In the Supreme Court of the United States

SUQUAMISH INDIAN TRIBE,

Petitioner,

v.

UPPER SKAGIT INDIAN TRIBE, SWINOMISH INDIAN TRIBAL COMMUNITY, JAMESTOWN S'KLALLAM TRIBE, LOWER ELWHA KLALLAM TRIBE, LUMMI INDIAN NATION, NISQUALLY INDIAN TRIBE, PORT GAMBLE S'KLALLAM TRIBE, SKOKOMISH INDIAN TRIBE, AND TULALIP TRIBES,

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 a court implementing an unambiguous court order is bound to apply that order according to its plain terms, or whether the court should instead determine whether the judge who initially issued the order "intended something other than its apparent meaning," as the Ninth Circuit held in this case.

RULE 14.1(b) STATEMENT

Although appearing in the caption below, the United States and the State of Washington are not named parties to and did not specifically appear in this proceeding.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Suquamish Indian Tribe respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a–13a), issued pursuant to the panel's grant of rehearing, is reported at 590 F.3d 1020. The panel's initial, withdrawn opinion (App., *infra*, 14a-30a) is reported at 576 F.3d 920. The district court's order (App., *infra*, 31a–54a) is not reported.

JURISDICTION

The court of appeals granted respondents' petition for rehearing on January 5, 2010, and concurrently issued its judgment. Petitioner timely filed a motion for rehearing en banc, which the court of appeals denied on February 16, 2010. App., *infra*, 55a-56a. On May 10, 2010, Justice Kennedy extended the time for filing a petition for a writ of certiorari to July 1, 2010. This Court's jurisdiction rests on 28 U.S.C. § 1254(1).

STATEMENT

This case presents the question whether judicial orders should be applied according to their plain terms. In 1975, Judge George Hugo Boldt of the United States District Court for the Western District of Washington issued an order recognizing that the Suquamish Indian Tribe, petitioner here, has the right to fish in "the marine waters of Puget Sound," an area that unambiguously includes subsidiary bodies of water known as Saratoga Passage and

Skagit Bay. In this case, however, the Ninth Circuit applied Judge Boldt's order to *deny* the Suquamish the right to fish in these waters. In doing so, the court of appeals declined to "accept[] Judge Boldt's unambiguous definition of 'Puget Sound,'" instead applying an interpretive standard that requires a court implementing an existing judicial order to look for evidence "that the court [issuing the order to be applied] intended something other than [the order's] apparent meaning." App., *infra,* 8a-9a. Using this test and re-assessing the evidence that was before Judge Boldt in 1975, the Ninth Circuit concluded that Judge Boldt did not intend his order to be applied as written.

This approach to the application of judicial orders, which departs from the rule that governs in every other circuit that has addressed the matter, is plainly wrong. This Court, in circumstances materially identical to those in this case, has held unequivocally that, "where the plain terms of a court order unambiguously apply, as they do here, they are entitled to their effect." *Travelers Indem. Co.* v. *Bailey*, 129 S. Ct. 2195, 2004 (2009). This Court also recognized that other courts of appeals, specifically including the First and Second Circuits, have embraced the same approach. *Ibid.* The Ninth Circuit's aberrant departure from this rule determined the outcome here: that court itself evidently recognized that the Suquamish would prevail were the unambiguous language of Judge Boldt's controlling order applied as written. Such a holding, and the conflict in the circuits it produced, should not stand.

That is especially so because the issue of interpretation presented here is a recurring one of substantial practical importance. Standing judicial

orders are applied repeatedly in the widest range of areas, which makes certainty and consistency in the rules governing the application of such orders essential. Yet the Ninth Circuit's interpretive rule guarantees uncertainty, while threatening to upset the settled expectations of the parties subject to judicial orders. It also invites continuing relitigation of matters that seemingly were resolved long ago, an outcome that Judge Kleinfeld, dissenting below, recognized will be "extremely burdensome and expensive." App., *infra,* 12a-13a. Moreover, the particular context in which the issue is presented here, involving treaty fishing rights of Pacific Northwest tribes that this Court has identified as "vital," is itself a matter of great economic and cultural significance. *Washington* v. *Washington State Commercial Passenger Fishing Vessel Ass'n*, 443 U.S. 658, 664, 666, 678 (1979) ("*Fishing Vessel*"). For all of these reasons, further review is warranted.

A. Tribal Fishing Rights In The Pacific Northwest.

This case involves a dispute over fishing rights in Puget Sound that are guaranteed by treaties between the United States and Indian tribes of the Pacific Northwest. "To extinguish the last group of conflicting claims to the lands lying west of the Cascade Mountains and north of the Columbia River in what is now the State of Washington, the United States entered into a series of treaties with Indian Tribes in 1854 and 1855." *Fishing Vessel*, 443 U.S. at 661-62. Under the leadership of Chief Seattle, the Suquamish, along with several other tribes, signed the Treaty of Point Elliott on January 22, 1855. See 12 Stat. 927. The "Tribes ceded their aboriginal lands to the United States for settlement, receiving in

exchange exclusive title to defined lands, free medical care, schools, occupational training, and annuity payments." *United States* v. *Washington*, 157 F.3d 630, 638 (9th Cir. 1998). Of particular importance, the tribes expressly reserved their rights to continue fishing in their traditional grounds; the Treaty specifically provided that "[t]he right of taking fish at usual and accustomed grounds and stations is further secured to said Indians in common with all citizens of the Territory." 12 Stat. at 928 (art. V). See *Fishing Vessel*, 443 U.S. at 662, 674-76.[1]

As this Court has recognized, the guarantee of fishing rights was of central importance to the tribes, which "shared a vital and unifying dependence on anadromous fish"; the tribes were "vitally interested in protecting their right to take fish at usual and accustomed places, * * * and * * * they were invited by the white negotiators to rely and in fact did rely heavily on the good faith of the United States to protect that right." *Fishing Vessel*, 443 U.S. at 664, 667. Such fishing rights remain vitally important to this day, as "anadromous fish constitute a natural resource of great economic value" in the Pacific Northwest. *Id.* at 664. There is no denying the significance of these interests: this Court has addressed issues arising out of "the fishing clause in these treaties" on at least seven occasions. See *id.* at 679 (citing decisions).

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[1] Although the United States entered into a series of treaties with the tribes of what is now Washington State (see *Fishing Vessel*, 443 US. at 661-62 & n.2), almost identical language is included in each. See *id.* at 674 & n.21.

