No. 17-1175

In the Supreme Court of the United States

POARCH BAND OF CREEK INDIANS, ET AL., PETITIONERS

v.

CASEY MARIE WILKES, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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QUESTION PRESENTED

Whether the sovereign immunity of a federally recognized Indian tribe bars a tort action against the tribe for damages arising from an automobile accident involving a tribal employee driving outside of the tribe's reservation but allegedly within the scope of her employment.

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INTEREST OF THE UNITED STATES

This brief is submitted in response to the Court's order inviting the Solicitor General to express the views of the United States. After the petition for a writ of certiorari was filed, amendments to tribal law were proposed that could substantially affect the basis for the decision of the Supreme Court of Alabama in this case. In the view of the United States, if those changes are enacted, the petition should be granted, the judgment vacated, and the case remanded for further proceedings.

STATEMENT

1. Indian tribes are "domestic dependent nations that exercise inherent sovereign authority." *Michigan* v. *Bay Mills Indian Community*, 572 U.S. 782, 788 (2014) (citations and internal quotation marks omitted). This Court has held that one of the "core" aspects of sovereignty that Indian tribes possess is the "common-

law immunity from suit traditionally enjoyed by sovereign powers." *Ibid.* (quoting *Santa Clara Pueblo* v. *Martinez*, 436 U.S. 49, 58 (1978)). That immunity from suit, the Court has explained, is "a necessary corollary to Indian sovereignty and self-governance." *Ibid.* (quoting *Three Affiliated Tribes of the Fort Berthold Reservation* v. *Wold Eng'g, P. C.*, 476 U.S. 877, 890 (1986)); see *id.* at 788-789 ("It is 'inherent in the nature of sovereignty not to be amenable' to suit without consent.") (quoting *The Federalist No. 81*, at 511 (Alexander Hamilton) (Benjamin Wright ed., 1961)).

This Court accordingly has long held that "an Indian tribe is subject to suit only where Congress has authorized the suit or the tribe has waived its immunity." *Kiowa Tribe of Okla.* v. *Manufacturing Techs., Inc.*, 523 U.S. 751, 754 (1998); see *Bay Mills*, 572 U.S. at 788-790; *Oklahoma Tax Comm'n* v. *Citizen Band Potawatomi Indian Tribe of Okla.*, 498 U.S. 505, 509 (1991) (*Potawatomi*); *Three Affiliated Tribes*, 476 U.S. at 890-891; *Santa Clara Pueblo*, 436 U.S. at 58; *Puyallup Tribe, Inc.* v. *Department of Game*, 433 U.S. 165, 172-173 (1977). Tribal sovereign immunity applies to suits based on activities (including commercial activities) both on and off the tribe's reservation. *Bay Mills*, 572 U.S. at 790, 797-803; *Kiowa*, 523 U.S. at 758. And any abrogation of that immunity by Congress must be clear and unequivocal. *Bay Mills*, 572 U.S. at 790.

2. Petitioner Poarch Band of Creek Indians is a federally recognized Indian tribe with a reservation located in Wetumpka, Alabama. Pet. 3, 6-7; see *Poarch Band of Creek Indians* v. *Hildreth*, 656 Fed. Appx. 934, 936-937 (11th Cir. 2016) (per curiam). Along with petitioner PCI Gaming Authority, its unincorporated in-

strumentality, the Tribe operates the Wind Creek Casino and Hotel Wetumpka on the Tribe's reservation. See *Alabama* v. *PCI Gaming Auth.*, 801 F.3d 1278, 1287-1288 (11th Cir. 2015). The National Indian Gaming Commission has authorized the Tribe to undertake class II gaming under the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. 2701 *et seq.* See *Alabama*, 801 F.3d at 1285.

