No. 06-414

In The Supreme Court of the United States

NARRAGANSETT INDIAN TRIBE,

Petitioner,

v.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS, *et al.*,

Respondents.

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

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether, under the unique jurisdictional arrangement set forth in the Rhode Island Indian Claims Settlement Act and the separate Settlement Agreement signed by the Tribe and the State, subjecting – without relevant exception – the Tribe's Settlement Lands to "the civil and criminal laws and jurisdiction of the State of Rhode Island," State law enforcement may enter the Settlement Lands, search an illegally-operating smoke shop and seize contraband cigarettes therein.

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COUNTER-STATEMENT OF THE CASE

This case was submitted to the United States District Court for the District of Rhode Island on Stipulated Facts found at Appendix G to the Tribe's Petition. These facts are binding on the parties. Facts not in evidence are not considered by this Court. Respondents provide this Counter-Statement of the Case because the Tribe has mischaracterized or invented certain facts designed to create a missing factual predicate necessary to trigger a sovereign immunity defense. The Respondents do not believe that tribal sovereign immunity is implicated by the true facts of this case and dispute the following factual allegations contained within the Tribe's Petition.

1. The Tribe uses the term "reservation" to describe property from which the contraband cigarettes were seized. Pet. at 2. The subject property is not an Indian reservation. Indeed, Congress specifically declined to use the term "reservation" in connection with the Tribe's property, instead identifying it as "Settlement Lands." 25 U.S.C. § 1702(f). The difference is not mere semantics. The term "reservation" means an area in which federal and tribal law form the predominant legal regime. The contraband cigarettes were seized from property governed by *state* and tribal law. By the same token, the Settlement Lands, subject to the civil and criminal laws and jurisdiction of the State of Rhode Island, are not Indian country.[1]

[1] "Generally speaking, primary jurisdiction over land that is Indian country rests with the federal government and the Indian tribe inhabiting it and not with the states." *Alaska v. Native Village of Venetie,* 522 U.S. 520, 527 n.1 (1998). Congress' jurisdictional grant to

(Continued on following page)

2. The Tribe also asserts that the contraband cigarettes were "tribal government property" (Pet. at 2, 7) and that the Smoke Shop itself was "wholly owned" by the Tribe. Pet. at 6. There are simply no facts in evidence on this point. The Stipulated Facts upon which this case was submitted do not establish or even suggest that the cigarettes or the Smoke Shop were owned by the Tribe. Pet. App. at 145a-147a.[2]

3. The Tribe claims that "most" of its 2,400 enrolled members live "on or near" the Settlement Lands. Pet. at 6. There are no facts in the record indicating that members of the Tribe live on the Settlement Lands.[3]

4. There is also a suggestion, running throughout the Tribe's Petition, that the State's search warrant was executed against the Tribe itself. In fact, the search warrant was directed at a place on the Settlement Lands described as "opposite pole 4510 South County Trail, Charlestown, Rhode Island described as a tan aluminum trailer, approximately 25 feet in length, 2 front gray doors, wooden ramp, wooden stairs, large sign on the roof Narragansett Smoke Shop." Search Warrant; Pet. App. at H 150a. Nothing in the

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Rhode Island on the Settlement Lands confirms that they are not Indian country, trust status notwithstanding.

[2] Indeed, documents obtained during the seizure of the contraband cigarettes indicate that the cigarettes were owned by an out-of-state Indian tribe and were being sold on consignment.

[3] Since 1978, the Settlement Lands have been largely uninhabited, with perhaps no more than a couple of dozen people currently living there.

record indicates that the warrant was executed against the Tribe itself.

5. To the extent that the Tribe suggests that its members were arrested for selling untaxed cigarettes (a misdemeanor under state law), that suggestion is false and is, in no way, supported by the Stipulated Facts. All arrests were for resisting or otherwise interfering with the execution of the State's search warrant for contraband cigarettes on the Settlement Lands.

6. Although not contained within its Statement of Facts, the Tribe asserts that the Rhode Island Indian Claims Settlement Act of 1978 is the "first of the land claims settlement acts" (Pet. at 16; *see also* Pet. at 13) and, thus, served as a "model for almost every other land-claims settlement act and for other similar legislation. . . ." Pet. at 13. The truth is that the Alaska Native Claims Settlement Act of 1971, 43 U.S.C. § 1601, *et seq.* – not Rhode Island's Settlement Act – was the first such land claim settlement act. Moreover, while the legislative history of Rhode Island's Settlement Act indicates that it was modeled on Alaska's,[4] there is no such corresponding legislative history in other settlement acts to suggest that they were modeled on Rhode Island's.

