No. 14-

IN THE

Supreme Court of the United States

JOHN STURGEON,

Petitioner,

v.

SUE MASICA, IN HER OFFICIAL CAPACITY AS ALASKA REGIONAL DIRECTOR OF THE NATIONAL PARK SERVICE *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether Section 103(c) of the Alaska National Interest Lands Conservation Act of 1980 prohibits the National Park Service from exercising regulatory control over State, Native Corporation, and private Alaska land physically located within the boundaries of the National Park System.

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Petitioner in this case is John Sturgeon.

Respondents are Sue Masica, in her official capacity as Alaska Regional Director of the National Park Service; Greg Dudgeon; Andee Sears; Sally Jewell, Secretary of the Interior; Jonathan Jarvis, in his official capacity as Director of the National Park Service; the National Park Service; and the United States Department of the Interior.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner John Sturgeon submits this petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit is reported at 768 F.3d 1066 and is reproduced in the Appendix ("App.") at 3a-34a. The Ninth Circuit's order denying rehearing en banc is unreported and is reproduced at App. 1a-2a. The opinion of the United States District Court for the District of Alaska is unreported and is reproduced at App. 35a-58a.

JURISDICTION

The United States Court of Appeals for the Ninth Circuit rendered its decision on October 6, 2014. App. 5a. A timely petition for rehearing en banc was denied on December 16, 2014. App.1a. On February 20, 2015, Justice Kennedy extended the time to file this petition for writ of certiorari to March 31, 2015. This Court has jurisdiction under 28 U.S.C. § 1254(a).

STATUTORY PROVISION INVOLVED

Section 103(c) of the Alaska National Interest Lands Conservation Act of 1980 provides:

> Only those lands within the boundaries of any conservation system unit which are public lands (as such term is defined in this Act)

> shall be deemed to be included as a portion of such unit. No lands which, before, on, or after December 2, 1980, are conveyed to the State, to any Native Corporation, or to any private party shall be subject to the regulations applicable solely to public lands within such units. If the State, a Native Corporation, or other owner desires to convey any such lands, the Secretary may acquire such lands in accordance with applicable law (including this Act), and any such lands shall become part of the unit, and be administered accordingly.

16 U.S.C. § 3103(c).

INTRODUCTION

The State of Alaska contains over 150 million acres of federally managed national parks, preserves, and monuments. The act responsible for creating the majority of this parkland, the Alaska National Interest Lands Conservation Act ("ANILCA"), 16 U.S.C. § 3101 *et seq.*, carefully and explicitly provided that non-federal land and water physically located within these parks that is owned by the State of Alaska, Alaska Native Corporations, and private citizens would not be included within the National Park System and, as a result, would not be subject to the myriad federal rules and regulations enacted to manage the National Park System.

In 1996, however, the National Park Service ("NPS") abandoned its longstanding interpretation of ANILCA and declared that it had all along possessed full regulatory authority over non-federal land and waters within national

parks and preserves in Alaska. It was that about-face that led to this case. NPS bans hovercraft in all national parks, and that regulation has been extended to state navigable waters within the Yukon-Charley Preserve based on this revised interpretation of ANILCA. While operating a small personal hovercraft on the Nation River to access moose hunting grounds upriver from the Yukon-Charley, Mr. Sturgeon was informed by armed NPS officials (and again later by their regional supervisor) that he would be subject to federal criminal citation if he continued to use his state-licensed hovercraft within the Yukon-Charley Preserve. Mr. Sturgeon thereafter filed this suit in federal district court challenging NPS's interpretation of Section 103(c) of ANILCA, and its extension of the hovercraft ban to non-federal land, under the Administrative Procedure Act. The district court granted summary judgment to NPS and the Ninth Circuit affirmed.

The decision below warrants this Court's review. The Ninth Circuit has granted NPS plenary authority to regulate State, Native Corporation, and private lands within Alaska's national parks and preserves as though these lands were in fact part of these parks. That decision has significant social and economic ramifications that will reverberate throughout the State of Alaska. Not only does it deprive petitioner of a liberty interest and the State of Alaska of sovereign control over its land, it destroys rights granted to Alaska Natives under the Alaska Native Claims Settlement Act ("ANCSA"). Alaska Natives depend on this land for economic support, which will be denied to them by NPS regulations that destroy its economic value and deny to these landowners the right to make productive use of their property. In one fell swoop, then, the Ninth Circuit has nullified not one—but *two*—important federal

statutes over which it has exclusive review and in turn opened 19 million acres of non-federal Alaska land to invasive federal regulation.

The Ninth Circuit's decision also is unsustainable on the merits. Section 103(c) unambiguously provides that NPS may exercise regulatory control only over "public lands" in Alaska, which the law defines to exclude State, Native Corporation, and private lands (even if the non-public land is located within the physical boundaries of the National Park System). The Ninth Circuit's decision read this limitation on NPS authority out of existence, holding that Section 103(c) protects non-public Alaska land only from application of Alaska-specific NPS regulations (as opposed to nationwide regulations like the hovercraft rule). But not only does this interpretation betray the statute's text, structure, and history, it is utterly illogical as it denies to these non-public lands the benefit of Alaska-specific NPS regulations that relax nationwide restrictions on hunting, camping, and motorized access. A Ninth Circuit opinion interpreting a statute designed to insulate millions of acres of non-federal Alaskan wilderness from NPS management to somehow impose a more restrictive regulatory regime on this land than NPS imposes even on Alaska national park land warrants this Court's attention. The petition should be granted.

