No.

In the Supreme Court of the United States

UNITED STATES OF AMERICA, PETITIONER

v.

AARON M. FREY, ATTORNEY GENERAL FOR THE STATE OF MAINE, ET AL.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Penobscot Indian Reservation includes only the uplands of the islands in the main stem of the Penobscot River or also includes the surrounding River, where the Penobscot have fished, hunted, and trapped since time immemorial.

PARTIES TO THE PROCEEDING

Petitioner United States of America was a plaintiff and counterclaim defendant in the district court and an appellant/cross-appellee in the court of appeals.

Respondent Penobscot Nation was a plaintiff and counter-claim defendant in the district court and an appellant/cross-appellee in the court of appeals.

Respondents Aaron M. Frey, in his official capacity as Attorney General for the State of Maine; Judy A. Camuso, in her official capacity as Commissioner for the Maine Department of Inland Fisheries and Wildlife; Dan Scott, in his official capacity as Colonel for the Maine Warden Service; and State of Maine were defendants and counterclaim plaintiffs in the district court and appellees/cross-appellants in the court of appeals.

Respondents Town of Howland; True Textiles, Inc.; Guilford-Sangerville Sanitary District; City of Brewer; Town of Millinocket; Kruger Energy (USA) Inc.; Veazie Sewer District; Town of Mattawamkeag; Covanta Maine LLC; Lincoln Sanitary District; Town of East Millinocket; Town of Lincoln; and Verso Paper Corporation were counterclaim plaintiffs and intervenors supporting defendants in the district court and appellees/cross-appellants in the court of appeals.

Respondents Expera Old Town; Town of Bucksport Lincoln Paper and Tissue LLC; and Great Northern Paper Company LLC were counterclaim plaintiffs and intervenors supporting defendants in the district court and appellees in the court of appeals.

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PETITION FOR A WRIT OF CERTIORARI

The Solicitor General, on behalf of the United States, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the First Circuit in this case.

OPINIONS BELOW

The opinion of the en banc court of appeals (Pet. App. 1a-119a) is reported at 3 F.4th 484. The opinion of a panel of the court of appeals (Pet. App. 120a-178a) is reported at 861 F.3d 324. The order of the district court (Pet. App. 179a-264a) is reported at 151 F. Supp. 3d 181.

JURISDICTION

The judgment of the court of appeals was entered on July 8, 2021. The effect of this Court's orders on March 19, 2020, and July 19, 2021, was to extend the deadline for filing a petition for writ of certiorari in this case to

December 5, 2021, 150 days from the date of the lower-court judgment. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

Pertinent statutory provisions are reproduced in the appendix to this petition. Pet. App. 265a-380a.

STATEMENT

A. The Penobscot Nation And Its River

"[F]rom time immemorial[,] the Penobscot Nation has centered its domain * * * on the Penobscot River." Pet. App. 85a (Barron, J., concurring in part and dissenting in part); see S. Rep. No. 957, 96th Cong., 2d Sess. 11 (1980) (Senate Report) (describing the history of the Penobscot Nation); see also H.R. Rep. No. 1353, 96th Cong., 2d Sess. 11 (1980) (House Report) (same). A "riverine" people, House Report 11, members of the Penobscot Nation have long depended on a 60-mile stretch of the River (the "Main Stem"), extending from Indian Island (just above Bangor) north to the confluence of the East and West Branches of the River, for fishing, hunting, and trapping. Pet. App. 85a. But the River represents more than merely a source of sustenance: the Penobscot people draw their very name from the waters, "refer[ring] to themselves as Pa'nawampske'wiak, or 'People of where the river broadens out,'" and trace their account of the Nation's origin to the story of the shaman Gluskábe, who released the waters of the Penobscot River by killing the giant frog Anglebému and thereby rescuing his "grandchildren" from destruction. *Id.* at 85a n.45, 87a (emphasis omitted); see D. Ct. Doc. 105-88, at 31-40 (Dec. 11, 2013) (describing spiritual significance of the River to the Penobscot Nation).

European colonists repeatedly recognized the Penobscot Nation's claim to the area around the Penobscot River. In 1775, for example, the Provincial Congress of Massachusetts "forb[ade] any person * * * from trespassing or making waste[] upon any of the lands and territories, or possessions, beginning at the head of the tide on Penobscot river, extending six miles on each side of said river, now claimed by our brethren, the Indians of the Penobscot tribe." Pet. App. 88a (citation omitted; brackets in original). And a subsequent treaty, negotiated between the Massachusetts militia and the Penobscot Nation in 1777, "promised to the Penobscot the protection of their territory in exchange for their assistance in the Revolutionary War." *Ibid.* (citation omitted).

Following the independence of the United States, however, States with expanding populations sought to obtain territory cheaply from Indian tribes. Congress acted to protect Tribes from overbearing pressure or unfair bargains by providing that no purchase of lands from an Indian nation or tribe would "be of any validity, in law or equity, unless the same be made by a treaty or convention entered into pursuant to the Constitution," thereby requiring federal ratification of any such agreement. Trade and Intercourse Act of 1790 (Indians), ch. 33, § 4, 1 Stat. 138 (25 U.S.C. 177) (Nonintercourse Act). But States did not always adhere to those requirements. See, *e.g.*, *County of Oneida* v. *Oneida Indian Nation*, 470 U.S. 226, 232 (1985) ("Despite Congress' clear policy" and warnings from the Secretary of War, "New York began negotiations to buy the remainder of the Oneidas' land.").

In 1796, Massachusetts—without approval by the United States—purported to purchase from the Penobscot Nation "all the lands on both sides of the River Penobscot," extending six miles out from the River for a stretch of 30 miles upriver from just north of Bangor. Pet. App. 89a (quoting Treaty Between the Penobscot and Massachusetts, Aug. 8, 1796, in 2 *Documents of American Indian Diplomacy* 1094, 1094 (Vine Deloria, Jr. & Raymond J. DeMallie eds., 1999)). The treaty explicitly reserved to the Penobscot Nation "all the Islands in said River, above Old Town, including said Old Town Island, within the limits of the said thirty miles," and promised that Massachusetts would provide the Tribe annually with identified goods, including "thirty six hats," blue cloth for blankets, rifle shot, corn, and rum. *Ibid.* (citation omitted).

