No. 25-

IN THE

Supreme Court of the United States

SAULT STE. MARIE TRIBE OF CHIPPEWA INDIANS,
Petitioner,

v.

STATE OF MICHIGAN, *et al.*,
Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a district court has "inherent equitable power" to enter a coercive "decree" restricting an Indian tribe's treaty rights without its consent and without satisfying this Court's well-established standards for injunctive relief.

PARTIES TO THE PROCEEDING

Petitioner (intervenor-appellant below) is the Sault Ste. Marie Tribe of Chippewa Indians.

Respondents are the United States (plaintiff-appellee below), the State of Michigan (defendant-appellee below), and the Bay Mills Indian Community, Grand Traverse Band of Ottawa and Chippewa Indians, Little River Band of Ottawa Indians, and Little Traverse Bay Bands of Odawa Indians (intervenors-appellees below).

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INTRODUCTION

It is an "ancient and well-established responsibility" of the federal government to "protect Indian treaty rights from encroachment" by States. *United States* v. *Michigan*, 653 F.2d 277, 278-279 (6th Cir. 1981). That ancient and solemn responsibility applies fully to treaty fishing rights. Indeed, as this Court has explained, to many tribes, fishing rights "were not much less necessary to the existence of the Indians than the atmosphere they breathed." *United States* v. *Winans*, 198 U.S. 371, 381 (1905). In this case, however, the Sixth Circuit blessed a sweeping judicial "decree" restricting the treaty fishing rights of the Sault Tribe—a decree that was negotiated without the Tribe's participation, that was forced on the Tribe over its objections, and that judicially micromanages fishing in the Great Lakes for almost the next quarter of a century. In doing so, the court of appeals failed to heed multiple decisions of this Court, including those cabining the equitable authority of federal courts, in a way that will grievously harm the Tribe and its members. Only this Court can address those wrongs and restore the Sault Tribe's treaty rights.

In 1836, the Sault Tribe's ancestors—the Ottawa and Chippewa Nations, historically located in and around the Great Lakes area of Michigan—signed a treaty with the United States ceding millions of acres of land to the federal government. In return, they secured from the United States, among other things, a promise vital to the preservation of tribal cultural, economic, spiritual, and religious identities: a reserved right to take fish "wherever fish are to be found within the area of cession." *United States* v. *Michigan*, 471 F. Supp. 192, 280 (W.D. Mich. 1979). These "centuries-old fishing

rights" were embodied in the Treaty of 1836, reflecting a "solemn promise of our nation." *Id.* at 277.

In the 1970s, Michigan violated the treaty obligations secured to Indian tribes and arrested tribal members for exercising their rights to fish unencumbered by state regulation. Michigan's actions prompted the United States to initiate this (now long-running) litigation to clarify the tribes' fishing rights and remedy Michigan's unlawful interference with those rights. The United States, Michigan, the Sault Tribe, and the Bay Mills Indian Community presented extensive evidence, put on experts, and participated in a full trial, culminating in a declaratory judgment and decree issued by the district court in 1979. That decree, as modified on appeal by the Sixth Circuit, confirmed the existence and breadth of the tribes' treaty rights and narrowly limited permissible state regulation to preventing irreparable harm to the Great Lakes fishery, with Michigan carrying a burden to show that harm.

Over the years, the sovereign parties to that original decree sought various modifications, transforming the decree into a highly prescriptive set of regulatory controls. More recently, the original decree was modified by consent agreements approved by the court in 1985 and 2000. By that time, additional tribes had intervened in the litigation. The result was that seven sovereigns altogether—the United States, Michigan, the Sault Tribe, Bay Mills, the Grand Traverse Band of Ottawa and Chippewa Indians, Little River Band of Ottawa Indians, and Little Traverse Bay Bands of Odawa Indians—were bound by the terms of the 2000 consent decree.

Upon the expiration of that consent decree, six of those sovereigns excluded the Sault Tribe—the tribe

with the largest Great Lakes fishing fleet—from negotiations over a replacement decree because the Sault Tribe objected to unnecessary and asymmetrical limits on its rights. Having excluded the Sault Tribe, the parties negotiated a replacement decree and asked the district court to enter it, over the Sault Tribe's objections. The court did so without discovery and without holding a trial to resolve contested facts. Although the district court equivocated as to whether this "decree" was a consent judgment, a consent decree, or something else, it approved the decree. And the Sixth Circuit affirmed, relying principally on the "inherent equitable power" of federal courts. At no point did either court hold that the decree satisfies the standards governing permanent injunctions even though the decree prospectively restricts the Sault Tribe's treaty rights and regulates fishing in the Great Lakes until 2047.

The decisions below sharply conflict with this Court's precedents regarding the limits on federal courts' equitable power. As this Court has put it, "equitable authority is not freewheeling," but is constrained by traditional limits on equitable remedies. *Trump* v. *CASA, Inc.*, 145 S. Ct. 2540, 2551 (2025). Those limits include the principle that equitable relief must be tailored to redress the harm to the injured party—a principle that by itself should have prevented the district court from restricting rather than safeguarding the Sault Tribe's treaty rights. Equally significant, neither the district court nor the court of appeals treated the decree as what it quite obviously is—a permanent injunction that must satisfy the well-established four-part test for such relief. Instead, the lower courts applied a judicially created fifteen-factor test, rooted in consent decrees, that has no application to a coercive decree to which not all parties consent.

If left to stand, the Sixth Circuit's affirmance of the district court's novel "decree" will have severe and permanent consequences. The Sault Tribe will suffer not only the diminishment of its treaty rights, but also the concrete loss of fishing opportunities of immense cultural, economic, and historical significance to the Tribe and its members. For a community dependent on Great Lakes fishing and already facing economic distress, this abrogation of treaty rights risks tremendous, irreparable consequences. Beyond the immediate impact on the Sault Tribe, the Sixth Circuit's decision provides a roadmap for parties to unfairly exclude key participants from government-to-government negotiations and then use the judicial process to impose the resulting "deal" as a judicial decree, without the consent of all parties and without regard to the limits of equity.

The Court should grant the petition.

OPINIONS BELOW

The Sixth Circuit's decision (App.1a-40a) is reported at 131 F.4th 409 (2025). The district court's opinion (App.41a-200a) is available at 2023 WL 5444315 (W.D. Mich. Aug. 24, 2023).

