Nos. 11-246 & 11-247

IN THE

Supreme Court of the United States

MATCH-E-BE-NASH-SHE-WISH BAND OF POTTAWATOMI INDIANS, PETITIONER

v.

DAVID PATCHAK, ET AL.

KEN L. SALAZAR, SECRETARY OF THE INTERIOR, ET AL., PETITIONERS

v.

DAVID PATCHAK, ET AL.

On Writ Of Certiorari
To The United States Court Of Appeals
For The District of Columbia Circuit

BRIEF FOR RESPONDENT DAVID PATCHAK

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QUESTIONS PRESENTED

1. The Administrative Procedure Act waives sovereign immunity to allow citizens to challenge agency actions that violate federal law. Plaintiff David Patchak alleges that the Department of the Interior's (DOI) decision to take land into trust for the Gun Lake Band violates §465 of the Indian Reorganization Act (IRA) because the Band was not under federal jurisdiction in 1934, as required by this Court in *Carcieri* v. *Salazar*, 129 S. Ct. 1058 (2009). The Band therefore is not eligible to have land taken into trust under the IRA.

Although the Quiet Title Act (QTA) provides sovereign immunity for quiet-title actions concerning Indian lands, Patchak is not bringing a quiet-title action, as he asserts no ownership interest in the land at issue.

The question presented is whether the APA's sovereign-immunity waiver applies, or whether the QTA's sovereign-immunity provisions impliedly bar Patchak's claim even though his claim is outside the scope of the QTA.

2. Section 465 of the IRA and its implementing regulations limit the DOI's discretion in deciding whether to take land into trust. Petitioners do not contest Patchak's constitutional standing, but claim he is not within the IRA's zone of interests and therefore cannot challenge the DOI's land-in-trust decision.

The question presented is whether a plaintiff living in a community that will be negatively affected by the DOI's land-in-trust decision has prudential standing to enforce the IRA's limitations on land-in-trust decisions.

TABLE OF CONTENTS

TABLE OF CONTENTS—Continued

TABLE OF AUTHORITIES

Page(s)

Federal Cases

TABLE OF AUTHORITIES—Continued

Page(s)

TABLE OF AUTHORITIES—Continued

Page(s)

TABLE OF AUTHORITIES—Continued

Page(s)

TABLE OF AUTHORITIES—Continued

Page(s)

TABLE OF AUTHORITIES—Continued

Page(s)

Federal Statutes

TABLE OF AUTHORITIES—Continued

Page(s)

Federal Rules

Other Authorities

BRIEF FOR RESPONDENT DAVID PATCHAK

STATUTES AND REGULATIONS INVOLVED

Relevant portions of the statutes and regulations involved in this case—including 5 U.S.C. §702; 28 USC §§1346, 1402, and 2409a; 25 U.S.C. §§463, 465, and 2719; and 25 C.F.R. Part 151—are reproduced in the appendix to this brief.

STATEMENT

1. The Match-E-Be-Nash-She-Wish Band of the Pottawatomi Indians, commonly known as the Gun Lake Band, was not federally recognized when Congress enacted the Indian Reorganization Act (IRA) in 1934. 62 Fed. Reg. 38,113, 38,113 (June 23, 1997). For nearly 100 years before the IRA's enactment, the Band affirmatively avoided the United States' jurisdiction. This history is significant because in *Carcieri* v. *Salazar*, 129 S. Ct. 1058 (2009), this Court held that the IRA allows the Department of the Interior (DOI) to take land into trust only for "those tribes that were under the federal jurisdiction of the United States when the IRA was enacted in 1934." *Id.* at 1068.

In 1839, the Band placed itself under the protection of an Episcopalian mission to avoid the federal government's plan to move Indians west, and occupied lands in Allegan County, Michigan. J.A. 47–50. In 1855, the Pottawatomi signed the Treaty of Detroit, which required Band members to reside in Oceana County, Michigan, and most of the Band moved there. *Id.* at 48–49. But in 1870, the Band violated the treaty by returning to Allegan County, thereby breaking off the Band's relationship with the

federal government. Exhibit A to Patchak's COA Appellant's Br. As the DOI has previously determined, "[s]ince 1870, the Federal government has dealt with band members as individual Indians entitled to attendance at BIA schools, etc., but *has not dealt with the band as an entity*." *Id.* (emphasis added).

2. In 1993, the Band filed an application for federal recognition under 25 C.F.R. §83.7, which applies only to tribes that are not acknowledged or recognized by the federal government at the time of application, 25 C.F.R. §83.3(a). The Band therefore acknowledged that it lacked federal recognition before 1993. See COA J.A. 94 (stating "the federal government withheld formal acknowledgement beginning in 1870" and "[t]hus, for well over a century, the Tribe was denied both federal recognition and reservation lands . . . ."). Before this Court's decision in *Carcieri*, the federal government also acknowledged the Band's lack of federal recognition. *Id.* at 167. Thus, the Band was not under federal jurisdiction from 1870 to 1993.

When the Band applied for federal recognition, it internally agreed "there would never be casinos in our Tribe" and represented in its proposed constitution (submitted to the DOI) that it had "decided not to sacrifice the future of its membership to gaming interests and the changes to traditions in the community that gaming could bring." *Id.* at 925 (emphasis omitted). The Band received federal recognition in 1998. See 63 Fed. Reg. 56,936, 56,936 (Oct. 14, 1998).

3. Shortly after its recognition, the Band acquired a 165-acre site in rural Wayland Township (the Bradley Tract) in Allegan County on which it

wished to construct and operate a casino complex. J.A. 41; COA J.A. 47–48. In 2001, the Band applied to have the land taken into trust. In its application, the Band specifically stated that it "intend[ed] to offer Class II and/or Class III gaming (as defined by the IGRA, 25 U.S.C. §2701 *et seq.*) to the public at the facility." J.A. 61. The Band could not use its land for a casino complex, or any other use inconsistent with state or local laws, absent the federal government taking the Band's land into trust.

To comply with the National Environmental Policy Act (NEPA), the DOI conducted an environmental assessment to evaluate the land-in-trust decision's potential effects. COA J.A. 520. Because the proposed use for the land—here, casino gambling—is inextricably intertwined with the fee-to-trust decision, the DOI analyzed the effects of a gambling complex of nearly 200,000 square feet, including almost 99,000 square feet of gambling space, two sit-down restaurants, a café, two fast-food outlets, four retail shops, a sports bar, an entertainment lounge, office space, and parking for more than 3,330 vehicles. COA J.A. 535, 729. This casino complex, which would be open 24 hours a day, 365 days a year, is expected to draw 3.1 million visitors annually—to a farming community of 3,000 residents. *Id.* at 754, 577. Indeed, the casino would have more parking spaces—3,330—than Patchak's community has residents. See *id.* at 535, 729.

The casino was expected to attract 1,420 new residents and induce construction of more than 500 new homes in the area. *Id.* at 734. Although such substantial growth might be good news to some, this urbanization will destroy the rural character of Wayland Township and harm those residents, like

Patchak, who value a community free from the significant noise, traffic, and general disruption that accompany a sizeable casino complex.

4. Despite receiving numerous comments expressing concern about the effect of the thousands of gambling visitors on the community, *id.* at 779, 788, the DOI made a final agency determination on April 18, 2005, that it would acquire the Bradley Tract in trust for the Band. 70 Fed. Reg. 25,596, 25,596 (May 13, 2005). The notice of determination stated that, in accordance with IRA regulation 25 C.F.R. §151.12(b), DOI was giving notice to the public "at least 30 days prior to the signatory acceptance of the land into trust." *Id.*

5. Michigan Gambling Opposition (MichGO), a nonprofit organization of concerned citizens, filed suit and challenged the DOI's right to take the Bradley Tract into trust on a number of grounds, including failure to comply with the NEPA, the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. §2701 *et seq.*, and the IRA. MichGO's IRA claim alleged a violation of the non-delegation doctrine. The *MichGO* litigation resulted in a stay that prevented the DOI from taking the land into trust. Following this Court's grant of certiorari in *Carcieri*, the courts in the *MichGO* litigation refused to consider whether the DOI was barred from taking the Bradley Tract into trust because the Band was not under federal jurisdiction in 1934.

6. Before the DOI took the land into trust, David Patchak filed this suit against the DOI. Patchak sought review of the DOI's final agency decision under the Administrative Procedure Act (APA), 5 U.S.C. §§702, 706. He argued that the DOI lacked the authority under the IRA to take the land into

trust because the Gun Lake Band was not under federal jurisdiction in 1934.

Patchak, who lives near the Bradley Tract, moved to the area "because of its unique rural setting," and he "values the quiet life he leads in Wayland Township." J.A. 30–31. He anticipated that a casino would irreversibly change the area's rural character, depriving him of the enjoyment of the agricultural land and weakening the community's family atmosphere. J.A. 31. He recognized that a casino would increase traffic, crime, and pollution. J.A. 31. These adverse effects in turn would divert police, fire, and emergency medical services and cause both decreased property values and increased property taxes. *Id.* The presence of a casino would also likely divert community resources because of an increased need to treat gambling addiction and would lead to other problems that would detrimentally affect his community's rural character. *Id.* None of these effects could occur absent the government taking the Bradley Tract into trust.

7. The stay in the *MichGO* litigation expired when the Court denied MichGO's petition for a writ of certiorari. Accordingly, Patchak moved for a stay to prevent the DOI from taking the land into trust. The district court denied Patchak's motion. Two months after the argument in *Carcieri* and five weeks before this Court's decision, the DOI took the land into trust. The government then asserted that because it had taken the land into trust, sovereign immunity under the Quiet Title Act (QTA) cut off judicial review of Patchak's pending APA claim.

8. The district court dismissed Patchak's complaint on the theory that Patchak lacked prudential standing because he was not within the IRA's zone of

interests. DOI Pet. App. 37a. The district court concluded Patchak fell outside that zone because he was "not an Indian" and did not "seek to protect or vindicate the interests of any Indians or Indian tribes." *Id.* at 35a. The district court stated that "because the Court finds that plaintiff lacks prudential standing, the Court need not, and does not, reach [the Quiet Title Act] issue in this opinion." *Id.* at 37a n.12.

9. The D.C. Circuit reversed. *Id.* at 22a. As an initial matter, the D.C. Circuit noted that "[t]here is no doubt that Patchak satisfied the standing requirements derived from Article III of the Constitution" and that "[n]either the Secretary nor the Band argues otherwise." *Id.* at 4a. Emphasizing this Court's guidance concerning the APA's "'generous review provisions,'" *id.* at 5a, the court of appeals recognized that Patchak falls within the IRA's zone of interests. "The IRA provisions interpreted in [*Carcieri*] limit the Secretary's trust authority." *Id.* at 7a. "When that limitation blocks Indian gaming, as Patchak claims it should have in this case, the interests of those in the surrounding community—or at least those who would suffer from living near a gambling operation—are arguably protected." *Id.* The court noted that "[t]he Interior Department itself recognizes the interests of individuals like Patchak who live close to proposed Indian gaming establishments": DOI regulations allow "'affected members of the public' thirty days to seek judicial review before the Secretary takes land into trust for an Indian tribe," and "[o]ther regulations require the Secretary to consider the purpose for which the land will be used and whether taking a tribe's land into trust would give rise to 'potential conflicts of land use.'" *Id.* at 8a–9a (citing 25 C.F.R. §§151.12(b) &

151.10(c), (f)). The D.C. Circuit also observed that "[t]he zone-of-interests test weeds out litigants who lack a sufficient interest in the controversy, litigants whose 'interests are so marginally related to or inconsistent with the purposes implicit in the statute that it cannot reasonably be assumed that Congress intended to permit the suit.'" *Id.* at 10a (quoting *Clarke* v. *Secs. Indus. Ass'n*, 479 U.S. 388, 399 (1987)). Unlike that type of marginal litigant, Patchak's "stake in opposing the Band's casino is intense and obvious," and it would be "very strange to deny Patchak standing in this case." *Id.*

The D.C. Circuit also rejected the government's assertion that Patchak's APA claim was barred by the Indian-lands exception to the Quiet Title Act's sovereign-immunity waiver. *Id.* at 21a. The court of appeals noted that the "common feature of quiet title actions is missing from this case": Patchak is not trying to "'establish a plaintiff's title to land,'" as "he mounts no claim of ownership of the Bradley Tract." *Id.* at 14a. The court observed that "the language of §2409a firmly indicates that Congress intended to enact legislation building upon the traditional concept of an action to quiet title." *Id.* at 14a–15a. Section 2409a of the QTA requires the plaintiff to "'set forth with particularity the nature of *the right, title, or interest which the plaintiff claims in the real property*.'" *Id.* at 15a (emphasis added) (quoting 28 U.S.C. §2409a(d)). Further, §2409a(b) allows the government the option of retaining possession of the land if it loses the quiet title action, "so long as the government pays just compensation to the person entitled to the property." *Id.* at 16a. This just-compensation provision "is senseless unless there is someone else—the plaintiff—claiming ownership." *Id.* Accordingly, the D.C. Circuit declined to follow

other courts that have "extended the reach of the Quiet Title Act beyond its text," instead holding that "the terms of the Quiet Title Act do not cover Patchak's suit" and that "[h]is action therefore falls within the general waiver of sovereign immunity set forth in §702 of the APA." *Id.* at 21a.