[4] H.R. Rep. No. 95-1453 (1978), *reprinted in* 1978 U.S.C.C.A.N. 1948, 1951.

REASONS FOR DENYING THE PETITION

It is black letter law that Congress has the power to allocate jurisdiction among tribal, state and federal governments. Indeed, in response to varying conditions on the ground, Congress has passed numerous distinct statutes affecting this allocation. Proffering a "one size fits all" argument, the Narragansett Indian Tribe (the "Tribe") selects one such jurisdictional statute – Public Law 280[5] – and invites this Court to impose an identical construction on the Tribe's own individually-negotiated jurisdictional statute – the Rhode Island Indian Claims Settlement Act.[6] This Court should decline that invitation. As the First Circuit aptly noted, comparing these two federal statutes is like comparing "plums with pomegranates."[7]

Public Law 280, inacted more than 50 years ago, applicable in a handful of western states with sprawling, populated reservations – passed without consent of the affected Indian tribes and riddled with jurisdictional carve-outs – is a far cry from the more recent, seamless, negotiated settlement agreement between the State of Rhode Island and the Narragansett Indian Tribe set forth in the Settlement Act. A plain reading of the Settlement Act and its accompanying Joint Memorandum of Understanding (the "Settlement Agreement") positively dictate the conclusion that Congress abrogated, and the Tribe separately waived, its sovereign immunity in connection with criminal activities on the Settlement Lands.

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[5] Pub. L. No. 83-280, §§ 2, 4, 67 Stat. 588-90 (1953), *codified as amended at* 18 U.S.C. § 1162 and 28 U.S.C. § 1360.

[6] 25 U.S.C. § 1701, *et seq.* (the "Settlement Act").

[7] *Narragansett Indian Tribe v. Rhode Island,* 449 F.3d 16, 28 (1st Cir. 2006); Pet. App. at 21a.

Even under a Public Law 280 regime, none of the cases cited by the Tribe support its claim of immunity from state criminal law enforcement. The cases cited by the Tribe – *Three Affiliated Tribes, Puyallup* and *Bryan* – all concern Public Law 280's very limited grant of *civil* jurisdiction to a state. None concern Public Law 280's broader grant of criminal jurisdiction and, thus, none are instructive on the issue of whether Public Law 280 permits a state to enforce its criminal laws against an Indian tribe.

Important as the abrogation and waiver of tribal sovereign immunity are to Rhode Island's jurisdictional scheme, they are not outcome determinative of this case. That is because the Tribe's sovereign immunity from suit was not implicated by the State's seizure of contraband cigarettes on the Settlement Lands. While the Tribe tries mightily to gain access to a sovereign immunity defense, the undisputed facts do not support that effort. The Tribe sued the State in this case, not the other way around. The State did not need to exercise judicial processes in connection with its seizure of contraband cigarettes on the Settlement Lands since Rhode Island law permits such a seizure *without* a warrant. While the State did, in an abundance of caution, obtain a search warrant, it was not directed at the Tribe, but rather against contraband at a specific location – the Smoke Shop – on the Settlement Lands. The Tribe asserts that the Smoke Shop and the seized contraband therein were "wholly owned" by the Tribe, but, there is no evidence to this effect in the record.[8]

[8] Indeed, records seized from the Smoke Shop indicate that the cigarettes were owned by another out-of-state Indian tribe and were being sold on consignment.

Thus, the Tribe's sovereign immunity from suit is simply not implicated by the facts of this case.

The First Circuit accurately and narrowly construed Rhode Island's Settlement Act and the Tribe's own Settlement Agreement as both an abrogation and a waiver of tribal sovereign immunity on the Settlement Lands. The First Circuit did not read the jurisdictional allocation of the Settlement Act like Public Law 280 because there was no reason to do so; the two congressional acts share few similarities. Because the jurisdictional arrangement set forth in Rhode Island's Settlement Act and Settlement Agreement is unique, the First Circuit's *en banc* decision has no effect on the wider world of state-tribal relations; and the First Circuit's construction of this particular negotiated agreement and confirmatory statute does not give rise to any split among the circuits or conflict with state supreme courts. There simply is no reason for this Court to grant the Tribe's Petition for a Writ of Certiorari.