JURISDICTION

The Sixth Circuit issued its final judgment on March 13, 2025. On May 30, 2025, Justice Kavanaugh granted petitioner's application to extend the time for filing a petition for a writ of certiorari to August 10, 2025. This Court has jurisdiction under 28 U.S.C. §1254(1).

STATUTORY PROVISIONS INVOLVED

This case involves the Treaty with the Ottawa and Chippewa, signed on March 28, 1836, and approved by

Congress, 7 Stat. 491 (the "Treaty of 1836"). The treaty is reproduced in the appendix. App.307a-316a.

STATEMENT

A. The Sault Tribe And Great Lakes Fishing

The Sault Tribe is the largest Indian tribe east of the Mississippi River, with more than 50,000 enrolled members. Federally recognized in 1972, the Tribe descends from Chippewa bands whose land base once included a vast area of the Upper Great Lakes region. *Michigan*, 471 F. Supp. at 220; *see Sault Ste. Marie Tribe of Chippewa Indians* v. *United States*, 576 F. Supp. 2d 838, 840-841 (W.D. Mich. 2008).

Indians have fished the Sault Tribe's ancestral waters in the Upper Great Lakes for thousands of years. *Michigan*, 471 F. Supp. at 221. Early Indians began coming to the Great Lakes for the spring fishing season, where they "took fish by hook, gorge, and spear." *Id.* Over time, the development of fishing nets and new settlement patterns opened up a fall fishing season, providing access to new species and allowing the fishery "to become more important and more productive." *Id.* at 222. "By the time of first European contact around 1650 A.D. fishing had come to be of enormous importance to the Upper Great Lakes Indians." *Id.* And by the early 1800s, the Indians of this area "were heavily engaged in commercial fishing." *Id.* at 223.

Great Lakes fishing continues to have immense economic and cultural importance for the Sault Tribe today. A substantial portion of its members rely on subsistence fishing to feed their families or on commercial fishing for their livelihood. D.Ct.Dkt.2119 at 74-75. Indeed, the Sault Tribe represents the largest commercial fishing operation in Michigan and has the largest number of

subsistence fishers among the intervening tribes. Lowes, *Opinion: Why The Sault Tribe Cannot Accept A Court-Imposed Fishing Decree*, Bridge Michigan (Aug. 13, 2024). The Sault Tribe has, moreover, been a leader in conservation efforts in the Great Lakes Fishery. *Id.* But a significant decline in the quality and quantity of fishing opportunity in the Great Lakes—prompted by environmental factors such as invasive species—has left tribal members unable to harvest sufficient fish to make a decent living. D.Ct.Dkt.2119 at 74-75; D.Ct.Dkt.2123. This decline has only compounded the Sault Tribe's dire economic picture: far higher unemployment and lower income than the Michigan average. D.Ct.Dkt.2120 at 187-189.

B. The Treaty Of 1836

Through a series of treaties, "much of the Indians' aboriginal title to Michigan land [was] extinguished" by the early 19th century. *Michigan*, 471 F. Supp. at 226. Under the Treaty of 1836, the Chippewa and Ottawa ceded to the United States lands totaling "almost 14 million acres," or "one-third of present-day Michigan." *Little Traverse Bay Bands of Odawa Indians* v. *Whitmer*, 998 F.3d 269, 274 (6th Cir. 2021). "The negotiation of this treaty [was] rent through with deception, manipulation, and double dealing," *Michigan*, 471 F. Supp. at 230, resulting in the tribes ceding this land for a "paltry sum," *id.* at 229. The Indian Claims Commission later determined that the "land had been worth approximately seven times what [the] tribes were paid in the 1836 treaty." *Id.* at 212.

At the time the Chippewa and Ottawa signed the Treaty of 1836, they were "devoted to a way of life which included, and was premised upon, hunting and fishing." *Michigan*, 471 F. Supp. at 231. The Treaty of 1836 thus

reserved their right "to fish in the ceded waters of the Great Lakes." *Id.* at 253. By its terms, the treaty stipulated that the tribes reserved "the right of hunting on the lands ceded, with the other usual privileges of occupancy," App.315a—language that "was understood by the Chippewas to include the right to fish," *Michigan*, 471 F. Supp. at 258 (quoting *People* v. *LeBlanc*, 248 N.W.2d 199, 205 (Mich. 1976)); *see also Menominee Tribe of Indians* v. *United States*, 391 U.S. 404, 405-406 (1968) (holding that similar treaty language reserved Indian fishing rights). This reservation of fishing rights was confirmed by the fact that the tribes "never explicitly ceded away" the right and were "too heavily dependent upon fish as a food source and for their livelihood to ever relinquish this right." *Michigan*, 471 F. Supp. at 259. "In the minds and comprehension of the Indians, so long as any Indians resided in Michigan, their aboriginal fishing rights would be continuing and undiminished in vitality." *Id.* at 238.[1]

More than a century later, Indian tribes that could "trace their lineage to the Ottawa and Chippewa" signatories of the Treaty of 1836, *Michigan*, 471 F. Supp. at 249—including the Sault Tribe and Bay Mills—regulated the fishing of their own members in the treaty waters of the Great Lakes through tribal licensing; time, place, and manner restrictions; reporting requirements; and conservation codes, *id.* at 248-249.

C. The District Court's 1979 Decree

In the 1970s, Michigan began arresting and prosecuting tribal members for fishing in treaty waters in

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[1] No party challenges the district court's core holding in 1979 that the Treaty of 1836 reserved the tribes' fishing rights in the Great Lakes.

ways that purportedly violated state regulations, which required state licenses and prohibited fishing with certain devices such as gill nets. *LeBlanc*, 248 N.W.2d at 201. The United States sued Michigan, alleging that its actions violated the descendant tribes' treaty rights. C.A.App.6-8 ¶¶1-6. The Sault Tribe and Bay Mills intervened as plaintiffs. Following their later federal recognition, the Grand Traverse, Little Traverse, and Little River tribes also intervened. *See* App.44a.

