

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

TABLE MOUNTAIN RANCHERIA,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF THE
INTERIOR, et al.,

Defendants,

and

BIG SANDY BAND OF WESTERN MONO
INDIANS,

Intervenor-Defendant.

No. 1:25-cv-02305-JMC

Hon. Jia Cobb

**BRIEF OF ALASKA, IDAHO, KANSAS, LOUISIANA, MONTANA,
NEBRASKA, NORTH DAKOTA, OKLAHOMA, SOUTH CAROLINA, SOUTH
DAKOTA, AND TEXAS AS *AMICI CURIAE* IN OPPOSITION TO INTERVENOR-
DEFENDANT'S MOTION TO DISMISS**

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INTEREST OF THE *AMICI* STATES

States have a compelling interest in maintaining their sovereign authority and jurisdiction over the land within their borders. The Indian Gaming Regulatory Act governs conduct of gaming on “Indian lands,” 25 U.S.C. § 2710(b) & (c), and “Indian land” is land “over which an Indian tribe exercises governmental power,” *id.* § 2703(4). A decision by the National Indian Gaming Commission (NIGC) concluding a parcel constitutes “Indian land” has “a direct and immediate impact on the sovereign rights” of a state because it determines which sovereign has jurisdiction over that parcel. *Kansas v. United States*, 249 F.3d 1213, 1218, 1223 (10th Cir. 2001).

How this Court resolves Big Sandy’s motion to dismiss will affect every state that has a federally recognized tribe within its borders. If Big Sandy is correct, then the NIGC holds the power to determine the extent of tribal jurisdiction within a state, and the state may seek judicial review only if the benefited tribe consents. Such a regime would upend settled principles of federalism by subordinating state sovereignty to unilateral executive agency action insulated from meaningful judicial review.

The Court’s decision carries especially consequential implications for Alaska, which faces a jurisdictional transformation unlike any other state.¹ Since territorial times, Alaska has been governed on the basic jurisdictional premise—reflecting the unique history of the lands and

¹ Although the Court’s decision will have great significance in Alaska, the issue is not unique to the state. *See, e.g., California v. U.S. Dep’t of the Interior*, No. 3:25-cv-3850 (N.D. Cal.) (challenging a decision to take lands-into-trust on behalf of a tribe); *Kansas v. United States*, 249 F.3d 1213 (10th Cir. 2001) (challenging an agency decision that land within Kansas constituted “Indian lands” within the meaning of the Indian Gaming Regulatory Act); *Rhode Island v. Narragansett Indian Tribe*, 19 F.3d 685 (1st Cir. 1994) (appealing an order concluding a tribe had jurisdiction and exercised governmental power over lands within the state).

its Native populations—that tribes in Alaska lack territorial jurisdiction. Congress codified this understanding in 1971 when it enacted the Alaska Native Claims Settlement Act. *See Alaska v. Native Village of Venetie Tribal Gov't*, 522 U.S. 520, 526 (1998) (“[The Alaska Native Claims Settlement Act] attempted to preserve Indian tribes, but simultaneously attempted to sever them from the land; it attempted to leave them as sovereign entities for some purposes, but as sovereigns without territorial reach.”) (*quoting Alaska v. Native Village of Venetie Tribal Gov't*, 101 F.3d 1286, 1303 (9th Cir. 1996) (Fernandez, J. concurring)).