B. *United States* v. *Washington*.

The century that followed execution of the treaties was marked by "frequent and often violent controversy between Indians and non-Indians over treaty right fishing." *United States* v. *Washington*, 384 F. Supp. 312, 329 (W.D. Wash. 1974) ("*Decision I*"). See also *Fishing Vessel*, 443 U.S. at 668-69. In 1970, the United States filed suit against the State of Washington, alleging that the State was impairing treaty fishing rights. *Decision I*, 384 F. Supp. at 327-28. Several tribes later joined as intervenor plaintiffs. *Id.* at 327. Years of discovery followed. *Id.* at 328.

In 1974, Judge Boldt issued substantial findings and concluded that, "[b]ecause the right of each treaty tribe to take anadromous fish arises from a treaty with the United States, that right is reserved and protected under the supreme law of the land, does not depend on state law, is distinct from rights or privileges held by others, and may not be qualified by any action of the state." *Decision I*, 384 F. Supp. at 402. Ultimately, Judge Boldt concluded that the treaties—which provide that Indian tribes are to fish "in common with" others—entitle "treaty tribe[s]" to a 50% share of all fish taken in areas of Puget Sound that constitute the "usual and accustomed grounds and stations" (the "U&A") of a tribe at the time the treaties were signed. *Id.* at 343, 386.

To effectuate this guarantee, Judge Boldt sought to determine each tribe's specific U&A, examining "the freshwater systems and marine areas within which the treaty Indians fished at varying times, places and seasons, on different runs," and considering a range of evidence, including the testimony of anthropologist Barbara Lane. *Decision I*, 384 F.

Supp. at 350, 402. Based on these factual findings and legal conclusions, Judge Boldt issued an injunction that detailed with great precision the Tribal-State fishing relationship and the U&As of the various tribes. *Id.* at 413-19. A determination that a particular geographic area fell within a tribe's U&A entitled the tribe to exercise its treaty rights to a share of the fish harvested in that location. *Id.* at 343, 403-04. On direct appeal of this order, the Ninth Circuit affirmed, *United States* v. *Washington*, 520 F.2d 676, 685 (9th Cir. 1975), and this Court denied certiorari, 423 U.S. 1086 (1976).

In his initial order, Judge Boldt recognized that he had not adjudicated the U&As for all tribes in the Puget Sound region. Thus, the court established "continuing jurisdiction * * * in order to determine * * * the location of any of a tribe's usual and accustomed fishing grounds not specifically determined" in its 1974 order. *Decision I*, 384 F. Supp. at 419. Following this directive, several additional tribes, including the Suquamish, joined the action as plaintiffs. See *United States* v. *Washington*, 459 F. Supp. 1020, 1039 (W.D. Wash. 1978) ("*Decision II*") (reporting several orders issued in 1974 and 1975), *aff'd*, 645 F.2d 749 (9th Cir. 1981). In 1975, the district court adjudicated the U&As for these tribes. *Decision II*, 459 F. Supp. at 1048-50.

Meanwhile, the State of Washington and non-tribal commercial fishers brought state and federal proceedings to challenge Judge Boldt's orders. After the State Supreme Court held that the State of Washington could not lawfully comply with the federal injunction and the Washington Department of Game "simply refused to comply," this Court granted certiorari, combining the state and federal

cases. *Fishing Vessel*, 443 U.S. at 673. The Court then substantially affirmed the injunctive relief ordered by Judge Boldt, with narrow exceptions that are not material here. *Id.* at 674.

C. Subsequent Litigation.

The orders establishing tribal U&As begot substantial litigation. Because the district court maintained continuing jurisdiction over the case, these disputes are brought as "sub-proceedings" to the original *United States* v. *Washington* action, which effectively are new lawsuits to enforce the underlying orders and associated treaty-based rights. See *Decision II*, 459 F. Supp. at 1037. See also App., *infra*, 18a n.11.[2] Among these sub-proceedings have been a series of inter-tribal disputes regarding fishing territories. See, *e.g.*, *United States* v. *Lummi Indian Tribe*, 235 F.3d 443 (9th Cir. 2000). Many of the tribes' U&As overlap, meaning that these tribes must share in the treaty entitlements to fish harvested at any particular location. See *Decision I*, 384 F. Supp. at 343, 410. As fishing resources have diminished and commercial competition increased, tribes have found themselves with a significant economic incentive to argue that neighboring tribes hold narrower U&As than those established by Judge

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[2] The district court docket for *United States* v. *Washington*, 2:70-cv-09213 (W.D. Wash.), contains more than 19,600 entries. Since 1983, at least twenty-two separate sub-proceedings have been initiated; the rulings terminating sub-proceedings are final, appealable judgments. See App., *infra*, 18a n.11; *United States*. v. *Muckleshoot Indian Tribe*, 235 F.3d 429, 432 n.1 (9th Cir. 2000). Over the life of the litigation, the case has been appealed to the Ninth Circuit on at least eighteen occasions. After Judge Boldt passed away in 1984, various district court judges have assumed responsibility for this ongoing litigation.

Boldt. See *United States* v. *Washington*, 573 F.3d 701, 704-05 (9th Cir. 2009).

In resolving these disputes that turn on the application of Judge Boldt's orders issued in the 1970s, the Ninth Circuit does not regard the language of the orders as dispositive. Instead, even when that language is unambiguous, the Ninth Circuit requires analysis of the record that was before Judge Boldt to determine whether he intended something other than what is expressed in the orders' plain language. See, *e.g.*, *Muckleshoot Tribe* v. *Lummi Indian Tribe*, 141 F.3d 1355, 1358 (9th Cir. 1998) (*"Muckleshoot I"*). In *United States* v. *Muckleshoot Indian Tribe*, 235 F.3d 429, 433 (9th Cir. 2000) (*"Muckleshoot III"*), the Ninth Circuit elaborated on this rule, explaining that, while "unambiguous text" in a federal judicial order "is certainly a factor to be considered" in interpreting that order, "it does not necessarily terminate the inquiry." The court reasoned that "there are no canons of construction for the interpretation of opinions" and that "[o]pinions, unlike statutes, are not usually written with the knowledge or expectation that each and every word may be the subject of searching analysis." *Ibid.* (citing *Julian Petroleum Corp.* v. *Courtney Petroleum Co.*, 22 F.2d 360, 362 (9th Cir. 1927), and *Marshall* v. *Andrew F. Mahony Co.*, 56 F.2d 74, 78 (9th Cir. 1932)).