On the morning of January 1, 2015, Barbie Spraggins, who was employed as an administrator at the casino and hotel complex, arrived at work after spending much of the night drinking. Pet. App. 2a. Spraggins decided to retrieve lamp shades for the hotel from a tribal warehouse ten miles away and left in a pickup truck owned by the casino and hotel, which she was authorized to drive. *Id.* at 2a-3a. At approximately 10:50 a.m., Spraggins's truck was involved in an accident eight miles west of the casino, in a location not on the route to the warehouse; the truck struck a guardrail, crossed into oncoming traffic, and collided head-on with a vehicle driven by respondent Casey Marie Wilkes. *Id.* at 3a. Spraggins, Wilkes, and respondent Alexander Jack Russell, a passenger in Wilkes's car, were transported to a nearby hospital, where a blood test indicated that Spraggins was severely intoxicated. *Ibid.*

3. In February 2015, respondents Wilkes and Russell filed suit in Alabama state (circuit) court against Spraggins, petitioners, and Wilkes's insurer. Pet. App. 3a. Respondents' complaint, as amended, asserted three claims, each of which sought compensatory and punitive damages. See Third Am. Compl., Cir. Ct. Rec. 409 (Apr. 26, 2016). In Count One, respondents alleged that Spraggins and petitioners (as Spraggins's employer) "negligently and/or wantonly operated a motor

vehicle under the influence of alcohol," causing bodily injury, medical expenses, pain and suffering, and lost income. *Id.* at 412-413. In Count Two, respondents sought compensation from Wilkes's insurer within the policy limits of her underinsured motorist coverage. *Id.* at 413. And in Count Three, respondents alleged that petitioners were "negligent and/or wanton in hiring, retaining, supervising, and/or monitoring Defendant Spraggins while she was employed by [petitioners]." *Id.* at 414; see *id.* at 413 (alleging petitioners "knew or should have known Defendant Spraggins' affliction with the sickness of alcoholism and or the propensity to abuse alcohol").

a. Petitioners moved for summary judgment on multiple grounds, including that they were absolutely immune from suit on the basis of tribal sovereign immunity. Pet. App. 4a. The circuit court issued a ruling agreeing with petitioners' immunity defense, based on "a number of cases that support [petitioners'] assertion that they are immune to civil law suits so long as they have not waived their immunity and [C]ongress has not abrogated it." *Id.* at 23a; see *id.* at 20a-23a. The court's ruling did not resolve respondents' claims against Spraggins or Wilkes's insurer, but the court certified an order of final judgment as to petitioners under Alabama Rule of Civil Procedure 54(b). Pet. App. 17a-18a.

b. The Alabama Supreme Court reversed and remanded. Pet. App. 1a-14a. At the outset, the court noted that "the doctrine of tribal sovereign immunity is generally considered to be settled law," requiring dismissal of "'any suit against a tribe absent congressional authorization (or a waiver).'" *Id.* at 7a (quoting *Bay Mills*, 572 U.S. at 789). The court also acknowledged

that this Court "has repeatedly expressed its willingness to defer to Congress" about the proper scope of immunity, thereby allowing Congress to "define the limits of tribal sovereign immunity in situations where tribal and non-tribal members interact." *Id.* at 8a.

Nevertheless, the Alabama Supreme Court, relying in part on what it characterized as this Court's "reservations about perpetuating the doctrine," determined that petitioners were not protected by tribal sovereign immunity in this case. Pet. App. 8a. The Alabama Supreme Court took "particular notice" of the concern expressed in *Kiowa* that "tribal sovereign immunity hurts most those who 'have no choice in the matter,'" such as tort victims. *Id.* at 10a (quoting 523 U.S. at 758). In the court's view, *Bay Mills* "recognized" such tort suits to be beyond the immunity doctrine's reach, by stating "in a footnote that [this Court] had never 'specifically addressed (nor, so far as we are aware, has Congress) whether immunity should apply in the ordinary way if a tort victim, or other plaintiff who has not chosen to deal with a tribe, has no alternative way to obtain relief for off-reservation commercial conduct.'" *Ibid.* (quoting 572 U.S. at 799 n.8).

The Alabama Supreme Court then stated:

> This appeal presents precisely that scenario: [Respondents] have alleged tort claims against the tribal defendants, and they have no way to obtain relief if the doctrine of tribal sovereign immunity is applied to bar their lawsuit.
>
> In light of the fact that the Supreme Court of the United States has expressly acknowledged that it has never applied tribal sovereign immunity in a situation such as this, we decline to extend the doctrine beyond the circumstances to which that Court itself

> has applied it; accordingly, we hold that the doctrine of tribal sovereign immunity affords the tribal defendants no protection from the claims asserted by [respondents].