The jurisdictional framework established by Congress over 50 years ago is now under sustained challenge. For the first 36 years after IGRA’s passage, Interior respected Congress’s directives and maintained its longstanding position that Alaska tribes generally do not have territorial jurisdiction over Alaska Native Allotments. *See generally Native Village of Eklutna v. U.S. Dep’t of the Interior*, 2021 WL 4306110 (D.D.C. Sept. 22, 2021). That practice changed in 2024, when the departing Solicitor for the Department of the Interior offered a novel interpretation that allowed Interior to conclude the Native Village of Eklutna held territorial jurisdiction over an Alaska Native Allotment, paving the way for the Tribe to engage in Class II gaming on that parcel.²

² In February 2024, the former Solicitor, Robert Anderson, partially revoked the 31-year-old Sansonetti Opinion and issued his own opinion that announced Alaska tribes now have territorial jurisdiction over Alaska Native Allotments in most circumstances. “Partial Withdrawal of Solicitor’s Opinion M-36975, ‘Governmental Jurisdiction of Alaska Native Villages Over Land and Nonmembers,’ and Clarification of Tribal Jurisdiction over Alaska Native Allotments,” M-37079 (DOI February 1, 2024); available at: <https://www.doi.gov/sites/default/files/documents/2024-02/m37079-partial-wd-m36975-and-clarification-trbl-jurisdiction-over-ak-native-allotments-2124.pdf> (accessed on March 9, 2026). Two months later, in June 2024, Interior’s Solicitor’s Office relied on the Anderson Opinion to conclude that an Alaska Native Allotment met the Indian lands definition. *See State of Alaska v. Newland*, 2024 WL 3178000, *7 (D. Alaska June 26, 2024).

Predictably, litigation followed, and like Big Sandy here, the Alaska tribe sought to dismiss the State of Alaska’s lawsuit under Rule 19, arguing that it was a necessary and indispensable party that cannot be joined due to its sovereign immunity.³

The stakes of this question are substantial. Alaska is home to 229 federally recognized tribes—approximately 39 percent of all federally recognized tribes nationwide. *Indian Entities Recognized by and Eligible to Receive Services from the United States Bureau of Indian Affairs*, 91 Fed. Reg. 4102, 4105-4106 (Jan. 30, 2026). Not only are Alaska tribes claiming territorial jurisdiction over Alaska Native Allotments, but they continue to seek the creation of “Indian country” through the Indian Reorganization Act, another way to divest the State of its core incidents of sovereignty. *See Alaska v. Newland*, 2024 WL 3178000 (D. Alaska June 26, 2024), appeal pending, Nos. 24-5280, 24-5285 (9th Cir. filed August 23, 2024); *see also Native Village of Venetie Tribal Gov’t*, 522 U.S. at 527 n.1 (“Generally speaking, primary jurisdiction over land that is Indian country rests with the Federal Government and the Indian tribe inhabiting it, and not with the States.”). Granting a federal agency unilateral and unreviewable authority to determine the sovereign jurisdiction of Alaska’s 229 reservation-less tribes would fundamentally reshape the State’s jurisdictional landscape and significantly affect Alaska’s sovereign interests.

³ The Native Village of Eklutna’s motion to dismiss is currently stayed pending an ongoing Ninth Circuit appeal. *See Alaska v. Dep’t of the Interior*, No. 3:25-cv-00148-JLR, Dkt. 54 (D. Alaska) (staying matter pending the issuance of the mandate in *Holl v. Avery*, No. 25-4618). Meanwhile, in September 2025, the new Solicitor for Interior overruled the Anderson Opinion and ordered the Department of the Interior to reevaluate any agency action, including any action taken by the NIGC, taken pursuant to the Anderson Opinion. *See* “Withdrawal of Solicitor Opinion M-37079, ‘Partial Withdrawal of Solicitor’s Opinion M-36975, Governmental Jurisdiction of Alaska Native Villages Over Land and Nonmembers, and Clarification of Jurisdiction Over Alaska Native Allotments,’” (DOI September 25, 2025), available at: <https://www.doi.gov/sites/default/files/documents/2025-09/withdrawal-solicitor-opinion-m-37079-signed-20250925.pdf> (accessed March 9, 2026).

Alaska, along with the joining amici states, have a direct and substantial interest in ensuring that federal agency action does not unilaterally redraw jurisdictional lines within their borders, and that state access to meaningful judicial review of such determinations is preserved.