Two decades later, Massachusetts purported to purchase additional territory from the Penobscot Nation, again without federal approval. This time, the purchase covered the Penobscot Nation's "lands * * * on both sides of the Penobscot river, and the branches thereof, above the" 30-mile stretch of river addressed in the 1796 agreement. Pet. App. 91a (quoting Treaty Made by the Commonwealth of Massachusetts with the Penobscot Tribe of Indians, June 29, 1818, in *Acts and Resolves Passed by the Twenty-Third Legislature of the State of Maine, A.D., 1843*, at 253, 253-254 (Augusta, Wm. R. Smith & Co. 1843)). The agreement again explicitly reserved to the Penobscot Nation "all the islands in the Penobscot river above Oldtown and including said Oldtown island," as well as four specified townships. *Id.* at 91a-92a (citation omitted). The agreement also provided that "the citizens of [Massachusetts] shall have a right to pass and repass any of the rivers . . . which

runs through any of the lands hereby reserved, for the purpose of transporting their timber and other articles through the same." *Id.* at 92a n.47 (citation and emphasis omitted).

In 1820, after Maine separated from Massachusetts and gained statehood in its own right, Maine agreed to respect "all the reservations" made to the Penobscot Nation in the earlier agreements with Massachusetts, with any "lands, rights, immunities or privileges" held by Massachusetts transferring to Maine. Pet. App. 93a (citation omitted). And 13 years later, Maine purported to purchase—without federal approval—the four townships on the banks of the Penobscot River that the 1818 agreement had reserved to the Penobscot Nation. *Id.* at 94a.

B. The Maine Indian Claims Settlement Act And The Maine Implementing Act

In the 1970s, the Penobscot Nation asserted continuing rights to its aboriginal lands, arguing that Massachusetts and Maine had not complied with the Nonintercourse Act when they had purported to purchase territory from the Penobscot Nation. The United States subsequently filed suit against Maine on behalf of the Penobscot Nation and the Passamaquoddy Tribe (from whom Maine had also purported to obtain territory without federal approval), contending that the area covered by never-ratified agreements—which included a substantial portion of the State—still belonged to the tribes. See *Joint Tribal Council of the Passamaquoddy Tribe* v. *Morton*, 528 F.2d 370, 379-380 (1st Cir. 1975).

Maine eventually agreed to settle the suits through an agreement with the Penobscot Nation, the Passamaquoddy Tribe, and the United States. The settlement was accomplished through Maine's enactment of

agreed-upon legislation known as the Maine Implementing Act (MIA), Me. Rev. Stat. Ann. tit. 30, §§ 6201-6214 (1979), which Congress then ratified in the Maine Indian Claims Settlement Act of 1980 (MICSA), Pub L. No. 96-420, 94 Stat. 1785 (formerly codified at 25 U.S.C. 1721-1735) (collectively, the Settlement Acts).[1]

In MICSA, Congress "deemed" the prior transfers "on behalf of the Passamaquoddy Tribe [and] the Penobscot Nation * * * to have been made in accordance with" the Nonintercourse Act, and "approve[d] and ratif[ied] any such transfer effective as of the date of said transfer," extinguishing "[a]boriginal title" to the transferred land. 25 U.S.C. 1723(a)(1) and (b) (emphasis omitted). Congress also "approved, ratified, and confirmed" the MIA, including its recognition of the Penobscot Nation's Reservation and its apportionment of rights and regulatory responsibilities between the Penobscot Nation and the State. 25 U.S.C. 1725(b)(1). And Congress established a pair of settlement funds that set aside approximately $40 million to be used for the benefit of the Penobscot Nation, with additional funds set aside for the Passamaquoddy Tribe. See 25 U.S.C. 1724.

This case specifically concerns the scope of the Penobscot Indian Reservation recognized in the MIA and ratified in MICSA. See 25 U.S.C. 1722(i) (defining the "Penobscot Indian Reservation" as "those lands as defined in the Maine Implementing Act"). The MIA provides that the "Penobscot Indian Reservation" includes:

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[1] As a result of a 2016 recodification, MICSA is no longer included in the U.S. Code (though it remains in effect). For ease of reference, all further citations to Title 25 of the U.S. Code refer to the 2015 edition.

> the islands in the Penobscot River reserved to the Penobscot Nation by agreement with the States of Massachusetts and Maine consisting solely of Indian Island, also known as Old Town Island, and all islands in that river northward thereof that existed on June 29, 1818, excepting any island transferred to a person or entity other than a member of the Penobscot Nation subsequent to June 29, 1818, and prior to the effective date of this Act.

MIA § 6203(8).

The MIA, as approved by Congress, established a Maine Indian Tribal-State Commission, composed of both tribal and state members, with authority to regulate most fishing within the Penobscot and Passamaquoddy Territories, taking into account the interests of both Indians and non-Indians. MIA § 6207(3)(A)-(C).[2] But within that framework, the MIA guarantees to members of the Penobscot Nation and Passamaquoddy Tribe a right to engage in sustenance fishing within their reservations, notwithstanding the authority that MICSA granted to Maine to regulate other on-reservation activities to a greater extent than States are ordinarily entitled to do in Indian country. See 25 U.S.C. 1725 (section titled "State laws applicable") (emphasis omitted); see also MIA §§ 6204, 6206(1). Specifically, the MIA provides:

> Notwithstanding any rule or regulation promulgated by the commission or any other law of the State, the members of the Passamaquoddy Tribe and the Penobscot Nation may take fish, within the boundaries

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[2] The Penobscot Indian Territory includes the Penobscot Reservation and up to 150,000 acres of land to be acquired by the Secretary of the Interior for the Tribe. MIA § 6205(2).

> of their respective Indian reservations, for their individual sustenance subject to the limitations of subsection 6.

MIA § 6207(4). The MIA also guarantees members of the Penobscot Nation the right to sustenance hunting and trapping within the Penobscot Reservation and the larger Penobscot Indian Territory, and confirms the Nation's sovereign authority to regulate hunting and trapping by members and nonmembers within the reservation. MIA § 6207(1)-(2).