In its amended complaint, the United States alleged that the Treaty of 1836 "confirmed" the tribes' "aboriginal right[]" to "fish in the waters … adjacent to the lands ceded by the Treaty." C.A.App. 7 ¶4. And it alleged that Michigan had been "for a number of years, interfering with [tribes'] rights … to fish in such waters," preventing them from "fully … exercis[ing] [their] treaty-protected rights." C.A.App.7-8 ¶¶5-6. Michigan's conduct "seriously affected the health and economic well-being of [tribal members and] their families by sharply reducing the availability of fish" from "a traditional source of food for both subsistence and income." C.A.App.8 ¶6. The United States requested declaratory relief as well as an injunction prohibiting the enforcement of Michigan's fishing laws and regulations in treaty waters, including against the Sault Tribe's members. C.A.App.9 ¶10. In response, Michigan argued that it had the authority to regulate Great Lakes fishing by the Sault Tribe and others because the tribes had relinquished any fishing rights they may have held. *Michigan*, 471 F. Supp. at 204. Michigan "ask[ed] the court to declare that the Indians involved in th[e] action are not exempt from state regulation." *Id.*

After a trial, at which the district court "heard extensive historical evidence and received voluminous documentation meant to provide a basis for interpreting the

often ambiguous treaties in issue," *Michigan*, 471 F. Supp. at 204, the court ruled in favor of the United States and the tribes, *see id.* at 259-260. The court concluded that the Treaty of 1836 reserved the tribes' fishing rights, *id.* at 260, and that Michigan had "acted in derogation of [those] vested aboriginal and federal rights," *id.* at 205. The court accordingly entered a declaratory judgment and decree that set forth "the right of the Plaintiff tribes," including the Sault Tribe, "to fish in the waters of the Great Lakes and connecting waters ceded by the Treaty of 1836." *Id.* at 278. This 1979 Decree confirmed that the "Indians have a right to fish today wherever fish are to be found within the area of cession," a right that "is not limited as to the species of fish, origin of fish, the purpose of use or the time or manner of taking." *Id.* at 280. It further declared that "any laws or regulations of Michigan … inconsistent with the treaty rights of the Michigan Indians" have "no force and effect as to the plaintiff tribes and their members." *Id.*

The court's efforts to enforce the 1979 Decree resulted in later rulings by the Sixth Circuit that Michigan retained some limited authority to regulate fishing in treaty waters. The court of appeals credited the Michigan Supreme Court's ruling in *People* v. *LeBlanc* that Michigan could regulate certain methods of fishing "if necessary to preserve fish from extinction or prevent irreparable damage to fish supplies or destruction of fisheries." *United States* v. *Michigan*, 623 F.2d 448, 449 (6th Cir. 1980) (per curiam). At the same time, the Sixth Circuit recognized that "[t]he treaty-guaranteed fishing rights preserved to the Indians in the 1836 Treaty … continue to the present day as federally created and federally protected rights." *Michigan*, 653 F.2d at 278. "The responsibility of the federal government to protect Indian treaty rights from encroachment by state and

local governments," the court affirmed, "is an ancient and well-established responsibility of the national government." *Id.* at 278-279. The tribes' treaty rights were thus subject to state regulation only if Michigan could meet the demanding *LeBlanc* standard and "show by clear and convincing evidence that it is highly probable that irreparable harm will occur and that the need for regulation exists." *Id.* at 279. "[I]f Indian fishing is not likely to cause irreparable harm to fisheries within the territorial jurisdiction of the State of Michigan, the state may not regulate it." *Id.*

D. The 1985 And 2000 Consent Decrees

In subsequent years, the parties "negotiated to draft new regulations implementing the 1979 Decree." App.47a. While that process was ongoing, the tribes self-regulated their fishing activities, first in accordance with federal standards and then, after those expired, intertribal regulations. *See* App.47a-48a. When the parties could not agree to a plan, the tribes moved the district court to allocate the fishery resource among the parties, and the court set the issue for trial in 1985. C.A.App.81. Meanwhile, the court appointed a special master to oversee "pretrial management of the allocation issue" and to "attempt to negotiate … a settlement." C.A.App.81-82.

The trial was called off when all of the sovereign parties reached agreement on a new plan to implement the 1979 Decree. Bay Mills moved for entry of a consent order reflecting that agreement, which the court entered. C.A.App.82. Weeks later, however, Bay Mills filed an objection to the same order, proposing a different allocation. *Id.* The court set a trial to determine whether to adopt the proposal reflected in the consent order, Bay Mills' new proposal, or neither. *Id.* At a pretrial

conference, all counsel "agreed that the court could choose one of the two plans, or reject both." *Id.* The court then concluded that the agreed-upon plan was "superior, both in terms of protecting the Indian reserved treaty fishing right, and for the preservation of the resource." C.A.App.90. It adopted the consent order as the 1985 Decree, which had a term of 15 years. C.A.App.95.

When the 1985 Decree expired in 2000, the parties agreed unanimously on the terms of a successor consent decree, which the district court adopted. App.8a. The 2000 Decree was to be "effective for the next twenty years." *Id.*

E. The 2023 Decree

In 2019, as the expiration of the 2000 Decree approached, the parties began negotiations over a new consent agreement. The Sault Tribe worked diligently and in good faith, including through in-person negotiations, to reach a consensus with the other parties. But the Tribe was emphatic in its view that the 2000 Decree had overly restricted tribal treaty rights, and it urged modest increases to fishing opportunities in certain areas and opposed specific restrictions on tribes, such as data collection provisions and closures of certain waters to future fishing. In August 2022, the Sault Tribe learned that the other parties did not wish to negotiate issues critical to its interests and that they "intend[ed] to exclude the Sault Tribe from further drafting sessions." D.Ct.Dkt.2006 ¶3; *see* D.Ct.Dkt.2077 at 1 n.1. Over the Sault Tribe's objection, the other parties cancelled future all-party meetings, D.Ct.Dkt.2006 ¶3, and in December 2022, without notice to the Tribe, the other parties filed a new proposed decree with the district court, App.52a.