STATEMENT OF THE CASE

A. The State of Alaska's Land Allocation

The State of Alaska covers 570,374 square miles, or roughly one-fifth of the total land area of the contiguous United States. From north to south, Alaska measures

1,420 miles, approximately the distance between Denver, Colorado and Mexico City, Mexico, and from east to west it measures nearly 2,400 miles, approximately the distance from Savannah, Georgia to Santa Barbara, California. While Alaska is the largest of the fifty states, it supports a total population of only 710,231 people and most of its acreage is inaccessible by road. Indeed, Alaska's average population density is only 1.2 persons per square mile. If Manhattan had the same population density as the state of Alaska, 28 people would live there. Allocating land and resources in this vast landscape, and ensuring the economic viability of its people, has been an issue of vital importance since Alaska joined the Union in 1959.

Allowing the new State of Alaska to control its land and resources was a central compact of statehood. In the Alaska Statehood Act, Congress granted approximately 103,350,000 acres of land to the new State of Alaska (or 28 percent of its overall area), and required that any further conveyance of this land must reserve mineral and other rights to the State. *See* Alaska Statehood Act, Pub. L. 85-508, 72 Stat. 339. The purpose of this grant was to ensure Alaska's economic viability.

However, statehood did not resolve Native Alaskan land claims. In 1971, Congress passed the Alaska Native Claims Settlement Act ("ANCSA") in response to the "immediate need for a fair and just settlement of all claims by Natives and Native groups of Alaska, based on aboriginal land claims[.]" 43 U.S.C. § 1601(a). ANCSA created 13 Regional Corporations and 220 Village Corporations, and prescribed a three-step regime involving the withdrawal, selection, and conveyance of roughly 22 million acres of federal land within the State

of Alaska. ANCSA conveyed the land to the Village Corporations and patented the subsurface estate to Regional Corporations. The Regional Corporations also received the right to select an additional 16 million acres (of both surface and subsurface estates) from federal land. *See Chugach Natives v. Doyon, Ltd.*, 588 F.2d 723, 724 (9th Cir. 1979). Congress intended for the Native Corporations to use the transfers of lands and assets for economic development benefiting the Native peoples of Alaska. *See* 43 U.S.C. § 1607; *City of Saint Paul, Alaska v. Evans*, 344 F.3d 1029, 1031 (9th Cir. 2003).

ANCSA also addressed land allocation between the State of Alaska and the United States. Under ANCSA, the Secretary of Interior was directed to withdraw up to 80 million acres of federal land from availability for Native Corporation selection to protect national interest lands for "public use and enjoyment." 43 U.S.C. § 1616(d)(2). This process was never completed because the Secretary's withdrawals never received Congressional approval.[1] The Carter Administration later stepped in and ordered a series of land withdrawals, claiming authority under the Federal Land Policy and Management Act of 1976 ("FLPMA"), 43 U.S.C. §§ 1701-1784, and the Antiquities Act of 1906, 16 U.S.C. §§ 431-433. By 1980, the Executive Branch had withdrawn over 100 million acres of federal land. *See* Proclamation No. 4611, 43 Fed. Reg. 57009 (1978) (Admiralty Island National Monument); Public Land Order 5653, 43 Fed. Reg. 59756 (1978); Public Land Orders 5696-5711, 45 Fed. Reg. 9562 (1980).

1. ANCSA provided that Congress had five years to act on the Secretary's recommendations and without Congressional action, the withdrawals would expire. 43 U.S.C. § 1616(d)(2)(D).

B. The Alaska National Interest Lands Conservation Act of 1980

The Alaska National Interest Lands Conservation Act of 1980 ("ANILCA") was a direct legislative response to the Executive Branch's unilateral withdrawal of millions of acres of federal lands for conservation purposes. "Congress became aware of the need for a legislative means of maintaining the proper balance between the designation of national conservation areas and the necessary disposition of public lands for more intensive private use." *City of Angoon v. Marsh*, 749 F.2d 1413, 1415-16 (9th Cir. 1984). The congressional goal, in other words, was "to preserve unrivaled scenic and geological values associated with natural landscapes" and "to provide the opportunity for rural residents engaged in a subsistence way of life to continue to do so." 16 U.S.C. § 3101(b)-(c). Congress thus designed ANILCA to provide "sufficient protection for the national interest in the scenic, natural, cultural and environmental values on the public lands in Alaska, and at the same time provide[] adequate opportunity for satisfaction of the economic and social needs of the State of Alaska and its people." *Id.* § 3101(d).

ANILCA affected 104.3 million acres of land in Alaska; the statute expanded the national park system in Alaska by over 43 million acres, creating ten new national parks, and increased the territory of three existing parks. Congress designated this land as the "conservation system unit" or "CSU."[2] As part of this national park expansion,

2. "The term 'conservation system unit' means any unit in Alaska of the National Park System, National Wildlife Refuge System, National Wild and Scenic Rivers Systems, National Trails System, National Wilderness Preservation System, or a National

ANILCA established the Yukon-Charley Preserve as a CSU in east-central Alaska, west of the village of Eagle. *See id.* § 410hh(10).

