No.

IN THE

Supreme Court of the United States

MAVERICK GAMING LLC,

Petitioner,

v.

UNITED STATES OF AMERICA, ET AL.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The Administrative Procedure Act (APA) provides that any person "adversely affected or aggrieved by agency action * * * is entitled to judicial review." 5 U.S.C. § 702. But the Ninth Circuit holds that Federal Rule of Civil Procedure 19 requires dismissal of an APA suit whenever an Indian tribe that is not a party to the case, but benefits from the challenged federal agency action, claims an interest in the dispute and invokes sovereign immunity to avoid being joined. Applying that rule, the Ninth Circuit in this case upheld the dismissal under Rule 19 of petitioner's APA suit seeking review of the Secretary of the Interior's approval of tribal-state compacts—which the agency is actively defending—because a non-party tribe, respondent Shoalwater Bay Indian Tribe, benefits from that agency action but refused to be joined based on sovereign immunity. The question presented is:

Whether Rule 19 requires dismissal of APA suits challenging federal agency action whenever a non-party who benefited from that action asserts sovereign immunity.

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

1. Petitioner is Maverick Gaming LLC.

Respondents are the United States of America; the U.S. Department of the Interior; Doug Burgum, in his official capacity as Secretary of the Interior; Scott Davis, in his official capacity as Acting Assistant Secretary – Indian Affairs; Bob Ferguson, in his official capacity as the Governor of Washington; Nick Brown, in his official capacity as the Attorney General of Washington; Alicia Levy, in her official capacity as Chair of the Washington State Gambling Commission; Sarah Lawson, in her official capacity as Vice-Chair of the Washington State Gambling Commission; Anders Ibsen, in his official capacity as Commissioner of the Washington State Gambling Commission; Michael Charles, in his official capacity as Commissioner of the Washington State Gambling Commission; Steve Conway, in his official capacity as ex officio member of the Washington State Gambling Commission; Jeff Holy, in his official capacity as ex officio member of the Washington State Gambling Commission; Shelley Kloba, in her official capacity as ex officio member of the Washington State Gambling Commission; Kevin Waters, in his official capacity as ex officio member of the Washington State Gambling Commission; Tina Griffin, in her official capacity as Director of the Washington State Gambling Commission; and the Shoalwater Bay Indian Tribe. Each Respondent was an appellee below. See Sup. Ct. R. 35.3.

2. Petitioner is a wholly owned subsidiary of Maverick Gaming HoldCo, Inc. No publicly held corporation owns 10% or more of petitioner's stock.

RELATED PROCEEDINGS

Pursuant to this Court's Rule 14.1(b)(iii), the following proceedings are directly related to this case:

- *Maverick Gaming LLC* v. *United States of America et al.*, No. 23-35136 (9th Cir.) (judgment entered December 13, 2024);
- *Maverick Gaming LLC* v. *United States of America et al.*, No. 3:22-cv-05325-DGE (judgment entered February 21, 2023); and
- *Maverick Gaming LLC* v. *United States of America et al.*, No. 1:22-cv-00068-FYP (case transferred May 9, 2022).

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Maverick Gaming LLC respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a-49a) is reported at 123 F.4th 960. The opinion of the district court (App., *infra*, 50a-67a) is reported at 658 F. Supp. 3d 966.

JURISDICTION

The judgment of the court of appeals was entered on December 13, 2024. On February 19, 2025, Justice Kagan extended the time within which to file a petition for a writ of certiorari to May 12, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS AND RULES INVOLVED

Pertinent statutory provisions and rules are reproduced in the appendix to this petition. App., *infra*, 68a-85a.

INTRODUCTION

This case implicates a square and acknowledged conflict over an important question about the interplay of the Administrative Procedure Act (APA), 5 U.S.C. §§ 551 *et seq.*, 701 *et seq.*, and the Federal Rules of Civil Procedure: whether a sovereign that is not a party to an APA suit may demand dismissal of the suit under Rule 19—and insulate the challenged federal agency

action from judicial review—by claiming an interest in that action while refusing to defend it on the merits.

Petitioner Maverick Gaming LLC brought an APA claim against the federal government challenging action by the Secretary of the Interior that blessed Washington's conferral of a casino-gaming monopoly on certain Indian tribes. But the Ninth Circuit held that its own precedent compelled dismissal of the suit because one of those tribes—respondent Shoalwater Bay Indian Tribe—claimed an interest in the Secretary's action and could not be joined as a defendant due to sovereign immunity. The court concluded that the Tribe was a required party under Federal Rule of Civil Procedure 19(a) because it would benefit from the challenged agency action, but that the Tribe was immune to joinder. And the court held that, even though the United States was actively defending its own action, the suit could not proceed without the Tribe under Rule 19(b).

As Judge Miller observed, that reading of Rule 19—which the Ninth Circuit has repeatedly refused to reconsider en banc—directly conflicts with decisions of multiple other circuits. The D.C. and Tenth Circuits squarely reject the Ninth Circuit's perplexing approach. App., *infra*, 47a-48a. That approach is also irreconcilable with Seventh and Eighth Circuit precedent in closely analogous contexts. None of those circuits would allow the sovereign immunity of a nonparty tribe to compel dismissal of an APA suit challenging agency action that the federal government stands ready to defend.

The Ninth Circuit's entrenched outlier approach is also deeply misguided. Rule 19 does not purport to

override the bedrock right to judicial review the APA confers merely because a non-party sovereign claims an interest in a case yet chooses to sit on the sidelines. An absent sovereign is not a necessary party in an APA suit under Rule 19(a) because "the only question to be decided is whether the agency's action should be set aside," and "the agency is the best party to defend" its own action. App., *infra*, 46a (Miller, J., concurring). And dismissal would be unwarranted in any event because Rule 19(b)'s fairness-focused "equity and good conscience" test does not empower a non-party sovereign to wield the shield of immunity as a sword to slay others' APA suits. That the Tribe could not have been compelled to join the suit involuntarily is of no moment because its involvement was never needed. And if it wished to participate of its own accord, nothing stood in its way. The Tribe was equally free to stay out of the case, but it should not then be allowed to leverage its own refusal to litigate the merits to vitiate Maverick's right to judicial review. Yet that is exactly what the Ninth Circuit's approach permits.

The Ninth Circuit's aberrant approach also contradicts the settled position of the United States. The government informed this Court just two Terms ago that the Ninth Circuit's rule is "incorrect" because it "erroneously applie[s] Rule 19 to require dismissal of th[ese] suit[s] under the APA." U.S. Br. in Opp. at 16-17, *Klamath Irrigation District* v. *Bureau of Reclamation*, No. 22-1116 (Sept. 27, 2023) (U.S. *Klamath* Br.). The government further acknowledged that the question presented "may warrant this Court's review." *Ibid.* And although it acknowledged in the courts below that the Ninth Circuit's precedent controlled the

disposition of this case in those courts, the government underscored its "disagreement" with that precedent and reiterated its view that the government's "shared interest with tribes in seeing agency action upheld adequately protects an absent tribe's interest in the resolution of an APA claim." Gov't C.A. Br. 18, 24.

