No. 24-1161

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

REPLY BRIEF FOR PETITIONER

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RULE 29.6 STATEMENT

The corporate disclosure statement in the petition for a writ of certiorari remains accurate.

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REPLY BRIEF FOR PETITIONER

The United States "agrees that the Ninth Circuit has adopted an unsound approach to Rule 19 that no other court of appeals has endorsed." U.S. Br. 21. It acknowledges that, "if this case had remained in the District of Columbia, where it was first filed, circuit precedent would not have supported dismissing petitioner's APA claim on Rule 19 grounds." *Ibid.* This square circuit conflict, the United States warns, "can create incentives for forum shopping." *Id.* at 22. And it concedes that the Ninth Circuit's "troubling" approach is sufficiently important to "warrant this Court's review in an appropriate case." *Id.* at 11.

The federal government nevertheless tries to forestall review of this certworthy question based on halfhearted vehicle objections. But none is substantial or poses any obstacle to this Court's consideration of the question presented: whether absent sovereigns may wield Rule 19 to foreclose judicial review of federal agency actions that benefit them. There is no reason to wait for the Ninth Circuit to repeat its error. This Court's review is warranted now.

The Tribe's and State's attempts to avoid review are weaker still. They purport not to see the circuit split—which the government and Judge Miller both acknowledged. That is strange, given that the State sought and secured a transfer from the D.C. Circuit to the Ninth Circuit, where, under settled precedent, the Tribe could use Rule 19 to torpedo this case. And their efforts to muddy the state of the law, the issues below, and the importance of the question presented all come up short, as the United States' brief itself shows.

The Court should grant certiorari and reverse.

I. THE UNITED STATES' RESPONSE CONFIRMS THAT THE QUESTION PRESENTED IS CERTWORTHY

The United States confesses that it prevailed below based on "an erroneous understanding of Rule 19 that no other court of appeals has endorsed." U.S. Br. 11. It also agrees that the Ninth Circuit's error is important and is likely to recur. See *id.* at 11, 25. Yet the government asks this Court to let that error stand—and thus permit its own challenged actions to escape judicial review—based on insubstantial vehicle objections. None of those objections holds up.

A. The United States' response confirms the need for this Court's review.

1. The United States agrees that the circuits are in conflict on this issue: "Petitioner is correct that the Ninth Circuit has adopted an erroneous understanding of Rule 19 that no other court of appeals has endorsed," and the D.C. Circuit's "precedent would not have supported" the Ninth Circuit's opinion "dismissing petitioner's APA claim on Rule 19 grounds." U.S. Br. 11, 21; see also *id.* at 13 (citing the D.C. and Tenth Circuits as conflicting with the Ninth Circuit). The split cuts across three issues in the Rule 19 analysis: (1) whether, under Rule 19(a), the United States adequately protects third-party interests when it defends against an APA suit; (2) whether the Rule 19(b) factors weigh against dismissal; and (3) whether the public-rights exception applies. Pet. 17-20. The Ninth Circuit is an outlier in answering "no" to each of those questions. Its error "[b]eg[an] with *Diné Citizens Against Ruining our Environment* v. *Bureau of Indian Affairs*, 932 F.3d 843 (2019)," and has continued "in a

series of cases" over the past five years. U.S. Br. 16-20; accord Pet. 20-23.

That split was outcome-determinative here, as the United States admits. "[I]f this case had remained in the District of Columbia, where it was first filed, circuit precedent would not have supported dismissing petitioner's APA claim on Rule 19 grounds." U.S. Br. 21. But the State secured a transfer to the Western District of Washington (over Maverick's opposition), and the Tribe then invoked Ninth Circuit precedent to compel dismissal. See Pet. App. 17a-18a. That is precisely the sort of "forum shopping" that the United States recognizes "may counsel in favor of granting further review." U.S. Br. 22.