Essential to ANILCA's compromise was Congress's assurance that the millions of acres of land previously set aside for the economic and social needs of the Alaskan people would not be subject to federal regulatory control and management. This concern was quite real given that much of this land surrounded or was located within the physical boundaries of CSUs.

Section 103(c) of ANILCA addressed the concern:

> Only those lands within the boundaries of any conservation system unit which are public lands (as such term is defined in this Act) shall be deemed to be included as a portion of such unit. No lands which, before, on, or after December 2, 1980, are conveyed to the State, to any Native Corporation, or to any private party shall be subject to the regulations applicable solely to public lands within such units. If the State, a Native Corporation, or other owner desires to convey any such lands, the Secretary may acquire such lands in accordance with applicable law (including this Act), and any such lands shall become part of the unit, and be administered accordingly.

16 U.S.C. § 3103(c).

Forest Monument including existing units, units established, designated, or expanded by or under the provisions of this Act, additions to such units, and any such unit established, designated, or expanded hereafter." 16 U.S.C. § 3102(4).

"The term 'land' means lands, waters, and interests therein." *Id.* § 3102(1). "The term 'Federal land' means lands the title to which is in the United States after December 2, 1980." *Id.* § 3102(2). "The term 'public lands' means land situated in Alaska which, after December 2, 1980, are Federal lands, except—(A) land selections of the State of Alaska which have been tentatively approved or validly selected under the Alaska Statehood Act and lands which have been confirmed to, validly selected by, or granted to the Territory of Alaska or the State under any other provision of Federal law; (B) land selections of a Native Corporation made under the Alaska Native Claims Settlement Act which have not been conveyed to a Native Corporation, unless any such selection is determined to be invalid or is relinquished; and (C) lands referred to in section 19(b) of the Alaska Native Claims Settlement Act." *Id.* § 3102(3).

Section 103(c)'s purpose was apparent from the inception of the legislative process. The provision began as an amendment "to make clear beyond any doubt that any State, Native, or private lands, which may lie within the outer boundaries of the conservation system unit are not parts of that unit and are not subject to regulations which are applied to public lands, which, in fact, are part of the unit." 125 Cong. Rec. H3240 (May 15, 1979). The Senate Report explained that "[t]hose private lands, and those public lands owned by the State of Alaska … are not to be construed as subject to the management regulations which may be adopted to manage and administer any national conservation system unit which is adjacent to, or surrounds, the private or non-Federal public lands." S. Rep. No. 96-413 at 303 (November 14, 1979).

Arizona Congressman Morris Udall, ANILCA's primary sponsor in the House of Representatives, further explained that:

> this bill… is a direct out-growth of the Alaska Native Claims Settlement Act of 1971.... Thus, it is important to recall the relationship between the conservation system units … and the lands which the Native peoples of Alaska have received and will receive pursuant to the Alaska Native Claims Settlement Act in return for the extinguishment of their claims based on aboriginal title. We recognize that there are certain lands which have been selected by Native Corporations and which are within the exterior boundaries of some of the conservation system units …. I want to make clear that inclusion of these Native lands within the boundaries of conservation system units is not intended to affect any rights which the Corporations may have under this act, the Alaska Native Claims Settlement Act, or any other law, or to restrict use of such lands by the owning Corporations nor to subject the Native lands to regulations applicable to the public lands within the specific conservation system unit.

125 Cong. Rec. 9905 (May 4, 1979).

Senator Ted Stevens of Alaska agreed:

> The fact that Native lands lie within the boundaries of conservation system units is not intended to affect any rights which the

> corporations have under this act, the Alaska Native Claims Settlement Act, or any other law. It is not our intent, by the inclusion of Native lands within the exterior boundaries of conservation system units, to imply that such inclusion is a revocation of land selections validly filed pursuant to any provision of the Alaska Native Claims Settlement Act. The Native organizations have been given repeated assurances that including their lands within conservation units will not affect the implementation of the Native Claims Settlement Act. We intend to have these assurances translated into practice by the administrative agencies.

126 Cong. Rec. 21882 (1980).

Section 103(c) was added to the final version of ANILCA through a concurrent resolution. *See* H. Cong. Res. 452, 96th Cong. (Nov. 21, 1980). The resolution, which contained Section 103(c)'s text, was added to the statute in order to firmly establish "that only public lands (and not State or private lands) are to be subject to the conservation unit regulations applying to public lands." 126 Cong. Rec. 30495, 30496 (1980).

C. ANILCA's Regulatory History

For sixteen years following ANILCA's enactment, NPS interpreted Section 103(c) to deny it the authority to regulate State of Alaska, Native Corporation, and private lands within the physical boundaries of CSUs as if they are part of the National Park System. In 1981, NPS

issued regulations to "provide interim guidance on public uses of National Park System units in Alaska, including units established by the Alaska National Interest Lands Conservation Act." 46 Fed. Reg. 31836 (June 17, 1981). The section-by-section preamble explained that:

> Sections 103(c) and 906(o) of ANILCA generally restrict the applicability of National Park Service regulations to federally-owned lands within park area boundaries. Consistent with the statute and the explanatory legislative history … § 13.2(e) restricts the applicability of these regulations to 'federally owned' lands (defined to mean all land interests held by the Federal government including unconveyed Native selections) within park boundaries …. These regulations would not apply to activities occurring on State lands. Similarly, these regulations would not apply to activities occurring on Native or any other non-federally owned land interests located within park area boundaries.