I. THE RHODE ISLAND INDIAN CLAIMS SETTLEMENT ACT ABROGATES, AND THE COMPANION SETTLEMENT AGREEMENT WAIVES, THE NARRAGANSETT'S SOVEREIGN IMMUNITY ON THE SETTLEMENT LANDS

The Tribe argues that Rhode Island's Settlement Act contains certain "ubiquitous statutory language" concerning state jurisdiction which language the Supreme Court and other circuit courts uniformly read as blocking states from enforcing their laws on Indian lands. Pet. at 2. As it turns out, the "ubiquitous" statutory language to which the Tribe points comes from a single congressional enactment – Public Law 280. While judicial constructions of Public Law 280 go nowhere near as far as the Tribe

claims, the Tribe's interpretation is entirely irrelevant to the First Circuit's construction of Rhode Island's unique settlement reached between the Tribe and the State and the resulting Settlement Act.

A. The Settlement Act Abrogates the Tribe's Sovereign Immunity on the Settlement Lands

Congress has specifically abrogated the Tribe's sovereign immunity on the Settlement Lands. Section 1708(a) of the Settlement Act reads as follows: "Except as otherwise provided in this subchapter, the settlement lands shall be subject to the civil and criminal laws and jurisdiction of the State of Rhode Island." 25 U.S.C. § 1708(a). By making the Settlement Lands subject to the State's civil and criminal laws, Congress preserved the State's right to "demand compliance with state laws." By additionally placing the Settlement Lands under the "jurisdiction" of the State, Congress provided Rhode Island with "a means available to enforce [its laws]." *See Kiowa Tribe of Oklahoma v. Manufacturing Technologies, Inc.*, 523 U.S. 751, 755 (1998) ("There is a difference between the right to demand compliance with State laws and the means available to enforce them."). The dual grant of State laws and jurisdiction over the Settlement Lands gives the State *both* a "right" to apply its laws there *and* a "remedy" against the Tribe on the Settlement Lands. Thus, the conundrum identified in *Kiowa* – that state substantive law may apply to tribal activities without a ready means of enforcement – does not apply to the Tribe on the Settlement Lands. Congress has expressly fixed this conundrum in Rhode Island.

B. In its Settlement Agreement with the State, the Tribe Waived its Sovereign Immunity on the Settlement Lands

In addition to the congressional abrogation of tribal sovereign immunity on the Settlement Lands, the Tribe itself clearly and unequivocally waived its sovereign immunity from suit when, in 1978, it signed the Settlement Agreement subjecting the Settlement Lands to the "full force and effect" of "all the laws of the State of Rhode Island." Settlement Agreement at ¶ 13; Pet. App. at F, 142a. Specifically, the Tribe agreed: "that, except as otherwise specified in this Memorandum, *all* laws of the State of Rhode Island shall be in *full* force and effect on the Settlement Lands, including, but not limited to state and local building, fire and safety codes." *Id.* Emphasis added. It is hard to imagine a clearer waiver of sovereign immunity from suit on the Settlement Lands. State law can only be in "full force and effect" where it both applies and can be enforced.[9]

Such a waiver does not merely apply to lawsuits as a mechanism for enforcement. It also applies to those judicial and quasi-judicial proceedings in aid of enforcement. For example, the guarantee that state and local building, fire and safety codes would be in "full force and effect" would be meaningless if inspections could not take place, if violations could not be issued and if enforcement

[9] Moreover, the Tribe reserved for itself only two specific exemptions from the full force and effect of state law: that the Settlement Lands would not be subject to local property tax (Settlement Agreement at ¶ 9; Pet. App. at 141a) and that certain state regulations concerning hunting and fishing would not apply on the Settlement Lands. Settlement Agreement at ¶ 11; Pet. App. at 141a.

proceedings could not be instituted. The Settlement Agreement establishes a clear and unequivocal waiver by the Tribe of its sovereign immunity from judicial and quasi-judicial proceedings, including the execution of a state search warrant, on the Settlement Lands.

C. Judicial Interpretations of Public Law 280 are Not Relevant to the First Circuit's Construction of the Settlement Act and Settlement Agreement

In order to avoid the clear import of the Settlement Act and its own Agreement, the Tribe claims that jurisdictional language very similar to that found in the Settlement Act and Settlement Agreement is "ubiquitous" in "Indian-related" statutes and is uniformly read to preserve, rather than eliminate, tribal sovereign immunity. Pet. at 2. In support, the Tribe is able to come up with only a single federal statute – Public Law 280. But Public Law 280 has never been read by this Court to eclipse a state's ability to enforce its criminal laws on Indian lands over which it has jurisdiction. In any event, such a construction would be of no moment given the entirely different purpose, language and history of the two statutes.