Because the court of appeals determined that the QTA did not apply, it chose not to address Patchak's argument that because he filed suit before the Bradley Tract was taken into trust, even if the QTA applied, sovereign immunity did not bar his claim. *Id.* at 21a n.10.

10. Soon after the court of appeals issued its decision permitting Patchak's APA challenge to proceed, the Band opened its sprawling casino complex. As Patchak predicted, the casino has severely disrupted his community's rural character. Media reports indicated that after opening, the parking lots at the casino were "so full and traffic is so heavy along US 131 [that police] closed the northbound and southbound exits" to the highway. Appellant's COA Resp. to Band's Mot. to Stay the Mandate, Ex. A.

Police calls in the area have, as expected, "skyrocketed," doubling from historical levels in the first month of operations and tripling in the second month. Grand Rapids Press article, Apr. 9, 2011, *available at* http://www.mlive.com/news/grandrapids/index.ssf/2011/04/why_township_officials_arent_c.html. One local sheriff described the casino's opening as "like dropping a small city into the middle of that area." *Id.*

In short, the casino complex has already disrupted the rural lifestyle of Wayland Township.

SUMMARY OF ARGUMENT

1. Patchak's claim is a paradigmatic APA claim: he challenges a final decision by a federal agency, the DOI, because that decision violates federal law, the IRA. Congress waived sovereign immunity in the APA for situations precisely like this one, to allow citizens to hold federal officials and agencies accountable for violating the law.

The DOI attempts to shield its action from judicial review by relying on the Quiet Title Act's sovereign-immunity provisions. But Patchak is not bringing a QTA claim. As the government recognizes, he could not bring one because he is not asserting that he has any right, title, or interest in the property.

Moreover, the QTA does not preclude Patchak from bringing his claim under the APA. The QTA's preclusive scope extends only to claims that the QTA recognizes in the first place. There is nothing in the QTA's text to indicate that it precludes claims brought under other statutes by parties that are not alleging an interest in the subject property. Indeed, if the QTA precluded claims like Patchak's, then such claims of unlawful agency action would receive no meaningful judicial review, contrary to the strong presumption established by this Court and the Congress.

Because Patchak is not bringing a quiet-title action and because the QTA does not preclude his bringing an APA claim, the QTA's sovereign-immunity provisions do not apply, any more than sovereign-immunity provisions found in some other federal statute (such as the Tucker Act) would apply. And because the QTA's sovereign-immunity provisions do not apply to a claim based on a completely different theory (i.e., an APA claim), it makes no

sense to think the QTA implicitly forbids a particular type of relief on that claim. Moreover, the relief Patchak seeks differs fundamentally from quiet-title relief: Patchak seeks reversal of the DOI's unauthorized action, not a declaration of who has title to the Bradley Tract.

2. Patchak also satisfies the zone-of-interests test for prudential standing. This test, which this Court has said is "not meant to be especially demanding," is satisfied because the interests Patchak seeks to protect are "arguably within the zone of interests to be protected or regulated" by §465 of the IRA. This Court has recognized that a statute's zone of interests includes those parties that Congress could have relied upon to challenge agency disregard of the law. Patchak is doing exactly that by enforcing the limitation of §465 that this Court recognized in *Carcieri*: that the DOI can take land into trust only for those who qualify as an Indian tribe under the IRA. Further, §465 directly implicates land-use concerns because its purpose of providing land to Indians is to promote economic self-sufficiency through *use* of trust land.

The DOI's own regulations adopted under §465 demonstrate the DOI's acknowledgment that land use is a concern within the IRA's zone of interests. Those regulations expressly require the DOI to consider proposed land uses when making land-in-trust decisions—specifically, to consider both "[t]he purposes for which the land will be used" and "potential conflicts of land use which may arise." 25 C.F.R. §151.10(c) & (f). In fact, these regulations are controlling under *Chevron* because they fill a gap Congress left in the IRA when Congress did not identify what considerations should govern the DOI's discre-

tion to take land into trust. If courts are required to give the regulations controlling weight regarding the statute's meaning, then logically those regulations provide guidance about the statute's zone of interests—particularly where, as here, the statutory text provides so little guidance. In short, like the state and local governments that even petitioners concede have prudential standing, Patchak falls within §465's zone of interests because he seeks to enforce the limit §465 imposes on whether land can be taken into trust.

Patchak's concerns also fall within the IRA's zone of interests upon proper consideration of the integrally related IGRA. *Clarke*, 479 U.S. at 396, 399. In *Clarke*, this Court looked to provisions enacted in two separate statutes when applying the zone-of-interests test because one statute was a specific limitation on the other. Here, the IGRA, in 25 U.S.C. §2719, specifically limits the DOI's authority to take land into trust for an Indian tribe under §465 when the land will be used for gaming. Because this Court considers integrally related statutes when determining the arguable zone of interests and because the petitioners agree that Patchak's interests fall with the IGRA's zone of interests, Patchak's asserted interests also fall within the IRA's zone of interests.

ARGUMENT

I. The Quiet Title Act's sovereign-immunity provisions do not apply to Patchak's APA suit

A. Patchak's challenge to unlawful agency action falls squarely within the APA's waiver of federal sovereign immunity

As this Court has long recognized, the Administrative Procedure Act "embodies the basic presumption of judicial review to one 'suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute.'" *Abbott Labs.* v. *Gardner*, 387 U.S. 136, 140 (1967) (quoting 5 U.S.C. §702), abrogated on other grounds by *Califano* v. *Sanders*, 430 U.S. 99, (1977). Congress made this presumption of judicial review even clearer in 1976 when it amended §702 to expressly waive sovereign immunity. The amendment provided that a suit under §702 "shall not be dismissed nor relief therein be denied on the ground that it is against the United States" and allowed "a judgment or decree may be entered against the United States." 5 U.S.C. §702. Thus, "[w]e begin with the strong presumption that Congress intends judicial review of administrative action." *Bowen* v. *Mich. Acad. of Family Physicians*, 476 U.S. 667, 670 (1986).

By waiving sovereign immunity to allow challenges to unlawful agency actions, Congress recognized a central maxim of American government: no one, not even the government, is above the law. See H.R. Rep. No. 94-1656, at 10 (1976) ("Only if citizens are provided with access to judicial remedies against Government officials and agencies will we realize a government truly under law."); *id.* at 7 ("'the funda-

mental concept of the APA [is] that a person adversely affected by administrative action is presumptively entitled to judicial review of its correctness'"). This Court has long recognized this principle:

> It would excite some surprise if, in a government of laws and of principle, furnished with a department whose appropriate duty it is to decide questions of right . . . between the government and individuals; a ministerial officer might, at his discretion, issue this powerful process . . . leaving to the debtor no remedy, no appeal to the laws of his country, if he should believe the claim to be unjust. But this anomaly does not exist; this imputation cannot be cast on the legislature of the United States. [*Bowen*, 476 U.S. at 670 (quoting *United States* v. *Nourse*, 34 U.S. 8, 28–29 (1835)).]

"Both Houses of Congress have endorsed this view" in their comments during the APA's passage. See *id.* at 671.

Patchak's claim falls squarely within §702's scope. His complaint focuses on illegal agency action, alleging that the DOI "unlawfully approved placing into trust approximately 146 acres of land," that agencies "have no authority to place the Property into trust for the Gun Lake Band because the [IRA] only permits land to be taken into trust for Indian tribes that were federally recognized as of June 1934," and that the agency decision was therefore "unlawful and *ultra vires*." J.A. 30, 31–32; see also J.A. 37 ("Defendants' approval of the trust acquisition violates §§5 and 19 of the [IRA] . . . and is *ultra vires*.").

The relief Patchak seeks under the APA also properly focuses on reversing the unauthorized

agency decision. His complaint asks the court to "find the action of Defendants unlawful and [to] reverse the decision to take the Property in trust for the Gun Lake Band," to "issue a declaratory judgment declaring that Defendants' decision to take the Property into trust violates" the IRA, and to enjoin transferring the land into trust for the Band. J.A. 39. In short, Patchak is asserting an APA claim directed at reversing unlawful agency action.

Petitioners do not deny that Patchak is challenging an agency action as unlawful. Instead, they contend that the APA's sovereign-immunity waiver does not apply here because §702 states that "[n]othing herein . . . confers authority to grant relief if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought." 5 U.S.C. §702. But the QTA does not grant consent to suit to individuals situated like Patchak, nor does it expressly or impliedly forbid the relief he seeks.

B. Patchak's claim cannot be brought under the Quiet Title Act

The QTA's plain language demonstrates that Patchak is not bringing a quiet-title action because he is not asserting any right, title, or interest in the land. As the court of appeals recognized, because Patchak's claim does not fall within the QTA's scope, the Act, including its sovereign-immunity provisions, does not apply to his suit. DOI Pet. App. 19a. Simply put, the QTA does not provide "consent to suit," 5 U.S.C. §702, to people bringing a claim like Patchak's, and thus the APA sovereign-immunity waiver governs his claim.

The QTA's text shows that the Act governs only traditional quiet-title actions, i.e., actions where the

plaintiff claims some interest in the property at issue. Section 2409a(d) requires the complaint to "set forth with particularity the *nature of the right, title, or interest which the plaintiff claims in the real property*." 28 U.S.C. §2409a(d) (emphasis added). This language expressly limits the QTA's scope to quiet-title actions. The government correctly recognizes this. DOI Br. 16–17 ("[T]he QTA permits challenges to the United States' claim of title to real property to be brought *only* by parties who themselves claim an interest in the same property." (emphasis added)). The Band, in contrast, states that it is "unclear" whether "the QTA authorizes suit only by plaintiffs asserting their own title to property." Band Br. 13. The Band, relying on the phrase "'to adjudicate *a* disputed title'" in §2409a(a), theorizes that the plaintiff does not have to claim title in himself. Band Br. 28; see also *id.* at 30 n.10 (suggesting that the QTA "would presumably encompass situations where the plaintiff asserts legal injury arising from the fact that title should be quieted *in a third party*" (emphasis added)). But the Band's theory conflicts with §2409a(d)'s requirement that the complaint identify "with particularity the nature of the right, title, or interest *which the plaintiff claims* in the real property." 28 U.S.C. §2409a(d) (emphasis added).