C. Facts And Procedural History

1. In the years following the Settlement Acts, Penobscot game wardens patrolled the Main Stem (as they had done for several years prior to the Settlement Acts), and Penobscot members continued to rely on the River's resources. Pet. App. 208a-218a. The federal government supported the Penobscot Nation in its use of the Main Stem and its exercise of jurisdiction as provided in the Settlement Acts, including by asserting the Nation's rights to the Main Stem in proceedings involving the licensing of hydroelectric projects and regulation of water quality, and by providing financial support for the Nation's law enforcement and wildlife management on the River. *Id.* at 226a-232a, 240a-243a. Maine also acknowledged in specific contexts that the Penobscot Reservation extends into the River, including the right of Penobscot members to use gill nets for catching salmon in the River irrespective of state law, and the Nation's right to regulate eel trapping in the River by nonmembers. *Id.* at 210a-218a. In 1994 and 1995, for example, Maine issued permits for commercial eel potting that stated: "The portions of the Penobscot River and submerged lands surrounding the islands in

the river are part of the Penobscot Indian Reservation and eel pots should not be placed on these lands without permission from the Penobscot Nation." *Id.* at 215a (citation omitted); see *id.* at 17a-18a (quoting statement by Maine in an earlier proceeding that "the Penobscot Reservation includes those islands * * * that have not otherwise been transferred, as well as the usual accompanying riparian rights").

In 2012, however, Maine repudiated its decades-old interpretation of the Settlement Acts. The State's Attorney General issued an opinion asserting, for the first time, that the Penobscot Reservation is limited to the island uplands and that the State has "exclusive regulatory jurisdiction over activities taking place on the River." Pet. App. 5a (citation omitted).

2. The Penobscot Nation responded by filing this suit for a declaratory judgment that it could exercise its on-reservation rights under the Settlement Acts within the Main Stem from bank to bank, including its sustenance fishing rights and regulatory authority over hunting and trapping. See D. Ct. Doc. 8 (Feb. 5, 2013). Maine counterclaimed, seeking a declaratory judgment that the waters and submerged lands of the River lie outside the Reservation for all purposes. D. Ct. Doc. 59 (Feb. 12, 2014). The United States intervened as a plaintiff, D. Ct. Doc. 58 (Feb. 4, 2014), and several municipal entities and paper companies holding permits to discharge pollutants into the Main Stem (State Intervenors) intervened as defendants, D. Ct. Doc. 25 (June 26, 2013).

In an order on cross-motions for summary judgment, the district court held that the use of the word "islands" in the definition of "Penobscot Indian Reservation" unambiguously limits the Reservation to the uplands of

the islands, excluding the surrounding waters. Pet. App. 251a-253a. The court further held, however, that the reference to the Nation's "Indian reservation[]" in MIA § 6207(4), which guarantees tribal members an on-reservation sustenance fishing right, is ambiguous and is properly interpreted to include the Main Stem bank to bank. That conclusion was based on undisputed evidence that the River is the only place where Penobscot members can exercise this right because none of the islands contain bodies of water in which it is possible to fish. Pet. App. 254a-263a.

3. Both sides appealed, and a divided panel of the court of appeals affirmed in part and reversed in part. See Pet. App. 120a-178a.

The majority (Judge Lynch, joined by Judge Selya) affirmed the district court's judgment that the statutory definition of "Penobscot Indian Reservation" restricts the Reservation to the island uplands. Pet. App. 125a-139a. The majority relied primarily on dictionary definitions of the word "island" in MIA § 6203(8), see Pet. App. 127a-129a, as well as the fact that Congress had defined the Penobscot Indian Reservation as "those *lands* as defined in the Maine implementing Act," 25 U.S.C. 1722(i) (emphasis added), see Pet. App. 131a-132a. In the majority's view, those words make it "clear and unambiguous" that the Reservation does not include the surrounding waters, notwithstanding other textual and structural indicators of meaning—including the provision guaranteeing the Penobscot Nation sustenance fishing rights within its "reservation[]," MIA § 6207(4). Pet. App. 129a; see *id.* at 132a-135a. The majority therefore treated as irrelevant arguments about the Penobscot Nation's "understanding of the Agree-

ment" in 1980 when it accepted that agreement as settlement of its claims; "arguments from history" about the 1796 and 1818 treaties with Massachusetts that formed the backdrop against which the Settlement Acts were adopted; and arguments about the application of the "the Indian canon of construction resolving ambiguities in favor of Indian tribes." *Id.* at 136a, 126a n.3.

The majority also vacated the district court's judgment that the Nation's sustenance fishing right extends bank to bank, concluding that the Nation did not have a ripe claim or standing to pursue that declaratory relief because Maine had indicated it had no present plans to interfere with tribal members' sustenance fishing in the Main Stem. Pet. App. 139a-144a.

Judge Torruella dissented "[r]espectfully, but most emphatically." Pet. App. 178a; see *id.* at 145a-178a. In his view, three considerations made it at least ambiguous whether the Reservation includes the portion of the Main Stem in which the Penobscot Nation's islands are located: (1) precedent of this Court holding that a grant of "islands" to Indians included the surrounding submerged lands, *Alaska Pacific Fisheries* v. *United States*, 248 U.S. 78 (1918); (2) Congress's intent that the Penobscot Nation would retain its aboriginal lands and resources not ceded in the 1796 and 1818 agreements; and (3) the "key" on-reservation sustenance fishing right contained in MIA § 6207(4). Pet. App. 145a-146a; see 25 U.S.C. 1723(a)(1) (extinguishing aboriginal title only as to lands or natural resources transferred through earlier agreements); Senate Report 18 (describing intent that the Penobscot Nation and Passamaquoddy Tribe "will retain as reservations those lands and natural resources which were reserved to them in their treaties with Massachusetts"); House Report 18

(similar). Given that ambiguity, Judge Torruella would have applied the Indian canons of construction and resolved the case in favor of the Penobscot Nation. Pet. App. 161a-162a, 166a.

4. The court of appeals granted rehearing en banc. Six members of the court participated in the en banc oral argument, but Judge Torruella passed away shortly thereafter. See Pet. App. 2a n.*. The court then issued a divided en banc opinion, with the three-judge majority affirming the district court's judgment that the Penobscot Indian Reservation is limited to the island uplands and vacating the district court's declaratory judgment regarding sustenance fishing rights for lack of jurisdiction. See *id.* at 1a-48a; see also 48a-177a (Barron, J., joined by Thompson, J., concurring in part and dissenting in part).

a. Judge Lynch, writing again for the majority, concluded that MIA § 6203(8) and 25 U.S.C. 1722(i) unambiguously define "Penobscot Indian Reservation" to exclude the River. Like the panel majority, the en banc majority relied primarily on dictionary definitions of "island" and "land" that contrast those terms with water. Pet. App. 9a-11a. The majority also concluded that the phrase "in the Penobscot River," MIA § 6203(8), describing "where the islands are located," "reinforced" the inference that the water itself was not included. Pet. App. 11a; see *id.* at 37a-39a (relying on "other provisions of the Settlement Acts [that] explicitly address water, water rights, and submerged lands using different and more specific language"). And the majority drew similar support from use of the phrase "consisting solely of Indian Island, also known as Old Town Island, and all islands in that river northward thereof that ex-

isted on June 29, 1818," MIA § 6203(8). In the majority's view, the word "solely" was used to indicate that only islands, not the surrounding water, was included. See Pet. App. 11a-12a. And the majority further reasoned that the phrase "that existed on June 29, 1818" would be superfluous if the Reservation included the entire Main Stem of the River. *Id.* at 21-22a.