Public Law 280, passed by Congress in 1953, gave five (later six) states criminal jurisdiction over offenses committed by or against Indians in Indian country within the territorial borders of those states. 18 U.S.C. § 1162(a). Congress' primary concern in passing Public Law 280 was with lawlessness on certain Indian reservations and the absence of adequate tribal institutions for law enforcement. *Bryan v. Itasca County,* 426 U.S. 373, 379 (1976). As something of an afterthought, Congress also gave these same states a far more limited grant of civil jurisdiction

restricted to "causes of action between Indians or to which Indians are parties." 28 U.S.C. § 1360(a). This limited grant of civil jurisdiction was "primarily intended to redress the lack of adequate Indian forums for resolving private legal disputes between reservation Indians and other private citizens, by permitting the courts of the States to decide such disputes. . . ." *Bryan,* 426 U.S. at 382.

At the time of the passage of Public Law 280 (at the height of the so-called "termination era"), state jurisdiction was mandatory and was conferred without the consent (and sometimes over the objections of) subject Indian tribes. Carole E. Goldberg, Public Law 280: The Limits of State Jurisdiction Over Reservation Indians, 22 U.C.L.A. L. Rev. 535, 544-49 (1975).

Public Law 280 also specifically identifies substantial areas over which states do *not* have jurisdiction; most notably, taxation. 18 U.S.C. § 1162(b); 28 U.S.C. § 1360(b). Moreover, by its own terms, Public Law 280 also prohibits the application of state laws to trust or restricted property "in any manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto. . . ." 18 U.S.C. § 1162(b); 28 U.S.C. § 1360(b).

In light of the limited purpose of its civil grant, in recognition of the fact that such jurisdiction was imposed upon tribes against their will and in light of the substantial exemptions to state jurisdiction, including taxation, it is not surprising that courts have read Public Law 280's grant of civil jurisdiction narrowly.

No such narrow interpretation of the Settlement Act's civil or criminal grant, however, is warranted. As the Tribe concedes, the focus of the Settlement Act was the comprehensive and ultimate settlement of all Indian land claims

in Rhode Island. The Settlement Act demonstrates a congressional commitment to ensuring that all land within the State, including the Settlement Lands, are subject to a single jurisdictional regime. Congress did so by extinguishing aboriginal title throughout the State as well as extinguishing all Indian claims based upon any "interest in" or "right involving" land in Rhode Island. 25 U.S.C. §§ 1705(a); 1712(a). Congress also disrupted the typical trust relationship between the Tribe and the United States on the Settlement Lands by expressly discharging the federal government from any further involvement with the Settlement Lands. 25 U.S.C. § 1707(c) (" . . . the United States shall have no duties or liabilities under this subchapter with respect to the Indian Corporation, or its successor, the State Corporation, or the settlement lands."). With a single exception for hunting and fishing (25 U.S.C. § 1706(a)(3)), it also made the Settlement Lands subject to *all* of the civil and criminal laws and jurisdiction of the State. Thus, the Settlement Act ensured that precisely the same set of laws and jurisdiction – Rhode Island's – would be applicable both within and without the Settlement Lands. Public Law 280 shows no such solicitude toward the uniform application of state law and jurisdiction.

Unlike Public Law 280, the Settlement Act was passed with the active participation and consent of the Narragansetts. Indeed, when the Tribe signed the Settlement Agreement, it not only authorized the application of all the State's laws and jurisdiction on the Settlement Lands, it also authorized the imposition of local building, safety and fire codes – a construct antithetical to Public Law 280. *See California v. Cabazon Band of Mission Indians,* 480 U.S. 202, 212 n.11 (1987) (noting that it is unlikely that Public

Law 280 authorizes the application of any local laws to Indian reservations).