Pet. App. 10a-11a.

The Alabama Supreme Court acknowledged that "tribal immunity is a matter of federal law and is not subject to diminution by the States." Pet. App. 12a-13a (quoting *Kiowa*, 523 U.S. at 756). But it asserted that this Court "has expressly acknowledged that it has not ruled on the issue whether the doctrine of tribal sovereign immunity has a field of operation with regard to tort claims." *Id.* at 13a. "Accordingly," the Alabama Supreme Court concluded, "in the interest of justice we respectfully decline to extend the doctrine of tribal sovereign immunity beyond the circumstances in which the Supreme Court of the United States itself has applied it." *Ibid.*

DISCUSSION

Under this Court's decisions, tribal sovereign immunity protects Indian tribes from suits, including from tort suits, absent abrogation by Congress or waiver by the tribe. The Alabama Supreme Court's decision to deny immunity in this case conflicts with those decisions and with decisions of other state and federal courts, which have uniformly applied tribal sovereign immunity to bar tort claims based on off-reservation conduct.

The Alabama Supreme Court's contrary conclusion is based on a misreading of the relevant decisions of this Court. Although this Court has noted that it has not specifically addressed whether a special justification for abandoning its established precedent would exist where "a tort victim * * * has no alternative way to obtain

relief for off-reservation commercial conduct," *Michigan* v. *Bay Mills Indian Community*, 572 U.S. 782, 799 n.8 (2014), state courts and lower federal courts must continue to apply this Court's precedent as it now stands.

As this case comes to the Court, it would not be an appropriate vehicle for considering whether the Court should depart from its precedent concerning tribal sovereign immunity. The Tribe has proposed to revise its laws to waive its sovereign immunity against claims like respondents'. Enactment of the proposed amendment could bear substantially on the basis for the Alabama Supreme Court's decision in this case. Therefore, if the amendment is adopted, which could occur as early as June 6, 2019, the Court should grant the petition for a writ of certiorari, vacate the judgment of the Alabama Supreme Court, and remand the case for further proceedings.

A. Under This Court's Precedents, Sovereign Immunity Applies To Tort Suits

1. As this Court has held, "[a]s a matter of federal law, an Indian tribe is subject to suit only where Congress has authorized the suit or the tribe has waived its immunity." *Kiowa Tribe of Okla.* v. *Manufacturing Techs., Inc.*, 523 U.S. 751, 754 (1998). The holding in *Kiowa* was in keeping with numerous decisions of this Court, rendered both before and after *Kiowa*. See p. 2, *supra*.

At issue in *Kiowa* was a corporation's state-court suit against the Kiowa Tribe to recover on a promissory note related to the Tribe's commercial activities, which the Tribe allegedly executed outside of its reservation. 523 U.S. at 753-754. This Court determined that tribal

sovereign immunity barred the suit, rejecting the plaintiff corporation's arguments that immunity should not apply to the Tribe's off-reservation, commercial activities. *Id.* at 754-755. "To date," the Court explained, its "cases have sustained tribal immunity from suit without drawing a distinction based on where the tribal activities occurred"; nor had the Court "yet drawn a distinction between governmental and commercial activities of a tribe." *Ibid.*

The Court noted the existence of reasons to "doubt the wisdom" of the tribal sovereign immunity doctrine, especially as applied to an "economic context, [in which] immunity can harm those who are unaware that they are dealing with a tribe, who do not know of tribal immunity, or who have no choice in the matter, as in the case of tort victims." *Kiowa*, 523 U.S. at 758. The Court, however, declined to "repudiate" or "confine" the doctrine. *Ibid.* The Court reasoned that "Congress has acted against the background of [its] decisions," including by altering the scope of tribal immunity legislatively in certain circumstances and expressly preserving it in others, and that the Court should "defer to the role Congress may wish to exercise." *Id.* at 758-759. In doing so, the Court in *Kiowa* noted that it had previously declined to abrogate or limit tribal sovereign immunity for similar reasons in *Oklahoma Tax Commission* v. *Citizen Band Potawatomi Indian Tribe of Oklahoma*, 498 U.S. 505, 510 (1991). See 523 U.S. at 757, 759.