SUMMARY OF ARGUMENT

Congress has authorized judicial review of final agency action through the Administrative Procedure Act, waiving the Federal Government's sovereign immunity for suits seeking equitable relief. That waiver reflects a considered judgment that executive agency actions—particularly action with significant sovereign consequences—must remain subject to judicial scrutiny. Nothing in the APA conditions that review on the consent or participation of other sovereigns affected by the agency's decision.

Big Sandy's proposed application of Rule 19 would fundamentally alter that framework. If accepted, it would transform a procedural joinder rule into a mechanism for insulating the NIGC's "Indian lands" decisions from judicial review whenever a non-consenting sovereign—whether a tribe or a state—has an interest in the outcome. Applied consistently, that theory would render "Indian lands" decisions effectively unreviewable, even when a tribe itself challenges an adverse agency action.

That result cannot be reconciled with the distinctive character of APA litigation or with Congress's express waiver of federal sovereign immunity. Nor is it supported by statutory design. When Congress intends to limit judicial review of federal action implicating tribal interests, it does so expressly—as it did in the Quiet Title Act. The Supreme Court's decision in *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak*, 567 U.S. 209 (2012), confirms that courts may not infer additional limits on judicial review based on policy concerns or the downstream effects of litigation on tribal interests.

Because Indian lands decisions determine a sovereign’s jurisdictional boundaries, insulating those decisions from judicial review would raise serious separation-of-powers and federalism concerns. Rule 19 cannot be applied in a manner that overrides Congress’s statutory choices or permits a federal agency to evade judicial scrutiny by hiding behind the sovereign immunity of whichever sovereign benefits from its challenged decision. The Court should therefore decline to extend its Rule 19 jurisprudence in the manner Big Sandy proposes.

ARGUMENT

Big Sandy relies heavily on the Ninth Circuit’s Rule 19 precedent. To be sure, within the Ninth Circuit, “there is a ‘wall of circuit authority’ in favor of dismissing actions in which a necessary party cannot be joined due to tribal sovereign immunity.” *Diné Citizens Against Ruining Our Env’t v. Bureau of Indian Affs.*, 932 F.3d 843, 857 (9th Cir. 2019). But none have “given adequate weight to the distinctive character of APA litigation.” *Maverick Gaming LLC v. United States*, 123 F.4th 960, 984 (9th Cir. 2024) (Miller, J., concurring). This Court should avoid adopting the Ninth Circuit’s view here.

Even within the already distinctive context of APA litigation, this case presents features that further distinguish it from the cases on which Big Sandy relies. Most notably, none of the cases have considered how the Ninth Circuit’s Rule 19 jurisprudence applies to a federal agency action, like the one at issue here, that implicates not only tribal interest, but also the sovereign interests of a state—another entity protected by sovereign immunity. Big Sandy’s Rule 19 theory cannot be confined to the posture in which it is advanced here. Applied consistently, it would operate to insulate the agency’s Indian lands determination from judicial review altogether—regardless of which sovereign seeks review, and even when a tribe itself challenges the agency’s action. That result underscores the structural and doctrinal flaws in Big Sandy’s approach and frames the analysis that follows.

I. Big Sandy’s Rule 19 theory would render all Indian lands decisions effectively unreviewable, gutting the APA’s judicial review provisions.

An Indian lands determination implicates coexisting sovereign interests among states, tribes, and the Federal Government. *See Kansas*, 249 F.3d at 1223 (stating that an NIGC “Indian lands” determination “plainly has a direct and immediate impact on the sovereign rights which the Miami Tribe, the Federal Government, and the State of Kansas exercise over the tract”). Under Big Sandy’s theory, both the state and the tribe would be necessary parties to any litigation challenging an Indian lands decision. This means both states and tribes would be able to intervene for the limited purpose of dismissal on sovereign immunity grounds. And the NIGC would be free to reset jurisdictional boundaries within each state with federally recognized tribes while escaping judicial review altogether. But Congress intended these decisions to be reviewable. 5 U.S.C. § 702. So, Big Sandy’s theory cannot be correct.