While both the civil and criminal provisions of Public Law 280 expressly exclude state tax jurisdiction on Indian trust and restricted property, the Settlement Act expressly authorizes the taxation of "income producing activities on the Settlement Lands." 25 U.S.C. § 1715(b). Moreover, where Public Law 280's grant of civil jurisdiction is narrowly confined by its own language to "civil causes of action" involving "Indians or to which Indians are parties which arise in areas of Indian country," there is no such narrowing of the jurisdictional grant in the Settlement Act. Indeed, the Settlement Act's broad and seamless grant of jurisdiction stands in stark contrast with Public Law 280's limited and exception-ridden grant.[10]

As this brief comparison illustrates, there are significant and important differences between the Settlement Act and Public Law 280's jurisdictional grants. The First Circuit's refusal to read the two acts identically recognizes and respects that difference. Its individualized treatment of Rhode Island's "idiosyncratic" act, accordingly, results in no split among the circuits nor does it conflict with decisions of any other state court. The unique provisions of the

[10] The First Circuit has twice analyzed the divergent purpose, legislative histories and language of the two federal acts and has determined that Public Law 280 is not a fair congener of the Settlement Act. *Narragansett Indian Tribe v. State,* 449 F.3d 16, 28 (1st Cir. 2006); Pet. App. at 20a-21a; *Rhode Island v. Narragansett Indian Tribe,* 19 F.3d 685, 696 (1st Cir. 1994) ("There is absolutely nothing in the legislative history of the Settlement Act that indicates congressional intent either to limit the scope of state jurisdiction or to carve a jurisdictional distinction along civil regulatory/civil adjudicatory lines.").

Settlement Act and Settlement Agreement govern the jurisdictional allocation between one Indian tribe and one small state; they have no wider significance.[11]

D. This Court Has Never Read Public Law 280 to Limit a State's Ability to Enforce its Criminal Laws Against an Indian Tribe

The Tribe selects two snippets from Public Law 280 – the word "jurisdiction" and the phrase "force and effect"– which language is also present either in the Settlement Act or Settlement Agreement. The Tribe then cites three decisions of this Court, *Bryan*, *Puyallup* and *Three Affiliated Tribes*, which it claims "establish that when congress confers 'jurisdiction' and provides for state laws to have 'force and effect' on Indian lands, it . . . does not subject the Tribe itself to state judicial process." Pet. at 12. By isolating these shared words from their larger contexts, the Tribe makes a hash of both Public Law 280 and the Settlement Act.

All of the decisions of this Court cited by the Tribe construe Public Law 280's narrow civil grant, which confers jurisdiction only over "civil causes of action between Indians or to which Indians are a party." Because the purpose of Public Law 280's civil grant was limited to providing a state forum for the resolution of disputes, its addition proviso that "those civil laws of such State that

[11] The First Circuit's construction of Rhode Island's Settlement Act has limited precedential value even among the four New England states with Indian settlement acts since each of those individual acts contains a unique, bargained-for jurisdictional regime. The Tribe concedes this point in its partial listing of those heterogeneous jurisdictional allocations. Pet. at 25-26.

are of general application to private persons or private property shall have the same *force and effect* within such Indian country as they have elsewhere in the State . . . " simply "authorizes application by the state courts of their rules of decision to decide such disputes." *Bryan,* 426 U.S. at 384. In other words, the "force and effect" language of the civil provision of Public Law 280 merely refers back to the limited scope of its adjudicatory grant.[12] *Accord Three Affiliated Tribes of the Fort Berthold Reservation v. Wold Engineering,* 476 U.S. 877 (1986) (construing Public Law 280's grant of civil jurisdiction); *Puyallup Tribe, Inc. v. Dep't of Game,* 433 U.S. 165 (1977) (same). None of these cases stand for the proposition that Public Law 280 eclipses a state's ability to enforce its *criminal* laws. Indeed, this Court has never held that Public Law 280 limits a state in the exercise of its *criminal* jurisdiction against a tribe on whose land it possesses the underlying jurisdiction.[13]

Notably absent from the Tribe's discussion of the limitations on state criminal jurisdiction is this Court's only relevant precedent – *Nevada v. Hicks,* 533 U.S. 353 (2001). In *Hicks*, this Court upheld Nevada's right to execute a search warrant on an Indian reservation in connection with an off-reservation crime, in the absence of any federal statute allocating criminal jurisdiction to Nevada. Writing for the majority, Justice Scalia made the following important observation:

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[12] By contrast, the "full force and effect" language of the Settlement Agreement excerpted by the Tribe refers to "all laws of the State of Rhode Island," not merely its civil adjudicatory ones.

[13] 449 F.3d at 28, n.7.

> While it is not entirely clear from our precedent whether [*Mescalero Apache v. Jones*] entails the corollary right to enter a reservation (including Indian-fee lands) for [criminal] enforcement purposes, several of our opinions point in that direction. In *Confederated Tribes,* we explicitly reserved the question whether state officials could seize cigarettes held for sale to nonmembers in order to recover the taxes due. In *Utah & Northern R. Co.,* however, we observed that '[i]t has . . . been held that process of state courts may run into an Indian reservation of this kind, where the subject-matter or controversy is otherwise within their cognizance.'