Because the majority concluded that the text was unambiguous, it stated that it did not need to "look to legislative history or Congressional intent." Pet. App. 9a. The majority likewise rejected any consideration of the state common-law meaning of "island," *id.* at 12a & n.7, and concluded that this Court's decision in *Alaska Pacific Fisheries* was distinguishable because it concerned a phrase ("body of lands," 248 U.S. at 89) that the majority viewed as more "nebulous" than the words used to define the reservation at issue here. Pet. App. 15a.

Although the majority held that the statutory definition of "Penobscot Indian Reservation" resolved the issue, it stated that it would reach the same result based on "the legislative history, context, and purpose of the Settlement Acts," which it understood to "show that the drafters never intended the Reservation to include the River itself." Pet. App. 24a. It observed that Massachusetts and Maine had exercised regulatory authority over fishing in the River in the 19th century and that several dams had been built in the River in the 19th century or early 20th century without any grant from the Nation, and it stated that there was no indication that "the drafters" of the Settlement Acts "were motivated by anything other than their stated purpose of 'remov[ing] the cloud on the titles to land in the State of Maine resulting from Indian claims.'" *Id.* at 30a (citation omitted; brackets in original); see *id.* at 24a-30a.

Having concluded that the Settlement Acts unambiguously adopted an uplands-only definition of the Penobscot Indian Reservation, the majority held inapplicable the canon that "[s]tatutes are to be construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit." *County of Yakima* v. *Confederated Tribes & Bands of the Yakima Indian Nation*, 502 U.S. 251, 269 (1992). See Pet. App. 34a. The majority also declined to apply the canon that "Indian treaties must be interpreted in light of the parties' intentions, with any ambiguities resolved in favor of the Indians," *Herrera* v. *Wyoming*, 139 S. Ct. 1686, 1699 (2019) (citation and internal quotation marks omitted), because "the Settlement Acts are not treaties." Pet. App. 35a. And the majority held inapplicable the canon that Congress's intent to "diminish [the] boundaries" of a reservation "must be clear," *Nebraska* v. *Parker*, 577 U.S. 481, 488-489 (2016) (internal quotation marks omitted), because "[t]his is not a traditional diminishment case" and because it viewed Congress's intent as sufficiently clear. Pet. App. 36a.

Finally, the majority addressed the Settlement Acts' "grant of sustenance fishing rights to the Passamaquoddy Tribe and the [Penobscot] Nation 'within the boundaries of their . . . Indian reservations.'" Pet. App. 39a (quoting MIA § 6207(4)). Going beyond the panel decision, the majority acknowledged "that § 6207(4) grants the Nation sustenance fishing rights in the Main Stem," concluding that there was no clear contrary indication in the text of the Settlement Acts and that the legislative history "confirms that the drafters understood that the right to sustenance fish could be exercised in the Main Stem." *Id.* at 42a-43a. But the majority did not regard Section 6207(4)'s use of the

words "Indian reservation[]" to refer to the Main Stem as conflicting with or detracting from the clarity of its understanding of the phrase "Penobscot Indian Reservation" as referring solely to uplands. *Id.* at 44a. Instead, the majority held that the reference to the Penobscot Nation's "Indian reservation[]" in Section 6207(4) does not "have the same meaning as 'Penobscot Indian Reservation'" in Section 6203(8). *Ibid.* And while the majority thus acknowledged the Penobscot Nation's fishing rights in the Main Stem, it concluded that no declaratory judgment to that effect was warranted because "no imminent threat" to the Nation's exercise of that right had yet materialized. *Id.* at 46a; see *id.* at 44a-48a.

b. Judge Barron, joined by Judge Thompson, concurred in part and dissented in part. Pet. App. 48a-119a. He agreed with the majority's conclusion that the Settlement Acts give the Nation's members the right to fish in the Main Stem for their own sustenance, but dissented from "the majority's further and more consequential conclusion that the Acts give the Nation no further rights in those waters." *Id.* at 49a.

Observing that the Settlement Acts had been adopted as part of the negotiated remedy for prior violations by Massachusetts and Maine of a statute designed "to protect tribes from states swindling them," Judge Barron wrote that it was "tragically ironic * * * that the majority now construes the Acts to leave the Nation with even fewer sovereign rights in the river that has been its lifeblood than it had reserved for itself in its own unprotected dealings with those two states so early on in our history." Pet. App. 50a. In Judge Barron's view, that result reflected an unduly narrow understanding of the Settlement Acts.

Judge Barron identified numerous textual, structural, contextual, and historical considerations that made it at least ambiguous whether the Settlement Acts' definition of the Penobscot Indian Reservation includes only uplands. He started where the majority had finished, stating that the majority's view that "Penobscot Indian Reservation" had only one possible (and narrow) meaning failed adequately to account for the description of the "'boundaries' of the 'Penobscot Nation . . . Indian reservation[]'" in Section 6207(4), which "even the majority agrees include the portions of the Penobscot River that are in dispute." Pet. App. 49a; see *id.* at 69a-76a (discussing MIA § 6207(4) in additional detail). He also emphasized the area-based meaning that this Court had attributed to a phrase referencing a group of islands in *Alaska Pacific Fisheries*, *supra*, concluding that it was at least ambiguous whether a similar understanding of Section 6203(8) is appropriate here. Pet. App. 57a-61a. And Judge Barron concluded that the reference in Section 6203(8) to rights reserved to the Nation by prior "agreement[s]" with Massachusetts and Maine provided a textual imperative to consider the treaty backdrop against which the Settlement Acts had been adopted, rather than confining the interpretive effort to dictionary definitions of the isolated words. *Id.* at 56a-57a.