The Court again reaffirmed the breadth of tribal sovereign immunity in *Bay Mills*, *supra*. In that case, Michigan sued the Bay Mills Indian Community and tribal officials in federal district court, seeking to enjoin operation of a new casino located on a parcel of land that

the Tribe had purchased with funds from a federal appropriation made to settle the Tribe's land claims. See 572 U.S. at 786. Michigan's principal claim on the merits was that the casino was not lawfully operated under IGRA because the casino was not located on "Indian lands." *Id.* at 786-787.

This Court began its analysis by confirming that *Kiowa* and other decisions "had established a broad principle" of tribal sovereign immunity, requiring dismissal of "any suit against a tribe absent congressional authorization (or a waiver)." *Bay Mills*, 572 U.S. at 789-790. Despite calls to limit immunity to tribes' noncommercial or on-reservation activities, the Court "thought it improper suddenly to start carving out exceptions." *Id.* at 790. Instead, the Court explained, it had "opted to 'defer' to Congress about whether to abrogate tribal immunity for off-reservation commercial conduct." *Ibid.* (quoting *Kiowa*, 523 U.S. at 758, 760). In so holding, the Court added in a footnote:

> Adhering to *stare decisis* is particularly appropriate here given that the State, as we have shown, has many alternative remedies: It has no need to sue the Tribe to right the wrong it alleges. We need not consider whether the situation would be different if no alternative remedies were available. We have never, for example, specifically addressed (nor, so far as we are aware, has Congress) whether immunity should apply in the ordinary way if a tort victim, or other plaintiff who has not chosen to deal with a tribe, has no alternative way to obtain relief for off-reservation commercial conduct. The argument that such cases would present a "special justification" for abandoning precedent is not before us. *Arizona* v. *Rumsey,* 467 U.S. 203, 212 (1984).

Id. at 799 n.8 (citation omitted).

2. Respondents' suit is precluded under the "broad principle" of tribal sovereign immunity articulated in *Potawatomi*, *Kiowa*, *Bay Mills*, and other cases. *Bay Mills*, 572 U.S. 790. This Court has stated, without qualification, that the doctrine requires dismissal of "*any suit* against a tribe absent congressional authorization (or a waiver)," *id.* at 789 (emphasis added); see *Kiowa*, 523 U.S. at 754 ("As a matter of federal law, an Indian tribe is subject to suit only where Congress has authorized the suit or the tribe has waived its immunity."), a principle that does not admit of an exception for tort suits. Although this Court has not ordered dismissal of a case on tribal sovereign immunity grounds in a case specifically involving tort claims, it has rejected a State's attempt to impose a blanket immunity-waiver that would have covered such claims. See *Three Affiliated Tribes of the Fort Berthold Reservation* v. *Wold Eng'g, P. C.*, 476 U.S. 877, 891 (1986); see also *Potawatomi*, 498 U.S. at 510. The Court has also recognized that sovereign immunity may preclude suit by "those who are unaware that they are dealing with a tribe, who do not know of tribal immunity, or who have no choice in the matter, *as in the case of tort victims*." *Kiowa*, 523 U.S. at 758 (emphasis added). And although several Justices have expressed the view in dissenting opinions that the doctrine of tribal sovereign immunity *should be* "revise[d]" to exclude tort claims, *Bay Mills*, 572 U.S. at 827 n.5 (Thomas, J., dissenting), those dissenting Justices have shared the majority's view that doing so would require the Court to create an "exception" to the current "blanket rule," *ibid.*; see *Kiowa*, 523 U.S. at 766

(Stevens, J., dissenting) ("[N]othing in the Court's reasoning limits the rule to lawsuits arising out of voluntary contractual relationships.").