533 U.S. at 364. Internal citations omitted. In its holding, this Court made it clear that state authority to serve process on Indian reservations is necessary to "prevent [such areas] from becoming an asylum for fugitives from justice." *Id.* Adhering to that rationale, there is no principled reason to limit the holding in *Hicks* to crimes occurring "off-reservation." The import of *Hicks* to this case is clear. General principles of Indian law do not bar a state from executing a search warrant on an Indian reservation, even in the absence of a specialized grant of criminal jurisdiction to do so. At a minimum, the same must be true where, as here, Congress expressly provided the State (and the Tribe separately agreed to) complete criminal jurisdiction over the Settlement Lands. The First Circuit's ruling does nothing more than comport with existing general principles of Indian law.

II. THE TRIBE'S SOVEREIGN IMMUNITY FROM SUIT WAS NOT IMPLICATED BY THE STATE'S SEIZURE OF CONTRABAND CIGARETTES FROM THE SETTLEMENT LANDS

The facts of this case simply do not support the Tribe's sovereign immunity defense. The sole means by which the Tribe seeks to trigger its immunity is through the State's use of a search warrant. The Tribe assumes that the State's entry upon the Settlement Lands and its confiscation of cigarettes was predicated upon a warrant and thereby a part of a *necessary* judicial process from which the Tribe is immune.[14] In fact, the State had *independent* authority to enter the Smoke Shop and seize cigarettes there. Section 44-20-37 of the Rhode Island General Laws specifically authorizes the seizure of contraband cigarettes *without* a warrant:

> Any cigarettes found at any place in this state without stamps affixed as required by this chapter are declared to be contraband goods and may be seized by the administrator, his or her agents, or employees, or by any sheriff, deputy sheriff, or police officer when directed by the Administrator to do so, *without a warrant*; . . .

Emphasis added.

Out of an abundance of caution, and even though there was no legal requirement to procure one, the State obtained a search warrant to search the Smoke Shop for

[14] The logical extension of the Tribe's argument that it is immune from all judicial processes is that the state may use *only* extra-judicial "self help" remedies to enforce its laws on the Settlement Lands. Ironically, this is precisely the conduct about which it most loudly complains.

contraband cigarettes. Trying to navigate into the safe harbor of sovereign immunity, the Tribe uses the warrant as evidence of the exercise of judicial process against the Tribe. In fact, on its face, the warrant was directed at a place on the Settlement Lands described as: "opposite pole 4510 South County Trail, Charlestown, Rhode Island described as a tan aluminum trailer, approximately 25 feet in length, 2 front gray doors, wooden ramp, wooden stairs, large sign on the roof Narragansett Smoke Shop." Search Warrant; Pet App. at H 150a. The Stipulated Facts upon which this case was submitted neither indicate nor suggest that the warrant was executed against the Chief Sachem of the Tribe or against the Tribal government.

The Tribe also claims that the Smoke Shop was "wholly owned" by the Tribe and that the cigarettes seized by the State were, likewise, owned by the Tribe. While those facts could be useful for a sovereign immunity defense, they simply are not in evidence in this case. The Stipulated Facts upon which this case was submitted say nothing about the ownership either of the cigarettes or of the Smoke Shop itself.[15]

Thus, under the particular facts of this case, the Tribe's sovereign immunity from suit is not implicated. The State did not bring this lawsuit against the Tribe, the warrant at issue was not necessary but, in any event, was not executed against the Tribe and there are no facts on the record demonstrating that the contraband cigarettes

[15] Records seized from the Smoke Shop indicate that the contraband cigarettes were not owned by the Narragansetts but, rather, by an out-of-state Indian tribe and were being sold on consignment.

seized, or the Smoke Shop searched, actually belonged to the Tribe.

* * *

It may be true, as the Tribe claims, that the enforcement of a state search warrant by a state court against a tribal government is a critically important issue in Indian country. Pet. at 14. But the importance of that issue does not justify the Court's review of this case. Because the Settlement Act authorizes both the application and enforcement of the State's civil and criminal laws on the Settlement Lands, because the Tribe agreed to the application of *all* the State's laws and that they be in *full* force and effect on the Settlement Lands, because the Settlement Lands are not Indian country and because no enforcement activities were directed either at the Tribe or the Tribal government, this case, as a matter of fact and law, does not come close to presenting that issue.

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted,

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