The question presented is of paramount importance and amply warrants this Court's review. In the Nation's largest circuit, the right to APA review evaporates if an absent sovereign asserts an interest in federal agency action but declines to mount a defense. That approach "threatens to sound the death knell for any judicial review of executive decisionmaking in the wide range of cases in which agency actions implicate the interests of Indian tribes." App., *infra*, 47a (Miller, J., concurring) (cleaned up). The Ninth Circuit's logic, moreover, is not limited to tribes but extends as well to other sovereigns, including the 50 States and foreign governments. Indeed, at least one State has already attempted to exploit it. Allowing any sovereign that benefits from federal agency action to switch off APA review for others would strike a body blow to basic principles of administrative law.

This case is an ideal vehicle to resolve the circuit conflict and put the Ninth Circuit's rewriting of Rule 19 to rest. Whether Rule 19 requires dismissal based on the Tribe's interest in the Secretary's challenged action and its sovereign immunity was the sole issue decided below. And it is outcome-determinative: But for the court of appeals' misreading of Rule 19, Maverick's APA suit would proceed to the merits. The Ninth Circuit's precedent, however, enabled the Tribe unilaterally to stop Maverick's suit in its tracks and

put the Secretary's unlawful action beyond federal courts' reach. That result is antithetical to the APA's text and underlying values. The Court should grant certiorari, repudiate the Ninth Circuit's erroneous rule, and reaffirm the APA's right of judicial review.

The petition for a writ of certiorari should be granted.

STATEMENT

1. Federal Rule 19 specifies persons who presumptively must be joined as parties to a federal civil suit and what follows if joinder is not "feasible." Fed. R. Civ. P. 19(a)-(b) (capitalization altered). Rule 19(a) defines a "required party" who "must be joined" to include (as relevant) a person who "claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may * * * as a practical matter impair or impede the person's ability to protect the interest." Fed. R. Civ. P. 19(a)(1)(B)(i). Rule 19(a) does not require joinder if such a person is not "subject to service of process" or if joining that person would "deprive the court of subject-matter jurisdiction." Fed. R. Civ. P. 19(a)(1).

Rule 19(b) then provides that, "[i]f a person who is required to be joined if feasible cannot be joined, the court must determine whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed." Fed. R. Civ. P. 19(b). Rule 19(b) states that the "factors for the court to consider" in making that determination "include":

> (1) the extent to which a judgment rendered in the person's absence might prejudice that person or the existing parties;

> (2) the extent to which any prejudice could be lessened or avoided by:
>
> (A) protective provisions in the judgment;
>
> (B) shaping the relief; or
>
> (C) other measures;
>
> (3) whether a judgment rendered in the person's absence would be adequate; and
>
> (4) whether the plaintiff would have an adequate remedy if the action were dismissed for nonjoinder.

Ibid.; see Fed. R. Civ. P. 12(b)(7), (h)(2) (addressing how failure to join a required party may be raised).

As this Court has explained, the "impulse" of Rule 19 and others addressing joinder and consolidation "is toward entertaining the broadest possible scope of action consistent with fairness to the parties." *United Mine Workers of America* v. *Gibbs*, 383 U.S. 715, 724 (1966). Its aim is to facilitate "the full adjudication of disputes" that parties bring to federal courts "with a minimum of litigation effort." 7 Charles Alan Wright et al., *Federal Practice & Procedure* § 1602 (3d ed.). Dismissal because joinder is infeasible—which means there is *no* federal-court adjudication of a dispute—is a last resort.

In addition, this Court—drawing on precedent that predated the Federal Rules—has long recognized that joinder requirements are relaxed in litigation seeking "the protection and enforcement of public rights," such as suits to "restrai[n] the unlawful actions of the defendant" under a federal statute. *National Licorice Co.* v. *National Labor Relations Board*,

309 U.S. 350, 363, 366 (1940). In those cases, "there is little scope or need for the traditional rules governing the joinder of parties in litigation determining private rights." *Id.* at 363.

2. This case involves an APA challenge to final agency action taken by the Secretary of the Interior under the Indian Gaming Regulatory Act (IGRA), 18 U.S.C. § 1166 *et seq.*, 25 U.S.C. § 2701 *et seq.*

a. IGRA establishes the governing framework for the regulation of gaming on Indian lands. In *California* v. *Cabazon Band of Mission Indians*, 480 U.S. 202 (1987), this Court held that California could not enforce its generally applicable gaming regulations against Indians on Indian lands within the State. Congress, the Court reasoned, had not consented to any such exercise of state jurisdiction over Indian gaming. See *id.* at 207. Dissatisfied with the uneven regulatory landscape that *Cabazon* produced, Congress enacted IGRA the following year to "foster a consistency and uniformity in the manner in which laws regulating the conduct of gaming activities are applied" and to promote "free market competition" between state-licensed gaming operators and Indian tribes. S. Rep. No. 446, 100th Cong., 2d Sess. 6, 13 (1988).

IGRA divides gaming into three classes and specifies a different set of regulations for each. At issue here is Class III gaming, which includes many of the games typically found in casinos (such as blackjack, roulette, and craps), see 25 U.S.C. § 2703(8), and which is the most heavily regulated of the three classes. Class III gaming is lawful on Indian lands only if three conditions are met:

- First, the Class III gaming activities must be "authorized by an ordinance or resolution" that (i) "is adopted by the governing body of the Indian tribe having jurisdiction over such lands," (ii) "meets the requirements of" the rules governing Class II gaming, and (iii) "is approved by the Chairman" of the National Indian Gaming Commission, a body within the U.S. Department of the Interior. *Id.* § 2710(d)(1)(A); see *id.* § 2704(a).
- Second, the Class III gaming activities must be "located in a State that permits such gaming for any purpose by any person, organization, or entity." *Id.* § 2710(d)(1)(B).
- Third, the Class III gaming activities must be "conducted in conformance with a Tribal-State compact entered into by the Indian tribe and the State under [Section 2710(d)(3)] that is in effect." *Id.* § 2710(d)(1)(C).

