No. 21-477

In the Supreme Court of the United States

JASON SELF AND THOMAS W. LINDQUIST, PETITIONERS

v.

CHER-AE HEIGHTS INDIAN COMMUNITY OF THE TRINIDAD RANCHERIA, RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

BRIEF FOR THE STATES OF TEXAS, OKLAHOMA, KANSAS, MONTANA, NEBRASKA, AND SOUTH DAKOTA AS AMICI CURIAE IN SUPPORT OF PETITIONERS

JOHN M. O'CONNOR
Attorney General of Oklahoma

MITHUN MANSINGHANI
Solicitor General

BRYAN CLEVELAND
Assistant Solicitor General

OFFICE OF THE OKLAHOMA ATTORNEY GENERAL
313 NE 21st Street
Oklahoma City, Oklahoma 73105

KEN PAXTON
Attorney General of Texas

BRENT WEBSTER
First Assistant Attorney General

JUDD E. STONE II
Solicitor General
Counsel of Record

NATALIE D. THOMPSON
Assistant Solicitor General

OFFICE OF THE TEXAS ATTORNEY GENERAL
P.O. Box 12548 (MC 059)
Austin, Texas 78711-2548
Judd.Stone@oag.texas.gov
(512) 936-1700

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases—Continued: Page(s)

Cases—Continued: Page(s)

Constitutional Provision, Statute, and Rule:

Miscellaneous:

INTEREST OF AMICI CURIAE

Amici curiae are the States of Texas, Oklahoma, Kansas, Montana, Nebraska, and South Dakota. The amici States are deeply interested in preserving their sovereign authority to "resolv[e] all disputes over . . . real property within [their] own domain[s]." *Asociacion de Reclamantes v. United Mexican States*, 735 F.2d 1517, 1521 (D.C. Cir. 1984) (Scalia, J.). Indian tribes increasingly acquire land outside their reservations on the open market. The decision below undermines the States' interest in protecting their sovereign territory by resolving disputes about such land. The amici States are also deeply interested in maintaining the proper relationship between their own sovereignty and tribal sovereign immunity. That interest, too, is implicated by the decision below, which is not alone in misapplying this Court's precedent to treat Indian tribes as superior to States when it comes to sovereign immunity. Numerous lower court decisions reflect confusion—largely based on misapplication of language from this Court's precedent—about the scope of tribal sovereign immunity and its doctrinal relationship to state sovereign immunity. The amici States therefore urge the Court to grant the petition for a writ of certiorari.[1]

SUMMARY OF ARGUMENT

I. When tribal sovereign immunity applies, it must be expressly waived or abrogated by statute. But this case is not about waiver or abrogation, it is about whether sovereign immunity applies in the first place.

---

[1] No counsel for any party authored this brief, in whole or in part. No person or entity other than amici contributed monetarily to its preparation or submission. On December 2, 2021, counsel of record for all parties received notice of amici's intention to file this brief.

That question is not answered in the statute books. The court below looked in the wrong place, so it found the wrong answer.

A. The immunity afforded to Indian tribes is, at most, that afforded to foreign sovereigns under the law of nations. Law-of-nations sovereign immunity came to be applied to Indian tribes through this Court's decisions. Although this Court has concluded that Congress acquiesced to the doctrine, Congress has never codified it. Its contours are therefore defined in caselaw applying the traditional doctrine.

B. One aspect of law-of-nations sovereign immunity doctrine is that it does not extend to actions to determine interests in real property located in another nation's territory. No other sovereign has immunity in such cases, and the same should be true of Indian tribes.

C. The court below thought that tribal sovereign immunity barred Petitioners' quiet title action unless Congress has waived or abrogated that immunity. It is true that Congress has plenary authority to abrogate tribal sovereign immunity. But no abrogation is necessary where law-of-nations sovereign immunity does not extend in the first place. So it should be no surprise that there is no statutory provision addressing the immovable property limitation on tribal sovereign immunity—that limitation is an inherent part of the law-of-nations doctrine applied to Indian tribes as a matter of precedent.