The QTA's jurisdictional and venue provisions reinforce that limitation. The QTA confers jurisdiction on the federal courts solely for quiet-title actions: "[t]he district courts shall have exclusive original jurisdiction of *civil actions under section 2409a to quiet title* to an estate or interest in real property in which an interest is claimed by the United States." 28 U.S.C. §1346(f) (emphasis added). The QTA's venue provision uses the same language: "Any *civil action under section 2409a to quiet title* to

an estate or interest in real property in which an interest is claimed by the United States shall be brought in the district court . . . ." 28 U.S.C. §1402(d) (emphasis added). Congress adopted these provisions contemporaneously with §2409a, demonstrating that the scope of §2409a covers only quiet-title actions; in other words, Congress intended the phrase "a civil action under this section to adjudicate a disputed title to real property," 28 U.S.C. §2409a(a), to mean the same thing as a "civil action under 2409a to quiet title to an estate or interest in real property," 28 U.S.C. §1346(f). See also DOI Br. 21 (citing legislative history showing that there is no substantive difference between the phrase "suits to adjudicate disputed titles to land" and the phrase "suits to adjudicate certain real property quiet title actions"). Accordingly, this Court recognized, shortly after the QTA was enacted, that §2409a applies to suits "to quiet title to land." *California* v. *Arizona*, 440 U.S. 59, 65 (1979).

Further, §2409a(b) provides that if an action under this section results in a determination adverse to the United States, it may elect to "retain [its] possession or control of the real property" if it makes "payment to the person determined to be entitled" to the land and pays that person "just compensation for such possession or control." As the D.C. Circuit pointed out, this "provision is senseless unless there is someone else—the plaintiff—claiming ownership." DOI Pet. App. 16a.

Ever since the QTA's enactment, the government has taken these provisions at face value and agreed that the QTA does not apply to suits where the plaintiff does not assert a claim to the title of the land in question. For example, in *Tudor* v. *Members of Ar-*

kansas State Parks, Recreation & Travel Commission, 83 F.R.D. 165 (E.D. Ark. 1979), the government "forcefully argued that the jurisdictional basis of these lawsuits, 28 U.S.C.A. §2409a, was never intended to provide a federal forum to plaintiffs who have no title, color of title or possessory interest in land in which the United States claims an interest." *Id.* at 168 (footnote omitted). The district court agreed and accordingly dismissed the case for a lack of standing. *Id.* at 173. The government has for decades successfully asserted a lack of jurisdiction or failure to state a claim to deflect QTA claims where the plaintiff does not assert title in herself.[1] See, e.g., *Kinscherff* v. *United States*, 586 F.2d 159, 161 (10th Cir. 1978); *Alleman* v. *United States*, 372 F. Supp. 2d 1212, 1222 (D. Or. 2005); *Friends of Panamint Valley* v. *Kempthorne*, 499 F. Supp. 2d 1165, 1175, 1177 (E.D. Cal. 2007).

Consistent with the statutory text and the government's position, this Court has applied the QTA only to plaintiffs seeking title in themselves. In *Block* v. *North Dakota*, 461 U.S. 273 (1983), "the United States and North Dakota assert[ed] competing claims to title to certain portions of the bed of the Little Missouri River within North Dakota." *Id.* at 277. Because North Dakota brought a suit asserting that it had title to the land and that the United States did not—a traditional quiet-title suit—this Court refused to allow North Dakota to use "artful

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[1] The Band also argues that, by 1972, some states had expanded quiet-title actions to allow those not in possession to sue, Band Br. 29, but regardless of whether state quiet-title actions required the plaintiff to have possession, state laws (and the QTA) require an interest in the subject property.

pleading" to avoid the Act's limitations. *Id.* at 284. Consistent with this context, the Court's holding in *Block* is specifically limited to plaintiffs asserting title to the land in dispute: "We hold that Congress intended the QTA to provide the exclusive means by which *adverse claimants* could challenge the United States' title to real property." *Id.* at 286 (emphasis added).

Similarly, *United States* v. *Mottaz*, 476 U.S. 834 (1986), also involved a traditional quiet-title action by an adverse claimant seeking title to the land, *id.* at 841, 846, 849, and thus involved a claim that fell within the QTA's scope. While the Band asserts that "[t]he nature of the plaintiff's interest . . . played no part in this Court's analysis" in *Mottaz*, Band Br. 27, the Court emphasized the nature of the plaintiff's interest, highlighting that the plaintiff asserted title to the lands in dispute: "What respondent seeks is a declaration that she alone possesses valid title to her interests in [certain parcels of land] and that the title asserted by the United States is defective." *Id.* at 842; see also *id.* at 841, 846, 849 (repeatedly referring to "adverse claimants").

C. The Quiet Title Act does not preclude Patchak's APA claim

Notwithstanding that Patchak did not (and could not) bring a QTA claim, the government seems to argue that his claim must be brought as a QTA claim. In other words, the government contends that the QTA precludes the field to such an extent that it forbids relief even to those who have no QTA claim in the first place. This approach is untenable for several reasons.

First, nothing in the QTA's text suggests that the QTA precludes the claims of parties that are not alleging an interest in the subject property. As this Court has frequently recognized, "[t]he mere fact that some acts are made reviewable should not suffice to support an implication of exclusion as to others." *Verizon Md., Inc.* v. *Pub. Serv. Comm'n*, 535 U.S. 635, 643 (2002) (quoting *Abbott Labs.*, 387 U.S. at 141). Simply put, the reviewability of quiet-title claims under the QTA does not create a presumption that the QTA precludes claims involving federal lands for which the plaintiff is not seeking to quiet title.

Block is not to the contrary. The DOI relies on *Block* for the proposition that a plaintiff cannot circumvent the QTA's detailed remedial scheme by artful pleading. DOI Br. 15. But the plaintiff in *Block* was seeking to enforce an adverse claim to property, a quintessential quiet-title claim. In contrast, Patchak is not using artful pleading to characterize an adverse claim to the Bradley Tract as something else because he has no such claim. Rather, he is bringing a different type of claim entirely (an APA claim) based on a completely different legal theory (that the agency violated the IRA when it took the land into trust). Although the Band contends that *Block* shows that whether the QTA's provisions apply does "not depend on the nature of the plaintiff's cause of action," Band Br. 28, *Block* teaches the opposite: the QTA applied to North Dakota's claim because it was a quiet-title claim. 461 U.S. at 284. The Court concluded that the QTA impliedly forbade relief under §702 because North Dakota brought the particular type of claim that the QTA addresses. *Id.* at 286 n.22.

As petitioners correctly identify, the QTA is a precisely drawn statute with specific limitations. DOI Br. 13; Band Br. 23. This observation does not help them. To the contrary, it further demonstrates that the QTA does not apply to an APA claim. A precisely drawn statute governs over more general remedies only when the claim asserted is the sort of claim that falls within the scope of that precisely drawn statute. Because Patchak's claim is an APA claim, not a QTA claim, the APA is the relevant precisely drawn statute governing his claim.

The cases petitioners rely on illustrate this point. DOI Br. 13–14; Band Br. 23–24. In *Brown* v. *GSA*, 425 U.S. 820 (1976), for example, this Court addressed "whether §717 of the Civil Rights Act of 1964 provides the exclusive judicial remedy *for claims of discrimination in federal employment*." *Id.* at 821. This Court explained that Congress created a particular scheme to address a specific type of claim: "congressional intent . . . was to [create] an exclusive, pre-emptive administrative and judicial scheme for the redress of federal employment discrimination." *Id.* at 829. But nothing in *Brown* indicates that a precise scheme governing discrimination claims would limit claims unrelated to discrimination. Similarly, in *Hinck* v. *United States*, 550 U.S. 501 (2007), this Court recognized that a tax statute specifically authorized suits to abate taxes and that the statute therefore provided the exclusive avenue for suits within the tax statute's scope. *Id.* at 506–07.

Here, Patchak is not bringing a suit within the QTA's scope, which means the QTA is not, as the Band would have it, the "'better fitted statute.'" Band Br. 33. Although "Congress intended the QTA to provide the exclusive means by which *adverse*

claimants could challenge the United States' title to real property," *Block*, 461 U.S. at 286 (emphasis added), there is nothing to indicate that Congress intended the QTA to be the exclusive avenue by which aggrieved persons could challenge unlawful agency actions involving federal lands. Instead, Congress passed a separate statute, the APA, that governs such claims. The Quiet Title Act *is* precisely drawn, but the consequence of that precision is that the aptly named Quiet Title Act applies only to quiet-title actions, not to APA claims.

Second, if the Court were to adopt the approach urged by the government, then there would be no judicial review for many types of claims challenging agency action. Specifically, because the QTA requires the plaintiff to have an interest in the property at issue, and the government believes that any claim affecting the government's title to property must be brought as a QTA claim, parties without an interest in the property could never bring *any* claim that affects the government's title to property. The government presents no justification for this extreme result. Indeed, it runs contrary to the well-established principle that "judicial review of a final agency action by an aggrieved person will not be cut off unless there is persuasive reason to believe that such was the purpose of Congress." *Bowen*, 476 U.S. at 670 (quotation omitted). Accordingly, "only upon a showing of 'clear and convincing evidence' of a contrary legislative intent should the courts restrict access to judicial review." *Id.* at 672 (quoting *Abbott Labs.*, 387 U.S. at 141); *see also id.* (noting the "heavy burden of overcoming the strong presumption that Congress did not mean to prohibit all judicial review of [an agency's] decision" (internal quotation marks omitted)). There is no indication, let alone

"clear and convincing evidence," in the QTA that Congress intended to preclude such a large group of claims from any judicial review.

D. The Quiet Title Act's sovereign-immunity provisions do not apply to Patchak's APA claim

Because Patchak can and did bring his claim as an APA claim and not a QTA claim, the QTA's sovereign-immunity provisions simply do not apply to his APA claim. As the APA states, the only sovereign-immunity provision that matters is one in a statute that grants "consent to suit." The QTA does not grant consent to individuals like Patchak who are not bringing quiet-title claims.

Indeed, it is illogical to suggest that the QTA's sovereign-immunity provisions apply to a non-QTA claim. If Patchak's claim does not fit within the QTA's scope, then it does not fall within the co-extensive scope of the QTA's waiver, and therefore it cannot fall within the scope of the exception to that waiver (because an exception to a waiver cannot exceed the scope of the waiver itself). Put another way, the QTA waives the United States' sovereign immunity only for suits brought by adverse claimants asserting title to federal lands, and the Indian-lands exception merely provides sovereign immunity from quiet-title actions related to that subset of federal lands.

1. The petitioners contend that because the QTA was adopted against a background that assumed the existence of sovereign immunity, the Indian-lands exception must apply to all suits involving Indian lands, regardless of whether the suits fit within the QTA's scope. DOI Br. 17, 21–22; Band Br. 24–25.

But the Indian-lands exception is not a free-standing assertion of sovereign immunity; it is part of the QTA and must be read in that context.

The QTA's sovereign-immunity provision expressly states that "*[t]his section* does not apply to trust or restricted Indian lands." 28 U.S.C. §2409a(a) (emphasis added). Thus, the Indian-lands exception applies only to the section governing QTA claims, not to all claims affecting Indian lands. Moreover, relying on a background rule makes sense for those statutes that do not address sovereign immunity, but the QTA *does* address sovereign immunity and therefore supplants that background rule. As then-Assistant Attorney General Scalia explained in his letter concerning the 1976 amendment to §702, "[b]ecause existing statutes have been enacted against the backdrop of sovereign immunity, this will probably mean that in most if not all cases where statutory remedies already exist, these remedies will be exclusive." S. Rep. No. 94-996, at 27. In other words, if a statute enacted before 1976 authorized certain remedies against the government but not other remedies, then it makes sense to assume that the statute waived sovereign immunity only for the enumerated remedies. But Congress specifically addressed sovereign immunity in the QTA, waiving sovereign immunity for all quiet-title claims concerning federal land except for the subset of federal lands held in trust for Indians. The QTA's provisions (including its sovereign-immunity provisions) are specifically tailored to quiet-title actions and cannot extend beyond the Act's scope.