Judge Barron therefore undertook an extensive review of that history. See Pet. App. 80a-97a. In doing so, he emphasized that the relevant agreements were grants of rights *from* the Penobscot Nation, rather than grants of rights *to* the Nation, such that the Nation retained all unceded rights. *Id.* at 82a. And none of those agreements, in Judge Barron's view, "indicate that the

Nation was relinquishing rather than reserving its historic rights to use and occupancy of the river itself or its longstanding sovereign rights relating to hunting and fishing therein." *Id.* at 90a (discussing 1796 agreement); see *id.* at 91a-92 (similar, with respect to 1818 agreement). Moreover, he noted, at various points in the century-and-a-half following the 1818 agreement, the Nation asserted control over the River, including by granting leases for dam and mill owners to "use * * * parts of the river itself—including 'coves and eddies,' river ledges, and other landmarks within the channel of the river." *Id.* at 95a. In Judge Barron's view, "these circumstances support—even if they do not compel—an understanding of the phrase 'islands in the Penobscot River reserved to the Penobscot Nation by agreement' * * * that is just as inclusive of the waters in that area as is the 'reservation[]' to which the majority agrees that § 6207(4) * * * refers." *Id.* at 96a (brackets in original); see 106a-113a (reviewing post-enactment developments that reflected an understanding that the Penobscot Indian Reservation includes portions of the Penobscot River).

Having concluded that the Settlement Acts do not unambiguously exclude the Main Stem from the Reservation, Judge Barron explained that the Indian canon of construction applies and "suffices to resolve this case in the Nation's favor." Pet. App. 114a; see *id.* at 114a-118a. In his view, "[b]efore we conclude that a statute purporting to honor what this riverine Nation had 'reserved * * * by agreement' in fact deprives it of the sovereign rights that it had long enjoyed in the river that defines it, we must have a clearer indication than is present here that the statute was intended to have such

a dramatic and potentially devastating consequence." *Id.* at 118a-119a.

REASONS FOR GRANTING THE PETITION

In interpreting the Settlement Acts to limit the Penobscot Indian Reservation to the dry uplands of the islands in the Penobscot River, the court of appeals dramatically departed from this Court's precedents applying the Indian canons of construction. For well over a century, this Court has recognized that "'[s]tatutes are to be construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit.'" *County of Yakima* v. *Confederated Tribes & Bands of the Yakima Indian Nation*, 502 U.S. 251, 269 (1992) (citation omitted); see, *e.g.*, *Choate* v. *Trapp*, 224 U.S. 665, 675 (1912). The court of appeals avoided that rule only by insisting that its preferred understanding of the Settlement Acts was *unambiguously* correct—even though it requires reading the phrase "Penobscot Nation * * * Indian reservation[]" in MIA § 6207(4) to mean something different from "Penobscot Indian Reservation" in MIA § 6203(8).

This Court's review is warranted to correct that error. Applying such a strikingly parsimonious understanding of ambiguity in this context would effectively deprive the Indian canons of nearly all their substantive force with respect to the Settlement Acts that Congress ratified to resolve past violations of the rights of the Penobscot Nation and other Indian tribes, and would undermine those canons more broadly. And this case well illustrates the severe consequences that de facto abandonment of the Indian canons could produce: here, the court of appeals' decision has essentially removed the entire waters of the River from the Penobscot Nation's

foundational reservation, depriving the Penobscot Nation of all sovereign rights over the River that has been its lifeblood since before European settlers first arrived, without any indication that the Nation ever knowingly surrendered those rights.

A. The Decision Below Is Wrong

In construing statutes, courts focus on the text, "interpret[ing] the relevant words not in a vacuum, but with reference to the statutory context, 'structure, history, and purpose.'" *Abramski* v. *United States*, 573 U.S. 169, 179 (2014) (quoting *Maracich* v. *Spears*, 570 U.S. 48, 76 (2013)). And where the statute at issue governs the rights of Indians or Indian tribes, "a principle deeply rooted in this Court's Indian jurisprudence" requires that the statute be "construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit." *County of Yakima*, 502 U.S. at 269 (citation omitted); see *Alaska Pacific Fisheries* v. *United States*, 248 U.S. 78, 89 (1918) ("doubtful expressions" must be "resolved in favor of the Indians"). Applying those settled principles here, the Settlement Acts plainly *can* be, and therefore *should* be, understood to recognize that the Penobscot Indian Reservation includes the Main Stem of the Penobscot River.

1. The Settlement Acts are properly construed to include the River within the Penobscot Indian Reservation

MIA § 6203(8) initially provides that the "Penobscot Indian Reservation" includes "the islands in the Penobscot River reserved to the Penobscot Nation by agreement with the States of Massachusetts and Maine." It then clarifies the boundaries by specifying

that the included islands "consist[] solely of Indian Island, also known as Old Town Island, and all islands in that river northward thereof that existed on June 29, 1818, excepting any island transferred to a person or entity other than a member of the Penobscot Nation subsequent to June 29, 1818." *Ibid.* Interpreting that provision requires attention not just to the individual words used, but also the entire operative text and the context in which that operative text was adopted.

As Judge Barron explained, the statutory text describes "a specific group of islands" in which "the Nation may exercise certain sovereign rights." Pet. App. 56a. It thus resembles the legislation defining the Metlakahtla Indian Reservation that this Court interpreted in *Alaska Pacific Fisheries*, *supra*. There, Congress had "set apart as a reservation" "the body of lands known as Annette Islands, situated * * * on the north side of Dixon's entrance." 248 U.S. at 86 (quoting Act of Mar. 3, 1891, ch. 561, § 15, 26 Stat. 1101). A corporation desiring to maintain fish-traps in the waters near the islands urged that "[t]he water surrounding an island forms no part of it," and therefore that the "reservation * * * embraces only the upland of the islands." *Id.* at 79, 87. This Court rejected that narrow interpretation. While not disputing the linguistic plausibility of the corporation's argument, the Court emphasized the "importan[ce]" of "the circumstances in which the reservation was created," including the Metlakahtlan Indians' status as "fishermen and hunters" who drew their "subsistence" from the "fishery adjacent to the shore" and who "naturally looked on the fishing grounds as part of the islands and proceeded on that theory in soliciting the reservation." *Id.* at 87-89. Against that backdrop, the Court thought it reasonable to conclude

that "the geographical name was used, as is sometimes done, in a sense embracing the intervening and surrounding waters as well as the upland—in other words, as descriptive of the area comprising the islands." *Id.* at 89.