II. The decision below undermines the States' sovereign interests in at least two ways, both of which warrant review by this Court. The court below is just the latest to misapply this Court's precedent in a way that treates Indian tribes as superior to States and insulates Indian tribes from suit to the detriment of the States.

And preventing state courts from resolving property disputes undermines an inherent and fundamental aspect of the States' sovereignty.

A. The relationship between State sovereign immunity and tribal sovereign immunity is an issue of great significance. Lower courts routinely conflate the question whether immunity has been waived or abrogated by Congress with the threshold question whether immunity applies in the first place. They also routinely cite the proposition that tribal sovereign immunity is not "coextensive with" the States' sovereign immunity out of context as support for treating tribes as superior to States. Although tribal and state sovereign immunity are not identical in scope, they have the same doctrinal origin. This court should clarify that the tribes and States both began with the same law-of-nations sovereign immunity.

B. Refusing to recognize the immovable property limitation on law-of-nations sovereign immunity undermines the States' primeval interest in control of their own territory. As Indian tribes increasingly acquire land in the open market, decisions affording them sovereign immunity from suits to determine property interests injure the States in one of the most fundamental aspects of their sovereignty.

ARGUMENT

I. The Court should grant review to clarify the scope of tribal sovereign immunity.

The California Court of Appeal looked at federal statutes and, because they do not contain a provision abrogating tribal sovereign immunity for quiet title actions such as this one, dismissed the case. Pet. App. 12a–17a. That reasoning is based on a misapprehension

of the origins of the doctrine of tribal sovereign immunity. The doctrine arose through this Court's decisions, not by statute. Part of the doctrine is the immovable property limitation: As a default rule, there is no sovereign immunity in suits to determine interests in land outside the sovereign's territory. The court below, however, conflated the question of abrogation with the threshold question of whether immunity applies in the first place. As a result, it relied on the absence of a statutory abrogation to give the tribe immunity. But the immovable property limitation is part of the uncodified law-of-nations doctrine.

A. Tribal sovereign immunity is a judge-made doctrine imported from the law of nations.

The background rule is that "all persons and property within the territorial jurisdiction of a sovereign, are amenable to the jurisdiction of himself or his Courts." *The Santissima Trinidad*, 20 U.S. 283, 353–54 (1822). Any exceptions to that rule "must be traced up to the consent of the nation itself." *The Schooner Exch. v. McFaddon*, 7 Cranch 116, 136 (1812). One such exception is "law-of-nations sovereign immunity," which "prevent[s] [a foreign sovereign] from being amenable to process" in another nation's courts. *Franchise Tax Bd. of California v. Hyatt*, 139 S. Ct. 1485, 1493 (2019). This immunity is one of "a class of cases in which every sovereign is understood to wa[i]ve the exercise of a part of [its] complete exclusive territorial jurisdiction." *Schooner Exch.*, 7 Cranch at 137.

Law-of-nations sovereign immunity is not absolute. *See Santissima Trinidad*, 20 U.S. at 353–54. After all, "[t]he jurisdiction of [a] nation within its own territory is necessarily exclusive and absolute. . . . Any restriction

upon it, deriving validity from an external source, would imply a diminution of [the nation's] sovereignty." *Schooner Exch.*, 7 Cranch at 136. The necessary "consent," *id.*, is implied "from the general usage of nations," *Santissimi Trinidad*, 20 U.S. at 353; *see also Schooner Exch.*, 7 Cranch at 137. But that consent "may be withdrawn upon notice at any time." *Santissimi Trinidad*, 20 U.S. at 353. So a foreign sovereign's immunity is respected as "a matter of grace and comity on the part of the United States." *Verlinden B.V. v. Cent. Bank of Nigeria*, 461 U.S. 480, 486 (1983).