Thus, the Ninth Circuit concluded, "debate over whether the language of [Judge Boldt's orders] is unambiguous is largely misdirected, inasmuch as an analysis of the decision is necessary, whether the text is ambiguous or not." *Muckleshoot III*, 235 F.3d at 433. That is so, the Ninth Circuit concluded, because it is still necessary for the court applying the

order to determine whether "'*the court [issuing the order] intended something other than its apparent meaning.*'" *Ibid.* (quoting *Muckleshoot I*, 141 F.3d at 1359 (emphasis added by the court)).

D. This Proceeding.

1. This case is a dispute between the Suquamish and certain other tribes as to the scope of the Suquamish's U&A. In his 1975 order, Judge Boldt determined:

> The usual and accustomed fishing places of the Suquamish Tribe include the marine waters of Puget Sound from the northern tip of Vashon Island to the Fraser River including Haro and Rosario Straits, the streams draining into the western side of this portion of Puget Sound and also Hood Canal.

Decision II, 459 F. Supp. at 1049, Finding of Fact No. 5 ("FF 5"). Judge Boldt defined Puget Sound as "'includ[ing] the Strait of Juan de Fuca and all saltwater areas inland therefrom.'" App., *infra*, 36a (quoting definition used in an exhibit that Judge Boldt expressly adopted as a finding of fact). For an illustrative map identifying these areas, see Appendix E. *Id.* at 57a.

In 2005, the Upper Skagit Indian Tribe ("Upper Skagit") initiated this action, Sub-proceeding No. 05-3, to determine whether the Suquamish's U&A includes portions of Saratoga Passage and Skagit Bay, waters of Puget Sound on the eastern side of Whidbey Island. See App., *infra*, 31a. The Swinomish Indian Tribal Community ("Swinomish") also filed a request for a determination, essentially joining in the request of the Upper Skagit and enlarging the area in dispute to include all of Saratoga Passage. *Ibid.*

The Suquamish responded that Saratoga Passage and Skagit Bay are within Judge Boldt's definition of "Puget Sound," "that this language is not ambiguous, and that it unambiguously includes the contested areas" within the Suquamish's U&A. *Id.* at 32a. The Upper Skagit and Swinomish replied that—notwithstanding the plain language of his order—Judge Boldt did not intend to include these waters within the Suquamish's U&A.

2. The district court granted summary judgment to the Upper Skagit and Swinomish. See App., *infra*, 31a-54a. The court first considered the plain language of Judge Boldt's 1975 order and found that, "[a]s Judge Boldt defined Puget Sound * * *, it includes the waters of * * * Saratoga Passage and Skagit Bay." *Id.* at 44a. See also *id.* at 37a (noting Judge Boldt's several "reference[s] to Puget Sound as a broad area encompassing all the saltwater areas inward from the entrance of the Strait of Juan de Fuca"); 38a ("this language necessarily subsumes the other bays and inlets, including the areas at issue here, into Puget Sound, as the term was used in this case"); 44a ("As Judge Boldt defined Puget Sound as the case area, it includes the waters of * * * Saratoga Passage and Skagit Bay."); 52a ("[T]he Court and the parties had a common understanding that the term 'Puget Sound' * * * include[es] all the bays and inlets, and specifically including Skagit Bay and Saratoga Passage."). Indeed, the Ninth Circuit later characterized the district court as having "held that Judge Boldt used the term Puget Sound unambiguously to refer to all the marine areas inward from the mouth of the Strait of Juan de Fuca." *Id.* at 19a.

The district court, however, reasoned that the unambiguous language of Judge Boldt's order "does

not end the inquiry." App., *infra*, 44a. Rather, "[u]nder the rules developed by the Ninth Circuit, the Court must look to the actual evidence that was before Judge Boldt to determine if it 'suggests that Judge Boldt *intended something other than this apparent meaning* when he wrote FF 5.'" *Ibid.* (emphasis added) (quoting *Muckleshoot I*, 141 F.3d at 1359). Thus, notwithstanding the plain language of the order, the court sought to determine whether there was evidence before Judge Boldt sufficient to prove that the Suquamish did in fact fish in Saratoga Passage and Skagit Bay during the 1850s, looking to "maps, fisheries reports, anthropological reports, and testimony." *Id.* at 52a. After considering this material, the court found dispositive what it labeled an "absence of evidence regarding Squamish [*sic*] fishing or travel through Saratoga Passage and Skagit Bay" (*id.* at 49a), which it took to mean "that Judge Boldt did not intend to include these areas in the Suquamish U&A." *Ibid.*

3. The court of appeals initially reversed. App., *infra*, 14a-30a. Writing for the panel, Judge Kleinfeld—like the district court—noted that, under the Ninth Circuit's interpretive approach, the existence of unambiguous language in Judge Boldt's order could not alone be dispositive:

> Suquamish argues that the court should only clarify Judge Boldt's rulings after finding them ambiguous. This contention is foreclosed by our precedent. An analysis of the decision is necessary, *whether the text is unambiguous or not* * * *.

Id. at 19a (internal quotations & alterations omitted; emphasis in original). The Ninth Circuit rule thus "obligated" the court "to discern what a deceased

federal district judge intended when he adjudicated Suquamish's fishing grounds more than three decades ago." *Id.* at 30a.

The court nonetheless reversed. It noted that "Saratoga Passage and Skagit Bay are in the Puget Sound" between Vashon Island and the Fraser River. App., *infra*, 22a. And the court determined that "[b]oth the language that Judge Boldt used and the evidence before him, specifically the Lane Report, support an inference that he intended to include the disputed areas in Suquamish's territory." *Id.* at 25a. Granting summary judgment to the Suquamish, the court accordingly concluded that, in light of the undisputed facts, the Upper Skagit did not meet its burden of proving that Judge Boldt intended something other than the apparent meaning of his words: "it is at least as likely as not that Judge Boldt meant what he said." *Id.* at 29a.