Take, for example, the situation in Alaska. Suppose the current administration revises the Indian Lands decision and concludes the Native Village of Eklutna does not have territorial jurisdiction over the Alaska Native Allotment. Like tribes, Alaska exercises inherent sovereign authority over its citizens and territory, and suits against it are barred absent a clear waiver or congressional abrogation. *See Seminole Tribe of Florida v. Florida*, 517 U.S. 44, 54 (1996) (“For over a century, we have reaffirmed that the federal jurisdiction over suits against consenting States “was not contemplated by the Constitution when establishing the judicial power of the United States.”). Like tribes, Alaska has a protected interest in the status of its lands—concluding a parcel does not qualify as “Indian land” retains the State’s authority over that parcel. *See Kansas*, 249 F.3d at 1228 (recognizing that “the State of Kansas’ interests in adjudicating the applicability of IGRA, and the ramifications of such adjudication, are sufficient to establish the real likelihood of irreparable harm if the [Tribe’s] gaming plans go forward”).

And like tribes, Alaska cannot rely on the Federal Government to adequately represent its interests, particularly where Interior's trust responsibilities to tribes may diverge from the State's sovereign concerns. *See Wichita & Affiliated Tribes of Okla. v. Hodel*, 788 F.2d 765, 775 (D.C. Cir. 1986) (holding the Federal Government could not adequately represent tribal interests when the government's allegiance is split among competing tribes); *see also Maverick Gaming LLC*, 123 F.4th at 975 n.16 (recognizing that "the federal government cannot adequately represent an absent party's interest when there are tribes acting as plaintiffs in the same suit" (citing *Makah Indian Tribe v. Verity*, 910 F.2d 555, 559 (9th Cir. 1990))); *Confederated Tribes of Chehalis Indian Rsrv. v. Lujan*, 928 F.2d 1496, 1500 (9th Cir. 2001) ("[T]he United States cannot adequately represent the [absent tribe's] interest without compromising the trust obligations owed to the plaintiff tribes.").

Given Alaska's interests, Alaska would be a required party should the Native Village of Eklutna sue the Federal Government to challenge a decision that the Native Allotment did not qualify as Indian land under IGRA. Applying Big Sandy's argument, Alaska could use Rule 19 to force dismissal based on its sovereign immunity. *See Jamul Action Committee v. Simermeyer*, 974 F.3d 984, 998 (9th Cir. 2019) ("Having concluded that the [tribe] is a party required to be joined if feasible, the remaining steps of the Rule 19 analysis are straightforward."). Alaska is protected by sovereign immunity, and its joinder is therefore infeasible. Plus, there is no reason that the balancing of the equitable factors under Rule 19(b)—which in the Ninth Circuit "almost always favors dismissal when a tribe cannot be joined due to tribal sovereign immunity, *id.* at 998—should come out any other way if it is Alaska, rather than the tribe, that benefits from the federal agency's decision. Sure, a tribe may advocate for dismissal when it benefits from the

agency's decision, but Big Sandy's theory offers no principled answer for cases in which the agency's action does not benefit a tribe and instead favors a state.

An interpretation of Rule 19 that prevents both a state and tribe from challenging Indian lands decisions fails to account for “the distinctive character of APA litigation.” *Maverick Gaming*, 123 F.4th at 984 (Miller, J., concurring). Of the three sovereigns affected by these decisions, only the Federal Government would benefit from such a rule: Interior could insulate decisions by hiding behind the sovereign immunity of whichever sovereign—state or tribe—benefits from the agency's action.