The proposed decree—which retained language calling it a "Consent Decree," *e.g.*, D.Ct.Dkt.2042-1 at 1—imposed significant and inequitable restrictions on tribal treaty fishing rights. Among other things, it adopted stringent limits on the areas in which tribes may fish, the gear they may use, and the type and quantity of fish they may catch. App.211a-234a, 245a-258a. As outlined in the Sault Tribe's objections, the 2023 Decree did not permit the Tribe to use traditional gear such as spears and set hooks. D.Ct.Dkt.2077 at 5. It deprived the Tribe of opportunities to fish in treaty waters, including by closing off traditional fishing areas. D.Ct.Dkt.2077 at 5-18. And it imposed burdensome reporting requirements on the tribes. D.Ct.Dkt.2077 at 11, 15-17. The decree imposed comparatively little regulation on state fishing operations.

Among other objections to the factual and legal justifications for many of the decree's provisions, the Sault Tribe objected to the district court's authority to enter the decree. App.54a-55a; D.Ct.Dkt.2077 at 2-18. The Tribe argued that it was "not the Defendant in this matter—the State of Michigan is," and that any judicial remedy must be tied to the original purpose of the lawsuit, which "was commenced to confirm the Indian treaty right and to restrain the State from interfering with the treaty fishing rights of Sault Tribe and the other treaty tribes." D.Ct.Dkt.2077 at 2. And the Tribe argued that despite the underlying litigation to vindicate the tribes' treaty rights, "the vast majority of the restrictions and obligations" under the decree "fall on tribes." D.Ct.Dkt.2077 at 3. Any decree, the Tribe explained, "must be focused on protection and enhancement" of tribal treaty rights, *id.*—the issue that prompted the litigation. And any state regulation of fishing rights, the Tribe explained, must satisfy the rigorous *LeBlanc*

standard, under which Michigan carries the burden to establish irreparable harm by "clear and convincing evidence." D.Ct.Dkt.2077 at 2. In addition, the Tribe pointed out that unlike the prior decrees, this decree was manifestly not a "consent decree."[2]

In response, the State argued that the *LeBlanc* standard did not apply because the decree "is a negotiated agreement that directs how parties will cooperatively manage and regulate the fishery." D.Ct.Dkt.2103 at 5. And relying on legal standards applicable to consent judgments, the State argued the decree may be adopted, even over the Sault Tribe's objection, if it is "fair, adequate and reasonable." *Id.*

In August 2023, the district court approved the proposed decree and entered the "2023 Decree" over the Sault Tribe's objections. App.43a. Adopting the State's position, the court applied a standard for "consent decree[s]" and observed that the "ultimate issue [it] must decide … is whether the decree is fair, adequate, and reasonable." App.53a. "Objectors to a decree," the court held, "bear the 'heavy burden of demonstrating that the decree is unreasonable.'" *Id.* Under those standards,

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[2] The Sault Tribe also moved for a planning conference to establish a schedule for discovery and a trial on its objections. D.Ct.Dkt.2078 at 3. The Tribe highlighted issues upon which an evidentiary record could be built, including the opening of areas then closed to fishing, restrictions on use of tribal gear, improvements to data collection, and environmental protection. *Id.* The district court denied the Sault Tribe's motion, concluding that it was sufficient that the court "heard oral argument" on those objections and provided the Sault Tribe with an opportunity to introduce expert evidence on a limited number of issues. D.Ct.Dkt.2114 at 3. To "allow[] discovery" or "schedul[e] a trial," the court claimed, would be "unnecessary and … overly burdensome." *Id.*

the court overruled all the Sault Tribe's objections. App.55a.

The court acknowledged that it lacked the authority to enter a consent decree over the Sault Tribe's objection, App.56a, but it reasoned that "the Proposed Decree is not necessarily a 'consent' decree; rather, it is a judicial decree in the ordinary sense of this legal term." *Id.* Citing its "continuing jurisdiction and equitable powers to enter orders regulating the fishery," the court held that it could "modify the existing decree, or enter a new decree, over a party's objection." App.57a.

The district court also agreed with Michigan that *Leblanc*'s "rigorous … standard" was inapplicable "[b]ecause the Proposed Decree is the product of negotiation and not a unilateral regulation by the State." App.58a-59a. The district court did not attempt to square its observation that the decree was not "necessarily a 'consent' decree" with its claim that the decree "is the product of negotiation."

The court likewise overruled the Sault Tribe's objections to specific provisions, explaining that the decree placed sufficient restraints on Michigan to prevent further violation of the Tribe's treaty rights. The court concluded that because "the State does not have as many commercial fishing rights as the Tribes … there need not be as many regulations on State commercial fishing." App.61a. And the court held that other provisions of the decree burdening the Sault Tribe's treaty rights in favor of Michigan or other tribes reflected a reasonable compromise, *e.g.*, App.62a-65a, 69a-71a, 73a-75a, 81a-82a, 88a-89a; were justified by their analogue in some form to consent decrees entered decades earlier, *e.g.*, App.60a-62a, 65a-69a, 91a-92a; or were insufficiently supported

by evidence, *e.g.*, App.60a-61a, 71a-73a—even though the Sault Tribe was not permitted discovery.

The Sixth Circuit affirmed. It held that the district court had authority to enter the 2023 Decree over the Sault Tribe's objections because the "law of the case" confirmed that the court exercised "continuing jurisdiction" and had "inherent equitable power" to allocate fishing rights in the treaty waters. App.14a. Accordingly, the court of appeals held, the district court did not need to apply the traditional standards governing injunctive relief. App.22a-26a. Nor did the district court need to tailor the decree's coercive provisions to the violation of treaty rights that prompted this litigation; it was sufficient, the Sixth Circuit reasoned in reliance on precedent applicable to consent decrees, that the decree negotiated without the Sault Tribe's participation established a "system of cooperative management" over the fishery that enabled the Sault Tribe to "exercise [its] treaty rights more fully." App.30a; *see* App.35a-36a.

REASONS FOR GRANTING THE PETITION

I. THE DECISION BELOW CONFLICTS WITH THIS COURT'S DECISIONS LIMITING FEDERAL COURTS' EQUITABLE AUTHORITY

The equitable authority of federal court is neither "freewheeling," *Trump* v. *CASA, Inc.*, 145 S. Ct. 2540, 2551 (2025), nor "unlimited," *Missouri* v. *Jenkins*, 495 U.S. 33, 51 (1990). It is instead cabined by longstanding principles of equity. The decisions below defy those principles, recognized in decisions of this Court, and decide "an important federal question in a way that conflicts with relevant decisions of this Court." S. Ct. R. 10(c).