4. The panel, over the dissent of Judge Kleinfeld, subsequently granted respondents' petition for rehearing, withdrew the court's initial opinion, and affirmed the district court's grant of summary judgment in favor of the Upper Skagit and Swinomish. App., *infra*, 1a-13a. Once again, the panel repeated the district court's finding that Judge Boldt's use of the term "'Puget Sound' * * * included the waters of Saratoga Passage and Skagit Bay" (*id.* at 6a), noting "Judge Boldt's unambiguous definition of 'Puget Sound.'" *Id.* at 8a. And once again, the panel rejected the Suquamish's argument that the unambiguous language controls, explaining that a departure from that language is required when "the record before Judge Boldt" or "additional evidence * * * if it sheds light on the understanding that Judge Boldt had of the geography at the time" suggests that Judge Boldt

"'intended something other than [the order's] apparent meaning.'" *Id.* at 9a. But this time, the panel found that to be the case, pointing particularly to what it thought to be the absence of evidence before Judge Boldt that the Suquamish had fished in the disputed areas at the relevant time. *Id.* at 7a-10a.

Judge Kleinfeld dissented. He complained that the Ninth Circuit's rule required the court to "engage[] in the odd activity of deciding what a long deceased judge thought was accurate history about what happened 150 years earlier. We cannot retry the case." App., *infra,* 12a. He added: "Continually revisiting Judge Boldt's decades-old opinions (and the limited record supporting them) in an attempt to discern what he thought the customs of multiple people were in the 1850's and earlier, besides being extremely burdensome and expensive, is a fundamentally futile undertaking. The truth is not knowable." *Id.* at 12a-13a. Instead, Judge Kleinfeld reasoned, "[t]he best way to determine what the judge thought is the language he used." *Id.* at 12a. And "the better reading of 'Puget Sound' is that it means 'Puget Sound.'" *Ibid.*

The Ninth Circuit denied the Suquamish's petition for rehearing en banc over Judge Kleinfeld's dissent. App., *infra*, 55a-56a.

REASONS FOR GRANTING THE PETITION

On the face of it, Judge Boldt's controlling, decades-old order disposes of the claim in this case: "the better reading of 'Puget Sound' is that it means 'Puget Sound.'" App., *infra,* 12a. The majority below did not disagree. But it nonetheless was compelled by the Ninth Circuit's interpretive rule to look behind the plain language of the order and attempt to

plumb the unexpressed intent of a long-deceased judge, relying on evidence considered by that judge 35 years ago.

This is not a sound basis on which to interpret and apply a court order. This Court said exactly that, recently and expressly, in *Travelers Indemnity*: "a court should enforce a court order, a public governmental act, according to its unambiguous terms." 129 S. Ct. at 2204. As the Court also recognized in *Travelers Indemnity*, other courts of appeals properly have applied that rule, rejecting the approach embraced by the Ninth Circuit in this case. Thus, in every other circuit to have considered the interpretive question here, the unambiguous language of a judicial order governs. The Ninth Circuit's departure from this otherwise uniformly applied rule should be unacceptable; identical judicial orders should not be subject to different methods of interpretation in different parts of the country.

There is good reason it is "black-letter law" that a court order should be enforced "according to its unambiguous terms." *Travelers Indem.*, 129 S. Ct. at 2204. Allowing dissatisfied litigants to look behind an order's plain language diminishes the force, and discourages precision in the formulation, of judicial orders. It invites continuing and repeated litigation. And it undermines the certainty and finality of judicial rulings, interfering with the reasonable and settled expectations of parties affected by court orders. This case itself illustrates the point: as Judge Kleinfeld observed, "I could be wrong, and today's majority could be wrong, but I am pretty sure that it is a mistake to reopen the matter without any more chance of being right." App., *infra*, 12a. Such an approach is "extremely burdensome,' "expensive,"

and "fundamentally futile." *Id.* at 13a. This Court should grant review and set aside the Ninth Circuit's aberrant rule.

I. THE PLAIN LANGUAGE OF AN UNAMBIGUOUS JUDICIAL ORDER SHOULD CONTROL.

1. To begin with, this is the rare example of a case where the court of appeals' decision is flatly inconsistent with a ruling of this Court. The language of the judicial order applied below is, in relevant part, unambiguous; the panel majority did not suggest otherwise. But the majority felt bound by the Ninth Circuit's interpretive rule to look beyond the plain language of the order and to search for other "evidence bearing on Judge Boldt's intent." App., *infra*, 11a. That the Ninth Circuit did, deconstructing Judge Boldt's ruling by pointing to what it regarded as an absence of "evidence in the record before Judge Boldt that the Suquamish fished or traveled in the waters on the eastern side of Whidbey island, particularly in Saratoga Passage or Skagit Bay." *Id.* at 9a. This supposed absence of evidence persuaded the Ninth Circuit majority that Judge Boldt "intended something other than [his order's] apparent meaning." *Id.* at 8a-9a.

The application of this interpretive rule was dispositive here. There can be little doubt that, if Judge Boldt's 1975 order were applied as written, the Suquamish would be entitled to treaty-based fishing rights in Saratoga Passage and Skagit Bay. The district court recognized that, "[a]s Judge Boldt defined Puget Sound * * * it includes * * * Saratoga Passage and Skagit Bay." App., *infra,* 44a. The Ninth Circuit majority agreed. See *id.* at 6a; see also *id.* at 57a. As the court recounted, "[t]he Suquamish main-

ly fault the district court for having engaged in a sufficiency of the evidence analysis *instead of accepting Judge Boldt's unambiguous definition of 'Puget Sound.'" Id.* at 8a (emphasis added). But the court rejected the Suquamish's position, finding that the district court "faithfully followed" circuit precedent by seeking to determine whether there was "evidence that suggests that the U&A is ambiguous *or* that the court intended something other than its apparent meaning." *Id.* at 8a-9a (alteration and internal quotation omitted; emphasis added). The court found the latter ground decisive here.

This Court, however, has rejected precisely that approach to the interpretation of judicial orders. In *Travelers Indemnity*, parties subject to a court order enjoining certain lawsuits argued that particular claims were not barred by the order, maintaining that the claims lay outside what the parties understood to be the scope of the order. See 129 S. Ct. at 2198-99, 2204. This Court recognized that the parties who contended that the intent of the order was more limited than the plain terms indicated "may well be right about that," noting that "there certainly are statements in the record that seem to support [the parties'] contention." *Id.* at 2004. Justice Stevens, in dissent, pointed to additional reasons to believe that the issuing court intended the order to be more limited than its plain language suggested. *Id.* at 2211-12.