Tribal sovereign immunity is an application of this same law-of-nations doctrine. *See Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 788 (2014). Tribal sovereign immunity "developed almost by accident," *Kiowa Tribe of Oklahoma v. Mfg. Techs., Inc.*, 523 U.S. 751, 756 (1998), not through statutory enactment but in "early cases that assumed immunity without extensive reasoning," *id.* at 753. In such decisions, this Court and lower federal courts afforded Indian tribes the same sovereign immunity historically recognized for foreign sovereigns under the law of nations. *See id.*; *see, e.g.*, *United States v. U. S. Fid. & Guar. Co.*, 309 U.S. 506, 512 (1940); *Turner v. United States*, 248 U.S. 354, 358 (1919). And because this Court has concluded that Congress acquiesced to the doctrine, it has remained in place despite its dubious origins. *See Kiowa Tribe*, 523 U.S. at 757–58 (citing *Oklahoma Tax Comm'n v. Citizen Band Potawatomi Indian Tribe of Oklahoma*, 498 U.S. 505, 510 (1991)).

B. The immovable property exception is an inherent part of law-of-nations sovereign immunity.

The traditional doctrine of law-of-nations sovereign immunity does not extend to actions to determine interests in immovable property within the *situs* nation's territory. *See Upper Skagit Indian Tribe v. Lundgren*, 138 S. Ct. 1649, 1657–61 (2018) (Thomas, J., dissenting); *see also* Restatement (Second) of Foreign Relations Law § 68(b) (1965) (no immunity in "an action to obtain possession of or establish a property interest in immovable property located in the territory of the State exercising jurisdiction"). That principle has been reflected in this Court's precedent for two centuries. *See Schooner Exch.*, 7 Cranch at 145 ("A prince, by acquiring private property in a foreign country, may possibly be considered as subjecting that property to the territorial jurisdiction."); *Georgia v. City of Chattanooga*, 264 U.S. 472, 479–80 (1924) ("Having acquired land in another state for the purpose of using it in a private capacity, Georgia can claim no sovereign immunity or privilege in respect of its expropriation.").

The immovable property rule "is a corollary of the ancient principle of *lex rei sitae*," which "provides that 'land is governed by the law of the place where it is situated.'" *Upper Skagit*, 138 S. Ct. at 1658 (Thomas, J., dissenting) (quoting WHARTON, CONFLICT OF LAWS § 273, p. 607 (G. Parmele ed., 3d ed. 1905)). It has never been the "general usage of nations," *Santissima Trinidad*, 20 U.S. at 353, for a sovereign to afford another immunity in suits to determine interests in land within its territory. That is because "an exemption of [a foreign nation's] property from the local jurisdiction of

another sovereign, when it came within his territory . . . would be to give [the foreign] sovereign power beyond the limits of his own empire." *Id.* at 352. And, "[a]fter all, 'property ownership is not an inherently sovereign function.'" *Upper Skagit*, 138 S. Ct. at 1655 (Roberts, C.J., concurring) (quoting *Permanent Mission of India to United Nations v. City of N.Y.*, 551 U.S. 193, 199 (2007)).

There is no dispute that this limit applies to law-of-nations sovereign immunity in general. As Justice Thomas put it in *Upper Skagit*, this principle "has been hornbook law almost as long as there have been hornbooks." *Id.* at 1657 (Thomas, J., dissenting). So "[t]he only question . . . is whether different principles afford Indian tribes a broader immunity from actions involving off-reservation land." *Id.* at 1655 (Roberts, C.J., concurring).

The court below answered that question incorrectly, and this Court should step in to recognize the historic limits placed on the doctrine of law-of-nations sovereign immunity.

C. Searching the statute books for abrogation is not the way to identify the doctrinal scope of law-of-nations sovereign immunity.