Petitioners argue that the purpose of the Indian-lands exception will be thwarted if suits such as Patchak's are allowed to proceed. They stress the

need for stability for Indian trust lands. But they ignore a key fact in this case: Patchak brought his APA suit *before* the government took the land into trust.[2] Rather than allowing Patchak's suit to resolve whether the DOI could lawfully take the land into trust based on the then-pending decision in *Carcieri*, the DOI took the land into trust (and the Band began developing the casino complex) with the goal of avoiding judicial review. Any instability and uncertainty regarding the Band's investments in the land are of the DOI's own making, resulting from its decision to forge ahead with its unlawful decision.

2. Even though Patchak's claim does not fall within the QTA's scope, the petitioners argue that his claim is "impliedly" prohibited by the QTA and therefore precluded by the last clause of §702—"Nothing herein . . . confers authority to grant relief if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought." 5 U.S.C. §702. But the relief Patchak seeks—a reversal of the DOI's land-in-trust decision, a declaratory judgment that the agency decision violated the IRA, and an injunction preventing the government from violating that statute by taking the

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[2] When Patchak filed his complaint, the land had not been taken into trust and therefore the QTA's sovereign-immunity provisions could not have applied. Patchak Opp'n 20. Because "[i]t has long been the case that 'the jurisdiction of the court depends upon the state of things at the time the action was brought,'" *Grupo Dataflux* v. *Atlas Global Group, L.P.*, 541 U.S. 567, 570 (2004), the existence of a waiver of sovereign immunity when the complaint was filed should prevent the executive branch from manipulating jurisdiction by asserting sovereign immunity after the complaint's filing.

land into trust—is not impliedly forbidden by the QTA.

Petitioners argue nonetheless that the relief Patchak seeks is forbidden because it would divest the government of title. DOI Br. 9, 11, 19–20; Band Br. 12. But even assuming that the relief sought could be separated from the cause of action authorizing it (it cannot), the fact that a declaration stating that the DOI acted without authority would end the land's trust status does not mean the declaration would be quiet-title relief. If Patchak prevails, he will obtain a ruling that the DOI exceeded its authority by taking land into trust for the Band because the Band was not under federal jurisdiction in 1934. In contrast, a plaintiff successfully asserting an adverse ownership interest under the QTA will obtain a declaration of title that the plaintiff has an interest in the property and will receive either possession of the property or payment for that interest.

Furthermore, as discussed above, the QTA provides no "consent to suit" for Patchak's claim. As the Seventh Circuit recently explained, if a given statute "could never apply to the type of claim advanced, then there is no reason to think that it implicitly forbids a particular type of relief for a claim outside its scope." *Michigan* v. *U.S. Army Corps of Eng'rs*, 667 F.3d 765, 776 (7th Cir. 2011), cert. denied, 2012 WL 603147 (2012). Here, the QTA focuses solely on quiet-title actions and says nothing to forbid implicitly APA claims directed at unlawful agency action.

Block recognized that §702 implicitly bars a claim "'when Congress has dealt in particularity with a claim and [has] intended a specified remedy to be the exclusive remedy'" for that type of claim. 461 U.S. at 286 n.22. In other words, when interpreting

§702's phrase "expressly or impliedly bars relief," this Court understood that determining whether a statute impliedly bars relief necessarily requires considering whether the statute addresses the particular type of claim being brought. Because North Dakota was bringing a quiet-title claim, the QTA did deal in particularity with the type of claim at issue and therefore §702 implicitly barred other relief.

The legislative history confirms that the limitations on specific relief were tied to statutes addressing specific type of claims. For example, the Tucker Act "created a damage remedy for contract claims" against the government, and by authorizing a damage remedy for contract claims Congress "intended to foreclose specific performance of government contracts." S. Rep. No. 94-996, at 12 (1976); 121 Cong. Rec. S16576 (daily ed. Sept. 24, 1975). Given that the Tucker Act impliedly forbids specific performance of a government contract, the "impliedly forbids" clause meant that someone could not bring a contract claim under the APA to seek specific performance.

The legislative history emphasized that the limitations on specific relief were tied to statutes addressing specific types of claims. Then-Assistant Attorney General Scalia's letter reinforces the point: "[W]hen [Congress's] action is not addressed to *the type of grievance which the plaintiff seeks to assert*, suit would be allowed." *Id.* at 27 (emphasis added). And so does language from the legislative history quoted by the Band: the last clause in §702 applies when "Congress has consented to suit and the remedy provided is intended to be the exclusive remedy . . . *with respect to a particular subject matter*." *Id.* at 11–12 (emphasis added); see also Band Br. 35. In short, courts are to examine the other statute to de-

termine whether it expressly or impliedly forbids a particular type of relief, and in doing so, the courts must take into account the type of claim the statute addresses. Because the QTA is not addressed to grievances based on unauthorized agency action, Patchak's suit should be allowed.

3. In applying §702's last clause, this Court and the federal circuit courts have consistently recognized that both the source of the right and the type of relief sought must be considered when determining whether the "other statute" implicitly forbids the relief sought. Specifically, in *Mottaz*, the Court focused on the essence of the plaintiff's case, not just the relief sought, when considering whether the plaintiff's claim fell under the Tucker Act or the QTA. 476 U.S. at 848. The Court noted that "the case she made, and the relief she seeks, do not fit within the scope of the Tucker Act." *Id.* Even though she sought money damages (which the Tucker Act does authorize), the relief she sought was not Tucker Act relief: "A Tucker Act-based lands suit would seek damages equal to just compensation for an already completed taking of the claimant's land," which amounted to "whatever compensation she was allegedly denied in 1954," *id.* at 850–51, but she instead sought damages "equal to the current fair market value" of the land in 1986, *id.* at 839 (emphasis added). In other words, even though the relief she sought bore some similarities to relief available under the Tucker Act, this Court recognized that it was not Tucker Act relief because Tucker Act relief focuses on "damages for the Government's past acts," whereas QTA relief focused on just compensation at the time the adverse claimant is held to have superior title and to "be entitled" to ownership of the land. 28 U.S.C. §2409a(b).

Unlike the plaintiff in *Mottaz*, the "'essence and bottom line of [Patchak's] case'" is not a claim for title. 476 U.S. at 842. Quite the opposite—the essence of Patchak's claim is that the DOI violated the IRA and that its decision should be declared unlawful and reversed. Just as this Court explained that monetary relief is not Tucker Act relief when it is not calculated under the theory of a Tucker Act claim, so too declaratory relief under the APA is not QTA relief because it rests on a completely different theory: that the agency violated federal law by taking the land into trust, not that Patchak is entitled to title to the land.

Similarly, in *Megapulse, Inc.* v. *Lewis*, 672 F.2d 959 (D.C. Cir. 1982), the D.C. Circuit examined whether the Tucker Act's sovereign-immunity waiver applied to a Trade Secrets Act claim relating to various contracts. *Id.* at 964. If the Tucker Act had applied, then sovereign immunity would be waived only for suits brought in the Court of Claims and the district court would have lacked jurisdiction. *Id.* at 963. The D.C. Circuit explained that "[t]he classification of a particular action as one which is or is not 'at its essence' a contract action depends both on the source of the rights upon which the plaintiff bases its claims, and upon the type of relief sought (or appropriate)." *Id.* at 968. The court concluded that the plaintiff's claims were "not 'disguised' contract claims" because the plaintiff "[did] not claim a breach of contract," focused on relief appropriate for protecting its trade secrets, and sought "no monetary damages." *Id.* at 969. Accord *Sharp* v. *Weinberger*, 798 F.2d 1521, 1522–25 (1986) (when determining whether "the Tucker Act and the Little Tucker Act impliedly forbid relief" for the particular claims, the

court divided the claims based on the source of the rights and the relief sought).

Other circuit courts have also recognized that the source of the right and the type of claim being brought matter to whether the other statute impliedly forbids the relief sought. See, e.g., *Up State Fed. Credit Union* v. *Walker*, 198 F.3d 372, 375 (2d Cir. 1999) (adopting the *Megapulse* framework); *United States* v. *J & E Salvage Co.*, 55 F.3d 985, 988–89 (4th Cir. 1995); *B & B Trucking, Inc.* v. *U.S. Postal Serv.*, 406 F.3d 766, 768 (6th Cir. 2005) (en banc) (quoting *Megapulse*); *Evers* v. *Astrue*, 536 F.3d 651, 657 (7th Cir. 2008) (following *Megapulse*); *Tucson Airport Auth.* v. *Gen. Dynamics Corp.*, 136 F.3d 641, 646 (9th Cir. 1998); *Normandy Apts., Ltd.* v. *U.S. Dep't of Hous. & Urban Dev.*, 554 F.3d 1290, 1300 (10th Cir. 2009) (citing *Megapulse* and *Sharp* and considering whether the claim was "'at its essence' a contract claim"); *Begner* v. *United States*, 428 F.3d 998, 1002 (11th Cir. 2005) (adopting *Megapulse*); *Nebraska Pub. Power Dist.* v. *United States*, 590 F.3d 1357 (Fed. Cir. 2010) (citing *Sharp* with approval).

The Seventh Circuit recently applied the same reasoning in the context of the Federal Tort Claims Act, explaining that there is no reason to apply a statute's sovereign-immunity provisions outside the statute's scope. In *Michigan*, several Great Lakes states sought an injunction against the Army Corps of Engineers on the theory that allowing an invasive fish species to enter Lake Michigan would violate the federal common law of public nuisance and advanced a related claim against the Corps under §702. 667 F.3d at 768. In response, the Corps argued that it was entitled to sovereign immunity under the FTCA,

because the FTCA does not waive sovereign immunity for suits "that seek declaratory and injunctive relief based on a federal common-law tort." *Id.* at 774. The Corps, relying on the phrase "expressly or impliedly forbids relief" in §702, made the same type of argument that the DOI makes here. *Id.* at 775 ("[W]hen Congress enacted the FTCA in 1946, it did so against a backdrop of no tort liability for the United States; the FTCA waives the government's sovereign immunity in suits for money damages to the extent that a private person would be held liable under applicable state tort law; but while the FTCA authorizes actions for damages, it says nothing at all about injunctive relief; thus, the FTCA implicitly prohibits injunctive relief in tort suits against the United States; and because of §702(2), the Corps's argument concludes, the plaintiffs cannot use the APA's waiver of immunity to assert a common-law tort claim against the United States." (citations omitted)).

The Seventh Circuit rejected this argument, recognizing that it "reads too much into congressional silence." *Id.* First, "[t]here is nothing in the statute suggesting that Congress meant to forbid all actions that were not expressly authorized." *Id.* "To the contrary, section 702(2) requires evidence, in the form of either express language or fair implication, that Congress meant to forbid the relief that is sought." *Id.* "The Corps's effort," the Seventh Circuit continued, "to transform silence into implicit prohibition would seriously undermine Congress's effort in the APA to authorize specific relief against the United States." *Id.* Second, the Seventh Circuit noted that "state tort law—not federal law—is the source of substantive liability under the FTCA," which meant that the States' tort claim based solely on federal

common law "would not be cognizable under the FTCA in the first place." *Id.* at 776. The Seventh Circuit reasoned that "if the FTCA could never apply to the type of claim advanced, then there is no reason to think that it implicitly forbids a particular type of relief for a claim outside its scope." *Id.* The same is true here.

