function of the courts is to enforce it according to its terms.'") (citation omitted). Accordingly, the GWEA's clear language should control: "Gross income does not include the value of any Indian general welfare benefit."

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provide substantially equal benefits to all qualifying members or a tribe or to provide benefits based on determinations of needs that are not financial in nature.

…I expect … that the IRS will not interpret the statute as requiring individualized determinations of financial need where a tribal government as established a program consistent with the statute." CONG. REC. H7601-H7602 (Sept. 16, 2014) (statement of Rep. Devin Nunes)

B. IGRA Does Not Require Equal General Welfare Payments to be Included in Taxable Income.

Congress' stated purpose in adopting IGRA in 1988 was to allow Tribes to generate revenue from gaming on Indian lands. 25 U.S.C. § 2702(3). And IGRA precludes Indian tribes from spending net revenues from gaming for purposes other than for the general welfare of the tribe and its members, or other similar purposes. 25 U.S.C. § 2710(b)(2)(B)(ii). In the language relied on by the IRS and the Eleventh Circuit to undercut the GWEA, IGRA states that per capita payments to tribal members from the "net revenues" of gaming are "subject to" federal taxation and that tribes should notify members of such tax liability when payments are made.

IGRA and the GWEA can easily be read together without conflict. First, the Miccosukee Tribe does not distribute "net revenues" from gaming, as that term is defined by IGRA, in its general welfare program. (R. DE 168 at ¶¶ 15, 18.) Rather, the Tribe distributes proceeds from its gross receipts tax, which includes a gross receipts tax on the Tribe's gaming facility. (*Id*.). The courts below, however, assumed the Tribe was distributing net revenues from gaming. (App. at 36 ("Thereafter, the Tribe derived a mechanism to argue its distributions did not constitute 'net revenue' from gaming.") & App. 17 n. 23.) Notably, this mechanism for deriving and distributing general welfare benefits long predated IGRA; it was not, as the Eleventh Circuit seemed to suggest, a contrivance to circumvent the letter of IGRA. (App. at 14 n. 17 ("[w]e decline this

invitation to place form over substance in analyzing the taxability of the distributions."))

Second, without additional specificity the phrase "subject to" taxation does not mean that payments derived from gaming revenue must be included in gross income and that other exclusions do not apply. When Congress uses the phrase "subject to" taxation, it frequently deems it necessary to clarify what that phrase actually means. For example, 42 U.S.C. § 1440(c)(3) requires interest on certain guaranteed housing obligations to be "subject to Federal taxation as provided in subsection (h)(2)." Subsection (h)(2) then clarifies that the interest paid on certain obligations "shall be included in gross income for purposes of chapter 1 of title 26." Likewise, 42 U.S.C. § 5308(h) states that certain guaranteed housing obligations "shall be subject to Federal taxation as provided in subsection (j)." Subsection (j) then clarifies that the "interest paid on such obligation shall be included in gross income for the purposes of chapter 1 of title 26." Similarly the Internal Revenue Code defines a taxpayer as "any person *subject t*o any internal revenue tax." 26 U.S.C. § 770(a)(14) (emphasis added). But that does not mean all such persons are obligated to file U.S. income tax returns, or that other statutory provisions cannot exclude payments they receive from income.

IGRA does not specify that "subject to" taxation means includable in gross income. The GWEA, however, clarifies that any payments for Indian general welfare purposes are excluded from gross incomes and places no restriction on the source of such payments.

C. Any Doubt as to the Interpretation of the GWEA Must Be Resolved in Favor of the Tribe.

Even if the GWEA and IGRA could not be read in harmony, the Eleventh Circuit applied the wrong canon of statutory interpretation in reading the two statutes in favor of the IRS against the Miccosukee Tribe.

First, the GWEA directs that any ambiguities be resolved in favor of Indian tribal government. *See* Tribal GWE Act of 2014, 128 Stat 1883, 1884; *see also Three Affiliated Tribes of Fort Berthold Reservation v. Wold Eng'g, P.C.*, 467 U.S. 138, 149 (1984) ("Statutes passed for the benefit of dependent Indian tribes are to be liberally construed, with doubtful expressions being resolved in favor of the Indians."). Thus, to the extent there is any ambiguity regarding whether general welfare payments derived from gaming revenues constitutes an excludable general welfare benefit, that ambiguity must be resolved in favor of Indian tribes.[8] This principle of interpretation is similar to, but stronger than, the common law principle that Indian treaties be interpreted in favor of the Tribe. *See Minn. v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172 (1999).

The Tribe seeks application of the plain language of the GWEA. The Tribe's position does not require

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[8] The significance of this interpretive requirement cannot be overstated. The entire United States Code contains only two laws that direct that any statutory ambiguity be resolved in favor of a specified party and they both relate to Indians, the other being 25 U.S.C. § 5392(f), regarding the interpretation of self-governance provisions by the Secretary of the Interior.

application of a canon of construction to broaden an exemption. *Cf. Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117, 2131 (2016) ("There is no basis to infer that Congress means anything beyond what a statute plainly says simply because the legislation in question could be classified as 'remedial.'"). Rather, the Tribe asks the Court to enforce the words of the GWEA directing that general welfare payments be excluded from gross income and that ambiguities be resolved in favor of the Tribe.