To satisfy the third condition, an Indian tribe that desires Class III gaming on its land may ask "the State in which such lands are located to enter into negotiations for the purpose of entering into a Tribal-State compact governing the conduct of gaming activities." 25 U.S.C. § 2710(d)(3)(A). "Upon receiving such a request," IGRA mandates that "the State shall negotiate with the Indian tribe in good faith to enter into such a compact." *Ibid.* If the State and the tribe conclude a compact, it goes to the Secretary of the Interior for review. *See id.* § 2710(d)(3)(B), (d)(8). If the Secretary approves the compact, it goes into effect once notice of the approval is published in the Federal Register. *Id.* § 2710(d)(3)(B), (d)(8)(C). But the Secretary must disapprove a tribal-state compact if "such

compact violates * * * (i) any provision of [IGRA], (ii) any other provision of Federal law that does not relate to jurisdiction over gaming on Indian lands, or (iii) the trust obligations of the United States to Indians." *Id.* § 2710(d)(8)(B); see *Amador County* v. *Salazar*, 640 F.3d 373, 380-381 (D.C. Cir. 2011) (Secretary "must * * * disapprove a compact if it would violate any of the three limitations" set forth in Section 2710(d)(8)(B)).

b. Washington State law makes it a crime to offer most forms of gaming within the State, including the vast majority of casino-style Class III games. See Wash. Rev. Code §§ 9.46.220-.222 (prohibiting "professional gambling"); *id.* § 9.46.0269 (broadly defining "professional gambling"). But Washington has exempted Indian tribes in the State—and only Indian tribes—from those criminal prohibitions, thereby granting the tribes a statewide casino-gaming monopoly.

Beginning in the 1990s, the State—purporting to act pursuant to IGRA—entered into tribal-state compacts permitting Indian tribes to offer a wide range of Class III games that remain a crime for non-tribal entities to offer. Washington ultimately executed, and the Secretary approved, such compacts with "[a]ll 29 federally recognized tribes" in the State. Washington State Gambling Commission, *Tribal Gaming Compacts and Amendments*, https://tinyurl.com/35xf454s; see, *e.g.*, 67 Fed. Reg. 68,152 (Nov. 8, 2002) (approving respondent Shoalwater Bay Indian Tribe's compact).

The resulting statewide gaming monopoly proved highly lucrative for the tribes. Collectively, they net-

ted more than $2 billion in 2021 alone. App., *infra*, 12a.

c. This case arises from Washington's attempt to expand the tribes' gaming monopoly to encompass sports betting. In March 2020, Washington enacted a law permitting Indian tribes to amend their existing gaming compacts "to authorize the tribe to conduct and operate sports wagering"—a Class III game—"on its Indian lands." 2020 Wash. Legis. Serv. Ch. 127, § 2 (Mar. 25, 2020) (Wash. Rev. Code § 9.46.0364(1)). The law expressly preserved the State's tribal gaming monopoly. The law recited that it "has long been the policy of this state to prohibit all forms and means of gambling except where carefully and specifically authorized and regulated." *Id.* § 1. And it stated explicitly the legislature's "inten[t] to further this policy by authorizing sports wagering on a very limited basis by restricting it to tribal casinos." *Ibid.*

To date, 20 of Washington's 29 federally recognized Indian tribes have amended their tribal-state compacts to permit them to offer sports betting. App., *infra*, 13a-14a. The Secretary of the Interior approved the compact amendments. See *ibid.*; see also, *e.g.*, 86 Fed. Reg. 51,373 (Sept. 15, 2021) (approving respondent Shoalwater Bay Indian Tribe's compact amendment).

3. Maverick is a non-tribal gaming company that owns and operates cardrooms in Washington. C.A. E.R. 112. Maverick also owns casinos in Nevada and Colorado, which offer a range of Class III games (including sports betting) to patrons in those States. *Ibid.* Maverick would like to expand its Washington gaming offerings in its cardrooms to include addi-

tional casino games, like roulette and craps, as well as sports betting, and it has identified economically viable opportunities in the State to do so. *Id.* at 112-113. But Washington's tribal monopoly on gaming has shut Maverick out of the State's profitable Class III gaming market. That asymmetry inflicts a competitive disadvantage on Maverick relative to the tribes' cardrooms, causing Maverick to suffer lost revenue and goodwill and to incur additional costs to compete with the tribes' casinos. *Id.* at 113-114.

a. Seeking to level the playing field, Maverick brought this suit to challenge the tribal gaming monopoly in Washington. As relevant here, Maverick asserted an APA claim against the United States, the Department of the Interior, and various agency components and officials alleging that the Secretary's approval of amendments to Washington's tribal-state compacts allowing sports betting was "not in accordance with law." 5 U.S.C. § 706(2)(A); C.A. E.R. 116-118. Specifically, Maverick alleged that the Secretary was required to disapprove the amendments because (1) they violated IGRA and other federal laws, including by authorizing gaming activity that is otherwise unlawful throughout the State; (2) they violated the Constitution's guarantee of equal protection by granting a monopoly to Indian tribes; and (3) they were executed in violation of the Tenth Amendment's anti-commandeering principle because IGRA purports to require States to negotiate gaming compacts with Indian tribes. *Ibid.* (Maverick's suit also asserted claims against the Washington State officials who had executed and administered the unlawful compacts and enforced Washington's criminal gaming

prohibitions, see *id.* at 118-123, but those claims are not at issue here.)

Maverick filed the suit in the U.S. District Court for the District of Columbia, but it was later transferred to the Western District of Washington. App., *infra*, 17a-18a. Maverick filed an amended complaint, and the parties stipulated to a briefing schedule for dispositive motions. C.A. E.R. 127-133.

b. Respondent Shoalwater Bay Indian Tribe operates a casino in Washington pursuant to a tribal-state compact. App., *infra*, 14a-15a. While briefing on dispositive motions was underway, the Tribe moved to intervene in the case as a defendant "for the limited purpose of moving to dismiss under Rules 12(b)(7) and 19" and asked the court to stay the briefing schedule. D. Ct. Doc. 68, at 1 (Aug. 3, 2022). The district court granted both requests. C.A. E.R. 64-79.

The Tribe then moved to dismiss, arguing that it is a required party under Rule 19(a), that it could not be joined because of its tribal sovereign immunity, and that the case could not proceed without it in equity and good conscience under Rule 19(b). C.A. E.R. 29-63. The Tribe contended that, under the Ninth Circuit's decisions in *Diné Citizens Against Ruining Our Environment* v. *Bureau of Indian Affairs*, 932 F.3d 843 (9th Cir. 2019), and *Klamath Irrigation District* v. *U.S. Bureau of Reclamation*, 48 F.4th 934 (9th Cir. 2022), dismissal was required despite the federal government's active participation in the litigation defending the Secretary's challenged action. C.A. E.R. 55-60.