Id. at 31843. NPS further explained that the Alaska-specific regulations found in 36 C.F.R. Part 13 "would not apply to activities occurring on Native or any other non-federally owned land interests located inside park area boundaries." *Id*.

As promulgated in 1983, then, 36 C.F.R. § 1.2(b) provided that:

> The regulations contained in Parts 1 through 7 of this chapter are not applicable on privately

> owned lands and waters (including Indian lands and waters owned individually or tribally) within the boundaries of a park area, except as may be provided by regulations relating specifically to privately owned lands and waters under the legislative jurisdiction of the United States.

48 Fed. Reg. 30252 (June 30, 1983).

36 C.F.R. § 1.4 defined "legislative jurisdiction" to mean "lands and waters under the exclusive or concurrent jurisdiction of the United States." NPS further explained that the regulation was "intended to also include state inholdings that are under the legislative jurisdiction of the United States." 48 Fed. Reg. at 30261.

Confusion nonetheless persisted as to the regulatory status of State-owned lands and the meaning of the phrase "legislative jurisdiction of the United States." In 1987, NPS resolved the confusion by revising Section 1.2(b). As revised, the regulation provided:

> Except for regulations containing provisions that are specifically applicable, regardless of land ownership, on lands and waters within a park area that are under the legislative jurisdiction of the United States, the regulations contained in Parts 1 through 5 and Part 7 of this chapter do not apply on non-federally owned lands and waters or on Indian lands and waters owned individually or tribally within the boundaries of a park area.

52 Fed. Reg. 35238 (Sept. 18, 1987). NPS cleared up the issue as to State-owned lands by broadening Section 1.2 to cover all "non-federally owned lands and waters or on Indian lands and waters." As to the meaning of "the legislative jurisdiction of the United States," NPS clarified that "when applied to non-federal lands, [it] means lands and waters over which the State has ceded some or all of its legislative authority to the United States." 52 Fed. Reg. 35238 (Sept. 17, 1987).

NPS reversed course in 1996, extending all of its regulations to non-federal lands in Alaska. To accomplish this objective, NPS issued 36 C.F.R. § 1.2(a)(3), which provides that NPS regulations apply to "[w]aters subject to the jurisdiction of the United States located within the boundaries of the National Park System, including navigable waters … *without regard to the ownership of submerged lands, tidelands, or lowlands*." 61 Fed. Reg. 35133 (July 5, 1996) (emphasis added). NPS revised 36 C.F.R. § 1.2(b) to provide that the "regulations contained in parts 1 through 5, part 7, and part 13 of this chapter do not apply on non-federally owned lands and waters or Indian tribal trust lands located within National Park System boundaries, *except as provided in paragraph (a) or in regulations specifically written to be applicable on such lands and waters*." *Id.* (emphasis added). Among the NPS regulations made applicable to State-owned lands is 36 C.F.R. § 2.17(e), which bans the use of hovercraft within NPS boundaries.

D. Factual Background

John Sturgeon has held a resident hunting license in Alaska for the past 40 years and, from 1971 until this

controversy, annually hunted moose on the Yukon River downstream from Eagle, Alaska, and its tributary, the Nation River. App. 8a. The Nation River has been adjudicated to be navigable. *See Alaska v. United States*, 201 F.3d 1154 (9th Cir. 2000). Thus, title to the bed of the Nation River vested in Alaska under the Statehood Act, Pub. L. No. 85-508, 72 Stat. 339 (1958); accordingly, its waters and submerged lands are not "public land" for purposes of ANILCA. App. 55a. Further, the Submerged Lands Act of 1953 grants the State of Alaska the authority to manage, use, and administer these submerged lands, the natural resources in them, and the navigable waters that flow over them. *See* 43 U.S.C. § 1311(a).

In 1990, in order to access all of the waters of the Nation River, including those waters of the Nation River upriver from the Yukon-Charley boundary, Mr. Sturgeon purchased a small personal hovercraft and licensed it with the State of Alaska as a watercraft. App. 8a. From 1990 through 2007, Mr. Sturgeon used the hovercraft to access moose hunting grounds on the Yukon River downstream from Eagle to the confluence of the Nation and Yukon Rivers, and on the Nation River thirty-five to forty miles upriver from the Yukon-Charley boundary. App. 8a. Operation of hovercraft on the Nation River is permissible under Alaska law.

In September of 2007, during his annual moose-hunting trip, Mr. Sturgeon entered the Nation River from the Yukon River for the purpose of taking the hovercraft upriver to hunt "moose meadows" and other stretches of the Nation River beyond the Yukon-Charley boundary. App. 8a. Approximately two miles upriver, while stopped on a gravel bar located below mean high water to engage

in some repairs, Mr. Sturgeon was approached by three armed NPS law enforcement employees. App. 8a. The NPS employees told Mr. Sturgeon it was a federal crime for him to operate the hovercraft within the boundaries of the Yukon-Charley. App. 8a. When Mr. Sturgeon advised the NPS employees that the hovercraft was being operated on a State-owned navigable river and thus the NPS water regulations did not apply, the NPS employees advised him that he was incorrect. App. 8a. Mr. Sturgeon complied with the NPS employees' directive to remove his hovercraft from within the boundaries of the Yukon-Charley App. 8a.