Second, to the extent canons of construction must be applied, as the Eleventh Circuit ruled, the appropriate canons favor application of the GWEA's plain language to the exclusion of the older IGRA. The Eleventh Circuit purported to apply the canon favoring the specific over the general, and found—incorrectly—that the 1988 IGRA is more specific and therefore controlling. (App. at 16-17.)

This conclusion is problematic for several reasons. The sponsor's statement, in lieu of a committee report, for the unanimously adopted bill shows that Congress adopted the GWEA in a bipartisan rejection of the aggressive IRS auditing of payments by tribes to members (*see* CONG. REC. H7600-7601 (Sept. 16, 2014)), which as a practical matter was due to the increased distributions from gaming revenues.

Moreover, which statute is "general" and which is "specific" is controlled entirely by what the court articulates as the aims of the statutes. The Eleventh Circuit found that the statutes were aimed at tax treatment of gaming revenue and, therefore, IGRA more specifically addressed the subject matter. But the court could have just as easily found that the statutes were

aimed at tax treatment of general welfare benefits—a subject matter that the GWEA more specifically addresses—and the result would be reversed.

To the extent canons of construction should apply, the later-in-time statute—the GWEA—controls. *E.g. EC Term of Years Tr. v. United States*, 550 U.S. 429 (2007) (holding in a tax case that later act will be treated as repealing the earlier*); see also Hinck v. United States*, 550 U.S. 501 (2007) (analyzing a specific tax law that Congress enacted to reverse a prior course of decision.)

III. This Court Frequently Addresses Issues Important to Indian Tribes in the First Instance.

Indian tribes are "domestic dependent nations" that exercise "inherent sovereign authority." *Okla. Tax Comm'n v. Citizen Band Potawatomi Tribe of Okla.*, 498 U.S. 505, 509 (1991). Accordingly, tribes are subject to plenary control by Congress, *United States v. Lara*, 541 U.S. 193, 200 (2004), while remaining "separate sovereigns pre-existing the Constitution." *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 56 (1978).

This unique relationship with the federal government places this Court in the often-exclusive position of adjudicating the applicability of federal statutes to Indian tribes. Because of this relationship, this Court frequently addresses issues of importance to Indian tribes, even if those issues have been previously addressed by only one federal appellate court.

For instance, in *Plains Commerce Bank v. Long Family Land & Cattle Co.*, the Court granted certiorari to answer whether Indian tribal courts have

jurisdiction to adjudicate claims against non-Indians for the sale of land where the land in question was no longer part of tribal land. 554 U.S. 316 (2008). Though only the Eighth Circuit had addressed the question, the Court determined that certiorari was appropriate. Similarly, with only a single circuit having weighed in, the Court granted certiorari in *United States v. Navajo Nation* on the question of whether an Indian tribe could bring a breach-of-trust lawsuit against the federal government for failing to enforce a federal statutory scheme applicable to that Indian tribe. 556 U.S. 287 (2009).

Perhaps most applicable to the facts presented here, in *United States v. Tohono O'odham Nation*, the Court granted certiorari on the question of whether a federal statute deprives the Court of Federal Claims of jurisdiction where the plaintiff, an Indian tribe, had a similar suit pending before another court. 563 U.S. 307 (2011) (reversing and holding that the federal statute precludes jurisdiction before the Court of Federal Claims when a substantially similar suit is pending in another federal court). The Court accepted certiorari where, as in this matter, there was no circuit split but the appellate court's decision conflicted with a federal statute.[9]

Many tribal governments are currently facing questions regarding how to construct their general welfare programs. Due to the slow-moving nature of

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[9] *See also United States v. Jicarilla Apache Nation*, 564 U.S. 162 (2011) (reversing and holding that fiduciary exception to attorney-client privilege is inapplicable to the general trust relationship to the United States and Indian tribes; no prior circuit split).

tax enforcement, however, the uncertainty created by the Eleventh Circuit's decision is likely to compound and Tribes may face IRS scrutiny of their general welfare programs many years after their implementation. Recognizing these concerns, this Court often addresses tax-related issues prior to a circuit split. *See, e.g., Ford Motor Co. v. United States*, 571 U.S. 28 (2013) (in tax case, issuing a per curiam opinion granting certiorari, vacating the Sixth Circuit's decision and remanding the case back to the appellate court for further consideration.).

Like the questions presented in *Plains Commerce Bank, Navajo Nation, Tohono O'odham Nation*, and *Ford Motor Co.*, the question presented here justifies immediate intervention by the Court.

CONCLUSION

The GWEA applies to the general welfare payments made by the Miccosukee Tribe to Sally Jim: "[g]ross income does not include the value of any Indian general welfare benefit." The Eleventh Circuit, however, crafted an unwritten exception to the exception-less GWEA, holding that it is inapplicable wherever distributions are derived from gaming revenue. The Court should grant certiorari because failing to address this mistake now will cause significant confusion among Indian tribes as they try to comport their existing general welfare programs with the now-uncertain scope of the GWEA.

Respectfully submitted,

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