The federal defendants filed a brief stating that "[t]he general position of the United States" is that "in

most contexts [the federal government] is the only required and indispensable party in litigation challenging final agency action under the Administrative Procedure Act." C.A. E.R. 22. The federal defendants acknowledged that the Ninth Circuit's decisions in *Diné Citizens* and *Klamath* compelled dismissal. *Id.* at 26. But they explained that "the United States disagrees with" those decisions and "reserve[d] the right to assert in future proceedings that the United States is generally the only required and indispensable defendant in APA litigation challenging federal agency action." *Ibid.*

c. The district court granted the Tribe's motion to dismiss, concluding that dismissal was mandated by Ninth Circuit precedent. App., *infra*, 50a. The court explained that "the Ninth Circuit has repeatedly held that tribes are necessary parties in third party suits challenging federal agency actions where the suits may negatively implicate tribal economic or sovereign interests." *Id.* at 55a. Under that precedent, the court concluded, the United States could not adequately represent the Tribe's interests. *Id.* at 55a-61a. And although the court acknowledged that dismissal under Rule 19(b) would foreclose judicial review of Maverick's claims altogether because "[t]here is no alternate judicial forum in which Maverick could seek the relief it requests," the court stated that it was bound by "a wall of circuit authority requiring dismissal" when "a tribe cannot be joined due to tribal sovereign immunity." *Id.* at 65a-66a (internal quotation marks omitted). The court also declined to apply the "public rights exception." *Id.* at 66a-67a.

4. The Ninth Circuit affirmed.

a. Applying its own precedent, the court of appeals held that the Tribe was a required party under Rule 19(a) "because the Tribe has a legally protected interest in the lawsuit that may be impaired or impeded in the Tribe's absence." App., *infra*, 20a. The court acknowledged that the United States and the Tribe "undoubtedly share an interest in the ultimate outcome of this case" because "they both seek to defend the Secretary's approval of the compacts and sports betting compact amendments." *Id.* at 26a (internal quotation marks omitted). But the court concluded that the United States and the Tribe had "different reasons" for seeking that same outcome: "[A]lthough the Federal Defendants and Tribe share an interest in defending the Secretary's approval of the gaming compacts and sports betting amendments, the Federal Defendants do not share the Tribe's sovereign and economic interests in protecting and furthering its class III gaming operations." *Id.* at 26a, 29a; see also *id.* at 24a-28a. Under circuit precedent, the panel held, the Tribe was therefore a required party.

The Ninth Circuit then held that the litigation could not proceed in the Tribe's absence under Rule 19(b). The court acknowledged that two of the Rule 19(b) factors weighed in favor of allowing the suit to proceed: the adequacy of a judgment and the absence of any alternative forum for Maverick's claims. App., *infra*, 39a-40a; see Fed. R. Civ. P. 19(b)(3)-(4). But the court followed the same "wall of circuit authority" the district court had obeyed "in favor of dismissing actions in which a necessary party cannot be joined due to tribal sovereign immunity," "regardless of whether an alternative remedy is available." App., *infra*, 40a-

41a. The court similarly declined to apply the public-rights exception. *Id.* at 41a-43a.

b. Judge Miller concurred. Although he agreed that Ninth Circuit case law compelled dismissal, he wrote separately to express disagreement with those decisions. App., *infra*, at 44a-49a. The Circuit's "precedent on Rule 19," he explained, "has not adequately considered the distinctive character of litigation under the [APA]." *Id.* at 44a. Judge Miller reasoned that "[t]he Secretary" of the Interior "is fully capable of defending her approval of the compact, and she has made clear that she is prepared to do so in this litigation," but "under [Ninth Circuit] precedent, that is not enough." *Id.* at 45a. That approach, he observed, "threatens to soun[d] the death knell for any judicial review of executive decisionmaking in the wide range of cases in which agency actions implicate the interests of Indian tribes." *Id.* at 47a (internal quotation marks omitted). That "anomalous result" "frustrates Congress's directive that a person 'adversely affected or aggrieved by agency action * * * is entitled to judicial review thereof.'" *Ibid.* (quoting 5 U.S.C. § 702).

Judge Miller further observed that the Ninth Circuit's interpretation of Rule 19 has "created a circuit conflict." App., *infra*, 47a. Multiple other circuits, he noted, have "held that a tribe is *not* a required party in an APA action challenging a federal decision to acquire land in trust for the tribe because 'the Secretary's interest in defending his determinations is virtually identical' to the tribe's interest, and that even if the tribe were a required party, the lack of 'any alternative forum in which plaintiffs' claims can be heard' weighs against dismissal." *Id.* at 47a-48a (quoting *Sac & Fox Nation of Missouri* v. *Norton*, 240

F.3d 1250, 1259-1260 (10th Cir. 2001), and citing, *inter alia*, *Ramah Navajo School Board, Inc.* v. *Babbitt*, 87 F.3d 1338, 1350-1352 (D.C. Cir. 1996)) (internal quotation marks omitted) (emphasis added).

REASONS FOR GRANTING THE PETITION

The right to judicial review of federal agency action is fundamental to our system of government and expressly safeguarded by statute in the APA. But the Ninth Circuit misreads Rule 19 to override that foundational right and to put an arbitrary subset of Executive Branch actions beyond federal courts' reach. Under the Ninth Circuit's approach, any entity with sovereign immunity that benefits from agency action challenged by others in an APA suit can demand dismissal of the litigation and thereby immunize the challenged action from judicial review. As Judge Miller recognized, that approach is wrong and conflicts with the precedent of several other circuits. And it contradicts the settled position of the United States across multiple Administrations that the federal government is the only party necessary to defend the validity of a federal agency's action.

The Ninth Circuit's erroneous approach, which it has repeatedly refused to reconsider en banc, is also profoundly harmful. As Judge Miller explained, that approach "threatens to 'sound the death knell for any judicial review of executive decisionmaking' in [a] wide range of cases." App., *infra*, 47a (brackets omitted). Under the Ninth Circuit's rule, a tribe can put any agency rule or order from which it benefits off-limits to APA review simply by intervening to claim an interest in that action and then refusing to litigate the merits. And the logic of the Ninth Circuit's approach is not even limited to tribes but could be exploited by States and foreign governments—as at

least one State has already attempted. It cannot be correct that an APA plaintiff loses any opportunity to challenge a federal agency's unlawful action merely because a non-federal sovereign that is not a party to the case would prefer to pretermit judicial review.

This case presents an ideal vehicle to correct the Ninth Circuit's entrenched outlier position and vindicate the right to judicial review of unlawful agency action. The Court should grant certiorari and reverse.

I. THE NINTH CIRCUIT'S DECISION ENTRENCHES AN ACKNOWLEDGED CIRCUIT CONFLICT

The Ninth Circuit's aberrant reading of Rule 19 "ha[s] created a circuit conflict." App., *infra*, 47a (Miller, J., concurring). The court of appeals has spurned multiple requests to course-correct, necessitating this Court's intervention.

A. The Ninth Circuit's precedent conflicts with the law of at least three circuits that allow APA suits to proceed where the United States is defending the challenged agency action, without requiring joinder of a tribe that claims to have benefited from that action. And the Ninth Circuit's approach is also irreconcilable with the reasoning of a fourth court of appeals in a related context.