After returning from this hunt, Mr. Sturgeon had phone conversations and met with NPS Special Agent Andee Sears in Anchorage, Alaska. App. 9a. Ms. Sears agreed that the State of Alaska owned the submerged land within the banks of the Yukon and Nation Rivers, but reaffirmed NPS's position that use of a hovercraft within the boundaries of the Yukon-Charley is a federal crime, even on navigable waters or on submerged land between the banks of navigable rivers, and warned Mr. Sturgeon that he would be criminally cited if he ever again operated the hovercraft within the Yukon-Charley. App. 9a. As a result of these warnings by NPS officials and employees, Mr. Sturgeon has not used his hovercraft within the boundaries of the Yukon-Charley in subsequent hunting seasons; as a result, he has not been able to hunt areas of the Nation River and the Yukon River he had previously accessed on a regular basis with the use of his hovercraft. App. 9a.[3]

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3. In October 2010, Mr. Sturgeon, by and through counsel, sent a letter to then Secretary of the Interior Ken Salazar,

E. Proceedings Below

On September 14, 2011, Mr. Sturgeon filed a complaint in the U.S. District Court for the District of Alaska to, among other things, enjoin application of 36 C.F.R. § 1.2(a)(3) and 36 C.F.R. § 2.17(e) on various grounds under the APA. The State of Alaska intervened and joined in the challenge to these NPS regulations. The district court granted summary judgment to the NPS as to all claims. App. 35a-58a. Mr. Sturgeon and the State both timely appealed.

The Ninth Circuit affirmed, holding that ANILCA did not prohibit the NPS from asserting authority over non-public lands within CSUs pursuant to regulations of general applicability. To the Ninth Circuit, Section 103(c)'s restriction on NPS's power to impose on non-public land "regulations applicable solely to public lands within such units" was limited to Alaska-specific regulations. App. 25a-28a. ANILCA, which was passed in 1980, therefore did not supersede the general authority that Congress, in 1976, vested in the Secretary of Interior to "'[p]romulgate and enforce regulations concerning boating and other

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petitioning him to engage in rulemaking to repeal or amend NPS regulations so that the NPS would no longer assert the authority to restrict access on navigable waters located within the boundaries of park areas in Alaska. Mr. Sturgeon never received a response to this letter. App. 49a. Faced with this lack of response, on June 26, 2011 he wrote a letter to the NPS Alaska District Regional Chief Ranger, copying Ms. Sears, in which he requested written confirmation that he would be cited if he attempted to operate his hovercraft within the Yukon-Charley in the areas he had traditionally hunted. Mr. Sturgeon also never received a response to this letter. App 49a.

activities on or relating to waters located with areas of the National Park System, including waters subject to the jurisdiction of the United States.'" App. 31a (quoting 16 U.S.C. § 1a-2(h)).[4] The Ninth Circuit concluded that because the "hovercraft ban ... applies to all federal owned lands and waters administered by NPS nationwide"—and not only on federal lands within Alaska—it may be enforced on Alaskan land owned by the State, Native Corporations, and individuals. App. 26a.[5]

REASONS FOR GRANTING THE PETITION

The Ninth Circuit "has decided an important federal question in a way that conflicts with relevant decisions of this Court." Sup. Ct. Rule 10(c). The decision below has significant social and economic ramifications for the people of Alaska. It implicates not only Alaska's sovereignty and Mr. Sturgeon's liberty, but Alaskan Natives' dependence on access to the State's natural resources for economic sustainability. The Ninth Circuit's decision jeopardizes all of these interests in contravention of Section 103(c) of ANILCA, which squarely prohibits NPS from regulating non-federal Alaska land as if it were part of the National Park System.

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4. 16 U.S.C. § 1a-2(h) was repealed and recodified by Pub. L. 113-287, Dec. 19, 2014, 128 Stat. 3272. *See* 54 U.S.C. § 100751.

5. The Ninth Circuit rejected the government's argument that Mr. Sturgeon lacked standing. App. 10a-14a. But the court agreed with the government that the State lacked standing and instructed the district court to dismiss its complaint. App. 14a-20a.

I. The Petition Raises A Question of Exceptional Importance To The State of Alaska, Native Corporations, and Private Citizens.

Because no circuit split is possible on this issue, the key consideration for purposes of certiorari is whether the petition raises an important federal question. It is difficult to conceive of an issue of greater importance to the people of Alaska than the one presented here. This case concerns the regulatory disposition of more than 19 million acres of Alaskan land. Perhaps more than any other State, Alaska depends on the beneficial use of its land for "economic and social well-being." *Trustees for Alaska v. State*, 736 P.2d 324, 335 (Alaska 1987). Yet if the Ninth Circuit's decision is upheld, the ability of Alaskans to productively use their natural resources will be subject to the plenary control of NPS, which prefers to use the Alaska wilderness strictly for conservation purposes. As a result, it is likely that the developmental potential of this land will be unrealized. The economic ramifications of the Ninth Circuit's decision for the people of Alaska is a compelling basis for reviewing this petition. *See, e.g.*, *Coeur Alaska, Inc. v. Se. Alaska Conservation Council*, 557 U.S. 261, 267 (2009).