Neither the district court nor the court of appeals correctly, or even consistently, identified the nature of the judicial remedy being entered—unable to decide whether the 2023 Decree is a consent decree, an "ordinary" decree, an injunction, or something different. Building on that foundational confusion, neither court took steps to ensure that the 2023 Decree hewed to equitable limitations defined by this Court's precedents in at least two respects. First, the decisions below failed to apply the guiding principle that equitable relief must be carefully designed to address "the wrong or injury that has been established," *Salazar* v. *Buono*, 559 U.S. 700, 718 (2010) (plurality op.), and provide the injured party with "complete relief," *CASA*, 145 S. Ct. at 2556. Second, neither court applied the traditional four-factor test governing the issuance of injunctive relief, *eBay Inc.* v. *MercExchange, LLC*, 547 U.S. 388, 391 (2006), instead applying a judicially created "fifteen-factor test" to determine what was "in the best interest of the fishery [and] the [p]arties," App.39a-40a; *see* App.59a.

In those ways, the 2023 Decree represents an unlawful exercise of judicial power that only this Court can remedy. Adherence to limitations on federal courts' equitable authority is especially important here, where the district court adopted a highly prescriptive, sweeping structural injunction regulating fishing in wide swaths of the Great Lakes for nearly the next quarter century. As members of this Court have warned, structural injunctions of this type "are radically different from the injunctions traditionally issued by courts of equity," *Brown* v. *Plata*, 563 U.S. 493, 555 (2011) (Scalia J., dissenting), and "there is no early record of the exercise of [such] broad remedial powers" or "examples of continuing judicial supervision and management of governmental institutions," *Missouri* v. *Jenkins*, 515 U.S. 70, 130

(1995) (Thomas, J., concurring). Moreover, such injunctions against sovereigns implicate both "federalism and the separation of powers," warranting additional scrutiny to maintain "clear restraints on the use of the equity power." *Id.* at 131. This Court's review is thus warranted to affirm the proper limits of judicial equitable authority.

A. The Sixth Circuit's Decision Contravenes This Court's Cases Holding That Injunctive Relief Must Be Tailored To The Legal Wrong Being Remedied

At the threshold, this Court's precedents establish that "[t]he essence of a court's equity power lies in its inherent capacity to adjust remedies in a feasible and practical way to eliminate the conditions or redress the injuries caused by unlawful action." *Freeman* v. *Pitts*, 503 U.S. 467, 487 (1992). The 2023 Decree violates that first principle of equity.

Nearly half a century ago, the district court derived its authority to oversee the prospective conduct of the United States, Michigan, and the tribes from its conclusion that Michigan had violated the tribes' treaty rights to fish in the Great Lakes. The court held that the tribes—including the Sault Tribe—enjoyed a right to fish under the Treaty of 1836 that was "not limited as to species of fish, origin of fish, the purpose of use or the time or manner of taking." *United States* v. *Michigan*, 471 F. Supp. 192, 260 (W.D. Mich. 1979). Michigan, it determined, had no right to regulate Indian treaty fishing. *Id.* at 216. The 1979 Decree therefore established the contours of the tribes' treaty rights and confirmed that any efforts by Michigan to interfere with those rights were "of no force and effect." *Id.* at 281.

As explained above, the Sixth Circuit modified the 1979 Decree to permit state regulation under narrowly confined circumstances, holding that, "if Indian fishing is not likely to cause irreparable harm to fisheries within the territorial jurisdiction of the State of Michigan, the state may not regulate it." *United States* v. *Michigan*, 653 F.2d 277, 279 (6th Cir. 1981). Critically, moreover, the court explained that Michigan must show "by clear and convincing evidence that it is highly probable that irreparable harm will occur," and "[i]n the absence of such a showing, the state may not restrict Indian treaty fishing." *Id.*

In entering the 2023 Decree, the district court did not meaningfully consider whether its exercise of equitable power was calibrated to remedy the underlying legal violation. Most notably, the 2023 Decree retreats from the district court's 1979 holding that the Treaty of 1836 guaranteed to the tribes "a right to fish today wherever fish are to be found within the area of cession," irrespective of species or origin, or the purpose, time, or manner of fishing, *Michigan*, 471 F. Supp. at 280, a right that yields to state regulation only upon "clear and convincing evidence … that irreparable harm will occur," *Michigan*, 653 F.2d at 279. The court abandoned this "rigorous" *LeBlanc* standard for protecting the treaty rights it had found were violated in 1979, believing that it could order equitable relief untethered to a violation of treaty rights because Michigan's efforts to regulate the Sault Tribe's fishing were not "unilaterally impose[d]" but "negotiated" with *some* of the other parties. App.58a; *see also* App.94a.

That rationale does not withstand scrutiny. The decree is obviously not a consent decree. Instead, it bears all the hallmarks of an injunction. It restricts the Sault Tribe's treaty rights—rights the Tribe certainly did not

"negotiate[]" away. And it does so in a particularly "pernicious" manner by inviting the district court to decide what uses of the fishery are reasonable and desirable, thereby empowering the court to "play a role essentially indistinguishable from the role ordinarily played by executive officials." *Plata*, 563 U.S. at 555 (Scalia, J., dissenting). Because the decree restricts the Tribe's treaty rights over its objection, the burden was on Michigan to justify those restrictions in light of the original 1979 legal determinations that prompted the need for a decree in the first place. Ignoring those equitable limits on judicial power, the district court effectively legislated an allocation of Great Lakes fishing that does not address the violation of treaty rights that motivated the underlying litigation and the 1979 Decree.

In those ways and others, the 2023 Decree, and the decisions upholding it, clash with this Court's precedents. For example, in *Salazar* v. *Buono*, this Court reversed an injunction that had been entered in a long-running dispute over a cross built on public land. 559 U.S. at 705-706. The district court had originally found that the presence of the cross violated the Establishment Clause and prohibited its display. *Id.* at 709. After Congress passed a statute authorizing the transfer of the land at issue to a private party, the district court enjoined the statute's implementation. *Id.* at 714. A plurality of this Court explained that the district court erred because it had "made no inquiry" into whether its injunction of the land-transfer statute would remedy "the harm to which [its earlier] injunction was addressed," but instead "used an injunction granted for one reason as the basis for enjoining conduct that was alleged to be objectionable for a different reason." *Id.* at 719. Just as in *Salazar*, the district court here entered a sweeping decree without determining that such an

"exercise of the court's equitable authority [was] supported by the prior showing of illegality"—in this case, Michigan's violation of the Sault Tribe's treaty rights. *Id.* at 718.