Despite the clarity of this Court's tribal immunity precedents, the Alabama Supreme Court erroneously limited the doctrine to the "circumstances to which th[is] Court itself has applied it." Pet. App. 10a-11a. Because this Court had not previously ruled that immunity applies "with regard to tort claims" in particular, the Alabama Supreme Court reasoned it was not "bound" to apply the doctrine to such claims. *Id.* at 13a. That was error. As respondents concede (Br. in Opp. 8), "lower courts are bound to follow the rationale of this Court's cases, not merely their results." The reasoning—and rule—of this Court's tribal sovereign immunity decisions is that Indian tribes, absent contrary congressional action, "retain their historic sovereign authority," a "core aspect[]" of which is "the common-law immunity from suit traditionally enjoyed by sovereign powers." *Bay Mills*, 572 U.S. at 788 (citations and internal quotation marks omitted). That traditional immunity of a sovereign encompasses tort claims, see *Franchise Tax Bd. of Cal.* v. *Hyatt*, No. 17-1299 (May 13, 2019), slip op. 1-2, 6-9, absent express statutory abrogation by Congress, *e.g.*, 28 U.S.C. 1605(a)(2) and (5) (Foreign Sovereign Immunities Act); 28 U.S.C. 2674 (Federal Tort Claims Act).

The Alabama Supreme Court nevertheless perceived a "limitation" on the doctrine's reach in footnote eight of *Bay Mills*. Pet. App. 10a. In that footnote, this Court stated that it "need not consider whether the situation would be different if no alternative remedies were available" to a plaintiff, such as where "a tort victim, or other plaintiff who has not chosen to deal with a tribe, has no

alternative way to obtain relief for off-reservation commercial conduct." 572 U.S. at 799 n.8. That portion of the Court's decision, however, addressed not the scope of tribal sovereign immunity as it currently exists, but the question of *stare decisis*—*i.e.*, whether the Court should abandon some aspect of tribal sovereign immunity despite prior precedents recognizing and affirming it in broad and categorical terms. See *id.* at 797-803. Footnote eight thus reserved for a later day the decision, by this Court itself, whether a scenario involving a tort victim "would present a 'special justification' for abandoning precedent," *id.* at 799 n.8 (quoting *Rumsey*, 467 U.S. at 212), a phrasing that necessarily rested on the understanding that such tort suits are barred under *current* "precedent." Footnote eight was not an invitation for lower courts to cut back on the established scope of Indian tribes' sovereign immunity; only this Court may abandon its own precedents—as the decision cited in the footnote reflects. See *Rumsey*, 467 U.S. at 212 (finding "no reason sufficient to warrant *our* taking the exceptional action of overruling" precedent) (emphasis added).

3. Respondents offer a variety of arguments aimed at demonstrating that Indian tribes should not be immune from suit for off-reservation torts. Among other things, respondents discuss the history of tribal sovereign immunity, Br. in Opp. 8-10; the growth of off-reservation tribal activities, *id.* at 10-11; limitations on other aspects of tribal sovereignty, *id.* at 11-12; the fact that other sovereigns do not currently enjoy immunity in similar situations, *id.* at 12-13; and the asserted unfairness of immunizing tribes from liability for their wrongdoing, *id.* at 13-14.

Whatever the merits of respondents' arguments—which this Court has rejected in other contexts, see *Bay Mills*, 572 U.S. at 799-800; *Kiowa*, 523 U.S. at 758; *Potawatomi*, 498 U.S. at 510; see also *Kiowa*, 523 U.S. at 765-766 (Stevens, J., dissenting)—they provide no justification for the Alabama Supreme Court's ruling here. They could potentially provide a basis for *this* Court to revisit its past decisions, provided it found those arguments justified such a course. They also could provide a basis for Congress to consider whether to abrogate, limit, or condition tribal sovereign immunity in certain circumstances—or for a tribe to consider whether to consent to suit in certain circumstances. Congress, for example, after weighing the competing considerations, could impose limits or conditions on any carve-out to sovereign immunity, such as limitations on the types of suits that could be brought (*e.g.*, based on torts or contracts, or off-reservation conduct); exceptions to any carve-out (*e.g.*, for discretionary functions in tort suits); the courts in which a suit might be brought (*e.g.*, federal, state, or tribal); or the amount or type of damages (*e.g.*, punitive or emotional distress damages). Or Congress could require tribes to carry insurance and provide for compensation by the insurer, while preserving the immunity of the tribes themselves, as it did in 25 U.S.C. 5321(c)(3).

But unless this Court, Congress, or the tribe concerned acts, lower courts are bound to hold tribes immune from all claims against them. See *State Oil Co.* v. *Khan*, 522 U.S. 3, 20 (1997) ("[I]t is this Court's prerogative alone to overrule one of its precedents.").