Because the decision's economic impact will fall most harshly on Native Corporations, which own approximately 18 million acres of the non-public land at issue, the need for further review is all the more urgent. Congress passed ANCSA in 1971 to resolve the "aboriginal land claims." 43 U.S.C. § 1601(a). Under ANCSA, roughly 40 million acres of land were conveyed to Alaska Native regional and village corporations to "assist them in achieving financial independence and self-sufficiency." *City of Angoon*, 749 F.2d at 1414. "Congress contemplated that

land granted under ANCSA would be put primarily to three uses—village expansion, subsistence, and capital for economic development. Of these potential uses, Congress clearly expected economic development would be the most significant." *Koniag, Inc. v. Koncor Forest Resource*, 39 F.3d 991, 996 (9th Cir. 1994) (citations omitted). Congress thus extinguished aboriginal claims in exchange for land, on the understanding that Alaska Natives "would be able to develop that land and to realize that potential." *Id.* at 997. Under the Ninth Circuit's ruling, however, Native Corporations will be foreclosed from developing roughly 30 percent of the land that Congress conveyed to them to address "the real economic and social needs of Natives." 43 U.S.C. § 1601(b).

But the importance of this case extends far beyond the practical harms resulting from the Ninth Circuit's view of ANILCA. These non-public lands, including the specific territory at issue in this case, do *not* belong to the federal government. *See supra* at 14-15. "After a State enters the Union, title to the land is governed by state law. The State's power over the beds of navigable waters remains subject to only one limitation: the paramount power of the United States to ensure that such waters remain free to interstate and foreign commerce." *Montana v. United States*, 450 U.S. 544, 551 (1981). Alaska thus owns the "shores of navigable waters, and the soils under them." *John v. United States*, 720 F.3d 1214, 1224 (9th Cir. 2013). NPS's assertion of regulatory authority therefore impairs Alaska's sovereign right to manage and direct the use of these non-federal lands. The significant federalism concerns created by the Ninth Circuit's decision warrant this Court's attention. *See Bond v. United States*, 131 S. Ct. 2355, 2364 (2011) ("[T]he federal structure serves to

grant and delimit the prerogatives and responsibilities of the States and the National Government vis-a-vis one another. The allocation of powers in our federal system preserves the integrity, dignity, and residual sovereignty of the States.").

The basis for the State of Alaska's intervention in this dispute illustrates the point. The State sought to collect specimens from the bed of the Alagnak River in connection with fisheries research. App. 9a-10a. Although the riverbed is indisputably State-owned submerged land, NPS restricted the State's ability to access it, asserting that the Alagnak's location within the Katami National Park subjected it to NPS regulation. App 9a-10a. The State was therefore barred from accessing the riverbed until it applied for a permit, obtained approval, and granted ownership of the resulting samples to NPS. App. 15a. The State should not have to seek permission from the federal government to conduct environmental studies on its own land.

Indeed, the Ninth Circuit's reading of ANILCA to grant NPS control over non-federal lands raises a difficult constitutional question. Congress's Article I authority to wrest supervision and control of these lands from Alaska would need to derive from the Commerce Clause or the Property Clause. But neither provides the sweeping power NPS asserts here. Both require a showing that activities on State-owned water sufficiently impact NPS controlled land so as to justify extra-territorial regulation. *See, e.g.*, *United States v. Lindsey*, 595 F.2d 5, 6 (9th Cir. 1979); *State of Minnesota by Alexander v. Block*, 660 F.2d 1240, 1249 (8th Cir. 1981). Thus, while this authority allows NPS to enforce specific targeted regulations on non-federal

lands to protect federal lands, *see Lindsey*, 595 F.2d at 6, it is not blanket authorization for the NPS to enforce the entirety of its regulations on non-federal lands, especially when NPS seeks to infringe on state sovereignty and regulate state-owned lands.

These important constitutional issues are not just a means to resolving a turf war between NPS and the State of Alaska. "Federalism is more than an exercise in setting the boundary between different institutions of government for their own integrity. State sovereignty is not just an end in itself: Rather, federalism secures to citizens the liberties that derive from the diffusion of sovereign power … Federalism secures the freedom of the individual." *Bond*, 131 S. Ct. at 2364 (citations and quotations omitted). "The fragmentation of power produced by the structure of our Government is central to liberty, and when we destroy it, we place liberty at peril." *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 132 S. Ct. 2566, 2677 (2012) (joint dissent). This case shows just how true that is.

As noted above, Mr. Sturgeon has held a resident hunting license in Alaska for the past 40 years and has used a small personal hovercraft, which he licensed with the State of Alaska, to access moose hunting grounds on the Yukon River since 1990. App. 8a. Yet, in 2007, he was approached by armed NPS officials who told him it was illegal to use the hovercraft. App. 8a. Petitioner was later informed that he would be subject to federal prosecution if he ever attempted to use the hovercraft again. App. 9a. It is difficult to conceive of a more severe threat to individual liberty than being threatened with criminal citation. NPS should not be permitted to threaten Mr. Sturgeon with criminal penalties for using a state-approved hovercraft for a state-approved purpose on non-federal land.

Unlike other instances, the significant practical and structural concerns raised by this case are not the result of Congress's desire to press the boundaries of its Article I authority. Congress has not demanded federal regulatory control over millions of acres of Alaskan land. It is instead NPS's assertion of expansive authority under a federal law specifically designed to curb its power, *see infra* at 23-30, and the Ninth Circuit's decision to accept that contorted interpretation that has led to this confrontation. This case epitomizes the concern that "[t]he administrative state wields vast power and touches almost every aspect of daily life…. It would be a bit much to describe the result as the very definition of tyranny, but the danger posed by the growing power of the administrative state cannot be dismissed." *City of Arlington, Tex. v. FCC*, 133 S. Ct. 1863, 1878-79 (2013) (Roberts, C.J., dissenting) (citations and quotation omitted). The administrative state's assertion of power over all manner of "economic, social, and political" activity, *id*. at 1878, is troublesome enough when it comes with the imprimatur of Congress. This Court's attention is certainly required where, as here, it does not.