The reasoning of these cases including *Block* and *Mottaz* is directly on point here. The essence of Patchak's claim is a challenge to unauthorized agency action; it is not a quiet-title action. This is evident from the source of law which he relies (the APA, not the QTA), from the relief he seeks (a declaration that the DOI violated federal law), and from the relief he does not seek (any declaration that he holds title to the property). He is not bringing a disguised quiet-title claim; if he were, it would be singularly ineffectual, as he never asks for title to the land. And because his claim could never be brought under the QTA, there is no reason to think the QTA implicitly forbids relief for his claim. Consequently, the D.C. Circuit did not err by focusing on the relief Patchak did not seek. Contra DOI Br. 19.

In contrast, the three decisions by the courts of appeals that have held that the QTA's sovereign-immunity provisions do bar APA suits ignored both the type of claim the plaintiff was bringing and the QTA's plain language. In *Florida Department of Business Regulation* v. *Department of Interior*, 768 F.2d 1248 (11th Cir. 1985), the Eleventh Circuit never addressed §2409a(d)'s requirement that the plaintiff claim "right, title, or interest . . . in the real property," and even admitted that "technically the suit in the instant case [was] not one to quiet title." *Id.* at 1254. The Ninth Circuit's decision in *Metro-*

politan Water District of Southern California v. *United States*, 830 F.2d 139 (9th Cir. 1987), aff'd by an equally divided Court sub. nom. *California* v. *United States*, 490 U.S. 920 (1989), also ignored §2409a(d)'s statutory requirement that the plaintiff be an adverse claimant. And although the Tenth Circuit at least mentioned the pleading requirements of §2409a(d) in *Neighbors for Rational Development* v. *Norton*, 379 F.3d 956, 962 (10th Cir. 2004), it mentioned them only to say that "plaintiffs cannot circumvent the intent of the Quiet Title Act's limitations with artful pleading." *Id.* at 965. But ignoring the QTA's requirement that the plaintiff assert an interest in the property to state a quiet-title claim, as the Tenth Circuit did, is not the way to effectuate the QTA's limitations.

4. The rights-and-remedies approach, demonstrated in *Mottaz*, in circuit-court cases addressing the Tucker Act, and in *Michigan*, makes sense. If courts are not required to factor in the type of claim the plaintiff is bringing, then the government could turn to any statute that includes both a waiver of sovereign immunity and an exception to the waiver and rely on that exception, regardless of the fact that the statute has nothing to do with the type of claim the plaintiff is bringing.

For example, the Federal Tort Claims Act has nothing to do with Patchak's claim, yet under the government's approach, the FTCA's discretionary-function exception would apply to this case. The FTCA waives sovereign immunity to allow tort claims against the United States. *United States* v. *Olson*, 546 U.S. 43, 44 (2005). The FTCA includes an exception to the waiver for "[a]ny claim . . . based upon the exercise . . . [of] a discretionary function or

duty on the part of a federal agency or an employee of the Government, whether or not the discretion be abused." 28 U.S.C. §2680(a). The natural reading of this exception would limit it to tort claims. But under the government's approach, which untethers sovereign-immunity provisions in statutes from the types of claims the statutes cover, this exception could also bar Patchak's claim, because Patchak challenges the DOI's discretionary decision to take land into trust. See 25 U.S.C. §465 ("The [Secretary] is authorized, *in his discretion*, to acquire . . . any interest in lands . . . for the purpose of providing land for Indians." (emphasis added)). Indeed, the government's argument suggests that it would be anomalous to allow persons like Patchak, who could not bring a valid tort claim against the government, to challenge such a discretionary decision when even a person with a valid tort claim could not challenge the decision. The fact that the government's theory could be applied with such little regard for the scope of the "other statute" demonstrates how flawed that theory is.

As just noted, petitioners argue that it would be anomalous to allow persons who could not bring a valid quiet-title claim against the government to challenge a land-in-trust decision when even a person with an interest in the property could not. E.g., DOI Br. 9; Band Br. 13. They essentially argue that adverse claimants have a greater interest than Patchak because adverse claimants have an interest in the land, and so it would be perverse to allow him, with his lesser interest (i.e., no interest in the land), to sue. E.g., Band Br. 29. This argument misses the point. Patchak's interest in suing an agency for a violation of federal law that injured him is not a *lesser* interest, it is a *different* interest. True,

Patchak has no interest in the land, but that merely confirms that the QTA does not apply in the first place. Yet he has a strong interest in holding a federal agency accountable for taking unlawful action that injured him, and, contrary to the Band's characterization of this as a "second-hand interest," Band Br. 37, it is precisely the sort of interest Congress enacted the APA to protect. Simply put, an interest in preventing the increased noise, traffic, and crime that the casino complex would bring (and has already brought) is not a "lesser" interest than an interest in the land itself

5. Petitioners and amici postulate that, notwithstanding the QTA's and the APA's text, policy considerations require ignoring that text and providing the DOI with "full immunity" from suits regarding Indian trust lands. Specifically, they argue that the limited QTA Indian-lands exception must be considered in the context of the role trust lands play in promoting tribal economic development and of the uncertainty that allowing APA claims like Patchak's will create. E.g., Band Br. 26. But the statutes' plain language, as discussed above, does not allow for such considerations. *Carcieri*, 129 S. Ct. at 1066–67 ("We need not consider these competing policy views, because . . . 'courts must presume that a legislature says in a statute what it means and means in a statute what it says'."). Further, petitioners and the amici exaggerate the supposed effects of affirming the QTA ruling. The APA's six-year statute of limitations, 28 U.S.C. §2401(a), which runs from the land-in-trust decision, still applies. And the APA allows the DOI to raise a fully array of defenses—such as laches and standing—that will protect against uncertainty. 5 U.S.C. §702 (courts retain the authority to dismiss any action "on any other appropriate legal

or equitable ground"); COA J.A. 41–42 (answer asserting defenses).) Further, uncertainty will arise only if there is good reason to think the agency's land-in-trust decision was unlawful, and in that event a plaintiff with standing should be allowed to advance an APA claim, just like any other APA plaintiff. Finally, even if the land-in-trust decision is held to be unlawful, the land will revert to the ownership of the affected tribe to use as any other landowner could.

E. Petitioners' application of the Quiet Title Act allows judicial review of land-in-trust decisions only at the pleasure of the DOI

The practical effect of petitioners' application of the QTA's sovereign-immunity provisions is that the DOI gets to unilaterally decide whether its land-in-trust decisions are subject to judicial review. The DOI's regulations currently provide a 30-day window between the final agency determination and the taking of the land into trust. Nothing prevents the DOI from taking the land into trust at any time following the 30-day window or from violating its own regulation and taking the land into trust during the 30 days. Under petitioners' theory, as soon as the DOI takes the land into trust, sovereign immunity applies. Consequently, judicial review is only available at the whim of the DOI. See *Dep't of Interior* v. *South Dakota*, 519 U.S. 919, 921 (1996) (Scalia, J., dissenting from decision to grant, vacate, and remand) (describing the DOI's view as "reviewability-at-the-pleasure-of-the-Secretary"). The DOI's position, in short, allows it, like Lucy holding a football for Charlie Brown, to pull away the opportunity for review once a lawsuit commences (or at such time as

the DOI perceives legal vulnerability). This is not consistent with the rule of law.

II. Patchak's substantial interest in this case satisfies prudential standing

Patchak has a clear interest in not having a casino as his neighbor. Petitioners have not argued that this interest is insufficient to satisfy Article III standing. Instead, they contend that the interest fails to establish prudential standing, but—as the D.C. Circuit correctly held—Patchak satisfies the zone-of-interests test.

The zone-of-interests test for prudential standing "is not meant to be especially demanding." *Clarke* v. *Secs. Indus. Ass'n*, 479 U.S. 388, 399 (1987). All that it requires is that "'the interest sought to be protected by the complainant [be] *arguably* within the zone of interests to be protected or *regulated* by the statute or constitutional guarantee in question.'" *Id.* at 396 (emphasis added) (quoting *Ass'n of Data Processing Serv. Orgs., Inc.* v. *Camp*, 397 U.S. 150, 153 (1970)).

When applying the test in the context of the APA, this Court has emphasized that "the APA's 'generous review provisions' . . . should be construed 'not grudgingly but as serving a broadly remedial purpose.'" *Id.* (quoting *Data Processing*, 397 U.S. at 156 (some quotations omitted)). This "liberal reading" promotes the rule that an APA claim "'is available absent some clear and convincing evidence of legislative intent to preclude review." *Id.* at 396 n.9 (quoting *Japan Whaling Ass'n* v. *Am. Cetacean Soc'y*, 478 U.S. 221, 230 n.4 (1986)); see also *id.* at 397. Given the broad remedial purpose of allowing citizens to challenge illegal agency actions, the zone-of-

interests test denies a right of review only "if the plaintiff's interests are so marginally related to or inconsistent with the purposes implicit in the statute that it cannot reasonably be assumed that Congress intended to permit the suit." *Id.*; see also *Thompson* v. *N. Am. Stainless, LP*, 131 S. Ct. 863, 870 (2011).

The Band attempts to modify this test by arguing that Patchak cannot be within the zone of interests of the IRA—which the Band acknowledges largely "lacks any discernible statutory standards," Band Br. 15—because he is neither "an Indian or a tribal beneficiary of the Act" and because his interests do not "advanc[e] tribal development or self-governance." Band Br. 14, 42; see also *id.* (arguing that Patchak is "not a statutory beneficiary of the trust process"). The DOI similarly contends that §465's limitation as recognized in *Carcieri* is not "designed to benefit surrounding communities or individual non-Indians." DOI Br. 31. But the test is not whether a plaintiff is a statutory beneficiary. To the contrary, this Court has "consistently held that for a plaintiff's interests to be arguably within the 'zone of interests' to be protected by a statute, there does not have to be an 'indication of congressional purpose to benefit the would-be plaintiff.'" *Nat'l Credit Union Admin.* v. *First Nat'l Bank & Trust Co.*, 522 U.S. 479, 492 (1998) (quoting *Clarke*, 479 U.S. at 399–400); *id.* ("[I]n applying the 'zone of interests' test, we do not ask whether, in enacting the statutory provision at issue, Congress specifically intended to benefit the plaintiff."); see also *Arnold Tours, Inc.* v. *Camp*, 400 U.S. 45, 46 (1970) (citing *Data Processing*). And the plaintiff's interest certainly need not conform to whatever public-minded purpose underlies the statute. See *Nat'l Credit Union*, 522 U.S. at 499 & n.8 ("Although it is clear that respondents' objectives in

this action are not eleemosynary in nature, under our prior cases that, too, is beside the point").

Indeed, if petitioners were correct that only intended beneficiaries of §465 (i.e., Indian tribes that gain land in trust) fall within its zone of interests, then even states and local governments do not have standing to enforce §465, and this Court's decision in *Carcieri* is a dead letter, because there is no one with an interest to enforce it. Notwithstanding Petitioners' protests to the contrary, §465 does not allow land to be taken into trust to benefit states, local governments, or members of the surrounding community. Rather, state and local governments "stand to lose taxing authority and some regulatory authority as a result of the Secretary's trust acquisition." DOI Br. 32; see also Band Br. 43–44 (noting that state and local governments' "regulatory authority over the trust lands is cut off or circumscribed by the Secretary's trust decision"). States and local governments have prudential standing for the same reason that Patchak does—to enforce the IRA's limitations.