This Court has applied the same principle in the context of modifying injunctions. In *Freeman* v. *Pitts*, this Court reviewed an appellate decision that had blocked the district court from modifying a school desegregation decree. 503 U.S. at 471. The Court confirmed that even though the school district had not demonstrated full compliance, the decree could be modified to return to the district "control over areas where judicial supervision is no longer needed." *Id.* at 492-493. That modification was appropriate because a remedy is "justifiable only insofar as it advances the ultimate objective of alleviating the initial constitutional violation." *Id.* at 489. Applied here, that means that even if the 2023 Decree were viewed as the modification rather than issuance of an injunction, the court's task was to ensure that the modification "advance[d] the ultimate objective of alleviating" the initial legal violation—Michigan's infringement on the tribes' rights under the Treaty of 1836.

And in *United States* v. *Swift & Company*, this Court reversed a district court order that had modified a decree originally entered to protect the public from predatory business practices by meat-packing companies. 286 U.S. 106, 114-116 (1932). The Court held that despite arguments changed circumstances warranted loosening the original decree's restrictions, modification could not "be made without prejudice to the interests of the classes whom this particular restraint was intended to protect." *Id.* at 117-118. Like the decree in *Swift*, the 2023 Decree diminishes the protections the district court found essential when it originally exercised its equitable power to restrain Michigan from violating the Sault

Tribe's right to fish in treaty waters. And as in *Swift*, the district court adopted a modified decree without making the required findings that the dangers posed by Michigan's treaty violations "have become attenuated to a shadow." *Id.* at 119.

The court of appeals mistakenly brushed aside these limits on equitable authority. It held that the district court's "inherent equitable power" to implement the treaty authorized the decree because, "[i]f left unregulated, tribal fishing in the Great Lakes would become an unchecked, all-against-all race to the bottom." App.35a. But equity courts do not have unbounded authority to "implement[] a regulatory framework," App.36a, to solve a perceived tragedy of the commons. As one member of this Court has warned, a federal court should not "issu[e] structural decrees entirely out of line with its constitutional mandate" while claiming to be "exercising 'equitable' powers." *Lewis* v. *Casey*, 518 U.S. 343, 365 (1996) (Thomas, J., concurring). The original exercise of judicial power in this case was based on a determination that Michigan's regulatory overreach infringed tribal treaty rights. The district court was therefore required to tailor its new decree to "eliminate the conditions or redress the injuries caused by [that] unlawful action." *Freeman*, 503 U.S. at 487. Only by subverting the district court's original finding—and declaring, remarkably, that insufficient regulation of treaty waters was "the original condition[] that offended the Tribes' federal treaty rights," App.36a—did the court of appeals affirm the decree.

B. The District Court Failed To Apply Well-Established Injunctive Relief Standards

The district court's disregard of the limits of equity is equally manifest in its failure to apply the traditional

test governing permanent injunctions. To start, the 2023 Decree obviously operates as an injunction. An injunction is "[a] court order commanding or preventing an action." *Injunction*, Black's Law Dictionary (11th ed. 2019). It is, in this Court's words, "a means by which a court tells someone what to do or not to do." *Nken* v. *Holder*, 556 U.S. 418, 428 (2009). And it thus differs from the "much milder form of relief" of a judicial declaration, which "is not ultimately coercive." *Steffel* v. *Thompson*, 415 U.S. 452, 471 (1974).

The 2023 Decree goes well beyond determining the rights and obligations of the parties. It is prescriptive, dictating in detail what the parties may and may not do. And it is decidedly coercive. By its terms, the 2023 Decree purports to "govern[] allocation, management, and regulation of State and Tribal fisheries in the 1836 Treaty Waters" until 2047, App.204a, and it restricts the Sault Tribe's treaty rights for that entire time by, among other things, prohibiting the use of traditional gear such as spears and set hooks, singling out the Tribe as the only tribe without a year-round exclusive fishing zone, and closing traditional fishing areas important to the Tribe, *see* D.Ct.Dkt.2077 at 5, 9-11.

Although the decree operates as an injunction, the district court did not cite to, much less apply, the traditional test that governs the issuance of permanent injunctive relief. *See eBay*, 547 U.S. at 391. Nor did the parties urging entry of the 2023 Decree attempt to satisfy that standard. Instead, the district court applied a judicially created fifteen-factor test—wrenched out of context from consent decree precedent, as explained below—without attempting to tie those factors to the standards governing injunctive relief. The 2023 Decree thus conflicts with this Court's precedent requiring "a plaintiff seeking a permanent injunction [to] satisfy a

four-factor test." *Id.* at 391. And it shows how the district court misconceived its role as setting fishery policy rather than judicially remedying a specific legal wrong under "well-established principles of equity" that limit Article III courts' power. *Id.*

The Sixth Circuit's own analysis of the injunction issue only underscores the need for this Court's review.[3] The court claimed that the Sault Tribe's position that the 2023 Decree operates as a "permanent injunction … is unsupported," App.24a, but it failed to explain how a coercive, prospective remedy that limits the rights of the Sault Tribe to fish in the Great Lakes could be anything other than an injunction. The 2023 Decree is plainly injunctive, as described above.