II. The Ninth Circuit's Interpretation of Section 103(c) of ANILCA Is Unsustainable Under This Court's Decisions.

The question presented asks whether Section 103(c) of ANILCA prohibits NPS from managing and regulating Alaskan and Native Corporation non-federal lands located within the National Park System as if they were part of the National Park System. Contrary to the Ninth Circuit's ruling, the statute unambiguously denies this authority to NPS. "If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency,

must give effect to the unambiguously expressed intent of Congress." *Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 842-43 (1984). Because the intent behind Section 103(c) is clear, the ruling conflicts with this Court's prior decisions and should be reversed.

Section 103(c) states that "[o]nly those lands within the boundaries of any conservation system unit which are public lands (as such term is defined in the Act) shall be deemed to be included as a portion of such unit." 16 U.S.C. § 3103(c). Under the statute, "public lands" means "land situated in Alaska which, after December 2, 1980, are Federal lands" and excludes from its ambit lands belonging to the "State of Alaska," "a Native Corporation," or "lands referred to in Section 19(b) of the Alaska Native Claims Settlement Act." *Id.* § 3102(3). Accordingly, "[n]o lands, which, before, on, or after December 2, 1980, are conveyed to the State, to any Native Corporation, or to any private party shall be subject to the regulations applicable solely to public lands within such units." *Id.* § 3103(c). "If the State, a Native Corporation, or other owner desires to convey any such lands, the Secretary may acquire such lands in accordance with applicable law (including this Act), and any such lands shall become part of the unit, and be administered accordingly." *Id.*

The law is straightforward. Under Section 103(c), State, Native Corporation, and private land within the boundaries of the ANILCA conservation system units are not part of these units and may not be managed as though they are. Each sentence of Section 103(c) clarifies, in different ways, that State, Native Corporation, and private land is not to be managed or otherwise treated as part of a CSU. Section 103(c) thus removes these lands from the

reach of the vast array of federal regulations promulgated to manage public lands, such as the hovercraft regulation at issue here, and forecloses the ability of NPS and other federal agencies to exert authority beyond public lands in Alaska. Accordingly, any NPS regulation that attempts to manage non-federal land in Alaska as if it is public land is not in accordance with law.

This interpretation follows not only from the law's plain meaning, it vindicates Congress's purpose. *See, e.g.*, *K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 300 (1988). ANILCA's dramatic expansion of federal park acreage raised serious concerns that it would sacrifice the needs of Alaskans who live off this land. *See supra* at 7-11. Section 103(c) struck a balance. It "provides sufficient protection for the national interest in the scenic, natural, cultural and environmental values on the public lands in Alaska, and at the same time provides adequate opportunity for satisfaction of the economic and social needs of the State of Alaska and its people." 16 U.S.C. § 3101(d). The statute accomplished this objective by "[s]pecifying that only public lands (and not State or private lands) are to be subject to the conservation unit regulations applying to public lands." H. Cong. Res. 452, 96th Cong. (Nov. 21, 1980); *see also* S. Rep. No. 96-413 at 303 (Nov. 14, 1979) ("Those private lands, and those public lands, owned by the State of Alaska … are not to be construed as subject to the management regulations which may be adopted to manage and administer any national conservation system unit which is adjacent to, or surrounds, the private or non-Federal public lands."). The whole point was to "make clear beyond any doubt that any State, Native, or private lands, which may lie within the outer boundaries of the conservation system unit are not parts of that unit and

are not subject to regulations which are applied to public lands, which, in fact, are part of the unit." 125 Cong. Rec. H3240 (May 15, 1979). The inclusion of Section 103(c) in the final version of ANILCA reflected a deliberate choice by Congress to preserve State management and limit NPS authority over these lands.

That is why, until 1996, NPS correctly interpreted Section 103(c) just as Petitioner does here. *See supra* at 11-14. In 1981, NPS explained that its "regulations would not apply to activities occurring on Native or any other non-federally owned land interests located inside park area boundaries." 46 Fed. Reg. 31843 (June 17, 1981). Further, in 1987, NPS reaffirmed that: "Except for regulations containing provisions that are specifically applicable, regardless of land ownership, on lands and waters within a park area that are under the legislative jurisdiction of the United States, the regulations contained in Parts 1 through 5 and Part 7 of this chapter do not apply on non-federally owned lands and waters or on Indian lands and waters owned individually or tribally within the boundaries of a park area." 52 Fed. Reg. 35238 (Sept. 18, 1987). That is, NPS interpreted Section 103(c) faithful to its terms by limiting NPS's regulatory authority to public lands in Alaska.

The Ninth Circuit nevertheless rejected this reading based on a crabbed interpretation of Section 103(c). App. 25a-28a. In the Ninth Circuit's view, the limitation on NPS authority to impose "regulations applicable solely to public lands within such units" applies only to Alaska-specific NPS regulations. App. 25a-26a. According to the Ninth Circuit, NPS was thus free to ban hovercrafts on non-federal Alaskan lands under its general authority to

"[p]romulgate and enforce regulations concerning boating and other activities on or relating to waters located within areas of the National Park System," 16 U.S.C. § 1a-2(h), so long as the ban was applied "to all federal-owned lands and waters administered by NPS nationwide" and not just to Alaska public lands. App. 25-26a. This interpretation of Section 103(c) is unsustainable.