"But be that as it may," the Court held,

> where the plain terms of a court order unambiguously apply, as they do here, they are entitled to their effect. * * * If it is black-letter law that the terms of an unambiguous private contract must be enforced irrespective of

> the parties' subjective intent, see 11 R. Lord, Williston on Contracts § 30:4 (4th ed. 1999), it is all the clearer that *a court should enforce a court order, a public government act, according to its unambiguous terms.*

129 S. Ct. at 2204 (emphasis added).[3]

The Ninth Circuit should have applied this rule. In seeking rehearing of the decision below, the Suquamish specifically called to the Ninth Circuit's attention the inconsistency of its decision with *Travelers Indemnity*. See Pet. for Rehearing En Banc, at 8. Although Judge Kleinfeld dissented from the denial of rehearing, the panel took no steps to conform its decision with *Travelers Indemnity*, and the full Ninth Circuit declined to revisit the issue en banc. In these circumstances, the manifest inconsistency between the holding of the court of appeals and a decision of this Court warrants review. Indeed, the Ninth Circuit's decision so clearly departs from the guidance of *Travelers Indemnity* that the Court may wish to consider summary reversal of the decision below.

2. That is especially so because compelling reasons support the plain-meaning rule applied in *Travelers Indemnity*. Courts have long recognized that the best evidence of the intent of one who drafts a document that has legal force—be it a judge au-

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[3] Likewise, in construing consent decrees (another type of federal judgment, see Fed. R. Civ. P. 54(a)), the Court has held that the clear language of the decree must control. See *United States* v. *Armour & Co.*, 402 U.S. 673, 682 (1971) ("[T]he scope of a consent decree must be discerned within its four corners, and not by reference to what might satisfy the purposes of one of the parties to it").

thoring an order, a legislature enacting a statute, or parties negotiating a contract—is the unambiguous meaning of the language selected. This commonsense rule is applied across a range of like circumstances.

The Court thus noted in *Travelers Indemnity* that this rule should be used to interpret "public governmental act[s]" generally. 129 S. Ct. at 2204. It is, of course, a staple tool of statutory construction "that, when the statutory language is plain, [a court] must enforce it according to its terms." *Jimenez* v. *Quarterman*, 129 S. Ct. 681, 685 (2009). See, *e.g.*, *West Virginia Univ. Hosps., Inc.* v. *Casey*, 499 U.S. 83, 98 (1991). Likewise, the Court has held that recourse to extrinsic evidence when interpreting a treaty is appropriate only in the face of ambiguity. See *Chan* v. *Korean Air Lines, Ltd.*, 490 U.S. 122, 134 (1989). And as the Court also noted in *Travelers Indemnity*, this rule is a centuries-old hornbook principle of contract interpretation. See, *e.g.*, *Richardson* v. *Hardwick*, 106 U.S. 252, 254 (1882); *Sprigg* v. *Bank of Mt. Pleasant*, 39 U.S. 201, 206 (1840).

The Ninth Circuit's departure from this long-standing method of construction is unjustified. In rejecting the plain-language rule as it applies to court orders, the Ninth Circuit reasoned that "judicial opinions are simply not statutes and the rules governing the interpretation of the two reflect this," as "[o]pinions, unlike statutes, are not usually written with the knowledge or expectation that each and every word may be the subject of searching analysis." *Muckleshook III*, 235 F.3d at 433. But that simply is not (or should not be) so.

To the contrary, as the First Circuit recently explained, "[d]istrict court orders are documents of considerable import. A district court speaks to the

parties and the court of appeals primarily through its orders." *Negron-Almeda* v. *Santiago*, 528 F.3d 15, 22 (1st Cir. 2008). Accordingly, "the phrasing of a court order is significant. When that phraseology is imprecise, there may be some play in the joints. * * * But when a court's order is clear and unambiguous, neither a party nor a reviewing court can disregard its plain language simply as a matter of guesswork or in an effort to suit interpretive convenience." *Id.* at 23 (internal quotation omitted). Thus, "to the extent that there [is] any room for doubt that [an] order meant exactly what it said, it [is] the burden of the doubters * * * to ask the district court in a timely fashion to clarify the scope of the order." *Id.* at 24. Failure to do so "estops" a party from "alleging the existence of a hidden ambiguity." *Ibid.* The Ninth Circuit accordingly erred in embracing a special rule that rests, at bottom, on a failure to respect the plain language of judicial orders.

II. THE NINTH CIRCUIT'S DECISION CONFLICTS WITH THE HOLDINGS OF OTHER COURTS OF APPEALS ON THE PROPER MEANS OF INTERPRETING A JUDICIAL ORDER.

Given that this Court regards it as a matter of "black-letter law" that the unambiguous language of a judicial order is controlling, it comes as no surprise that other courts of appeals have rejected the Ninth Circuit's interpretive approach. While the Ninth Circuit will examine extrinsic evidence of the issuing judge's intent to determine the meaning of even an unambiguous order, every other court to address the question has held that the unambiguous language *must* control. This conflict, on an important and recurring question of federal law, should be resolved.

1. As we have explained, when interpreting even an unambiguous judicial order, the Ninth Circuit requires a court to look behind the language of the order and examine the evidence originally presented to determine the intent of the issuing judge. The Ninth Circuit carefully considered and deliberately chose this interpretive rule. As noted above, the court opined that "judicial opinions are simply not statutes and the rules governing the interpretation of the two reflect this," that there generally "are no canons of construction for the interpretation of opinions," and that it is not expected that "each and every word" of a judicial order "may be the subject of searching analysis." *Muckleshoot III*, 235 F.3d at 433. The Ninth Circuit therefore regards as "largely misdirected" any "debate over whether the language of [an order] is unambiguous, * * * inasmuch as an analysis of the decision is necessary, whether the text is unambiguous or not," to determine whether "'*the court intended something other than its apparent meaning*.'" *Ibid.* (internal omitted; emphasis added by the court).