Such a result contravenes Congress's expressed intent, which was to make these federal actions reviewable. Under the APA, a person—including a state or a tribe—“adversely affected or aggrieved by agency action within the meaning of a relevant statute” may seek judicial review so long as the relief sought is “other than money damages.” 5 U.S.C. § 702. The proper defendant in such actions is the relevant federal agency or officer, or the United States itself. *Id.*; *see also* 5 U.S.C. § 703 (“If no special statutory review proceeding is applicable, the action for judicial review may be brought against the United States, the agency by its official title, or the appropriate officer.”). “[T]he APA does not authorize relief against any party other than the agency.” *Maverick Gaming*, 123 F.4th at 984 (Miller, J., concurring).

In short, Big Sandy's proposed application of Rule 19 would transform a procedural joinder rule into a mechanism for insulating Indian lands decisions from judicial review, because at least one sovereign will almost always benefit from the agency's decision. That outcome cannot be squared with the distinctive character of the APA, where Congress expressly permitted judicial review of final agency action through suits against the Federal Government alone.

II. When Congress intends to limit judicial review of federal actions or federal interests that implicate tribal interests, it does so expressly.

When Congress intends to limit judicial review of a federal action against the Federal Government because that action implicates tribal interests, Congress makes that limitation clear. The Quiet Title Act provides an example.

The Quiet Title Act waives federal sovereign immunity for title actions—suits asserting a “right, title, or interest” in real property that conflicts with a “right, title, or interest” claimed by the United States. 28 U.S.C. § 2409a(d). The statute, however, contains an exception: the Quiet Title Act’s authorization of suit “does not apply to trust or restricted Indians lands.” *Id.* § 2409a(a).

At first glance, the Court might view that language as controlling here, given that Table Mountain challenged the Secretary’s approval of a trust-to-trust transfer of the McCabe Allotment on behalf of Big Sandy. *See* Complaint, at 29 (praying this Court to “[d]eclare that Defendants’ approval of the trust-to-trust transfer of the McCabe Allotment violates the APA, NEPA, NHPA, and Defendant’s trust obligations to Table Mountain Rancheria”). But the Supreme Court has rejected this view.

In the past, the Federal Government thought the Quiet Title Act applied. For at least two decades, Interior argued that any challenge to the acquisition of trust land was, in substance, a quiet title action because success would ultimately divest the United States of title to the land. *See Match-E-Be-Nash-She-Wish Band of Pottawatomis Indians v. Patchak*, 567 U.S. 209, 215 (2012) (arguing the Quiet Title Act barred Patchak’s challenge to the Secretary’s acquisition of land on behalf of the tribe); Petition for a Writ of Certiorari, *U.S. Dep’t of the Interior v. South Dakota*, 1996 WL 34432929, at *7 (June 3, 1996) (“Once the property is actually conveyed to the United States, however, a suit to disturb title would be barred, because the Quiet Title Act

‘does not apply to trust or restricted Indian lands.’” (internal citation omitted) (quoting 28 U.S.C. § 2409a(a)). Alternatively, the Federal Government believed that the APA’s waiver of sovereign immunity was also unavailable because the Quiet Title Act “expressly or impliedly forb[ade] the relief which [was] sought.” *Patchak*, 567 U.S. at 215 (discussing the Government’s arguments regarding 5 U.S.C. § 702).

Interior did not rely solely on statutory text to support its position. It also invoked policy considerations and legislative history—arguing that permitting challenges to land-into-trust decisions would “abridge the historic relationship between the Federal Government and the Indians without the consent of the Indians.” Brief for the Federal Petitioners, *Patchak*, 2012 WL 416751, at 23 (quoting Before the Subcomm. on Public Lands of the Senate Comm. on Interior & Insular Affairs, 92d Cong., 1st Sess. 19 (1971)). In Interior’s view, the potential impact of litigation on tribal interests justified insulating land-into-trust decisions from judicial review absent tribal consent.