Although its reasoning is far from clear, the Ninth Circuit appears to derive its Alaska-specific interpretation of Section 103(c) from its determination that "[t]he plain text of § 103(c) only exempts nonfederal land from 'regulations applicable *solely* to public lands within [CSUs].'" App. 25a (emphasis in original). The Ninth Circuit believed that this language limited Section 103(c) to "*CSU-specific regulations*." App. 25a (emphasis in original). But the Ninth Circuit drew the line in the wrong place. ANILCA does not distinguish between regulations applying nationwide and those applying only "within such units" in Alaska. The law distinguishes between NPS's authority to manage "public lands within such units" and its lack of authority to manage non-public (*i.e.*, non-federal) lands *within such units*. That point is made clear by the preceding sentence: "Only those lands within the boundaries of any conservation system unit which are public lands (as such term is defined in this Act) shall be deemed to be included as a portion of such unit." 16 U.S.C. § 3103(c). The Ninth Circuit committed the cardinal error of reading the phrase "within such units" in "isolation" instead of "the context in which it is used." *Deal v. United States,* 508 U.S. 129, 132 (1993).

The Ninth Circuit sought to draw additional support from Section 103(c)'s use of the word "solely," since

nationwide NPS regulations are not "solely" applicable to federal lands in Alaska. App. 25a. The Ninth Circuit claimed that only this interpretation could reconcile the statutory text with Congress's statement that "'[f]ederal laws and regulations of general applicability to both private and public lands' are 'unaffected,' and 'would be applicable to private or non-federal public land holdings within [CSUs].'" App. 27a-28a (quoting S. Rep. 96-413, at 303 (1979)). But the Ninth Circuit's textual analysis again missed the mark.

Congress inserted "solely" into Section 103(c) to avoid inadvertently nullifying *all* federal statutes and regulations applicable to non-federal lands in Alaska. That is, Congress was careful to ensure that ANILCA did not exempt non-federal lands in Alaska from laws such as the Clean Air Act and the Clean Water Act. These are the federal laws of "general applicability" (and not the run-of-the-mill NPS management regulations) that were to be "unaffected" by ANILCA:

> Federal laws and regulations of general applicability to both private and public lands, such as the Clean Air Act, the Water Pollution Control Act, U.S. Army Corps of Engineers wetland regulations and other Federal statutes of general applicability would be applicable to private or non-Federal public land in holdings within conservations [sic] system units, and to such lands adjacent to conservation system units, and thus are unaffected by the passage of the bill.

S. Rep. 96-413, at 303 (1979). Had the Ninth Circuit not selectively quoted from the Senate Report, this would have been clear.

But even if there were some support for the Ninth Circuit's Alaska-specific version of Section 103(c), which there is not, the statute should be interpreted to avoid a "nonsensical result" if the text will allow it. *Paroline v. United States*, 134 S. Ct. 1710, 1729 (2014). As explained above, the Ninth Circuit's reading exempts non-federal lands from NPS's Alaska-specific regulations, but not from NPS's nationwide regulations. Under that reading, then, non-federal land could not benefit when NPS exempts Alaska national parks from a more restrictive nationwide rule. By the Ninth Circuit's reasoning, the non-public land would remain subject to the more restrictive nationwide regulation. If NPS decided to exempt Alaska public lands from the hovercraft regulations, the non-federal lands (*i.e.*, State, private, and Native-owned) would, paradoxically, still be subject to the ban.

This is not some wild hypothetical. There are many NPS regulations that make allowances for Alaska public lands that are not applicable to the rest of the National Park System. For example, NPS has granted Alaska parks more liberal hunting, trapping, and motorized access rules because of the unique terrain. *See, e.g.*, 36 C.F.R. §§ 13.25, 13.30, 13.45, 13.182. It is nonsensical to interpret Section 103(c) to force non-federal land in Alaska to abide by the more restrictive nationwide rule instead of benefiting from the less restrictive Alaska-specific rule. Yet that is where the Ninth Circuit's ruling leads. The better interpretation of Section 103(c) is one that, as Congress clearly intended, leaves day-to-day management of these non-federal lands

to their owners: the State of Alaska, Native Corporations, and private individuals.

At base, the Ninth Circuit's interpretation violates the "text, structure, and purpose" of ANILCA. *Maracich v. Spears*, 133 S. Ct. 2191, 2196 (2013). Section 103(c) was enacted to enforce the law's bargain that those lands not transferred to the federal government would be subject to state and local management. *See supra* at 5-11. Under the Ninth Circuit's reasoning, however, the promise is illusory. If the decision below is allowed to stand, NPS could easily circumvent any limitation on its day-to-day management authority merely by regulating on a nationwide basis. There is no basis for interpreting Section 103(c) to defeat ANILCA's objective of preserving state authority, private property rights, and Native Alaskan land rights within the new federal park lands it created. Certainly not when there is a strong textual basis for interpreting the law to achieve that unambiguous congressional purpose.

CONCLUSION

The Court should grant the petition.

Respectfully submitted,

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