As Judge Miller observed, "[t]he Tenth Circuit has held that a tribe is not a required party in an APA action." App., *infra*, 47a (discussing *Sac & Fox Nation of Missouri* v. *Norton*, 240 F.3d 1250, 1259-1260 (10th Cir. 2001)). In *Sac & Fox Nation of Missouri* v. *Norton*, for example, multiple Indian tribes and the Governor of Kansas filed an APA suit against the Secretary of the Interior over his decision to acquire land in trust for the Wyandotte Tribe to conduct gaming un-

der IGRA. 240 F.3d at 1254-1257. The Tenth Circuit concluded that the Wyandotte Tribe was not a required party under Rule 19. As the Tenth Circuit explained, the plaintiffs' APA claims "turn[ed] solely on the appropriateness of the Secretary's actions, and the Secretary [wa]s clearly capable of defending those actions." *Id.* at 1260. Since "'the Secretary's interest in defending his determinations [was] virtually identical' to the tribe's interest," the Tenth Circuit held the Tribe was not a necessary party to the action. App., *infra*, 47a (Miller, J., concurring) (quoting *Sac & Fox Nation*, 240 F.3d at 1259-1260) (internal quotation marks omitted); see also *Kansas* v. *United States*, 249 F.3d 1213, 1227 (10th Cir. 2001) (absent tribes and United States have "substantially similar, if not identical" interest in "upholding the [federal agency's] decision").

The Tenth Circuit further held that, "[e]ven assuming" the tribe were a required party under Rule 19(a), the suit should be allowed to proceed "in equity and good conscience" under Rule 19(b). 240 F.3d at 1259-1260. And the Tenth Circuit has elsewhere applied the public-rights exception to conclude that absent non-federal parties were not necessary for a suit challenging agency action to proceed. See *Southern Utah Wilderness Alliance* v. *Kempthorne*, 525 F.3d 966, 969 n.2 (10th Cir. 2008) (under public-rights exception, "private lessees were not indispensable parties" in APA challenge to agency decision issuing oil and gas leases).

"Similarly, the District of Columbia Circuit has held that a tribe is not a required party to an APA challenge to the Secretary of the Interior's plan for allocating funds to tribes." App., *infra*, 48a (Miller, J., con-

curring) (citing *Ramah Navajo School Board, Inc.* v. *Babbitt*, 87 F.3d 1338, 1350-1352 (D.C. Cir. 1996)). Even if the tribe in *Ramah Navajo* had "a legally protected interest" in those funds, the D.C. Circuit held, it was not a required party because "the United States may adequately represent that interest" absent some conflict of interest. 87 F.3d at 1351. That conclusion aligns with the D.C. Circuit's approach to indispensable parties in other contexts. See, *e.g.*, *De Csepel* v. *Republic of Hungary*, 27 F.4th 736, 746 (D.C. Cir. 2022) (suit to recover art seized by Hungary during Holocaust could proceed without Hungary because its "interests are so aligned with those of the remaining defendants that their participation in the litigation protects Hungary against potential prejudice from the suit proceeding in its absence").

The Tenth and D.C. Circuits are not alone. In *Thomas* v. *United States*, 189 F.3d 662 (7th Cir. 1999), the Seventh Circuit similarly held that Rule 19 did not bar APA claims challenging the federal government's decision to overturn the results of an election ratifying amendments to a tribal constitution—action that the tribe's governing body supported. *Id.* at 667-669. Even though the issues at stake were of "fundamental importance to the tribe," the Seventh Circuit held, the lawsuit was "[a]t its base" a "challenge to the way certain federal officials administered an election for which they were both substantively and procedurally responsible." *Id.* at 667. "[T]he fact that a tribe has an interest in the litigation is not enough in itself to make it a necessary party in the sense of Rule 19," and the tribe could not "tak[e] advantage of Rule 19" to make the government's decision "unreviewable." *Id.* at 667-669.

In addition, the Eighth Circuit applied similar analysis to reach the same conclusion in the cognate context of intervention as of right under Rule 24. In *South Dakota ex rel. Barnett* v. *Department of the Interior*, 317 F.3d 783 (8th Cir. 2003), a tribe moved to intervene as of right in an APA suit challenging the federal government's decision to place land into trust for the tribe, contending that the "United States cannot adequately protect the Tribe's interest." *Id.* at 786. The Eighth Circuit squarely rejected that contention, concluding that "the United States' interests in this litigation subsume the Tribe's interests and that the United States can adequately protect any interest that the Tribe has in this litigation." *Ibid.*

2. Since 2019, the Ninth Circuit has rejected that sound consensus in favor of a rule that grants tribes and other sovereigns a veto over APA suits brought by others. And it has repeatedly refused to revisit that approach en banc.

The Ninth Circuit first announced its outlier position in *Diné Citizens Against Ruining Our Environment* v. *Bureau of Indian Affairs*, 932 F.3d 843 (9th Cir. 2019). *Diné Citizens* involved a suit by a coalition of environmental groups asserting challenges under federal environmental statutes to the federal government's reauthorization of coal-mining activities on land reserved to the Navajo Nation. *Id.* at 847-848. A tribal coal-mining company moved to intervene and dismiss, contending that it "was a required party because of its economic interest in the [m]ine, that it could not be joined due to tribal sovereign immunity, and that the action could not proceed in its absence." *Id.* at 850. The federal defendants opposed that reasoning, "[e]ven though dismissal would have left their

decisions intact," and argued that the "federal government was the only party required to defend an action seeking to enforce" a federal agency's compliance with federal laws. *Ibid.* The Ninth Circuit held that Rule 19 required dismissal. *Id.* at 851-861. The court reasoned that, "while Federal Defendants have an interest in defending their own analyses that formed the basis of the approvals at issue, here they do not share an interest in the *outcome* of the approvals"—*i.e.*, "the continued operation of the Mine and Power Plant." *Id.* at 855. And because "the lack of an alternative remedy 'is a common consequence of sovereign immunity,'" the Ninth Circuit held that the Rule 19(b) factors weighed in favor of dismissal. *Id.* at 858.

The plaintiffs in *Diné Citizens* sought rehearing en banc, noting that the panel's decision "directly conflict[ed] with controlling Ninth Circuit precedents, Supreme Court precedents, and precedents of all sister circuits addressing the issue." Pet. for Reh'g at 1, *Diné Citizens*, *supra*, No. 17-17320 (9th Cir. Sept. 12, 2019). The Ninth Circuit denied the petition. Order, *Diné Citizens*, *supra* (9th Cir. Dec. 11, 2019).