The court of appeals also wrongly justified its refusal to apply injunctive standards by invoking "the law of the case," observing that the district court since 1979 has continually "allocate[d] treaty resources, without having to apply the injunction factors." App.24a. To start, the court cited no authority for the strange notion that, in the course of a nearly 50-year litigation, a court's prior legal error in entering a remedy gives a court license to repeat that error in perpetuity. Law of the case was "crafted with the course of ordinary litigation in mind," *Arizona* v. *California*, 460 U.S. 605, 618 (1983), not a district court's decades-long superintendence of

[3] The court of appeals stated it did not "need [to] reach the merits of this issue because the Sault Tribe forfeited this argument by failing to make it before the district court," App.22a, but that is wrong. The Tribe objected to the district court's impermissible use of consent decree authority to enter a decree restricting the Tribe's treaty rights. D.Ct.Dkt.2077 at 4. In any event, this issue is properly presented because the court of appeals "overlook[ed] forfeiture," App.22a, and "passed upon" this issue when it affirmed the district court, *see United States* v. *Williams*, 504 U.S. 36, 41 (1992).

fishing rights. In any event, contrary to the Sixth Circuit's account of the case's history, the district court's previous decrees either were declaratory in nature (1979) or were entered with the effective agreement of all tribes (1985 and 2000). The 2023 Decree does not fairly resemble any of those exercises of equitable power. Finally, the law of the case doctrine merely "directs a court's discretion," *id.* at 618; it does not relieve a party of the requirement to "satisfy [the] four-factor test before a court may grant [injunctive] relief," *eBay*, 547 U.S. at 391.

The failure of the courts below to apply the proper injunctive standard was made worse by their reliance on inapt consent decree precedent. The Sixth Circuit confidently claimed that "all agree that the 2023 Decree is not a consent decree." App.13a; *but see* App.205a (2023 Decree twice referring to "this Consent Decree"). It is certainly true that the 2023 Decree is not a consent decree. If it were, it would violate the blackletter principle that "a court may not enter a consent decree that imposes obligations on a party that did not consent to the decree." *International Association of Firefighters* v. *City of Cleveland*, 478 U.S. 501, 529 (1986). Under this Court's precedents, in other words, the consent of all parties is a nonnegotiable element of a consent decree, and the Sault Tribe's consent was absent here.

This Court reached that precise conclusion last year in *Texas* v. *New Mexico*, 602 U.S. 943 (2024). That case involved a dispute between two states over shared use of the Rio Grande River—a relationship governed by a compact approved by Congress in 1939. *Id.* at 947. This Court had previously allowed the United States to intervene, recognizing that the federal government's own interests were affected by the depletion of water serving a federal irrigation system in alleged violation of the

compact. *Id.* at 951-952. Texas and New Mexico agreed to a consent decree, but the United States objected, and the special master appointed to oversee the case recommended approval of the decree anyway. *Id.* at 953. This Court held that the decree could not be approved, reasoning that a "court's approval of a consent decree between some of the parties ... cannot dispose of the valid claims of nonconsenting intervenors." *Id.* at 954.

Although the 2023 Decree is not a consent decree, both lower courts repeatedly relied on consent decree precedent. In entering the 2023 Decree, the district court repeatedly invoked the standards for reviewing consent decrees, holding that "[t]he ultimate issue … is whether the decree is fair, adequate and reasonable," and that "[o]bjectors to a decree bear 'the heavy burden of demonstrating that the decree is unreasonable.'" App.53a. The court also stated that the fifteen-factor test it used to approve the 1985 consent decree as "fair and equitable" was an application of that general reasonableness standard. App.53a-54a. The court then cited the purported reasonableness of the 2023 Decree's provisions in rejecting a number of the Sault Tribe's objections. *See, e.g.*, App.62a, 65a-66a, 82a, 88a-89a, 114a, 128a, 131a, 144a, 146a, 167a. Indeed, the court described the Tribe's "burden" as "showing that the Proposed Decree is unreasonable." App.79a. And the Sixth Circuit affirmed the district court's use of this reasonableness standard. App.10a.

The lower courts' apparent view that the 2023 Decree was somehow close enough to a consent decree to justify its approval also led them to dispense with the *LeBlanc* standard, which would have required that Michigan show clear evidence of irreparable harm to justify state regulation in treaty waters. *See Michigan*, 653 F.2d at 278-279. The district court declined to apply the

"rigorous *LeBlanc* [s]tandard" because it considered the 2023 Decree to be "the product of negotiation" rather than a "unilateral" state regulation. App.59a. But it was, of course, the product of negotiations from which the Sault Tribe was deliberately excluded, and it resulted in restrictions unilaterally imposed on the Sault Tribe without its consent. Rather than look for evidence of irreparable harm, the district court instead settled for majority rule, contravening this Court's precedents.

The lower courts' decisions impair the Sault Tribe's treaty rights for the next quarter of a century. This Court's review is needed to correct that inequitable and unlawful outcome.

II. THE QUESTION PRESENTED WARRANTS THIS COURT'S REVIEW

By failing to respect traditional limits of equitable authority, the lower courts approved a sweeping "decree" restricting the Sault Tribe's treaty rights until at least 2047, with grave harm to the Tribe and its members. The lower courts' decisions thus turn on its head the fundamental precept of Indian law that courts must interpret Indian treaties to safeguard rather than restrict the rights reserved to tribes. And they risk encouraging parties to settle resource disputes by ignoring the sovereign rights asserted by inconvenient objectors rather than reaching unanimous consent. Only this Court can prevent that injustice.

The resulting harms to the Sault Tribe and its members are significant. As explained above, the 2023 Decree interferes with Great Lakes fishing practices that are immensely important to the Sault Tribe's economy, history, and culture. *See supra* p.12. In particular, it prohibits the Sault Tribe from using traditional fishing gear such as spears and set hooks. App.60a-62a;

App.245a-250a. It singles out the Sault Tribe as the only tribe without a year-round exclusive fishing zone. App.64a-65a; App.231a-232a. And it increases the size of fishing zones belonging to other tribes. App.121a, 128a-129a; App.214a-216a, 225a-229a. The 2023 Decree also closes off an expansive range of traditional fishing areas important to the Sault Tribe. *See* App.67a-68a, 145a-151a; App.236a-241a. And it restricts the species that tribes are permitted to target for commercial fishing, putting the burden on the tribes to prove that fishing of a restricted species is commercially viable before any adjustment to the restricted list is made. App.85a-88a; App.262a-263a. In those ways and others, the 2023 Decree hollows out the Sault Tribe's treaty rights, which guarantee that "if Indian fishing is not likely to cause irreparable harm to fisheries within the territorial jurisdiction of the State of Michigan, the state may not regulate it." *Michigan*, 653 F.2d at 279.