The question whether sovereign immunity has been abrogated is different from the question whether it applies in the first place. To be sure, the immovable property limitation has been referred to as an "exception" to sovereign immunity, *see, e.g.*, *Upper Skagit*, 138 S. Ct. at 1654, and that is how the California Court of Appeals approached it, s*ee* Pet. App. 7a. This terminology, however, caused the court below to conflate two distinct questions: whether immunity had been

abrogated and whether immunity applied in the first place. Treating "tribal immunity [a]s the rule," the court refused to apply the immovable property "exception" because it does not fall within one of the "only … two exceptions [to the rule]: when a tribe has waived its immunity or Congress has authorized the suit." Pet. App. 3a-4a.

Congress did not need to abrogate tribal sovereign immunity because—the settled principle being what it is—that immunity never applied to begin with here. *See supra* Part I.B. Instead of an exception, the background rule remains in place for actions to determine interests in real property. As discussed above, that background rule is that "all persons and property within the territorial jurisdiction of a sovereign, are amenable to the jurisdiction of himself or his Courts." *Santissima Trinidad*, 20 U.S. at 353–54. Law-of-nations sovereign immunity is an exception to *that* rule. *See id.*; *Schooner Exch.*, 7 Cranch at 137. It does not extend to suits to determine interests in land such as the one here. *See Upper Skagit*, 138 S. Ct. at 1657-61 (Thomas, J., dissenting). From that vantage point, it is apparent that abrogation or waiver are not needed.

And whatever its name, there is no reason to expect the immovable property limitation—which in all other contexts is part of the law-of-nations sovereign immunity doctrine—to be found in the statute books. Congress has never codified law-of-nations sovereign immunity for Indian tribes. It should be no surprise that it has not codified the immovable property limitation inherent in that doctrine.

The California Court of Appeals nevertheless refused to apply the exception out of what it called "defer[ence] to Congress." Pet. App. 8a. It is not deference to ignore

the scope of the doctrine that Congress has implicitly adopted. The Court should grant the petition to clarify that tribal sovereign immunity is subject to the same immovable property limitation that has always been part of law-of-nations sovereign immunity.

II. The Court should grant review to protect the States' sovereignty.

The decision below is troubling to the States in at least two respects. First, it is just the latest in a series of lower-court decisions that misapply this Court's precedent to elevate tribal sovereign immunity above the States' own sovereign immunity. Second, applying tribal sovereign immunity in quiet title actions like this one undermines the States' ancient sovereign prerogative to control their own territories.

A. The decision below is emblematic of lower federal courts' tendency to treat tribes as superior to the States when it comes to sovereign immunity.

Sovereign immunity has a set doctrinal scope, and the question of what it encompasses at the outset is quite different from the question of how the traditional doctrine has been altered for States or Indian tribes, whether by waiver or abrogation. Yet courts like the one below frequently confuse these distinct inquiries.

Mistreatment by lower courts has its origins in two statements from this Court that are often taken out of context. First, "an Indian tribe is subject to suit only where Congress has authorized the suit or the tribe has waived its immunity." *Kiowa Tribe*, 523 U.S. at 754. Second, "the immunity possessed by Indian tribes is not coextensive with that of the States." *Id.* at 756. The first statement stands for the proposition that the tribes have

law-of-nations sovereign immunity absent waiver or abrogation. The second stands for the proposition that submitting to the Constitution (States) and having one's sovereignty diminished by the federal government (Indian tribes) are different means of altering a sovereign's traditional immunity that sometimes have different results. But lower courts have badly misunderstood the meaning of these passages in a way that requires correction from this Court.

1. The first statement from *Kiowa* is often used to collapse the two-part sovereign immunity analysis into a single "exceptions" inquiry, as the California court used it in this case. *See* Pet. App. 3a-4a. This Court has previously explained that tribes possess the "immunity from suit traditionally enjoyed by sovereign powers." *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58 (1978). Like all sovereigns, tribal sovereigns hold this law-of-nations sovereign immunity absent waiver "unequivocally expressed." *Id.* (quoting *United States v. Testan*, 424 U.S. 392, 399 (1976)). In addition, tribes are in the unique position of having their sovereignty "subject to the superior and plenary control of Congress." *Id.* Thus, under this Court's jurisprudence, the proper inquiry is to (1) start with law-of-nations sovereign immunity and then (2) examine for waiver or abrogation by Congress. *See supra* Part I.B.