The Ninth Circuit doubled down on *Diné Citizens* three years later in *Klamath Irrigation District* v. *U.S. Bureau of Reclamation*, 48 F.4th 934 (9th Cir. 2022). In *Klamath*, various irrigators, farmers, and other water users sued the federal government under the APA and another statute over the government's distribution of water from a federal irrigation project in the Klamath Water Basin. *Id.* at 938. Applying *Diné Citizens*, the Ninth Circuit in *Klamath* held Rule 19 required dismissal because the suit implicated tribal water and fishing rights. *Id.* at 943-945, 947-948. The Ninth Circuit reasoned that the Bureau of Reclama-

tion's and the tribes' interests were "overlapping" as to the "ultimate outcome" of the dispute, but that Reclamation and the tribes were interested in the outcome for "very different reasons." *Id.* at 944-945. The tribes' interest was in "ensuring the continued fulfillment of their reserved water and fishing rights," while Reclamation's interest was "in defending its interpretations of its obligations" under federal law. *Ibid.* The lack of "unity of all interests," the Ninth Circuit held, meant that the Bureau of Reclamation could not adequately represent the tribe. *Id.* at 945.

As in *Diné Citizens*, the plaintiffs in *Klamath* asked the full Ninth Circuit to reconsider its position on Rule 19. Pet. for Reh'g at 1, *Klamath*, *supra*, Nos. 20-36009, 20-36020 (9th Cir. Nov. 23, 2022). Once again, the Ninth Circuit declined. Order, *Klamath*, *supra* (9th Cir. Jan. 11, 2023).

The Ninth Circuit has also shunned opportunities to limit the reach of *Diné Citizens* and *Klamath*. In this case, for example, the court rejected multiple distinctions from those cases that Maverick advanced. App., *infra*, 26a-28a. Instead, it reaffirmed their breadth by holding that, "under *Diné Citizens* and *Klamath Irrigation*, the Federal Defendants cannot adequately represent the Tribe's interests" despite "undoubtedly shar[ing] an interest in the ultimate outcome of this case." *Id.* at 26a (internal quotation marks omitted). And the court has continued to apply its outlier rule in other cases to immunize federal agency action from judicial review. See, *e.g.*, *Backcountry Against Dumps* v. *Bureau of Indian Affairs*, 2022 WL 15523095, at *1-2 (9th Cir. Oct. 27, 2022) (affirming dismissal under Rule 19 of suit challenging

federal government's approval of lease between tribe and wind-energy development company).

The Ninth Circuit's repeated refusal to reassess its position and resolve the conflict it has created leaves no alternative to this Court's review. Further percolation would serve no purpose—the split will persist whichever side additional circuits join—and would needlessly delay the inevitable reckoning. The Court should grant certiorari and resolve the conflict.

II. THE NINTH CIRCUIT'S APPROACH IS WRONG

The Ninth Circuit's approach is also unsupportable and inconsistent with the government's settled position dating back decades. As the United States has explained in this Court and others—in the IGRA context and others, and across Administrations—the government itself "is generally the only required and indispensable defendant" under Rule 19(a) "in APA litigation challenging federal agency action." C.A. E.R. 26; see, *e.g.*, U.S. *Klamath* Br. at 17-19; U.S. Amicus Br. at 11, *Montana Wildlife Federation* v. *Haaland*, No. 22-35549, 2023 WL 2167617 (9th Cir. Feb. 14, 2023); U.S. Br. at 9, *West Flagler Associates, Ltd.* v. *Haaland*, No. 1:21-cv-02192-DLF, 2021 WL 8344054 (D.D.C. Oct. 26, 2021); U.S. Amicus Br. at 11, *Diné Citizens*, *supra*, No. 17-17320, 2018 WL 948523 (9th Cir. Feb. 16, 2018); U.S. Br. at 17-18, *Vann* v. *U.S. Department of Interior*, No. 11-5322, 2012 WL 2950168 (D.C. Cir. July 19, 2012); U.S. Br. at 25, *Southwest Center for Biological Diversity* v. *Babbitt*, No. 98-15038, 1998 WL 34104453 (9th Cir. Mar. 9, 1998). Allowing a non-party tribe or other sovereign to shut down an APA suit it does not like is also un-

warranted and inequitable under Rule 19(b). And the public-rights exception compels the same conclusion.

A. The Tribe Is Not A Required Party Under Rule 19(a) Because The United States Can Adequately Defend Its Action

The Ninth Circuit's approach goes off track at the outset by deeming the federal government incapable of adequately defending federal agency action. This APA suit, like others the Ninth Circuit has squelched, challenges final action by a federal agency: the Secretary of the Interior's approval of the amendment of tribal-state compacts to expand tribes' statewide gaming monopoly. The Department of the Interior, represented by the Department of Justice, is fully capable of defending that action. Indeed, as Judge Miller correctly recognized, and as the government has explained here and in many past cases, "the agency is the *best* party to defend" the legality of its own actions, and it was "prepared to do so in this litigation." App., *infra*, 45a-46a (emphasis added); see C.A. E.R. 26; U.S. *Klamath* Br. at 17. After all, "an agency's action must be upheld, if at all, on the basis articulated by the agency itself." *Motor Vehicle Manufacturers Association of the United States* v. *State Farm Mutual Automobile Insurance Co.*, 463 U.S. 29, 50 (1983) (citing, *inter alia*, *SEC* v. *Chenery Corp.*, 332 U.S. 194, 196 (1947)). Neither the Tribe nor any other non-federal party is better positioned than the agency itself to elucidate the basis it has articulated.

That should be the ballgame. An absent party's interest in a lawsuit does not make it "required" under Rule 19(a) if an existing party will adequately defend that interest. Rule 19 exists to protect absent parties' interests—not to give those parties the power to short-

circuit litigation where their interests are already well defended. As the United States has put it, "whatever beneficial effects might result for a third party from [a] challenged agency action are derivative of that agency action and thus should ordinarily be regarded as sufficiently protected on judicial review by the government's defense of its action." U.S. *Klamath* Br. at 18.

The United States' adequacy is further magnified in IGRA cases like this one. IGRA was designed to "promot[e] tribal economic development, self-sufficiency, and strong tribal governments." 25 U.S.C. § 2702(1). Before the Secretary of the Interior may approve a tribal-state compact, he must determine that the compact is consistent with IGRA, other federal law, and "the trust obligations of the United States to Indians." *Id.* § 2710(d)(8)(B). The Secretary (through a subordinate) expressly so determined in this case. App., *infra*, 86a-89a (letters approving Tribe's compact amendments). The United States and the Tribe are thus fully aligned in defending against Maverick's APA claim on the merits, and the Tribe's absence would not leave its interests unprotected.