The correct test, as recognized by this Court is that a plaintiff falls within a statute's zone of interests when "[t]here is sound reason to infer that Congress 'intended [petitioner's] class [of plaintiffs] to be relied upon to challenge agency disregard of the law.'" *Clarke*, 479 U.S. at 403 (quoting *Block* v. *Cmty. Nutrition Inst.*, 467 U.S. 340, 347 (1984)). By considering whether "the interest sought to be protected by the complainant [is] arguably within the zone of interests to be . . . *regulated* by the statute," *id.* at 396 (emphasis added), the foundational statement of the zone-of-interests test proves this point. Patchak satisfies the test for just that reason: he is within the class of persons Congress could reasona-

bly have expected to enforce §465 and its limitations as articulated in *Carcieri*.

A. Patchak falls within the zone of interests of the Indian Reorganization Act

Patchak's claim falls within the IRA's zone of interests for two reasons. First, §465 includes a limitation on the DOI's authority to take land into trust for Indians, and Patchak is arguably within the class of persons that Congress intended to enforce that limitation. Second, land-use concerns such as Patchak's are relevant because a decision to take land into trust cannot be separated from the use to which that land may be put.

1. Patchak brought this suit to challenge an unlawful agency action—the DOI taking land into trust for a group that does not qualify as an Indian tribe under the IRA. As this Court recently recognized in *Carcieri*, §465 limits those who qualify as Indian tribes to "those tribes that were under the federal jurisdiction of the United States when the IRA was enacted in 1934." 129 S. Ct. at 1068. The class of persons who could be expected to enforce this limitation at least arguably includes members of the nearby community whose daily lives will be affected if the land were taken into trust. See *Clarke*, 479 U.S. at 403. Indeed, far from asserting interests "'inconsistent with the purposes implicit in the statute,'" as petitioners would have it, Band Br. 40, Patchak's desire as a member of the surrounding community to enforce a limitation specifically written into the text of the statute, *Carcieri*, 129 S. Ct. at 1065, effectuates Congress's express statutory intent. In short, because Congress arguably expected community

members like Patchak to enforce the statute, he falls within the IRA's zone of interests.

Petitioners concede that state and local governments are within the IRA's zone of interests but claim that affected members of the community like Patchak are not. DOI Br. 32; see also Band Br. 44. This distinction is unprincipled. Petitioners contend that states and local governments have prudential standing to assert the limitations of §465 because "they stand to lose taxing authority and some regulatory authority as a result of the Secretary's trust acquisition." *Id.* Yet this taxing and regulatory interest fails the petitioners' own proposed "beneficiaries only" prudential-standing test because it is not "an interest in advancing tribal development or self-governance." Band Br. 42; see also DOI Br. 33–34. The true reason the governments have standing is because they are enforcing a limitation of the statute—just as Patchak is.

Moreover, the fact that Congress imposed a limitation on the DOI's authority to take land into trust only for certain Indian tribes implies that Congress intended *someone* to be able to enforce that limitation. State and local governments cannot necessarily be relied upon to enforce §465's limitation, for those government entities might decide that they would rather enter into a gaming compact to benefit from an unlawful land-in-trust decision than challenge the unlawful agency action. See DOI Br. 32 ("[T]he State of Michigan has not sued to oppose the trust acquisition here. To the contrary, it has entered into a gaming compact with the Band. Similarly, Allegan County and Wayland Township (where the property is located) have actively supported the trust acquisi-

tion and the Band's economic-development efforts." (citations omitted)).

Consider, for example, a hypothetical situation where a group that has no Indian ancestry (perhaps a group of Nevada businesspeople) seeks recognition as an Indian tribe under the IRA so that it can open a casino in Michigan. If the DOI were to decide to take land into trust for the non-Indian group, that action would violate §465's limitation that the Indian tribe must have been "under the federal jurisdiction of the United States when the IRA was enacted in 1934." *Carcieri*, 129 S. Ct. at 1068. Yet because this agency action would (in petitioners' view) have nothing to do with land use, even a neighbor living adjacent to the land would not be able to challenge the *ultra vires* action. And the individual citizen might not be able to rely on the state or local government to sue, because those entities might prefer to enter into a gaming compact with the group and to share the profits from the casino. Given these considerations, it is at least arguable that Congress intended individual members of the community, and not just governmental entities, to be able to enforce §465's limitation. See *Data Processing*, 397 U.S. at 153 (examining "whether the interest sought to be protected by the complainant is *arguably* within the zone of interests to be protected *or regulated* by the statute" (emphasis added)).

2. The land-in-trust decision cannot be separated from the use to which the land will be put, because simply taking the land into trust for an Indian tribe does not produce the desired economic benefit; an economic benefit arises only when that land is used. And §465 promotes economic development through *use* of the land, not through its *acquisition*;

after all, the tribe applying to have the land held in trust must hold the land in fee in the first place in order to have the government take it into trust. See BIA *Fee-to-Trust Handbook, Version II* at 8 (requiring fee-to-trust applications to include "[a] legal instrument" "to verify applicant ownership").

Despite the DOI's current litigation position, it has long acknowledged that decisions to take land into trust for an Indian tribe necessarily implicate land-use concerns. In 1980, the DOI promulgated regulations under the IRA that require the DOI to consider both "[t]he purposes for which the land will be used" and "potential conflicts of land use which may arise" before taking land into trust. 45 Fed. Reg. 62,036 (Sept. 1, 1980) (codified at 25 C.F.R. §151.10(c) & (f)). Those regulations also require the DOI to give notice to the public before taking the land into trust, 25 C.F.R. §151.12(b), so that affected members of the public may challenge the decision. The notice announcing the DOI's decision to take the relevant land into trust for the Gun Lake Band met this requirement by notifying the community that the land would "be used for the purpose of construction and operation of a gaming facility." 70 Fed. Reg. 25,596 (May 13, 2005). In light of this history, the Band's attempt to cast the land-in-trust decision as "independent" from land-use considerations, Band Br. 46, is inconsistent with the DOI's longstanding view of §465, not to mention the Band's concession that "[t]he purposes for which the land will be used bear *obvious relevance*" to whether land-in-trust decisions further the IRA's interests. *Id.* at 57 n.14 (emphasis added).

In sum, the fact that DOI regulations adopted under §465 expressly require the DOI to consider the

proposed land use demonstrates that the DOI long ago conceded that land uses and the conflicts they may cause are within §465's zone of interests.

The DOI attempts to distance itself from its own regulations by arguing that they represent only the views of the Secretary, not the views of Congress. DOI Br. 37. These regulations, however, fill a gap left by Congress, and therefore represent an agency interpretation of the gap that is entitled to controlling deference under *Chevron, U.S.A., Inc.* v. *Natural Resource Defense Council*, 467 U.S. 837 (1984). As the Band concedes, §465 "lacks any discernible statutory standards" governing the DOI's discretion to take land into trust. Band Br. 15; see also *MichGO* v. *Kempthorne*, 525 F.3d 23, 35 (D.C. Cir. 2008) (Brown, J., dissenting) (arguing that §465 is "a standardless delegation, allowing the Secretary of the Interior to take land in trust for whichever Indians he chooses, for whatever reasons," and therefore violates the non-delegation doctrine).

When Congress "has explicitly left a gap for the agency to fill, there is an express delegation of authority to elucidate a specific provision of the statute by regulation," and "[s]uch legislative regulations are given controlling weight unless they are arbitrary, capricious, or manifestly contrary to the statute." *Chevron*, 467 U.S. at 844. Given that the regulations themselves determine, in part, §465's meaning, their guidance that land-use concerns are relevant under §465 cannot be so easily pushed aside. E.g., *Hollywood Mobile Estates Ltd.* v. *Seminole Tribe of Fla.*, 641 F.3d 1259, 1269–70 (11th Cir. 2011) (explaining that "[u]nder [the zone-of-interests] test, we must examine the Indian Long-Term Leasing Act and its accompanying regulations to determine the interests

they arguably protect"). Put simply, it does not matter for the zone-of-interests test whether Congress enumerates the interests or gives authority for an agency to do so. And if a regulation is sufficiently authoritative to determine the very meaning of the statute, surely it is authoritative enough to illuminate a statute's zone of interests.

Chevron highlights another problem with the DOI's argument that the regulations do not matter. The DOI contends that §465 "has nothing to do with the interests asserted in Patchak's suit, which involve the effect of gaming . . . on nearby landowners." DOI Br. 10. But the DOI's regulations effectuating §465 expressly consider "[t]he purposes for which the land will be used" and "potential conflicts of land use which may arise." 25 C.F.R. §151.10(c) & (f). If it were true that the interests the regulations address have nothing to do with §465, then the regulations would be invalid.

3. Looking to other IRA provisions confirms that Congress did not intend to exclude community members from enforcing the IRA's limitations on land decisions. Section 463 directs the Secretary to consider "the public interest" when deciding whether to restore surplus lands to Indian tribes. 25 U.S.C. §463. Given that in both the restored-lands and the land-in-trust contexts the primary effect on the public interest arises from the use of the land, it is at least arguable that Congress was also concerned about how the use of lands held in trust would affect the surrounding community.

Petitioners assert that "the zone-of-interests analysis is limited to the particular 'statutory provision whose violation forms the legal basis for [the] complaint,'" which means that "it would have been

inappropriate for the court to consider the interests protected even by other provisions of the IRA itself." DOI Br. 32–33 (quoting *Lujan* v. *Nat'l Wildlife Fed'n*, 497 US. 871, 883 (1990)); see also *id.* at 10 ("the court of appeals erred by failing to limit its zone-of-interests analysis 'to the particular provision of law upon which the plaintiff relies'" (quoting *Bennett* v. *Spear*, 520 U.S. 154, 175–76 (1997))); Band Br. 15.

Despite the Court's statements in *National Wildlife Federation* and *Bennett*, this Court has not suggested that other provisions are irrelevant to the zone of interests—an approach that would defy this Court's usual method of statutory interpretation. See, e.g., *Samantar* v. *Yousef*, 130 S. Ct. 2278, 2289 (2010) ("[w]e do not . . . construe statutory phrases in isolation; we read statutes as a whole" (quoting *United States* v. *Morton*, 467 U.S. 822, 828 (1984)); *Dolan* v. *U.S. Postal Service*, 546 U.S. 481, 486 (2006) ("Interpretation of a word or phrase depends upon reading the whole statutory text, considering the purpose and context of the statute . . . ."). For example, last year in *Thompson*, the Court conclude[d] that the plaintiff fell "within the zone of interests protected by Title VII." *Id.* 131 S. Ct. at 870. Although the plaintiff sued under the specific anti-retaliation provision of Title VII, 42 U.S.C. §2000e-3(a), this Court did not limit its analysis to that provision, but instead referred to "the zone of interests protected by Title VII" as a whole. 131 S. Ct. at 870. Accord *FEC* v. *Akins*, 524 U.S. 11, 20 (1998) (examining the Federal Election Campaign Act of 1971 as a whole, and finding "nothing in the Act that suggests Congress intended to exclude voters from the benefits of [its] provisions, or otherwise to restrict standing, say, to political parties, candidates, or their committees").

4. Further, this Court's cases recognizing that competitors fall within the zone of interests of various statutes illustrate that plaintiffs who police a statute's limitations fall within that statute's zone of interests. In *Data Processing*, the case that introduced the zone-of-interests test, this Court addressed whether a data-processing company had prudential standing to challenge an agency ruling that national banks would be allowed to provide data-processing services, when a statute provided that "'[n]o bank service corporation may engage in any activity other than the performance of bank services for banks.'" 397 U.S. at 155 (quoting 12 U.S.C. §1864). The Court held that the competitors had standing to enforce the statutory limitation. *Id.* at 156. See also *Investment Co. Inst.* v. *Camp*, 401 U.S. 617, 619–21 (1971) (rejecting the argument that investment companies lacked standing to enforce a statutory provision that prohibited banks from underwriting or issuing securities).