Yet lower courts frequently quote the *Kiowa* language as a talismanic rule, ignoring the prior precedent placing the traditional law-of-nations doctrine as the threshold definer of the scope of tribal sovereign immunity. Pet. App. 7a-8a; *see, e.g.*, *Somerlott v. Cherokee Nation Distributors, Inc.*, 686 F.3d 1144, 1148 (10th Cir. 2012); *Furry v. Miccosukee Tribe of Indians of Florida*, 685 F.3d 1224, 1228, 1230 (11th Cir. 2012);

Cayuga Nation v. Tanner, 448 F. Supp. 3d 217, 244–45 (N.D.N.Y. 2020), *aff'd*, 6 F.4th 361 (2d Cir. 2021), *pet. for cert. docketed*, No. 21-749 (Nov. 19, 2021) (rejecting the immovable property exception because "courts must 'dismiss[] any suit against a tribe absent congressional authorization (or a waiver)'"). Some courts seem more aware of the threshold inquiry than others. *See United States ex rel. Cain v. Salish Kootenai Coll., Inc.*, 862 F.3d 939, 943 (9th Cir. 2017) ("*Like States*, Indian tribes are immune from suits unless their immunity is waived or abrogated by Congress." (emphasis added)); *Alltel Commc'ns, LLC v. DeJordy*, 675 F.3d 1100, 1102 (8th Cir. 2012) (explaining the contours of law-of-nations immunity); *see also, e.g.*, *Spurr v. Pope*, 936 F.3d 478, 483 (6th Cir. 2019), *cert. denied*, 140 S. Ct. 850 (2020); *Gingras v. Think Fin., Inc.*, 922 F.3d 112, 120 (2d Cir. 2019), *cert. denied sub nom. Sequoia Cap. Operations, L.L.C. v. Gingras*, 140 S. Ct. 856 (2020). But even the courts that recognize the threshold inquiry have been too wary of this Court's statement that it is "improper" to "start carving out exceptions." *Cayuga Indian Nation of New York v. Seneca Cty.*, 761 F.3d 218, 220 (2d Cir. 2014) (per curiam) (quoting *Bay Mills*, 572 U.S. at 790). These courts fail to distinguish the traditional, doctrinal limitations on law-of-nations sovereign immunity from non-traditional exceptions a litigant might ask the courts to impose on the doctrine. *See id.*

The lower courts are also internally inconsistent on whether the traditional doctrine applies. For example, the Sixth Circuit case cited above stands in contrast to another Sixth Circuit decision. *Compare Spurr*, 936 F.3d at 483, *with In re Greektown Holdings, LLC*, 917 F.3d 451, 462–63 (6th Cir. 2019). In *Greektown Holdings*, the court described the waiver requirement for tribal

sovereign immunity as deriving from the "graveness of this question" regarding tribes rather than the normal waiver requirement under the common law. *See id.* This sort of language leads to the sense that tribal sovereign immunity starts from a different place than the sovereign immunity enjoyed by every other sovereign—an idea wholly outside this Court's jurisprudence. *Cf. Upper Skagit*, 138 S. Ct. at 1656 (Thomas, J., dissenting); *Santa Clara Pueblo*, 436 U.S. at 58.

2. While "the immunity possessed by Indian tribes is not coextensive with that of the States," *Kiowa Tribe*, 523 U.S. at 756, that is because "tribes were not at the Constitutional Convention," *id.* (citing *Blatchford v. Native Village of Noatak*, 501 U.S. 775, 782 (1991)). It does not follow that the tribes' immunity is *broader* than what they would enjoy under the traditional doctrine. The "plan of the Convention" affects the relationship among the several States and the federal government, not the tribes directly. The tribes' immunity is altered instead by their dependent status and the plenary power of Congress over them.