The Supreme Court squarely rejected Interior’s approach, adopting an interpretation that preserved judicial review even after the land had been acquired into trust. In *Patchak*, the plaintiff challenged the Secretary’s acquisition of land in trust for the tribe’s proposed casino. 567 U.S. at 214. About five months after *Patchak* filed suit, the Secretary acquired the tribal property in trust for the tribe. *Id.* at 213–14. Rejecting Interior’s interpretation that the claim was now barred by the Quiet Title Act because it involved restricted trust land, the Court held that when a plaintiff challenges the legality of the Secretary’s decision to take land into trust—rather than asserting a competing property interest—the suit does not fall within the Quiet Title Act at all and instead proceeds under the Administrative Procedure Act. *Patchak*, 567 U.S. at 217–18. The Court acknowledged Interior’s policy concerns were “not without force,” but emphasized

that those considerations were for Congress to weigh in defining the scope of sovereign-immunity waivers. *Id.* at 224. Courts, the Supreme Court made clear, may not narrow a congressionally enacted waiver of sovereign immunity based on their own assessment of the interests implicated by judicial review. Therefore, Mr. Patchak’s lawsuit could proceed, even though Interior had since taken the property into trust.⁴

The Quiet Title Act and the Supreme Court’s decision in *Patchak* are relevant here for two reasons.

First, when Congress intends to bar suits involving the Federal Government that also affect tribal interests, it does so expressly. The Quiet Title Act’s waiver explicitly excludes trust and restricted Indian lands. 28 U.S.C. § 2409a(a). If the Ninth Circuit’s “wall of authority” operated as Big Sandy suggests, the language in the Quiet Title Act would have been superfluous—because any suit challenging the Federal Government’s acquisition of the land on behalf of a tribe would necessarily threaten the tribe’s interest in having the land held in trust and therefore could not proceed without the tribe’s consent under Rule 19.

Second, *Patchak* confirms that the judiciary may not redefine the statutory scope of judicial review. *Patchak*, 567 U.S. at 224. This is because, as the Supreme Court explained, Congress’s decisions to waive the Federal Government’s sovereign immunity necessarily reflect

⁴ Congress eventually responded to the Court’s invitation. Following remand, Congress enacted legislation that reaffirmed the trust status of the land, ratified and confirmed the Secretary’s decision to take the land into trust, and provided that “[n]otwithstanding any other provision of law, an action (including an action pending in a Federal court as of the date of enactment of this Act) relating to the land [at issue in this case] shall not be filed or maintained in a Federal court and shall be promptly dismissed.” Gun Lane Trust Land Reaffirmation Act, Pub. L. No. 113-179, § 2(b), 128 Stat. 1913. The district court subsequently dismissed Patchak’s suit, explaining that the “clear intent” of Congress was “to moot this litigation.” *Patchak v. Jewell*, 109 F. Supp. 3d 152, 159 (D.D.C. 2015). That decision was upheld by the D.C. Circuit, *Patchak v. Jewell*, 828 F.3d 995 (2016), and the Supreme Court, *Patchak v. Zinke*, 583 U.S. 244 (2018).

policy judgments. *Id.* Whether Congress should limit the waiver for actions brought under the Administrative Procedure Act as it did for actions under the Quiet Title Act is therefore a question for Congress—not the courts.

Accordingly, this Court should decline to extend its Rule 19 jurisprudence in a manner that would effectively graft a new, atextual exception onto the Administrative Procedure Act’s waiver of federal sovereign immunity. Where Congress has chosen to permit judicial review of federal agency action—and has declined to condition that review on tribal consent—the courts may not foreclose it by invoking prudential doctrines that Congress itself did not adopt. Doing so would not respect tribal sovereignty; it would instead displace Congress’s considered judgment.

CONCLUSION

Rule 19 cannot be used to shield federal agency decisions from judicial review. The Court should deny Big Sandy's motion to dismiss.

DATED March 13, 2026.

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the typeface and page-length requirements of Local Civil Rules 5.1(d) and 7(o)(4).

Date: March 13, 2026.

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CERTIFICATE OF SERVICE

I certify that on March 13, 2026, I electronically filed this document with the Clerk of Court using the Court's CM/ECF system, which will send a notice of docketing activity to all parties who are registered through CM/ECF.

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