This Court has repeatedly invoked *Alaska Pacific Fisheries* in concluding that other federal reservations were similarly intended to include submerged lands. See *Idaho v. United States*, 533 U.S. 262, 273-277 (2001) (holding that the United States had reserved during the territorial period the lakebed of Coeur d'Alene Lake for the Coeur d'Alene Tribe); *United States* v. *Alaska*, 521 U.S. 1, 39-40 (1997) (holding that federal reservation of two barrier islands for the National Petroleum Reserve within Alaska's three-mile coastal zone included the submerged lands shoreward of the islands); and *Hynes* v. *Grimes Packing Co.*, 337 U.S. 86, 114 (1949) (holding that the Karluk Reservation includes submerged lands).

A similar understanding of the Settlement Acts is likewise sound here. Rather than referring just to individual islands or establishing the boundaries of the reservation through specific coordinates, the Settlement Acts referred to a group of islands identified by the "agreement[s]" under which the Penobscot Nation had reserved territory for its own subsistence well over a century earlier. MIA § 6203(8); see 25 U.S.C. 1722(i). In those agreements, the Penobscot Nation had purported to grant to Massachusetts (and eventually Maine) "the lands on both sides of the River Penobscot." Pet. App. 89a (citation omitted) (1796 agreement); see *id.* at 91a (1818 agreement purporting to grant "lands * * * on both sides of the Penobscot river"). Nothing in those agreements purported to grant to Massachusetts or Maine the Penobscot Nation's aboriginal interests in

the River itself, and the Penobscot Nation had—like the Metlakahtlan Indians—continued to draw "subsistence" from the "fishery adjacent to" its islands, just as it had since time immemorial. *Alaska Pacific Fisheries*, 248 U.S. at 88; see p. 2, *supra*. In that context, it is natural to understand the reference to islands reserved to the Penobscot Nation by past agreements "in a sense embracing the intervening and surrounding waters as well as the upland—in other words, as descriptive of the area comprising the islands." *Alaska Pacific Fisheries*, 248 U.S. at 89. Here, that area comprising the islands is the 60-mile stretch of the River's Main Stem reserved to the Penobscot Nation in the 1796 and 1818 agreements. See Pet. App. 202a n.19 (describing testimony during 1980 legislative hearings from tribal member Lorraine Nelson, who explained that her son "fish[ed] her islands," meaning fished in the Main Stem) (brackets in original).

Indeed, if anything, the Settlement Acts speak with greater clarity to the intended inclusion of the surrounding waters in the Reservation than did the legislation at issue in *Alaska Pacific Fisheries*. Although the Settlement Acts give Maine an atypical degree of regulatory authority over the Reservation itself, see pp. 6-7, *supra*, they guarantee to the Penobscot Nation (and the Passamaquoddy Tribe) the right to "take fish, within the boundaries of their respective Indian reservations, for their individual sustenance." MIA § 6207(4). Congress's (and the Nation's) understanding that fishing would be permitted within the boundaries of the reservation was thus not just implicit, as in *Alaska Pacific Fisheries*, but explicitly preserved. And as even the en banc majority recognized, that guaranteed fishing right would have been illusory if it could be exercised only on

the island uplands in the Main Stem, which themselves contain no fishable bodies of water. See Pet. App. 43a (acknowledging that "there are no places to fish on the Reservation's islands" and that "§ 6207(4) means that the Nation has the right to engage in sustenance fishing in the Main Stem").

Because "[s]tatutes should be interpreted 'as a symmetrical and coherent regulatory scheme,'" *Mellouli* v. *Lynch*, 575 U.S. 798, 809 (2015) (citation omitted), MIA § 6203(8) should be understood in light of the sustenance fishing right conveyed nearby in MIA § 6207(4). Section 6207(4) guarantees members of the "Penobscot Nation" a right to fish within "their * * * reservation[]," *ibid.*, so an interpretation of the "Penobscot Indian Reservation," MIA § 6203(8), that contains nowhere to fish is, at the very least, "doubtful." *Alaska Pacific Fisheries*, 248 U.S. at 89.

Under the canons that effectuate the "full obligation of this nation to protect the interests of" Indian tribes whose rights were too often violated in the past, *Choctaw Nation of Indians* v. *United States*, 318 U.S. 423, 432 (1943), that unavoidable doubt should have been resolved in favor of the Penobscot Nation. To do otherwise, as Judge Barron recognized (Pet. App. 50a), produces a "tragic[] iron[y]": the very legislation that was supposed to *remedy* the past violations of the Penobscot Nation's legal rights is instead given an unanticipated meaning that strips the Nation of a substantial portion of the sovereign territory it had previously prioritized and retained in the 1796 and 1818 agreements. There is no reason to believe that the Nation, in 1980, would have agreed to settle its legal claims on such unfavorable terms—by not only accepting ratification of the transfers made in those agreements, but also by giving up

lands that it *reserved* in those agreements. And the Indian canons preclude imposing those terms on the Nation today. *Cf. Herrera* v. *Wyoming*, 139 S. Ct. 1686, 1699 (2019) ("Indian treaties must be interpreted in light of the parties' intentions, with any ambiguities resolved in favor of the Indians, and the words of a treaty must be construed in the sense in which they would naturally be understood by the Indians.") (citations and internal quotation marks omitted).

2. The en banc majority's view that the Settlement Acts* unambiguously *require an uplands-only interpretation is without merit

The en banc majority concluded that the Indian canons are inapplicable based on its view that "[t]he plain text of the definition of Reservation in MIA and MICSA plainly and unambiguously includes certain islands in the Main Stem but not the Main Stem itself." Pet. App. 3a. And the majority further indicated that any arguable ambiguity in the Settlement Acts should be resolved *against* the Penobscot Nation based on "the context, history, and clear legislative intent." *Ibid.* Those conclusions were wrong in multiple respects.

a. The en banc majority placed primary reliance on dictionaries that define an "island" as a "piece of land completely surrounded by water," not including the water itself. Pet. App. 10a (quoting Oxford English Dictionary Online); see *id.* at 8a-11a. But as discussed above, a description of a *group* of islands—the relevant description here—is sometimes "used * * * in a sense embracing the intervening and surrounding waters as well as the upland—in other words, as descriptive of the area comprising the islands." *Alaska Pacific Fisheries*, 248 U.S. at 89. Moreover, the majority's dictionary definitions describe the *topographical* concept of an island

but do not purport to specify the legal boundary of a parcel containing islands for purposes of the right to use resources or exercise sovereign authority. The shoreline of an island necessarily varies over time, particularly in a riparian environment like the Penobscot River where flow levels change from day to day, season to season, and year to year. See Pet. App. 163a n.27 (Torruella, J., dissenting). And significantly, even the common law of Massachusetts and Maine provides that an island parcel in a nontidal reach of a river like the Main Stem presumptively includes a portion of the riverbed extending to the centerline of the surrounding channels. See, *e.g.*, *Warren* v. *Westbrook Mfg. Co.*, 29 A. 927, 927-928 (Me. 1893). The dictionary definition of "island," while relevant, is therefore not dispositive of the meaning of the operative language in the Settlement Acts.