Unfortunately, this statement from *Kiowa* is also often misused to reinforce the sentiment that tribal sovereign immunity is distinct from and superior to the law-of-nations sovereign immunity that States possess. *See* Pet. App. 8a ("Simply because this rule applies to states, however, does not mean it also applies to tribes."). For example, like the court below, the Tenth Circuit has on several occasions set aside the law-of-nations doctrine that applies to all other sovereigns. Instead, it has held that "tribal sovereign immunity is not coextensive with that of the states," but that "[t]ribal sovereign immunity *is* deemed to be coextensive with the sovereign immunity of the United States." *Somerlott*, 686 F.3d at 1150

(quoting *Miner Elec., Inc. v. Muscogee (Creek) Nation*, 505 F.3d 1007, 1011 (10th Cir. 2007)).

That statement is clearly wrong as a description of the starting point of tribal, state, and federal immunity, *see Santa Clara Pueblo*, 436 U.S. at 58, and it is also directly contrary to this Court's statements on the current status of tribal immunity, *see Three Affiliated Tribes of the Fort Berthold Reservation v. Wold Eng'g*, 476 U.S. 877, 890–91 (1986) ("[B]ecause of the peculiar 'quasi-sovereign' status of the Indian tribes, the Tribe's immunity is not congruent with that which the Federal Government, or the States, enjoy.").

To be sure, the Tenth Circuit does not always get it wrong. See *Crowe & Dunlevy, P.C. v. Stidham*, 640 F.3d 1140, 1154 (10th Cir. 2011) ("Tribes and states both enjoy immunity from suit by virtue of their status as pre-Constitutional sovereigns.") But such conflicting published precedent only makes litigation more uncertain.

Similarly, the Eleventh Circuit has cited *Kiowa*'s "not coextensive" language in a discussion about *waiver* of sovereign immunity, stating "there are powerful reasons to treat an Indian tribe's sovereign immunity differently from a state's Eleventh Amendment immunity." *Contour Spa at the Hard Rock, Inc. v. Seminole Tribe of Fla.*, 692 F.3d 1200, 1206 (11th Cir. 2012). But there is nothing in this Court's jurisprudence that would justify different doctrines of waiver for the same law-of-nations immunity. The Eleventh Circuit reaches that conclusion by dredging up notions of state sovereign immunity as limited to the Eleventh Amendment, *contra Alden v. Maine*, 527 U.S. 706, 713

(1999),[2] and then proceeds to policy reasons for elevating tribes and denigrating States, *see Contour Spa*, 692 F.3d at 1206; *see also, e.g.*, *Gingras*, 922 F.3d at 119 (referring to "Eleventh Amendment immunity").

3. In short, lower courts are taking statements from this Court regarding tribal sovereign immunity out of context, often using them to reach conclusions inconsistent with this Court's precedent. This Court should grant certiorari to issue a clear statement that an Indian tribe begins, at most, with the same immunity as all sovereigns, *Santa Clara Pueblo*, 436 U.S. at 58, and that this immunity can be waived or abrogated by Congress's plenary power, *Kiowa*, 523 U.S. at 754. Such clarification would greatly assist the States with their mistreatment in the lower courts.

Under that rule, of course, this case is clear. The immovable property limitation applies to tribes, as it does to all other sovereigns. *See supra* Part I. This Court should grant certiorari to address this important question and to clarify the confusion caused by misapplication of its own precedent.