The Band attempts to distinguish the competitor-standing cases by saying that in those cases, "Congress intended the relevant statutes to legislate against the very competition that plaintiffs sought to rein in." Band Br. 45 n.13. But this Court has expressly disclaimed such a limited interpretation of those cases. In *National Credit Union*, the defendants made the same argument: "Petitioners attempt to distinguish this action [from the competitor-standing cases] principally on the ground that there is no evidence that Congress, when it enacted the FCUA, was at all concerned with the competitive interests of commercial banks, or indeed at all concerned with competition." 522 U.S. at 495–96. This Court held that "[t]he difficulty with this argument is that similar arguments were made unsuccessfully

in each of *Data Processing*, *Arnold Tours*, *ICI*, and *Clarke*." *Id.* at 496; see also *id.* at 498 ("The provisions at issue . . . could be said merely to be safety-and-soundness provisions, enacted . . . without a concern for competitive effects. We nonetheless did not hesitate to find standing. We therefore cannot accept petitioners' argument that respondents do not have standing because there is no evidence that the Congress that enacted §109 was concerned with the competitive interests of commercial banks.").

The Band also argues that the prudential-standing doctrine reflects the principle that "federal courts should refrain from deciding questions that 'other governmental institutions may be more competent to address.'" Band Br. 39 (quoting *Warth* v. *Seldin*, 422 U.S. 490, 500 (1975)). To be sure, that principle does explain the prudential-standing limitations that *Warth* actually discussed—namely, that a plaintiff may not assert "'generalized grievances' shared in substantially equal measure by all or a large group of citizens" and may not "rest his claim to relief on the legal rights or interests of third parties," *Warth*, 422 U.S. at 499. But *Warth* does not address the zone-of-interests test. Moreover, the principle of institutional competence is furthered, not harmed, by judicial review under §702, which is why Congress permitted the courts to review whether federal agencies are violating federal law. Deciding cases brought by plaintiffs with Article III standing about alleged violations of federal law falls squarely within the core competency of courts and offends no separation-of-powers principles. In any event, there is no plausible argument that Patchak's interest in not having the DOI illegally take land into trust so the Band can operate a casino in his neighborhood is a "generalized grievance."

B. Patchak's concerns are within the zone of interests of the Indian Reorganization Act when considering the integrally related Indian Gaming Regulatory Act

In its decision below, the D.C. Circuit considered the interests of both the IRA and the IGRA when applying the zone-of-interests test. DOI Pet. App. 8a. This approach is consistent with the decisions of this Court, especially *Clarke*, which determined the zone-of-interests by considering not only to the statutory provision that served as the basis for the plaintiff's claim, but also an integrally related statutory provision, even though the two provisions were adopted more than 60 years apart.

1. *Clarke* involved provisions from both the National Banking Act of 1864 and the McFadden Act of 1927. 479 U.S. at 401–02. The first provision, 12 U.S.C. §81, was originally enacted in 1864 and limited the general business of a national bank to its headquarters. 479 U.S. at 391; see *First Nat'l Bank in St. Louis* v. *Missouri*, 263 U.S. 640, 657 (1924) (quoting §81's original language). The second provision, 12 U.S.C. §36, adopted in 1927, allowed national banks to operate branches, but only *within* their home state, and amended §81 to cross-reference the new limitation imposed by §36. The dispute in *Clarke* arose when the Comptroller of Currency granted a national bank's application to offer discount brokerage services at locations *outside* its home state. When the plaintiff, a trade association representing securities brokers and investment bankers, challenged that agency decision as violating §36, the Comptroller responded that the plaintiff was "not within the zone of interests protected by the McFadden Act." *Id.* at 393.

The Court rejected the Comptroller's argument because it "focuse[d] too narrowly on 12 U.S.C. §36, and [did] not adequately place §36 in the overall context of the National Bank Act." *Id.* at 401. "Section 36," the Court explained, "is a limited exception to the otherwise applicable requirement of §81," *id.*, and "the interest respondent asserts has a plausible relationship to the policies underlying §§36 and 81 of the National Bank Act," *id.* at 403. Because the Court saw no indication of "a congressional intent to preclude review," the Court held that the plaintiff satisfied the zone-of-interests test. *Id*; see also *Air Courier Conference of Am.* v. *Am. Postal Workers Union*, 498 U.S. 517, 529 (1991) (recognizing that *Clarke* applies to instances where the provisions of one statute have an "integral relationship" with the provisions of another statute).

This approach makes sense because prudential standing is a matter of inferring congressional intent, and this Court routinely looks to related statutes when interpreting a particular statute. See, e.g., *Branch* v. *Smith*, 538 U.S. 254, 281 (2003) (plurality opinion) ("And it is, of course, the most rudimentary rule of statutory construction . . . that courts do not interpret statutes in isolation, but in the context of the *corpus juris* of which they are a part, including later-enacted statutes: 'The correct rule of interpretation is, that if divers statutes relate to the same thing, they ought all to be taken into consideration in construing any one of them.'" (quoting *United States* v. *Freeman*, 3 How. 556, 564–65, 11 L.Ed. 724 (1845)). Regardless of when a particular statutory provision was enacted or whether it was codified in the same section as another provision, congressional intent must be analyzed by looking at related statutory schemes. This is particularly true

in the context of prudential standing, where the courts—not Congress—are creating the restriction on who can enforce the statute. Given that the courts are inferring the restriction in the first place, any indication that Congress sought to allow the suit should be respected.

Like the statutes in *Clarke*, the IRA and the IGRA are integrally related. This close relationship can be seen from their interrelated text and from the DOI's own approach to land-in-trust decisions. Consequently, Congress's intent regarding enforcement of the IRA must be analyzed by looking at the related provisions of the IGRA.

As to the statutory text, just as one of the statutes in *Clarke* limited the other, so too the IGRA limits the IRA. Section 465 of the IRA authorizes the DOI "to acquire . . . any interest in lands . . . for the purpose of providing lands for Indians," and provides that such title or rights in the lands "shall be taken in the name of the United States in trust for the Indian tribe." 25 U.S.C. §465. The IGRA limits this authority by prohibiting gaming "on lands acquired by the Secretary in trust for the benefit of an Indian tribe"—e.g., land acquired under §465—unless certain conditions are met. 25 U.S.C. §2719(a); see also 25 U.S.C. §2719(b)(1)(A) (expressly considering "the surrounding community"). In other words, the IGRA specifically limits the use of Indian trust lands for gaming. *Lac Courte Oreilles Band* v. *United States*, 367 F.3d 650, 653 (7th Cir. 2004) (the DOI's authority to take land into trust "is limited by IGRA"). This is the same type of integral relationship present in *Clarke*, where one provision is a limitation on the other one.

In practice, the IRA and the IGRA operate in tandem because unless land is taken into trust, such land ordinarily cannot be used for Class III gaming. The Band's land-in-trust application—which addresses requirements imposed by the DOI—highlights this integral relationship by repeatedly addressing the proposed land use of gaming and the requirements of the IGRA. The application's introduction explains how using the land for gaming will "promote tribal economic development" and "self-sufficiency." J.A. 41. These are the goals underlying the IRA: "[t]he overriding purpose of [the Indian Reorganization Act] was to establish machinery whereby Indian tribes would be able to assume a greater degree of self-government, both politically and economically." *Morton* v. *Mancari*, 417 U.S. 535, 542 (1974). When addressing "the purposes for which the land will be used," 25 C.F.R. §151.10(c), the Band specifically referenced gaming and the IGRA, explaining that it "intend[ed] to offer Class II and/or Class III gaming (as defined by the IGRA, 25 U.S.C. §2701 *et seq.*)." J.A. 61. When addressing "potential conflicts of land use which may arise," 25 C.F.R. §151.10(f), the Band again addressed gaming by detailing the measures that would be taken to attempt "to mitigate any impact on the surrounding community" that might arise from the gaming facility. J.A. 62–65. The Band's application also specifically addressed IGRA requirements, quoting §2719's limitations on gaming on land held in trust and addressing in detail why the Band believed it allowed the DOI to authorize gaming on this land. J.A. 67–74.

Thus, Patchak's interests fall within the IRA's zone of interests when considered in the context of the integrally related land-use provisions of IGRA.

See *TOMAC* v. *Norton*, 193 F. Supp. 2d 1982, 190 (D.D.C. 1982) (IGRA considers "effects on surrounding communities" and community members "are precisely the type of plaintiffs who could be expected to police these interests").

Both petitioners admit that Patchak's interests would fall within the zone of interests of the IGRA. The Band concedes that IGRA addresses "precisely the concerns that [Patchak] raises." Band Br. 47. And the DOI also admits as much, conceding that MichGO, which asserted interests similar to those asserted by Patchak, had prudential standing under the IGRA. DOI Br. 35. Compare Compl. ¶¶ 13–14, *MichGO* v. *Norton*, No. 1:05-cv-01181-JGP (D.D.C. June 13, 2005), ECF No. 1 (alleging that the casino "would detract from the quiet, family atmosphere of the surrounding rural areas" and asserting the specific adverse effects), with J.A. 31 (asserting similar adverse effects).

2. Despite the integral relationship between the IRA and the IGRA, the DOI contends that the D.C. Circuit erred by considering the IGRA because that statute was enacted "some 54 years after the IRA" and because Congress could not "even have imagined" that a land-in-trust decision could affect the interests of those living near the land. DOI Br. 34, 35. But in *Clarke*, the limitation imposed in §36 of the McFadden Act was enacted some 63 years after Congress enacted the National Bank Act and the original version of §81. 479 U.S. at 401, 403; see also *Japan Whaling*, 478 U.S. at 230 n.4 (examining the zone of interests in two statutes enacted 13 years apart). And Congress expressly linked IRA §465 to the IGRA, by including language in IGRA regarding "lands acquired by the Secretary in trust for the

benefit of an Indian tribe." 25 U.S.C. §2719. In sum, it does not take much imagination to see that a change in land use to allow otherwise illegal gambling activity will affect the surrounding community.

This case is very different from *Air Courier*, 498 U.S. at 530, where, as petitioners correctly point out, the only relationship between the two statutes at issue there was that they were both included in the general codification of the postal statutes. DOI Br. 36; Band Br. 49. Here, §2719 is a specific limitation on the DOI's authority to take land into trust under §465.

The Band also argues that *Air Courier* demonstrates that two statutory provisions can be integrally related only "when the two statutory provisions are *within the same statute*." Band Br. 48–49. But *Air Courier* does not stand for that proposition, *Clarke* refutes it, and it would be absurd given that Congress frequently enacts related provisions in different statutes, which must then be interpreted together.

* * * * *

In the end, Patchak is not the sort of marginally related plaintiff that Congress would not have intended to bring an APA suit. To the contrary, he has a concrete, obvious interest in whether a casino complex will be built on trust land in close proximity to where he lives, and he is precisely the sort of plaintiff Congress would want to enforce the IRA's statutory limitations. As the D.C. Circuit recognized, it would be "very strange to deny Patchak standing in this case." DOI Pet. App. 10a.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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APPENDIX[1]

STATUTORY PROVISIONS INVOLVED

1. 5 U.S.C. §702 provides:

Right of Review

A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof. An action in a court of the United States seeking relief other than money damages and stating a claim that an agency or an officer or employee thereof acted or failed to act in an official capacity or under color of legal authority shall not be dismissed nor relief therein be denied on the ground that it is against the United States or that the United States is an indispensable party. The United States may be named as a defendant in any such action, and a judgment or decree may be entered against the United States: *Provided*, That any mandatory or injunctive decree shall specify the Federal officer or officers (by name or by title), and their successors in office, personally responsible for compliance. Nothing herein (1) affects other limitations on judicial review or the power or duty of the court to dismiss any action or deny relief on any other appropriate legal or equitable ground; or (2) confers authority to grant relief if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought.

[1] The text is from the 2010 edition of the United States Code.