B. In Its Current Posture, This Case Would Be A Poor Vehicle For Reconsidering The Scope Of Tribal Sovereign Immunity

In line with the foregoing analysis, other state and federal courts have consistently held Indian tribes immune from suit, including where plaintiffs have advanced tort claims arising from tribes' or tribal employees' off-reservation activities. See Pet. 15-21 (discussing cases). Respondents thus acknowledge (Br. in Opp. 16) that the decision below "is inconsistent" with those other decisions, as did the Alabama Supreme Court, see Pet. App. 13a.[1]

Despite the conflict of authority, however, this Court's plenary review is not presently warranted. The Tribe has proposed to amend its Tribal Code to waive its sovereign immunity for claims like those asserted by respondents. If enacted, that amendment would substantially affect the basis for the Alabama Supreme Court's decision. The appropriate disposition of the petition for a writ of certiorari accordingly depends on whether the amendment is adopted, which may occur as early as June 6, 2019.

1. Respondents argue that tribal sovereign immunity should not apply to claims asserted by "a tort victim, or other plaintiff who has not chosen to deal with a tribe," Br. in Opp. 13 (quoting *Bay Mills*, 572 U.S. at

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[1] Respondents assert (Br. in Opp. 16) that "most of those decisions predate *Bay Mills*." As explained above, however, nothing in *Bay Mills* calls into question the application of tribal sovereign immunity to cases of the present type. To the contrary, *Bay Mills* recognizes that tribal sovereign immunity, as currently established, covers tort claims. And as petitioners note (Reply Br. 4), in the time since *Bay Mills*, other courts "have continued to apply immunity to tort claims asserted by non-members." See *id.* at 4-5 (citing examples).

799 n.8), because such a plaintiff will likely "have no recourse for the injuries they suffer from negligent tribal conduct," *id.* at 14. The Alabama Supreme Court's decision was similarly based on the premise that respondents "have no way to obtain relief if the doctrine of tribal sovereign immunity is applied to bar their lawsuit." Pet. App. 10a.

The Tribe has proposed to enact an ordinance amending the Tort Claims Act of its Tribal Code in a manner that bears directly on respondents' argument and the Alabama Supreme Court's decision. See Poarch Band of Creek Indians, *Summary of Revisions to the Poarch Band of Creek Indians Title 29 (Tort Claims Act) and Section 5-1-1 of the Tribal Code and to Repeal Sections 3-1-8, 3-5-5, and 8-1-15 of the Tribal Code* (May 16, 2019).[2] The Tribe has announced that, on June 6, 2019, the Tribal Council is anticipated to vote on the proposed amendment. See *id.* at 2-3. The amendment would waive tribal sovereign immunity for certain tort claims, including the type of claims at issue here. See Proposed § 29-2-4 (waiving immunity to "claims for potentially Compensable Injuries"); see also Proposed § 29-1-4(g)(2) (defining "'Compensable Injury'" to include harm "[r]esulting from an alleged act or omission that, if proven, would constitute a tort under * * * Alabama law," if applicable). The proposed amendment would also permit "any Claimant with a lawsuit alleging a Compensable Injury that is pending in any state or federal court of the United States as of June 6, 2019," to seek compensation from the Tribe on any claim that has been dismissed on the basis of tribal immunity. Pro-

[2] http://www.pci-nsn.gov/pdf/051719_revisions_to_title_29.pdf.

posed § 29-2-7. Under the proposed amendment, therefore, should the state circuit court's dismissal of respondents' claims be reinstated, respondents could seek relief from the Tribe, including (if necessary) in tribal court.

The potential availability of relief under tribal law, as it is proposed to be amended, also raises the question whether Alabama state courts would lack jurisdiction to adjudicate part of respondents' suit under *Williams* v. *Lee*, 358 U.S. 217 (1959). In that case, the Court held that state courts are generally barred from assuming jurisdiction over claims against tribal members involving conduct on the tribe's reservation; such claims ordinarily must be adjudicated in tribal court. *Id.* at 223. Count Three of respondents' current complaint alleges that petitioners were "negligent and/or wanton in hiring, retaining, supervising, and/or monitoring Defendant Spraggins while she was employed by [petitioners]." Cir. Ct. Rec. 414. That allegedly wrongful conduct presumably occurred on the Tribe's Reservation. And, to the extent state law is relevant to the application of *Williams* v. *Lee*, claims under Alabama law concerning petitioners' allegedly improper hiring, retention, and supervision of Spraggins may also find their locus on the Reservation. Cf. *Ex parte Jim Burke Auto., Inc.*, 200 So. 3d 1153, 1156 (Ala. 2016) (for purposes of determining venue for claims of negligence and wantonness, "the inquiry is not the location of the injury, but the location of the wrongful acts or omissions of the corporate defendant").