B. The decision below interferes with the States' control of their own territories.

The decision below also undermines the States' interest in control of their territory, which is a fundamental and ancient aspect of sovereignty. In recent

---

[2] Such errors may also be due to a lack of clarity in this Court's use of the term "Eleventh Amendment immunity." *See PennEast Pipeline Co., LLC v. New Jersey*, 141 S. Ct. 2244, 2263–64 (2021) (Gorsuch, J., dissenting). That issue is not present in this case, but Amici States note it to highlight the problems States face in litigation from lack of clarity from this Court regarding sovereign immunity.

years, Indian tribes have acquired significant acreage outside their reservations.[3] For example, earlier this year the Navajo Nation paid $4.9 million for property at 11 D Street, S.E. to house its lobbying arm in Washington, D.C.[4] Such acquisitions are often part of the tribes' profit-making ventures.[5] Many—like the one at issue here—are made with intent to put the property into trust with the federal government. *See* Pet. App. 4a; 42 U.S.C. § 5108.[6] But the fee-to-trust process can take years to complete, and itself may require resolution of outstanding title disputes, 25 C.F.R. § 151.13(b). In the meantime, tribes increasingly hold fee title to non-reservation, non-trust lands outside of Indian country.

"Every government has, and from the nature of sovereignty must have, the exclusive right of regulating the descent, distribution, and grants of the domain within its own boundaries." *Green v. Biddle*, 21 U.S. 1, 12 (1823). So the States have "a primeval interest in resolving all disputes over use or right to use of real property within [their] own domain[s]." *Asociacion de*

---

[3] Linda Baker, *Native American Tribes Move to Make Real Estate a Force for Renewal*, N.Y. TIMES (July 6, 2021), https://www.nytimes.com/2021/07/06/business/native-american-tribes-real-estate.html; Adrian Florido, *Indian Tribes Use Casino Profits to Buy Real Estate*, KPBS (March 7, 2012), https://www.kpbs.org/news/2012/03/07/tribes-use-casino-profits-buy-real-estate.

[4] *See* Navajo-Hopi Observer, *Navajo Nation acquires Washington D.C. office space for $4.9 million* (Feb. 16, 2021), https://www.nhonews.com/news/2021/feb/16/navajo-nation-acquires-washington-dc-office-space; Baker, *supra* n.3.

[5] *See* Baker, *supra* n.3.

[6] *See* Associated Press, *Tribes Buy Back America—Acres at a Time*, NBC NEWS (Dec. 27, 2009), https://www.nbcnews.com/id/wbna34602971.

Reclamantes v. United Mexican States, 735 F.2d 1517, 1521 (D.C. Cir. 1984) (Scalia, J.). The States cannot be said to have surrendered that primeval interest in "the plan of the convention," *Alden*, 527 U.S. at 713, and neither Respondent nor the court below has claimed that Congress divested the States of their authority to resolve property disputes by statute, *cf.* Pet. App. 7a–12a. The Court should grant certiorari to preserve the States' ability to resolve disputes involving the portions of their territory owned by Indian tribes and not held in trust by the federal government.

* * *

Courts are bound to respect the reach of an Indian tribe's immunity, which is—unless changed by Congress—precisely as broad as the immunity enjoyed by a sovereign under the law of nations. But courts must also respect its outer limits. One such limit is that a sovereign has no immunity in a suit to determine interests in land located within the territory of another sovereign.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

JOHN M. O'CONNOR
Attorney General of Oklahoma

MITHUN MANSINGHANI
Solicitor General

BRYAN CLEVELAND
Assistant Solicitor General

OFFICE OF THE OKLAHOMA
ATTORNEY GENERAL
313 NE 21st Street
Oklahoma City, Oklahoma
73105

KEN PAXTON
Attorney General of Texas

BRENT WEBSTER
First Assistant Attorney
General

JUDD E. STONE II
Solicitor General
Counsel of Record

NATALIE D. THOMPSON
Assistant Solicitor General

OFFICE OF THE TEXAS
ATTORNEY GENERAL
P.O. Box 12548 (MC 059)
Austin, Texas 78711-2548
Judd.Stone@oag.texas.gov
(512) 936-1700

DECEMBER 2021

Counsel for Additional Amici States:

DEREK SCHMIDT
Attorney General
of Kansas

AUSTIN KNUDSEN
Attorney General
of Montana

DOUGLAS J. PETERSON
Attorney General
of Nebraska

JASON R. RAVNSBORG
Attorney General
of South Dakota