The majority also relied (Pet. App. 11a) on Congress's use of the word "lands" in MICSA's definitional provision. See 25 U.S.C. 1722(i) ("those lands as defined in" MIA). In the majority's view, Congress would have used the phrase "lands or other natural resources" or "lands and waters" if it intended the reservation to include the river. Pet. App. 11a & n.6; see *id.* at 37a-39a. But submerged land is a form of land. See, *e.g.*, Submerged Lands Act, 43 U.S.C. 1301(a) (addressing "lands beneath navigable waters"). Indeed, this Court has previously recognized that congressional authorization of a reservation of "public lands" for Indians may include submerged lands. *Hynes*, 337 U.S. at 115-116. Subsection 1722(i) of MICSA is appropriately understood in that manner as well.

The majority concluded that the words "solely" and "in the Penobscot River," MIA § 6203(8), "reinforced" its interpretation. Pet. App. 11a. But the Settlement

Acts were adopted to resolve a land dispute in which the United States, on behalf of the Penobscot Nation, had asserted the Nation's entitlement to substantial territory in the State, including on both sides of the Penobscot River, because of the legal invalidity of the 1796 and 1818 agreements. See p. 5, *supra*. In that context, it makes sense that the drafters would be careful to clarify that, going forward, the Reservation would not extend beyond the River, and—as Judge Barron explained (Pet. App. 65a-66a)—to be specific about which group of islands were covered. Those words thus cannot resolve whether the reference to the group of islands in Section 6203(8) was used in an uplands-only sense or instead in an area-based sense.[3]

b. The en banc majority stated that even if it had concluded that the statutory text was ambiguous, it still would have rejected the Penobscot Nation's claim because it believed the history and context demonstrated "that the drafters never intended the Reservation to include the River itself." Pet. App. 24a. A fair consideration of the pre-enactment historical record and legislative

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[3] The reference to islands "that existed on June 29, 1818," MIA § 6203(8), see Pet. App. 22a, likewise provided clarification about which islands were included in the relevant group, as Judge Barron explained, see *id.* at 62a-63a. MIA's legislative history reveals that Maine was concerned about islands created after 1818 when dam construction caused some areas along the river to become islands in the newly created Chesuncook Lake. See U.S. Panel Principal C.A. Br. 29 (Feb. 16, 2017). And while the majority saw limited additional support for its uplands-only interpretation in a handful of other provisions of the Settlement Acts, see Pet. App. 37a-39a, those provisions may reasonably be read as consistent with the interpretation that the Penobscot Reservation includes submerged lands and riverine resources, as Judge Barron, *id.* at 76a-79a, and Judge Torruella, *id.* at 165a, well explained.

history, however, demonstrates—and at the very least can reasonably be understood to support the conclusion—that the Settlement Acts were intended to preserve an existing reservation that included not just uplands but waters as well.

The majority observed, for example, that Massachusetts and Maine had regulated the passage of fish in the Penobscot River during the 19th century. See Pet. App. 24a-25a. But that history is consistent with the Penobscot Nation's claim, because the States' regulatory authority stemmed from the presence of the 30-mile tidal reach downstream of the nontidal reach occupied and used by the Penobscot, and the passage of migratory fish through both the tidal and nontidal reaches of the River. Indeed, as the majority acknowledged (*ibid.*), "Massachusetts regulated the River before its 1818 treaty with the Nation," indicating that the regulatory authority did not derive from any sovereign authority that Massachusetts (or later Maine) purported to have obtained from the Nation.

The majority also stated that Massachusetts and Maine had conveyed parcels of land "along the Main Stem" to municipalities and private parties, and that those parcels had "includ[ed] adjacent submerged lands." Pet. App. 25a. In doing so, however, the majority simply recited Maine's allegations about the original deeds, ignoring the subsequent demonstration that those deeds were fairly interpreted under Massachusetts and Maine common law to bound the parcels at the riverbank. See U.S. C.A. Panel Reply Br. 20-23 (Feb. 16, 2017). Similarly, the majority observed that several dams had been constructed "in and adjacent to the Main Stem beginning in the 19th and 20th centuries" without objection or explicit permission from the Nation, Pet.

App. 25a, but ignored evidence that the Nation had signed leases for *other* uses in the River. See *id.* at 95a (Barron, J., concurring in part and dissenting at part). This "somewhat mixed picture of the understandings that prevailed following the treaties," *ibid.*, hardly allows for only one conclusion.

The majority's account of the legislative history preceding adoption of the Settlement Acts (Pet. App. 26a-31a & n.17) is likewise incomplete and unpersuasive. In the majority's view, the drafters were not "motivated by anything other than their stated purpose of 'remov[ing] the cloud on the titles to land in the State of Maine resulting from Indian claims.'" *Id.* at 29a-30a (quoting 25 U.S.C. 1721(b)(1) (brackets in original)). But the Settlement Acts were not intended just to benefit Maine, without regard to the interests of the Penobscot Nation. They were part of the carefully negotiated resolution of the Nation's legal claims (backed by the United States), under which Congress ratified prior transfer agreements concerning "lands on both sides of the River Penobscot," *id.* at 89a (quoting 1796 agreement), while also "clarify[ing] the status of other land and natural resources in the State of Maine," 25 U.S.C. 1721(b)(2) (reciting congressional purposes). The majority's one-sided account of legislative purposes ignored the Nation's valid and important interests, but a full review of the record shows that the drafters of the Settlement Acts did not. See Pet. App. 97a-106a (Barron, J., concurring in part and dissenting in part).