Assuming that the Tribe would provide an avenue for relief based on this claim, therefore, there is a serious question whether *Williams* v. *Lee* would independently preclude Alabama's courts from adjudicating it. The

proposed amendment to the Tribal Code thus creates a significant prospect that respondents would be able to obtain—and may in fact be required to seek—relief from the Tribe.

If the proposed amendment to the Tribal Code is adopted, as early as June 6, 2019, then this Court should grant the petition for a writ of certiorari, vacate the judgment of the Alabama Supreme Court, and remand for further proceedings. See *Madison County* v. *Oneida Indian Nation*, 562 U.S. 42 (2011) (per curiam) (vacating judgment below and remanding in light of tribal declaration and ordinance waiving tribe's sovereign immunity against certain state and local taxation). That course will allow the state courts to consider, in the first instance, the effect of the amendment to the tribal Tort Claims Act, including whether it provides respondents with an opportunity to seek relief from the Tribe. If respondents are able to do so, respondents' arguments about cutting back on the scope of tribal sovereign immunity may become moot.

2. If the proposed amendment is not enacted, however, the Court should deny the petition for a writ of certiorari. Although the Alabama Supreme Court's decision is erroneous, it is an outlier. Given the clear conflict between the decision below and this Court's precedent, other state and federal court are unlikely to adopt its reasoning or conclusion. If those other courts continue to follow this Court's decisions, the Alabama Supreme Court may reconsider its decision here, especially with the benefit of the views of the United States, which did not participate in the proceedings in the Alabama Supreme Court in this case.

In addition, the Alabama Supreme Court's decision in this case is interlocutory, as it did not finally determine or terminate the litigation. See Pet. App. 13a ("remand[ing] for further proceedings"). If certiorari is denied, further proceedings will be held in which the state courts will adjudicate respondents' claims against petitioners, Spraggins, and Wilkes's insurer. As petitioners have argued (Reply Br. 3), respondents may "be made completely whole for their injuries through their claims against Spraggins." Those claims were stayed by the state circuit court pending this Court's decision in *Lewis* v. *Clarke*, 137 S. Ct. 1285 (2017). See Cir. Ct. Rec. 898. The current status of those claims is unclear, as is the likelihood that respondents would be able through them to obtain compensation (in whole or in part) for their injuries. Nor is it clear whether respondents will be able to receive full or partial compensation from Wilkes's insurer, against whom respondents have sought compensatory and punitive damages. See *id.* at 413 (Count Two); see also Ala. Code § 32-7-23 (LexisNexis 2010) (requiring insurer to offer coverage against damage by uninsured and underinsured motorists). Further proceedings may also illuminate whether the claims against petitioners for negligent hiring, retention, and supervision are properly regarded as arising on the Reservation, and the effect of any such determination on the Alabama Supreme Court's view of immunity. Finally, petitioners may prevail on their argument that "Spraggins was not acting within the scope of her employment at the time of the January 2015 accident." Pet. App. 4a.

If judgment were ultimately rendered against petitioners, however, and the Alabama Supreme Court ad-

hered to its sovereign immunity ruling in this case, petitioners could seek review in this Court at that time. The interlocutory posture of this case thus provides another reason that review on the merits is not presently warranted. At a minimum, further state-court proceedings will clarify the scope and practical effect of respondents' claims for compensation against petitioners. And in any event, the Court will have another opportunity to grant review, based on a complete record, at the conclusion of the case.

CONCLUSION

If the proposed amendment to the Tribal Code is enacted, the petition for a writ of certiorari should be granted, the judgment of the Alabama Supreme Court should be vacated, and this case should be remanded for further proceedings in light of that change in law.

Respectfully submitted.

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