2. On the merits, the United States agrees that "the decision below is incorrect." U.S. Br. 21. The Tribe is not "required" under Rule 19(a) because, "[e]ven assuming some cognizable third-party interest in a given APA suit, the government's own interest in defending the action will generally ensure that any such third-party interest is protected." *Id.* at 13; accord Pet. 24-25. Even if the Tribe "satisfie[d] the standard for required-party status in Rule 19(a)," Rule 19(b)'s "equitable inquiry" "further militates against dismissing an APA suit for failure to join an absent non-federal third party." U.S. Br. 13-14; accord Pet. 27-29. And "[t]his Court's traditional equitable practices"—*i.e.*, the "public-rights doctrine"—"also counsel against dismissing an APA suit on Rule 19 grounds." U.S. Br. 15-16; accord Pet. 29-30. For all these reasons, "the Ninth Circuit's approach fails to take proper account of 'the distinctive character of litigation under the' APA." U.S. Br. 11 (quoting Pet. App. 44a (Miller, J., concurring)).

3. On importance, the United States further agrees that the Ninth Circuit's "troubling" approach "may warrant this Court's review in an appropriate case." U.S. Br. 11. As Judge Miller warned below, the Ninth Circuit's outlier 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"—an "anomalous result" that "frustrates Congress's directive that a person adversely affected or aggrieved by agency action is entitled to judicial review thereof." Pet. App. 47a (citations and alterations omitted). And, as the United States observes, the Ninth Circuit's reasoning "is not limited to sovereign tribes" and could cause "significant disruption in APA litigation" if "extended * * * to its logical conclusion." U.S. Br. 20.

B. Because it does not contest the certworthiness of the question presented, the United States stakes its entire opposition on purported vehicle objections. U.S. Br. 22-25. None poses any obstacle to review.

1. First, the United States points to Maverick's acknowledgment below that "the Tribe has a legitimate interest in the legality of its gaming compact and sports betting amendment." Pet. App. 21a; see U.S. Br. 22. But that is not a vehicle defect; rather, it tees up the circuit conflict. The relevant questions that have split the circuits—and which are dispositive here—concern not the existence of a tribal interest, but rather (1) whether the government's defense on the merits of an APA claim adequately protects the Tribe's asserted interest, (2) whether the suit should be dismissed under the Rule 19(b) factors, and (3) whether the public-rights exception applies. *Su-*

pra 2-3; Pet. 17-20. The petition cleanly presents those questions, which the government agrees are dispositive "[e]ven assuming" the Tribe has a "cognizable third-party interest." U.S. Br. 13; see *supra* 3.

2. Next, the United States suggests that Maverick could have obtained judicial review of its equal-protection argument via its Section 1983 claim against the State defendants. U.S. Br. 22-23. But again, the United States admits that this is not a real vehicle problem: it does "not directly bear on the Rule 19 analysis for petitioner's APA claim" because "[r]equired-party status under Rule 19 is assessed on a claim-by-claim basis." *Id.* at 23. Moreover, Maverick's claim against the State defendants is different from its APA claim. The APA claim raised the additional arguments that the compacts at issue violated IGRA and were invalid under the anti-commandeering doctrine; the Section 1983 equal-protection claim did not raise either argument. Compare State App. 168a-170a, with *id.* at 174a-176a. The claims also seek different relief: the APA claim would lead to vacatur of the Secretary's approval of the compact amendments, whereas the remedy for Maverick's equal-protection claim may involve either "leveling up" (by allowing Maverick to offer class III gaming) or "leveling down" (by forbidding tribal gaming). Cf. *Barr* v. *American Association of Political Consultants, Inc.*, 591 U.S. 610, 632-634 (2020) (plurality opinion).

3. Third, the United States notes that in July 2025 Maverick initiated voluntary reorganization proceedings under Chapter 11. U.S. Br. 23-24. Here again, the United States admits that "the pendency of a Chapter 11 proceeding would not preclude this Court from granting the petition." *Id.* at 24. And

while the United States speculates about whether Maverick "will remain a going concern in the future" or ultimately realize the "benefit" from a favorable decision, *ibid.*, one of the core "policies underlying Chapter 11" is to "*preserv*[*e*] going concerns." *Bank of American National Trust & Savings Association* v. *203 North LaSalle Street Partnership*, 526 U.S. 434, 453 (1999) (emphasis added). The United States offers no reason to think Maverick will not remain a going concern here.