2. None of the Ninth Circuit's responses to that conclusion holds water.

The court principally reasoned that the United States cannot adequately represent the Tribe because its "interests in this litigation begin and end with defending the compacts," whereas the Tribe has a stake in downstream *effects* of the amended compacts—specifically, in continuing its gaming activities. App., *infra*, 26a (internal quotation marks omitted). But the United States presumably desires the amendments it

approved (and the underlying compacts) to be effectuated. And the agency approved them based on its belief that they are consistent with IGRA's goal of promoting tribal gaming and consistent with "the trust obligations of the United States to Indians." 25 U.S.C. §§ 2702, 2710(d)(8)(B)(iii); see App., *infra*, 86a-89a.

In any event, the relevant unit of analysis under Rule 19(a) is "the subject *of the action*," Fed. R. Civ. P. 19(a)(1)(B) (emphasis added), *i.e.*, the suit, and here Maverick's APA claim "begin[s] and end[s]" (App., *infra*, 26a) with the compact approvals. As Judge Miller observed, "[i]n an APA case, the only question to be decided is whether the agency's action should be set aside." *Id.* at 46a. Whatever downstream interests the Tribe might have *after* this litigation concludes, the Tribe's interests *in* this litigation are fully aligned with the United States in defending the approvals that Maverick challenges.

The Ninth Circuit's contrary, downstream-effects approach lacks a limiting principle. Under its interpretation, the United States will almost never be an adequate representative in APA cases affecting tribes' (or other sovereigns') interests: A non-federal sovereign seeking dismissal under Rule 19 will nearly always assert some concrete benefit it would derive as a "consequenc[e] of upholding that action." App., *infra*, 45a. In virtually any suit affecting absent sovereigns, the United States will have an interest in faithfully implementing federal law, but the absent sovereign can also claim an additional, parochial stake in having the agency's action sustained.

The Ninth Circuit also hypothesized that, "in the event of a conflict between the Tribe's interest in class

III gaming and any other provision of federal law, IGRA requires the federal government to consider, and possibly prioritize, the federal law." App., *infra*, 27a. That conjecture ignores the reality that the Secretary has already determined that, in his view, the Tribe's compact does not violate IGRA or other applicable federal laws. App., *infra*, 86a-89a. Although Maverick disagrees on the merits, sheer speculation that the agency might someday revisit its position is no reason to stop Maverick's suit today.

The Ninth Circuit took that misguided conjecture a step further still, positing that the Tribe might argue that it "can lawfully offer class III gaming even without a compact"—a stance the United States could not embrace because (as the panel recognized) it "is contrary to federal law." App., *infra*, 30a-31a & n.17. But the Tribe has no legally cognizable interest that Rule 19(a) would recognize in advancing arguments that are clearly foreclosed by federal law. And in any event, such an argument could only arise in some future case after the Secretary's approval of the compact amendments was set aside. On every merits question at issue in *this* case, the United States and the Tribe are fully aligned.

B. Dismissal Under Rule 19(b) Is Improper And Inequitable In Any Event

Even on the Ninth Circuit's misguided view that the Tribe is a required party under Rule 19(a), the dismissal remedy it upheld here (as in prior cases) under Rule 19(b) is wrong. The Ninth Circuit's approach again turns Rule 19 upside-down by transforming dismissal of APA suits from an exception into the default rule.

1. Rule 19(b) identifies four factors that a court should consider in determining whether the infeasibility of joining a required party warrants dismissal: (1) whether an absent party's absence might prejudice it; (2) methods to avoid or mitigate any such prejudice; (3) whether a judgment would be adequate without the absent party; and (4) whether the plaintiff has other adequate remedies. But this Court has made clear that Rule 19(b) requires careful analysis of those factors, even when an absent sovereign is required and cannot be joined. See *Republic of Philippines* v. *Pimentel*, 553 U.S. 851, 865-872 (2008). And as the United States has previously explained, those factors generally favor allowing APA suits to proceed without an absent party who benefited from the agency action at issue. See U.S. *Klamath* Br. at 22-23.

The Ninth Circuit turns that principle on its head. As the court of appeals itself observed, "virtually all of [its] cases to consider the question appear to dismiss under Rule 19, regardless of whether an alternative remedy is available, if the absent [parties] are Indian tribes invested with sovereign immunity." App., *infra*, 40a. The court's leading case in this line candidly admitted that its approach reduces the critically important Rule 19(b) inquiry to an afterthought that rarely if ever makes any difference. See *Diné Citizens*, 932 F.3d at 857 ("there may be very little need for balancing Rule 19(b) factors because immunity itself may be viewed as the compelling factor" (internal quotation marks omitted)).

This case well illustrates that inversion of the Rule 19(b) inquiry. The Ninth Circuit acknowledged that the third and fourth factors cut Maverick's way: Vacatur of the Secretary's compact approvals would

be adequate relief for Maverick, and dismissal would completely foreclose judicial review of Maverick's claims. App., *infra*, 40a. But the court concluded that the first factor—prejudice to the Tribe if the suit proceeds—"largely duplicates the consideration that made a party necessary under Rule 19(a)." *Id.* at 38a-39a. And the court invoked that first factor to resolve the second—the possibility of mitigating prejudice to the Tribe—against Maverick by rejecting Maverick's mitigation proposals (such as allowing the Tribe to participate as an amicus) out of hand. The Ninth Circuit then broke that purported two-to-two tie in the Tribe's favor, and in doing so it gave the game away: Under "a wall of circuit authority," the court stated, "[t]he balancing of equitable factors under Rule 19(b) almost always favors dismissal when a tribe cannot be joined due to tribal sovereign immunity," and the result here accordingly had to be the same. *Id.* at 37a-40a.

As the decision below demonstrates, the Ninth Circuit in effect applies a per se rule compelling dismissal under Rule 19(b) whenever an absent sovereign is a required party under Rule 19(a). The first factor (prejudice) will favor dismissal whenever Rule 19(a) is met; the second factor (mitigation) will be foreordained by the first; and the Ninth Circuit breaks the tie in favor of dismissal.

2. The Ninth Circuit has also diverged from settled law and raised its roadblock to APA review higher still by refusing to apply the public-rights exception.

As this Court has long recognized, traditional mandatory-joinder rules are relaxed in cases "restricted to the protection and enforcement of public

rights." *National Licorice*, 309 U.S. at 363. An APA suit seeking to enforce governmental compliance with constitutional and statutory requirements is a quintessential public-rights case. Rule 19(b) ultimately turns on considerations of "equity and good conscience," and "the distinctive character of APA litigation" counsels in favor of allowing judicial review of executive decisionmaking. App., *infra*, 46a (Miller, J., concurring). The United States, too, has argued in this Court that the public-rights exception "generally applies in suits for judicial review challenging federal agency action under the APA." U.S. *Klamath* Br. at 20-22.