Indeed, as Judge Barron observed (Pet. App. 100a), the "most conspicuous[]" aspect of the legislative history is that it contains no indication whatsoever that the drafters of the Settlement Acts intended members of the Penobscot Nation to exercise their guaranteed

subsistence fishing right in a "reservation[]," MIA § 6207(4), different from "Penobscot Indian Reservation" defined in MIA § 6203(8). Given the recognition that fishing was an "area[] of particular cultural importance," Pet. App. 101a (quoting statement at 1980 legislative hearing), there presumably would have been *some* explanation if the drafters intended the right to be exercised in a "reservation" other than the Penobscot Indian Reservation. The fact that no such explanation exists strongly suggests that the drafters—and the affected parties, including the Penobscot Nation—understood at the time that the Penobscot Indian Reservation would include the stretch of the Penobscot River in which tribal members had fished from time immemorial.

* * * * *

Taken as a whole, the text, context, and history of the Settlement Acts support an interpretation of Section 6203(8) that includes not just the uplands of the islands but also the surrounding waters. Indeed, prior to this litigation, the State itself had at times acknowledged that "[t]he portions of the Penobscot River and submerged lands surrounding the islands in the river are part of the Penobscot Indian Reservation." Pet. App. 215a (citation omitted). In holding that the record before it *unambiguously* compelled a contrary reading —and thus precluded resort to the Indian canons—the majority badly erred.

B. The Question Presented Warrants This Court's Review

This Court's review is warranted to correct that error. If allowed to stand, the decision below will dramatically diminish the Penobscot Nation's foundational Reservation, strip the Nation of all sovereign authority

over a river that lies at the heart of its historical livelihood and cultural identity, and leave it even worse-off than it was under the exploitative 1796 and 1818 agreements that the Settlement Acts were adopted in part to redress. Cf. *McGirt* v. *Oklahoma*, 140 S. Ct. 2452, 2476 (2020) ("[T]he State's argument inescapably boils down to the untenable suggestion that, when the federal government agreed to offer more protection for tribal lands, it really provided less.").

1. The United States has significant interests in the appropriate construction of the Settlement Acts in this case. The United States has long pursued "a firm federal policy of promoting tribal self-sufficiency" and "encouraging tribal independence." *White Mountain Apache Tribe* v. *Bracker*, 448 U.S. 136, 143-144 (1980). In doing so, the United States has recognized the "significant geographic component to tribal sovereignty." *Id.* at 151. And the Court has recognized as well as the importance of protecting Indian tribes from "encroach[ment]" by the States "on the tribal boundaries or legal rights Congress provided." *McGirt*, 140 S. Ct. at 2462; see *ibid.* (stating that allowing such encroachment would "nullify the promises made in the name of the United States").

Those federal policies are directly and substantially implicated here. For decades, the United States has supported the Penobscot Nation's efforts to enjoy full recognition of its sovereign status and confirmation of its rights with respect to the territory and resources within its Reservation that it retained in the 1796 and 1818 agreements and that were maintained for the Nation in 1980. And those interests in sovereignty and self-sufficiency powerfully align with respect to the Nation's authority to regulate hunting, trapping and other

taking of wildlife within its reservation—including in the River—and to patrol the river to enforce those regulations.

Congress recognized as much in the enactment of MICSA and ratification of MIA. Together, the Settlement Acts gave the State of Maine more expansive regulatory authority on the Penobscot Indian Reservation than would ordinarily exist under principles of federal law typically applicable to other reservations. See pp. 6-7, supra. But Congress specifically reserved to the Penobscot Nation "exclusive authority * * * to promulgate and enact ordinances regulating * * * [h]unting, trapping or other taking of wildlife" by both members and nonmembers, recognizing that "such ordinances may include special provisions for the sustenance of the [Tribe's] individual members." MIA § 6207(1); see 25 U.S.C. 1725(b) (ratifying MIA's jurisdictional provisions).

Reflecting the importance of such authority, the federal government has provided funding for Penobscot game wardens to patrol "Reservation lands and waterways"—including the Penobscot River—for decades. Pet. App. 107a-108a; see MIA § 6210(1). The decision below, however, would force the halt of those federally supported patrols on the River. And more broadly, it would also diminish the jurisdiction the Penobscot Nation Tribal Court has long exercised over tribal members who engaged in illegal activities on the waters. See Pet. App. 235a-239a; see also MIA § 6209-B(1)(A) and (B) (recognizing tribal court's exclusive jurisdiction over certain criminal offenses that are committed within the Reservation by members of any federally recognized tribe and that do not involve non-Indian victims); MIA § 6209-B(1)(C) (recognizing tribal

court's exclusive jurisdiction over certain civil actions arising within the Reservation that are filed against a member of the Penobscot Nation or Passamaquoddy Tribe).

The court of appeals' decision will likely disrupt other regulatory bodies as well. The MIA, as ratified by Congress, established the Maine Indian Tribal-State Commission, which has authority to regulate most fishing within the Penobscot and Passamaquoddy Territories, taking into account Indian and non-Indian interests. But because the Commission's regulatory authority is tied in relevant part here to the boundaries of the Penobscot Reservation, see MIA § 6207(3), the decision below appears to substantially curtail its jurisdiction as well—potentially leaving the Penobscot Nation with no voice in the regulation of the fishery guaranteed by Section 6207(4). And the en banc majority also cast substantial doubt on the authority of the Passamaquoddy Tribe—which had not participated in the proceedings below—by opining that the drafters of the Settlement Acts "clearly intended the Passamaquoddy Indian Reservation to cover less than what was reserved to the Passamaquoddy Tribe in its agreement with Massachusetts." Pet. App. 24a. Those potential interferences with the sovereign authority of other tribal or tribal-affiliated bodies makes the need for this Court's review even greater.

2. The fact that the decision below does not present a direct circuit conflict provides no reason for this Court to decline review. There is no prospect of a division among the courts of appeals here because the Settlement Acts apply only to petitioner Penobscot Nation and other tribes located in Maine. And this Court has many times reviewed other court of appeals decisions

involving important statutes or treaties particular to one or a small subset of Indian tribes. See, *e.g.*, *Ysleta del Sur Pueblo* v. *Texas*, cert. granted, No. 20-493 (Oct. 18, 2021); *McGirt*, 140 S. Ct. 2452; *Herrera*, 139 S. Ct. 1686; *Washington State Dep't of Licensing* v. *Cougar Den, Inc.*, 139 S. Ct. 1000 (2019). The same course is appropriate here.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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