2. In contrast, every other court of appeals to address the question has rejected this approach and held that extrinsic evidence is irrelevant in these circumstances. There can be no doubt about the existence of this conflict: this Court in *Travelers Indemnity* cited decisions of the First and Second Circuits as standing for the proposition that, "where the plain terms of a court order unambiguously apply, * * * they are entitled to their effect." 129 S. Ct. at 2204 (citing *Negron-Almeda* 528 F.3d at 23, and *United States* v. *Spallone*, 399 F.3d 415, 421 (2d Cir. 2005)). If the Suquamish had litigated this dispute in these other circuits, they would have prevailed.

a. The First Circuit recently held that, "absent amendment or vacation, a court must carry out and enforce an order that is clear and unambiguous on its face, whether or not the inscribed language reflects the court's recollection of its actual intent." *Negron-Almeda*, 528 F.3d at 23. See *Travelers Indem.*, 129 S. Ct. at 2204 (quoting a portion of this language). As we have noted, the First Circuit's rule is that, "when a court's order is clear and unambiguous, neither a party nor a reviewing court can disregard its plain language." *Negron-Almeda*, 528 F.3d at 23. Thus, "unless and until a clear and unambiguous order is amended or vacated * * * a court must adopt, and give effect to [the order's] plain meaning." *Ibid* (bracketed material added by the court).

In *Negron-Almeda*, the court applied this rule to "distill the meaning" of a particular order. 528 F.3d at 22. One party, despite "conced[ing] that the language of the order is inhospitable" to its interpretation, sought to introduce evidence such as "the case law cited in the lead-up" to the original order as bearing on the issuing court's intent. *Id.* at 23. But the First Circuit rejected this attempt at rewriting the order's language. It held that where the order is "unambiguous[]" and written with "conspicuous clarity," a party's "grab-bag of random facts lacks force" (*ibid.*)—and that was so even though the same district court that initially issued the order stated that a departure from the order's plain language conformed with its initial intent. See *id.* at 20, 23.

This is a rule of long standing in the First Circuit. See *Alstom Caribe, Inc.* v. George *P. Reintjes Co.*, 484 F.3d 106, 115 (1st Cir. 2007) ("We cannot disregard express rulings simply as a matter of

guesswork or in an effort to suit interpretative convenience."); *In re Thinking Machs. Corp.*, 67 F.3d 1021, 1026 (1st Cir. 1995) ("Court orders are customarily important events in the life of a judicial proceeding; they are the primary means through which courts speak, and they should carry commensurate weight." (citation omitted)).

b. The Second Circuit likewise has explained, in language quoted by this Court in *Travelers Indemnity*, that "if a judgment is clear and unambiguous, a court must adopt, and give effect to, the plain meaning of the judgment." *Spallone*, 399 F.3d at 421 (internal quotation omitted). As the Second Circuit explained, this "limiting principle prohibits a court from altering a judgment that is clear on its face, *even if not reflective of the court's actual intent.*" *Ibid.* (emphasis added). Thus, when the language of a judicial order is clear, additional evidence of a court's intent is simply irrelevant to courts in the Second Circuit.

c. The Third Circuit similarly has held that "[c]ourt orders must ordinarily be interpreted by examination of only the 'four corners' of the document." *Ford Motor Co.* v. *Summit Motor Prods., Inc.*, 930 F.2d 277, 286 (3d Cir. 1991). There, in the context of a RICO action, the court was required to interpret the meaning of a more than 20-year-old divestiture order issued in an antitrust suit. *Id.* at 283-84. Only after concluding that the underlying order was "ambiguous" did the court consider evidence of the issuing court's intent. *Id.* at 287. See also *Richman Bros. Records, Inc.* v. *U.S. Sprint Commc'ns. Co.*, 953 F.2d 1431, 1438-39 (3d Cir. 1991) (applying *Ford Motor Co.*).

d. The Eleventh Circuit agrees that a district court may not revisit an unambiguous earlier judgment by purporting to "interpret" supposed ambiguity. See *Sec. & Exch. Comm'n* v. *Hermil, Inc.*, 838 F.2d 1151, 1153-54 (11th Cir. 1988). The court of appeals there held that there was "no ambiguity in the [initial] judgment, and therefore no basis for saying that in [its subsequent order] the district court was merely interpreting its original order." *Id.* at 1154. This was so even though the party seeking to depart from the plain language of the original order "point[ed] to a substantial and convincing amount of evidence" that its favored approach conformed to the initial intent of the order, and even though the district court itself "stated * * * that it had intended this result all along." *Ibid.* Because "[t]he court * * * did not draft the [original] order to reflect this intent, * * * the [subsequent] revision came too late" and the plain language of the order governed. *Ibid.*

e. The Fifth Circuit has reached the same conclusion. See *Dunlop* v. *Ledet's Foodliner of Larose, Inc.*, 509 F.2d 1387, 1389 (5th Cir. 1975) (declining to "search [the] record to clarify an unambiguous judgment"). See also *In re National Gypsum Co.*, 219 F.3d 478, 484 (5th Cir. 2000) (court will defer to trial court's interpretation of its own order only if the documents are "truly * * * ambiguous"). And although the Fourth Circuit evidently has not expressly addressed the standard for reviewing an unambiguous prior court order or judgment, district courts in that Circuit follow the majority rule. See *Spearman* v. *J & S Farms, Inc.*, 755 F. Supp. 137, 140 (D.S.C. 1990) ("A judgment which is clear and unambiguous must be given its plain meaning and consequent legal effect. * * * In construing the judgment,

general rules for the construction of written instruments are applicable. Thus, if the judgment is clear and unambiguous, this court must adopt, and give effect to, the plain meaning of the judgment.").

f. These and other courts of appeals also have applied this rule in the context of consent decrees, which are a form of "judgment." See Fed. R. Civ. P. 54(a). The Seventh Circuit, for example, holds that "where a decree is clear on its face, it is neither necessary nor appropriate to consider extrinsic evidence." *Ahern* v. *Bd. of Educ.*, 133 F.3d 975, 981 (7th Cir. 1998) (internal quotation and alteration omitted). The Fifth and Eleventh Circuits likewise have explained that they are "required to analyze" the meaning of a consent decree "by its language without resort to extrinsic considerations." *Eaton* v. *Courtaulds of N. Am., Inc.*, 578 F.2d 87, 90 (5th Cir. 1978). See, *e.g.*, *Lelsz* v. *Kavanagh*, 824 F.2d 372, 373-74 (5th Cir. 1987) ("[T]he scope of a consent decree must be discerned within its four corners." (internal quotation omitted)); *Roberts* v. *St. Regis Paper Co.*, 653 F.2d 166, 171 (5th Cir. 1981) ("[U]nless the decree is ambiguous, we must find the meaning of the decree in its language, without resort to extrinsic considerations."); *Sierra Club* v. *Meiburg*, 296 F.3d 1021, 1030 n.10 (11th Cir. 2002) (explaining that, "[g]iven the clarity of the consent decree," the court would "decline * * * invitations to consider any extrinsic evidence on the issue"); *United States* v. *Danube Carpet Mills, Inc.*, 737 F.2d 988, 993 (11th Cir. 1984) ("Reference to extrinsic evidence to construe a consent order is proper only where the language is ambiguous.").