4. Finally, the United States suggests that this case is "arguably idiosyncratic" given "the contractual nature of an IGRA compact" and the general rule that "all parties to a contract must be joined to any action seeking to invalidate the contract." U.S. Br. 24-25. But the United States admits that "[t]he Ninth Circuit did not rest its decision here on that background principle." *Id.* at 25. Rather, the Ninth Circuit applied its prior precedents in *Diné Citizens*, 932 F.3d 843, and *Klamath Irrigation District* v. *Bureau of Reclamation*, 48 F.4th 934 (9th Cir. 2022), cert. denied, 144 S. Ct. 342 (2023), neither of which relied on a contract-specific rule. See Pet. App. 23a-32a, 37a-41a; *id.* at 46a (Miller, J., concurring). Moreover, the United States never argues that Rule 19 applies differently in an IGRA case. To the contrary, the government's merits analysis correctly focuses on generally applicable Rule 19 principles. U.S. Br. 11-16; see also *id.* at 16-21 (rebutting the Ninth Circuit's analysis).

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The United States closes by noting that "the Rule 19 question continues to recur in APA suits." U.S. Br. 25. That is a reason to grant review, not to delay it.

Without this Court's intervention, litigants in the Ninth Circuit will continue to see their APA claims dead on arrival "in the wide range of cases in which agency actions implicate the interests of Indian tribes." Pet. App. 47a (Miller, J., concurring). That result flouts the presumption of judicial review and nullifies Congress's promise of such review in the APA. This Court should grant certiorari now.

II. THE TRIBE'S AND THE STATE'S REMAINING ARGUMENTS ARE MERITLESS

The Tribe and the State largely echo the United States' vehicle arguments, which fail for the reasons explained above. They also argue the merits, which is no reason to forgo review. Their few remaining arguments are baseless.

A. The Tribe and the State claim there is no split. Tribe Br. 18-23; State Br. 13-25. That position is untenable.

1. The United States acknowledges the split. U.S. Br. 11, 21. Judge Miller did, too. Pet. App. 47a-48a. And while the Tribe and the State insist that there is no split, their litigation tactics suggest otherwise. The Washington Indian Gaming Association (of which the Tribe is a member and has a seat on the board of directors) issued a statement opposing Maverick's litigation the day Maverick filed its initial complaint in the District of Columbia.[1] Yet the Tribe never participated in the litigation until seven months later, *after* the State defendants successfully moved to transfer the case to the Western District of Washing-

[1] See WIGA, Washington Indian Gaming Association Statement (Jan. 11, 2022), https://tinyurl.com/mvdhxny3.

ton. See State App. 60a-61a & n.5. As the United States correctly observes, that deliberate change of forum was outcome-determinative. See U.S. Br. 21-22. The Tribe and the State are hardly in a position to say now that it made no difference after all.

2. The argument also fails on its own terms.

The Tribe and the State say that all courts would find a tribe necessary under Rule 19(a) if the federal government has a "conflict of interest." Tribe Br. 21-22; State Br. 16-18. But that simply ignores the circuit split at issue here: no other circuit would have found a conflict of interest in this case. As the United States correctly notes, "[t]he federal government and the Tribe have no apparent conflict of interest in their shared desire to see the Secretary's actions upheld." U.S. Br. 18-19. The Tribe and the State (echoing the decision below) point to the Tribe's adversarial relationship with the federal government "in the late 1990s," *before* the Tribe had any IGRA compact. Pet. App. 31a; see Tribe Br. 21-22; State Br. 18. That 30-year-old "conflict" is a red herring. As the United States explains, for Maverick's "APA claim, the only question for the reviewing court is whether to sustain the Secretary's approval of the compact amendments, and the Tribe's proffered argument about lawful Class III gaming *in the absence of a compact* is irrelevant to that question." U.S. Br. 18; accord Pet. 26.

The Tribe and the State also identify Ninth Circuit decisions predating *Diné Citizens* and *Klamath* that allowed some claims to go forward. But *Diné Citizens* and *Klamath* adopted a new requirement no other circuit applies—that the federal government share the same "reasons" as the Tribe for wanting to

see an agency action upheld. Pet. App. 26a (citation omitted); see *id.* at 45a (Miller, J., concurring). That new requirement is fatal in all but the rarest cases "[b]ecause the motivations of private entities that benefit from federal agency action very frequently are different than the agency's motivation for defending its own action." U.S. Br. 20. That is why "the motivations of the parties are not the proper focus." *Id.* at 17; see also Pet. 26 (similar); California Gaming Association *Amicus* Br. 3-5 (similar).