This Court routinely grants review in cases implicating Indian tribes' treaty rights. *See, e.g.*, *Arizona* v. *Navajo Nation*, 599 U.S. 555 (2023); *McGirt* v. *Oklahoma*, 591 U.S. 894 (2020); *Washington State Department of Licensing* v. *Cougar Den, Inc.*, 586 U.S. 347 (2019); *Herrera* v. *Wyoming*, 587 U.S. 329 (2019); *Minnesota* v. *Mille Lacs Band of Chippewa Indians*, 526 U.S. 172 (1999); *Washington* v. *Washington State Commercial Passenger Fishing Vessel Association*, 443 U.S. 658 (1979); *Oregon Department of Fish & Wildlife* v. *Klamath Indian Tribe*, 472 U.S. 753 (1985); *Menominee Tribe of Indians* v. *United States*, 391 U.S. 404 (1968); *Tulee* v. *State of Washington*, 315 U.S. 681, 684-685 (1942); *United States* v. *Winans*, 198 U.S. 371 (1905). It should do so here.

Indeed, this Court has recognized the existential importance of treaty fishing rights like those at issue in this

case. More than a century ago, in *United States* v. *Winans*, the Court held that state license holders should be enjoined from blocking Yakima fishers from the Columbia River. 198 U.S. at 377. Holding that the Yakima's 1859 treaty with the United States guaranteed tribal fishing rights that could not be limited by the state licenses at issue, this Court recognized that the fishing rights at stake "were not much less necessary to the existence of the Indians than the atmosphere they breathed." *Id.* at 381. Similarly, in *Menominee Tribe of Indians* v. *United States*, this Court affirmed a judgment that Menominee members who were prosecuted for violating state hunting and fishing regulations were entitled to just compensation for the loss of their treaty rights. 391 U.S. at 407. As the Court observed, hunting and fishing were core components of the tribe's "way of life," which an 1854 treaty guaranteed to them by reserving land "to be held as Indian lands are held." *Id.* at 405-406. And in *Washington* v. *Washington State Commercial Passenger Fishing Vessel Association*, this Court underscored various tribes' "vital and unifying dependence on … fish" and its centrality to diet, culture, and trade, explaining that as fish became scarce, the tribes' "treaty right to take fish" became even more "critical." 443 U.S. at 664-665, 669.

The decisions below not only threaten the Sault Tribe's treaty rights; they also unsettle bedrock principles of this Court's Indian law jurisprudence. Indian treaties are the "supreme Law of the Land." *McGirt*, 591 U.S. at 903 (quoting U.S. Const. art. VI, cl. 2). And this Court has instructed the federal judiciary to interpret such treaties to vindicate the rights they reserved to their Indian signatories. A court's "responsibility" is "to see that the terms of the treaty are carried out, so far as possible, in accordance with the meaning they were

understood to have by the tribal representatives at the council and in a spirit which generously recognizes the full obligation of this nation to protect [their] interests." *Tulee*, 315 U.S. at 684-685.

Lower courts are not authorized to reshape Indian treaty rights in pursuit of broader equitable goals, as the lower courts did here. Just two terms ago in *Arizona* v. *Navajo Nation*, this Court vacated a decision that instructed the trial court to enter an injunction requiring the United States to provide the Navajo with an adequate water supply, purportedly because a treaty demanded it. 599 U.S. at 563-564. This Court held that the treaty "did not impose [such] a duty on the United States," and explained that "it is particularly important that federal courts not" engraft requirements onto such treaties to address contemporary resources disputes. *Id.* at 566. Courts must instead "stay in their proper constitutional lane and interpret the law (here, the treaty) according to its text and history." *Id.* at 567. In a similar vein, the Court has guarded against judicial abrogation of treaty rights, rejecting the argument that courts can find implicit elimination of treaty rights in conflicting statutory provisions because only "'clear evidence' of congressional intent" can support abrogation. *Mille Lacs*, 526 U.S. at 202; *accord Herrera*, 587 U.S. at 343-344.

Here, the district court exceeded the limited judicial power over Indian treaty rights by acting as a super-administrator of the Great Lakes fishery. The court imposed the decree over the Sault Tribe's specific objections, without a trial, without permitting discovery, and without the power or expertise to craft a policy solution to the competing demands on the shared resource. In doing so, it improperly took on "functions [that] involve a legislative or executive, rather than a judicial, power."

Jenkins, 515 U.S. at 133 (Thomas, J., concurring). But the court's perceived "failure of ordinary remedies" is not "sufficient to justify a court of equity to depart from all precedent and assume an unregulated power of administering abstract justice at the expense of well-settled principles." *Heine* v. *Board of Levee Commissioners*, 86 U.S. 655, 658 (1873). While "the courts must declare the sense of the law," "if they should be disposed to exercise WILL instead of JUDGMENT, the consequence would equally be the substitution of their pleasure to that of the legislative body." The Federalist No. 78, at 526 (Hamilton) (Cooke ed. 1961).

The Sixth Circuit's undisciplined and sweeping concept of equitable power puts sovereign governments' treaty rights and resource-sharing across the country in jeopardy. Rather than "settle their controversies by 'mutual accommodation and agreement,'" as is this Court's "preference" for resolving disputes between sovereigns, *Florida* v. *Georgia*, 585 U.S. 803, 809 (2018), parties will be encouraged to abandon fair negotiations over shared resources in favor of backroom deals and majority rule. Indeed, the Sixth Circuit signed off on the effective elimination of the procedural mechanism tribes and other sovereigns have relied on, in favor of unbounded equitable authority. In hoping to avoid a "racehorse fishery" App.35a, the court of appeals created a new kind of race: a race in which sovereigns scramble to be the first in the room, so that they can barter away one another's rights and cram down the majority's will on the unlucky minority. But the minority here is itself a sovereign tribal government with protected treaty rights that the Constitution requires courts to zealously protect, not eviscerate.

The 2023 Decree will be in place for nearly a quarter of a century—longer than any of the previous decrees.

App.164a-165a. This petition therefore presents the Court's only opportunity for a generation to protect the Sault Tribe's treaty rights. Both the harm to those rights and the Sixth Circuit's failure to adhere to the limits on judicial power carefully stewarded by this Court merits review.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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