Which rule the court applies when the parties dispute the meaning of a court order—either the

plain-language approach used by most courts, or the investigation into what the issuing judge "really meant" undertaken by the Ninth Circuit—will govern the nature of the inquiry undertaken by the court in all cases, and often will determine the outcome of the case, as it did here. This Court should resolve the conflict.

III. THE QUESTION IN THIS CASE IS A RECURRING ONE OF SUBSTANTIAL IMPORTANCE.

The question how to interpret existing judicial orders is one of substantial practical importance. It is a question that arises frequently, in the widest range of contexts. The cases affected are often ones of considerable significance in their own right, governing the continuing rights and obligations of both governments and private parties. Left uncorrected, the Ninth Circuit's approach accordingly would work mischief in many areas of law. Moreover, *United States* v. *Washington* itself implicates important, treaty-based rights of numerous Indian tribes, which have been settled in a series of complex and comprehensive court orders spanning four decades. Correction of the error below therefore will limit what otherwise is sure to be many new rounds of "extremely burdensome and expensive" litigation in an already exhaustively long set of proceedings. App., *infra*, 13a.

A. Judicial Orders Are Interpreted And Applied In A Wide Range Of Contexts.

Parties frequently contest the proper interpretation of past judicial orders and decrees in numerous areas of the law. Such issues often arise in institutional litigation, where parties seek injunctive relief

to guide future behavior. See Abram Chayes, *The Role of the Judge in Public Law Litigation*, 89 Harv. L. Rev. 1281 (1976); Donald L. Horowitz, *Decreeing Organizational Change: Judicial Supervision of Public Institutions*, 1983 Duke L.J. 1265. They also are common in many areas where judicial orders are entered involving disputes between private parties. The question presented here will be involved in every such case.

Antitrust. In antitrust proceedings, the government often seeks injunctive relief that regulates the defendant's future conduct. The precise effect of these orders may be litigated years later. In *Ford Motor Co.*, 930 F.2d at 283-84, for example, the court interpreted the requirements of a two-decade old divestiture order that resolved an antitrust action.

Bankruptcy. Bankruptcy proceedings frequently involve orders regarding reorganization and receivership. Claimants in such proceedings may later challenge the scope of the court's order. See, *e.g.*, *In re Bernard L. Madoff Inv. Sec. LLC*, 413 B.R. 137, 144 (Bankr. S.D.N.Y. 2009) ("Courts have a duty to enforce their orders and ensure that all parties under their jurisdictions follow them."); *In re Mahoney,* 251 B.R. 748, 754 (Bankr. S.D. Fla. 2000) ("Where the language of a judgment is clear and unambiguous, the reviewing court must adopt, and give effect to the plain meaning of the judgment." (internal quotation omitted)); *In re Doty*, 129 B.R. 571, 588 (Bankr. N.D. Ind. 1991) (the meaning of unambiguous judgments "should be accepted at its face value" (internal quotation omitted)). This Court's decision in *Travelers Indemnity* involved such a case, addressing the meaning of a bankruptcy order issued almost 25 years earlier.

Civil Rights. In civil rights cases, courts are often required to construe injunctive relief contained in decades-old judgments. In *United States* v. *Georgia*, 171 F.3d 1344, 1348 (11th Cir. 1999), for example, the court examined the meaning of a twenty-six year old school desegregation order. See also, *e.g.*, *Ahern*, 133 F.3d at 980-82 (also interpreting orders issued in school desegregation case); *Capacchione* v. *Charlotte-Mecklenburg Sch.*, 57 F. Supp. 2d 228, 244 (W.D. N.C. 1999) (interpreting predecessor judge's twenty-nine year old standard for school desegregation).

Environmental. Similarly, injunctive orders or decrees often resolve actions brought pursuant to federal environmental statutes. This relief frequently becomes the subject of subsequent proceedings. See, *e.g.*, *Rumpke of Ind., Inc.* v. *Cummins Engine Co.*, 107 F.3d 1235, 1236-38 (7th Cir. 1997) (CERCLA). See also, *e.g.*, *Sierra Club*, 296 F.3d at 1030 (interpreting consent decree issued under the Clean Water Act).

Insurance. Parties to insurance contracts may obtain declaratory judgments adjudicating coverage rights under a policy, which may be the subject of later dispute. See, *e.g.*, *Sec. Mut. Cas. Co.* v. *Century Cas. Co.*, 621 F.2d 1062, 1063-64 (10th Cir. 1980).

Water rights. In locations where water is scarce and ownership contested, federal courts may enter orders adjudicating the allotment of water resources. These judgments often become the subject of subsequent enforcement proceedings, where the original court's intent is questioned. See, *e.g.*, *Kittitas Reclamation Dist.* v. *Sunnyside Valley Irrigation Dist.*, 626 F.2d 95 (9th Cir. 1980) (interpreting meaning of thirty-five year old consent decree).

In each of these areas of the law—as well as many others—courts frequently must interpret judicial orders, many of which are years or decades old. The question presented here accordingly arises with great frequency in a variety of settings. Conclusively resolving the proper way to construe past judicial orders will provide guidance, and minimize litigation, in all such cases.[4]

B. The Ninth Circuit's Rule Undermines Finality And Repose.

In addition, getting the interpretive rule correct is imperative because the Ninth Circuit's anomalous approach has significant, and harmful, practical consequences. The rule applied below makes it impossible for parties bound by a judicial order to rely on the order's plain language. That reality effectively deprives governing orders of certainty, interferes with planning by the parties, and ensures continued, burdensome litigation as those seeking to

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[4] That a judicial order is being applied by the judge who initially issued it should not matter to the analysis; as several courts of appeals have noted, the unambiguous language should control "whether or not [that] language reflects the court's recollection of its actual intent." *Negron-Almeda*, 528 F.3d at 23. See *Spallone*, 399 F.3d at 421; *Hermil*, 838 F.2d at 1154. But it is worth noting that the interpretive difficulties posed by the Ninth Circuit's rule are especially acute in cases, like this one, where an order is being applied by a judge who did not initially issue it. Because court orders may govern the parties' conduct for decades, that occurs with some frequency. See, *e.g.*, *Reed* v. *Rhodes*, 179 F.3d 453, 460 (6th Cir. 1999); *Gonzales* v. *Galvin*, 151 F.3d 526, 528, 530 & n.6 (6th Cir. 1998); *Kittitas Reclamation Dist.*, 626 F.2d 95; *Capacchione*, 57 F. Supp. 2d at 244. In such circumstances, as Judge Kleinfeld noted, attempting to discern the thoughts of the issuing judge "is a fundamentally futile undertaking." App., *infra*, 13a.

escape an order's explicit terms embark on a quest to uncover the issuing judge's supposed "real" intent. Left uncorrected, the Ninth Circuit's rule thus invites litigants to collaterally challenge the resolution of issues seemingly settled long ago by unambiguous judicial orders.