Similarly, the State suggests that the decision below is consistent with other circuits' caselaw because the United States has "an inadequate stake in the outcome of the case." State Br. 20; see *id.* at 26-27. But that merely tees up the question here: whether the United States' interest in defending its own agency actions *is* a sufficient stake to ensure "as a practical matter" that third-party interests are protected. Fed. R. Civ. P. 19(a)(1)(B)(i). Other circuits, and the United States itself, correctly recognize that it is. See Pet. 17-20; U.S. Br. 13, 17-18.

Finally, the Tribe casts the Rule 19(b) analysis in this case as a case-specific "exercis[e] [of] discretion" in which the court "carefully evaluated each factor" and "balance[d]" them. Tribe Br. 33-34. The decisions below belie that account. The district court stated that it "face[d] a wall of circuit authority requiring dismissal when a Native American tribe cannot be joined due to its assertion of tribal sovereign immunity." Pet. App. 65a-66a (citation omitted). The Ninth Circuit yielded to that same "wall," underscoring that "virtually all of the cases to consider the question appear to dismiss under Rule 19, regardless of whether an alternative remedy is available." *Id.* at 40a (cita-

tion omitted); see also *id.* at 45a (Miller, J., concurring) ("In practice, when tribal sovereign immunity is involved, that means that the case must be dismissed."); *Diné Citizens*, 932 F.3d at 857 ("[T]here may be very little need for balancing Rule 19(b) factors because immunity itself may be viewed as the compelling factor.") (citation omitted). That squarely contravenes the practice in other circuits. See Pet. 18.

B. The Tribe and the State also attempt to conjure up vehicle problems, but each one fails.

1. The Tribe and the State say that Maverick "conceded" that "where there is an actual conflict between a Tribe and the United States, federal defendants do not adequately represent tribal interests." Tribe Br. 25; see State Br. 31. But all parties (and all courts of appeals) agree on that point. Tribe Br. 21; see U.S. Br. 18. The question here is not whether a true conflict of interest can affect the Rule 19 analysis (it can); it is whether any such conflict exists in a case like this one, where the United States stands ready to defend its own agency action on the merits.

The Tribe and the State also incorrectly assert that the existence of such a conflict in this case is "unchallenged." Tribe Br. 25; State Br. 31. That is demonstrably false: as Maverick's filings collected in the State's own appendix show, Maverick argued at length below that no conflict exists. See, *e.g.*, State App. 8a-14a, 65a, 75a-78a. The petition reiterates that argument, noting that "the relevant unit of analysis under Rule 19(a) is 'the subject of the action'"—not the Tribe's purported conflict with the federal government in the 1990s, *before* it had any compact—and that "the Tribe's interests in this litigation are fully

aligned with the United States." Pet. 26 (quoting Fed. R. Civ. P. 19(a)(1)(B); emphases omitted). And the United States agrees that there was "no such conflict with respect to petitioner's APA claim" because "[t]he federal government and the Tribe have no apparent conflict of interest in their shared desire to see the Secretary's actions upheld." U.S. Br. 18-19.

2. The Tribe says this case is "not a typical APA dispute" because the federal government did not itself "negotiat[e]" the compacts or otherwise "develo[p] any record." Tribe Br. 27. But the government's approval of the Tribe's compact amendment stated unequivocally the government's view that the amendment "d[id] not violate the Indian Gaming Regulatory Act" or "any other provision of Federal law that does not relate to jurisdiction over gaming on Indian lands." Pet. App. 86a, 88a. The United States stands ready to defend those conclusions on the merits, and Maverick's APA challenge to those legal determinations does not require any further "record."

Finally, the Tribe and the State argue that Maverick seeks "more than just vacatur" under its APA claim. Tribe Br. 26; see State Br. 26-27. That is a nonstarter: as the United States explains, although the complaint initially requested additional declaratory relief, Maverick offered to "limit any relief under the APA" to vacatur, and "[t]he court of appeals decided the case on the premise that petitioner is seeking only that limited relief." U.S. Br. 18 n.3.

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The petition for a writ of certiorari should be granted.

Respectfully submitted.

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