2. 25 U.S.C. §463 provides in pertinent part:

Restoration of lands to tribal ownership

(a) Protection of existing rights

The Secretary of the Interior, if he shall find it to be in the public interest, is authorized to restore to tribal ownership the remaining surplus lands of any Indian reservation heretofore opened, or authorized to be opened, to sale, or any other form of disposal by Presidential proclamation, or by any of the public-land laws of the United States: Provided, however, That valid rights or claims of any persons to any lands so withdrawn existing on the date of the withdrawal shall not be affected by this Act: *Provided further*, That this section shall not apply to lands within any reclamation project heretofore authorized in any Indian reservation.

* * * * *

3. 25 U.S.C. §465 provides:

Acquisition of lands, water rights or surface rights; appropriation; title to lands; tax exemption

The Secretary of the Interior is authorized, in his discretion, to acquire, through purchase, relinquishment, gift, exchange, or assignment, any interest in lands, water rights, or surface rights to lands, within or without existing reservations, including trust or otherwise restricted allotments, whether the allottee be living or deceased, for the purpose of providing land for Indians.

For the acquisition of such lands, interests in lands, water rights, and surface rights, and for expenses incident to such acquisition, there is authorized to be appropriated, out of any funds in the

Treasury not otherwise appropriated, a sum not to exceed $2,000,000 in any one fiscal year: *Provided*, That no part of such funds shall be used to acquire additional land outside of the exterior boundaries of Navajo Indian Reservation for the Navajo Indians in Arizona, nor in New Mexico, in the event that legislation to define the exterior boundaries of the Navajo Indian Reservation in New Mexico, and for other purposes, or similar legislation, becomes law.

The unexpended balances of any appropriations made pursuant to this section shall remain available until expended.

Title to any lands or rights acquired pursuant to this Act or the Act of July 28, 1955 (69 Stat. 392), as amended (25 U.S.C. 608 et seq.) shall be taken in the name of the United States in trust for the Indian tribe or individual Indian for which the land is acquired, and such lands or rights shall be exempt from State and local taxation.

4. 25 U.S.C. §2719 provides:

Gaming on lands acquired after October 17, 1988

(a) Prohibition on lands acquired in trust by Secretary

Except as provided in subsection (b) of this section, gaming regulated by this chapter shall not be conducted on lands acquired by the Secretary in trust for the benefit of an Indian tribe after October 17, 1988, unless—

(1) such lands are located within or contiguous to the boundaries of the reservation of the Indian tribe on October 17, 1988; or

(2) the Indian tribe has no reservation on October 17, 1988, and—

(A) such lands are located in Oklahoma and—

(i) are within the boundaries of the Indian tribe's former reservation, as defined by the Secretary, or

(ii) are contiguous to other land held in trust or restricted status by the United States for the Indian tribe in Oklahoma; or

(B) such lands are located in a State other than Oklahoma and are within the Indian tribe's last recognized reservation within the State or States within which such Indian tribe is presently located.

(b) Exceptions

(1) Subsection (a) of this section will not apply when—

(A) the Secretary, after consultation with the Indian tribe and appropriate State and local officials, including officials of other nearby Indian tribes, determines that a gaming establishment on newly acquired lands would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community, but only if the Governor of the State in which the gaming activity is to be conducted concurs in the Secretary's determination; or

(B) lands are taken into trust as part of—

(i) a settlement of a land claim,

(ii) the initial reservation of an Indian tribe acknowledged by the Secretary under the Federal acknowledgment process, or

(iii) the restoration of lands for an Indian tribe that is restored to Federal recognition.

* * * * *

5. 28 U.S.C. §1346 provides in pertinent part:

United States as Defendant

* * * * *

(f) The district courts shall have exclusive original jurisdiction of civil actions under section 2409a to quiet title to an estate or interest in real property in which an interest is claimed by the United States.

* * * * *

6. 28 U.S.C. §1402 provides in pertinent part:

United States as Defendant

* * * * *

(d) Any civil action under section 2409a to quiet title to an estate or interest in real property in which an interest is claimed by the United States shall be brought in the district court of the district where the property is located or, if located in different districts, in any of such districts.

* * * * *

7. 28 U.S.C. §2409a provides:

Real property quiet title actions

(a) The United States may be named as a party defendant in a civil action under this section to adjudicate a disputed title to real property in which the United States claims an interest, other than a security interest or water rights. This section does not

apply to trust or restricted Indian lands, nor does it apply to or affect actions which may be or could have been brought under sections 1346, 1347, 1491, or 2410 of this title, sections 7424, 7425, or 7426 of the Internal Revenue Code of 1986, as amended (26 U.S.C. 7424, 7425, and 7426), or section 208 of the Act of July 10, 1952 (43 U.S.C. 666).

(b) The United States shall not be disturbed in possession or control of any real property involved in any action under this section pending a final judgment or decree, the conclusion of any appeal therefrom, and sixty days; and if the final determination shall be adverse to the United States, the United States nevertheless may retain such possession or control of the real property or of any part thereof as it may elect, upon payment to the person determined to be entitled thereto of an amount which upon such election the district court in the same action shall determine to be just compensation for such possession or control.

(c) No preliminary injunction shall issue in any action brought under this section.

(d) The complaint shall set forth with particularity the nature of the right, title, or interest which the plaintiff claims in the real property, the circumstances under which it was acquired, and the right, title, or interest claimed by the United States.

(e) If the United States disclaims all interest in the real property or interest therein adverse to the plaintiff at any time prior to the actual commencement of the trial, which disclaimer is confirmed by order of the court, the jurisdiction of the district court shall cease unless it has jurisdiction of the civil action or suit on ground other than and independent

of the authority conferred by section 1346(f) of this title.

(f) A civil action against the United States under this section shall be tried by the court without a jury.

(g) Any civil action under this section, except for an action brought by a State, shall be barred unless it is commenced within twelve years of the date upon which it accrued. Such action shall be deemed to have accrued on the date the plaintiff or his predecessor in interest knew or should have known of the claim of the United States.

(h) No civil action may be maintained under this section by a State with respect to defense facilities (including land) of the United States so long as the lands at issue are being used or required by the United States for national defense purposes as determined by the head of the Federal agency with jurisdiction over the lands involved, if it is determined that the State action was brought more than twelve years after the State knew or should have known of the claims of the United States. Upon cessation of such use or requirement, the State may dispute title to such lands pursuant to the provisions of this section. The decision of the head of the Federal agency is not subject to judicial review.

(i) Any civil action brought by a State under this section with respect to lands, other than tide or submerged lands, on which the United States or its lessee or right-of-way or easement grantee has made substantial improvements or substantial investments or on which the United States has conducted substantial activities pursuant to a management plan such as range improvement, timber harvest, tree planting, mineral activities, farming, wildlife habitat improvement, or other similar activities,

shall be barred unless the action is commenced within twelve years after the date the State received notice of the Federal claims to the lands.

(j) If a final determination in an action brought by a State under this section involving submerged or tide lands on which the United States or its lessee or right-of-way or easement grantee has made substantial improvements or substantial investments is adverse to the United States and it is determined that the State's action was brought more than twelve years after the State received notice of the Federal claim to the lands, the State shall take title to the lands subject to any existing lease, easement, or right-of-way. Any compensation due with respect to such lease, easement, or right-of-way shall be determined under existing law.

(k) Notice for the purposes of the accrual of an action brought by a State under this section shall be—

(1) by public communications with respect to the claimed lands which are sufficiently specific as to be reasonably calculated to put the claimant on notice of the Federal claim to the lands, or

(2) by the use, occupancy, or improvement of the claimed lands which, in the circumstances, is open and notorious.

(l) For purposes of this section, the term "tide or submerged lands" means "lands beneath navigable waters" as defined in section 2 of the Submerged Lands Act (43 U.S.C. 1301).

(m) Not less than one hundred and eighty days before bringing any action under this section, a State shall notify the head of the Federal agency with jurisdiction over the lands in question of the State's in-

tention to file suit, the basis therefor, and a description of the lands included in the suit.

(n) Nothing in this section shall be construed to permit suits against the United States based upon adverse possession.

REGULATIONS INVOLVED[2]

25 C.F.R. Part 151 provides in pertinent part:

§151.10 On-reservation acquisitions.

Upon receipt of a written request to have lands taken in trust, the Secretary will notify the state and local governments having regulatory jurisdiction over the land to be acquired, unless the acquisition is mandated by legislation. The notice will inform the state or local government that each will be given 30 days in which to provide written comments as to the acquisition's potential impacts on regulatory jurisdiction, real property taxes and special assessments. If the state or local government responds within a 30-day period, a copy of the comments will be provided to the applicant, who will be given a reasonable time in which to reply and/or request that the Secretary issue a decision. The Secretary will consider the following criteria in evaluating requests for the acquisition of land in trust status when the land is located within or contiguous to an Indian reservation, and the acquisition is not mandated:

(a) The existence of statutory authority for the acquisition and any limitations contained in such authority;

(b) The need of the individual Indian or the tribe for additional land;

(c) The purposes for which the land will be used;

(d) If the land is to be acquired for an individual Indian, the amount of trust or restricted land already

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[2] The text is from the 2011 edition of the Code of Federal Regulations.

owned by or for that individual and the degree to which he needs assistance in handling his affairs;

(e) If the land to be acquired is in unrestricted fee status, the impact on the State and its political subdivisions resulting from the removal of the land from the tax rolls;

(f) Jurisdictional problems and potential conflicts of land use which may arise; and

(g) If the land to be acquired is in fee status, whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status.

(h) The extent to which the applicant has provided information that allows the Secretary to comply with 516 DM 6, appendix 4, National Environmental Policy Act Revised Implementing Procedures, and 602 DM 2, Land Acquisitions: Hazardous Substances Determinations. (For copies, write to the Department of the Interior, Bureau of Indian Affairs, Branch of Environmental Services, 1849 C Street NW., Room 4525 MIB, Washington, DC 20240.)

§151.11 Off-reservation acquisitions.

The Secretary shall consider the following requirements in evaluating tribal requests for the acquisition of lands in trust status, when the land is located outside of and noncontiguous to the tribe's reservation, and the acquisition is not mandated:

(a) The criteria listed in §151.10 (a) through (c) and (e) through (h);

(b) The location of the land relative to state boundaries, and its distance from the boundaries of the tribe's reservation, shall be considered as follows: as the distance between the tribe's reservation and

the land to be acquired increases, the Secretary shall give greater scrutiny to the tribe's justification of anticipated benefits from the acquisition. The Secretary shall give greater weight to the concerns raised pursuant to paragraph (d) of this section.

(c) Where land is being acquired for business purposes, the tribe shall provide a plan which specifies the anticipated economic benefits associated with the proposed use.

(d) Contact with state and local governments pursuant to §151.10 (e) and (f) shall be completed as follows: Upon receipt of a tribe's written request to have lands taken in trust, the Secretary shall notify the state and local governments having regulatory jurisdiction over the land to be acquired. The notice shall inform the state and local government that each will be given 30 days in which to provide written comment as to the acquisition's potential impacts on regulatory jurisdiction, real property taxes and special assessments.

§151.12 Action on requests.

(a) The Secretary shall review all requests and shall promptly notify the applicant in writing of his decision. The Secretary may request any additional information or justification he considers necessary to enable him to reach a decision. If the Secretary determines that the request should be denied, he shall advise the applicant of that fact and the reasons therefor in writing and notify him of the right to appeal pursuant to part 2 of this title.

(b) Following completion of the Title Examination provided in §151.13 of this part and the exhaustion of any administrative remedies, the Secretary shall publish in the Federal Register, or in a news-

paper of general circulation serving the affected area a notice of his/her decision to take land into trust under this part. The notice will state that a final agency determination to take land in trust has been made and that the Secretary shall acquire title in the name of the United States no sooner than 30 days after the notice is published.