This approach undermines the usual rules that are intended to create an orderly and predictable process for parties to challenge judicial orders. A party has twenty-eight days after the entry of judgment to file a motion to "alter or amend" that judgment (Fed. R. Civ. P. 59(e)), and generally has thirty days after entry of judgment within which to appeal (Fed. R. App. P. 4(a)(1)(A)). But once final, an order is not subject to later challenge: "It is just as important that there should be a place to end as that there should be a place to begin litigation." *Stoll* v. *Gottlieb*, 305 U.S. 165, 172 (1938). "A fundamental precept of common-law adjudication * * * is that a 'right, question or fact distinctly put in issue and directly determined by a court of competent jurisdiction cannot be disputed in a subsequent suit between the same parties or their privies.'" *Montana* v. *United States*, 440 U.S. 147, 153 (1979) (alteration omitted) (quoting *S. Pac. R.R.* v. *United States*, 168 U.S. 1, 48-49 (1897)). *Travelers Indemnity* itself applied this principle, holding that issues resolved by a final judgment were not subject to collateral attack (129 S. Ct. at 2205)—and, of course, that this rule could not be circumvented through the device of recharacterizing the plain language of the original judgment.

The effect of the Ninth Circuit rule *requiring* examination of the original record and, if necessary, extrinsic evidence to determine the district court's intent when it initially issued an unambiguous order

necessarily undermines this essential principle of repose. Although the Ninth Circuit expresses its rule in terms of uncovering the issuing court's intent, the effect of the rule is far different: by directing the parties and the district court to review the record presented at the time the governing order was written, the rule calls into question the work of the issuing judge. If the later court disagrees with the language of the initial order or believes that the order was not supported by the evidence before the issuing judge (as the courts below appear to have concluded here), the later court is at liberty to declare that the issuing judge could not have intended the order to be applied as written. In this way, the Ninth Circuit rule permits relitigation in the guise of interpretation. And that result, in practical effect, undermines the rules of finality that are intended to "protect[] [parties] from the expense and vexation attending multiple lawsuits, conserve[] judicial resources, and foster[] reliance on judicial action." *Montana*, 440 U.S. at 153-54.

This case is a prime example of the unfortunate effect of a rule that mandates review of the record underlying even unambiguous court orders. As required by circuit precedent, the parties sifted through the evidence available to Judge Boldt at the time of the 1975 order, including "maps, fisheries reports, anthropological reports, and testimony" (App., *infra*, 52a), and argued as to its proper interpretation. The courts below weighed and evaluated that material, ultimately concluding that there was an "absence of evidence regarding [Suquamish] fishing or travel through Saratoga Passage" (*id.* at 49a) and that, accordingly, "Judge Boldt did not intend to include these areas in the Suquamish U & A." *Ibid.* But as Judge Kleinfeld observed below,

"[c]ontinually revisiting Judge Boldt's opinions (and the limited record supporting them) in an attempt to discern what he thought the customs of multiple people were in 1850's and earlier, besides being extremely burdensome and expensive, is a fundamentally futile undertaking. The truth is not knowable." *Id.* at 12a-13a. This Court should determine whether the Ninth Circuit is correct in its view that such an approach is required.

C. The *United States* v. *Washington* Litigation Has Substantial Importance.

Finally, not only is the legal issue presented here a recurring one of great importance, this proceeding is *itself* one of considerable significance. The dispute here concerns the scope of treaty-based fishing rights held by certain Indian tribes. These rights have substantial financial, cultural, and historical value. The Court in *Fishing Vessel* repeatedly noted the "vital" importance of fishing rights to the tribes (443 U.S. at 664, 666, 676), as well as the "great economic value" of anadromous fish in the Pacific Northwest (*id.* at 664) and the central role of "this important treaty provision" in establishing those rights. *Id.* at 674. The relitigation whether the Suquamish have the right to fish in Skagit Bay and Saratoga Passage thus will have a significant practical impact on the affected tribes.

But beyond that, decision of the question presented would aid significantly in diminishing the burden of the massive and continuing litigation spawned by *United States* v. *Washington*. The Ninth Circuit itself has repeatedly recognized that "'[w]e cannot think of a more comprehensive and complex case than'" *United States* v. *Washington*. App., *infra*, 4a (quoting *United States* v. *Suquamish Indian*

Tribe, 901 F.2d 772, 775 (9th Cir. 1990)). As we have noted, the litigation has involved at least 22 separate sub-proceedings, 18 appeals to the Ninth Circuit, and almost 20,000 docket entries in the district court. Essentially "[a]ll of these supplemental proceedings require the interpretation of Judge Boldt's opinion." *Muckleshoot Indian Tribe* v. *Lummi Indian Nation*, 234 F.3d 1099, 1099 (9th Cir. 2000) (*Muckleshoot II*).

For this reason, the need for much of this litigation would be foreclosed, and any litigation that did proceed would be greatly simplified, if the Ninth Circuit applied the rule recognized everywhere else: that "[t]he best way to determine what the judge thought is the language he used." App., *infra*, 12a (Kleinfeld, J., dissenting). Such an approach would bring greatly increased clarity and repose to pending and future matters involving *United States* v. *Washington*. It would spare the tribes and other affected parties unwarranted expense. And it would conserve the substantial judicial resources that otherwise would be expended reviewing the decades-old record in an attempt to determine whether Judge Boldt really meant what he expressly said. For this reason as well, review of the decision below by this Court is warranted.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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