The Ninth Circuit offered two reasons for nevertheless deeming the public-rights exception inapplicable to this APA case, but both fail. First, the court held that this suit merely concerns "Maverick's private interest in increasing its own revenue," rather than vindication of constitutional or statutory requirements. App., *infra*, 42a. But Maverick's suit indisputably seeks judicial review of actions taken by a federal agency—a textbook public-rights case. It makes no difference that Maverick has a private economic *motivation* for bringing its public-rights claim. Indeed, Article III *requires* a federal-court plaintiff to plead and prove a "particularized" injury that "affect[s] the plaintiff in a personal and individual way." *Spokeo, Inc.* v. *Robins*, 578 U.S. 330, 339 (2016). But the existence of that particularized injury does not transform the nature of the public right being vindicated as a legal basis for relief. Cf. *Bond* v. *United States*, 564 U.S. 211, 222 (2011) ("An individual has a direct interest in objecting to laws that upset the constitutional balance between the National Government

and the States when the enforcement of those laws causes injury that is concrete, particular, and redressable."). The public-rights exception does not paradoxically require a plaintiff to sabotage its own Article III standing by demonstrating that it has no private interest in a suit attacking agency action.

Second, the Ninth Circuit deemed the public-rights exception inapposite on the ground that Maverick's suit threatened the Tribe's "legal entitlements." App., *infra*, 42a-43a. But the fact that an APA suit could affect "contract rights" does not make it one "for the adjudication of private rights." *National Licorice*, 309 U.S. at 362-363. And, in any event, the compacts at issue here are not remotely run-of-the-mill private contracts that confer garden-variety contract rights, to which joinder rules apply with greater force. They are agreements between two sovereigns (a State and a tribe) that set the balance of regulatory authority—more akin to treaties or interstate compacts than private agreements. See 25 U.S.C. § 2702. A dispute over the compacts' constitutional and statutory legality, particularly in the context of an APA claim, is a paradigmatic dispute over public rights.

If this case cannot proceed without the Tribe under the Rule 19(b) rubric, it is hard to imagine an APA case that can. The Ninth Circuit's decision improperly forecloses APA review in nearly any case where agency action has benefited an absent sovereign.

III. THIS CASE IS AN IDEAL VEHICLE TO RESOLVE THIS IMPORTANT AND RECURRING QUESTION

The importance of the question presented should be beyond serious dispute: The Ninth Circuit has invented an exception to the APA's right of judicial re-

view that empowers tribes and other sovereigns to put federal agency actions they like beyond courts' reach. This case is an optimal vehicle to resolve the issue.

A. The Question Presented Is Important And Recurring

In a wide swath of cases, the Ninth Circuit's approach nullifies the bedrock principle of administrative law that final agency action is subject to judicial review. See, *e.g.*, *Bowen* v. *Michigan Academy of Family Physicians*, 476 U.S. 667, 670 (1986). The APA "authorizes persons injured by agency action to obtain judicial review by suing the United States or one of its agencies, officers, or employees." *Corner Post, Inc.* v. *Board of Governors of Federal Reserve System*, 603 U.S. 799, 807 (2024); see 5 U.S.C. § 702. That right of review is critical to keeping the government honest. The Court has "long applied a strong presumption favoring judicial review of administrative action" in part because the government is "especially" incentivized to commit legal violations "when they have no consequence." *Weyerhaeuser Co.* v. *U.S. Fish & Wildlife Service*, 586 U.S. 9, 22-23 (2018). And the Court has emphasized that "judicial review of a final agency action by an aggrieved person will not be cut off unless there is persuasive reason to believe that such was the purpose of Congress." *Bowen*, 476 U.S. at 670 (internal quotation marks omitted).

But the Ninth Circuit's approach eliminates that APA-conferred right of judicial review whenever a non-party sovereign benefits from the challenged agency action and invokes its immunity to bar APA litigation brought by others against the government. Tribes can now wish away an APA suit imperiling an

agency regulation or other action across "the wide range of cases in which agency actions implicate the interests of Indian tribes." App., *infra*, 47a (Miller, J., concurring). The Ninth Circuit's decisions from *Diné Citizens* forward make clear that the issue is recurring and illustrate the range of agency actions tribes can insulate from review—from environmental analyses and approvals (*Diné Citizens* and *Backcountry*) to water rights (*Klamath*) to casino gaming (this case). And nothing in the court of appeals' logic limits its rule to those contexts. Its reasoning applies to any federal agency action that tribes claim affects their interests.

Nor is the Ninth Circuit's analysis limited to Indian tribes. Its rule rests on tribes' sovereign interests and sovereign immunity—attributes other sovereigns share. The Ninth Circuit's decisions create a roadmap for States and foreign governments to seek to shut down litigation imperiling agency actions that benefit them. Indeed, within months of *Diné Citizens*' issuance, Arizona sought to exploit the remarkable power the court of appeals had conferred. See, *e.g.*, Arizona Amicus Br. at 2-3, *Center for Biological Diversity* v. *U.S. Forest Service*, No. 3:12-cv-08176-SMM, Dkt. 159 (D. Ariz. Nov. 12, 2019) (invoking *Diné Citizens* to urge Rule 19 dismissal of challenge to action by U.S. Forest Service). Whether a State or other sovereign may intervene to *defend* federal agency action the federal agency has abandoned is debatable. Cf. *Arizona* v. *City & County of San Francisco*, 596 U.S. 763 (2022). Whether a sovereign may help itself to *dismissal* of an APA suit it has not joined that the federal government is actively defending is not.

B. This Case Is An Ideal Vehicle

This case provides a perfect opportunity to answer the question presented. The Rule 19 issues were briefed extensively below, and the Ninth Circuit squarely addressed them in a published opinion. And that question was dispositive in the decision below: The court of appeals upheld the dismissal of Maverick's suit solely because it determined that the Tribe is a required party under Rule 19 without whom the suit cannot proceed. But for that conclusion, Maverick's APA suit would move forward to the merits. Nor is there any realistic prospect that the Ninth Circuit will reconsider or temper its rule. It has twice previously denied rehearing and in this case rejected arguments to limit or distinguish its prior decisions.

Nor does this case suffer from any vehicle defects that have previously hindered this Court's review. In *Klamath*, after the Ninth Circuit first doubled down on its outlier position, the federal government agreed that "questions concerning the application of Rule 19 in APA actions challenging final agency action, and if or when an Indian Tribe's assertion of sovereign immunity may require dismissal of an APA action, may warrant this Court's review." U.S. *Klamath* Br. at 16. But the government contended that *Klamath* was a poor vehicle for reasons absent here, including the petitioner's "heavy focus on the McCarran Amendment" and "related water-rights issues" that "significantly distract[ed] from the relevant Rule 19 and APA issues." *Id.* at 24.

No such distractions are present here. The Rule 19 question is central and cleanly presented. This Court should grant review to answer it.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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