No. 25-165

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

## REPLY BRIEF FOR PETITIONER


RYAN J. MILLS
SAULT STE. MARIE TRIBE OF CHIPPEWA INDIANS
523 Ashmun St.
Sault Ste. Marie, MI 49783

ALEX W. MILLER
WILMER CUTLER PICKERING HALE AND DORR LLP
7 World Trade Center
250 Greenwich St.
New York, NY 10007

BRITANY RILEY-SWANBECK
WILMER CUTLER PICKERING HALE AND DORR LLP
50 California St., Suite 3600
San Francisco, CA 94111

SETH P. WAXMAN
*Counsel of Record*
KELLY P. DUNBAR
KEVIN M. LAMB
WILMER CUTLER PICKERING HALE AND DORR LLP
2100 Pennsylvania Ave., NW
Washington, DC 20037
(202) 663-6000
seth.waxman@wilmerhale.com

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## INTRODUCTION

Nearly 200 years ago, the Sault Tribe's ancestors ceded much of their homeland in exchange for the federal government's promise that the Tribe would retain the right to 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). The Sixth Circuit affirmed a decree that infringes that sovereign right. To do so, it ignored this Court's precedents limiting federal courts' equitable authority and transformed a 1973 lawsuit filed by the United States to *protect* the Tribe from state regulation into a license for perpetual regulation-by-litigation. Because the decree does not remedy the legal violations giving rise to that decades-old action, the decision below cannot stand. Although the court of appeals strained to find an alternative source of authority that could salvage the decree, only the Sault Tribe's consent or application of the established four-factor test for permanent injunctions could have justified the order. Neither occurred. This Court should not permit the exercise of such boundless equitable authority, especially at the expense of sovereign treaty rights essential to the livelihood of the Sault Tribe's members.

Unable to justify the decisions below on the merits, the briefs in opposition resort to conjuring vehicle problems from a fifty-year litigation history. None warrants denying the petition.

First, the Sault Tribe properly preserved its challenge to the district court's equitable authority to enter the decree, which includes the district court's failure to treat the order as the injunction it is. The Sixth Circuit also directly addressed this argument, removing any barrier to this Court's review.

Second, the Sault Tribe is not judicially estopped from challenging the district court's authority to enter the decree. The Sixth Circuit expressly declined to pass on this question, and the doctrine is in any event inapposite: petitioner's position is consistent with those it took over 40 years ago, and the underlying facts have meaningfully (and concededly) changed, making application of estoppel against a sovereign like the Sault Tribe inappropriate.

Third, the law of the case does not make the district court's decree a permissible exercise of its equitable authority. No prior decree in this litigation involved comparable circumstances. The government's primary example involved a party's ultimately abandoned attempt to renege on a consent decree. Because that order was entered only following the consent of all parties, it decided nothing about the procedure for addressing contested decrees like this one.

The decisions below implicate important questions concerning federal courts' equitable authority and the abrogation of tribal rights, with grave, real-world consequences for the Sault Tribe, its members, and other sovereigns. Those questions are adequately preserved and squarely presented, and only this Court's intervention can protect the Sault Tribe's treaty rights. The petition should be granted.

## ARGUMENT

### I. THE DECREE IMPAIRS TRIBAL TREATY RIGHTS IN CONTRAVENTION OF THIS COURT'S PRECEDENTS

The lower courts' expansive conception of the district court's equitable authority violates this Court's longstanding instruction that courts must interpret Indian treaties to safeguard, rather than restrict, the

rights reserved to tribes. Pet.26-31. As the petition explains, the district court effectively appointed itself a tribal administrator with perpetual power to allocate treaty rights among sovereigns, then ran roughshod over the Sault Tribe's efforts to protect the fishing rights it was promised by the United States. *Id.* The result will encourage further abrogation of those rights, discouraging the cooperation that had characterized management of the Great Lakes fishery since the mid-1980s. *Id.* This Court regularly grants review in similar cases implicating tribal treaty rights, Pet.27, and should do so again here.

The government suggests that petitioner has overstated the consequences of the 2023 Decree, including by arguing that tribal treaty rights are somehow not implicated at all. SG.BIO.23-25. But the 2023 Decree will control the Sault Tribe's fishermen, legislators, and executives for the next quarter century without the Tribe's consent, on pain of further judicial coercion. It restricts (among other things) where the Sault Tribe's members can fish in their own ancestral waters, what type and quantity of fishing gear they can use, what type and quantity of fish they can harvest, and what times of year they can harvest those fish. Pet.11-15. It also requires the Tribe to provide extensive and detailed harvest and sales data to the State, including with respect to tribal subsistence fishing. *Id.* None of these restrictions existed under the treaty, and the Sault Tribe did not consent to them.

Citing this Court's decision in *Florida* v. *Georgia*, 585 U.S. 803 (2018), the respondent tribes contend that this is not unusual because courts "routinely allocate shared resources among sovereigns over the objections of one of more of them." Tribes.BIO.36. But this Court's exercise of its original jurisdiction to address disputes

between states rests on express constitutional authority and presents none of the questions created by the 2023 Decree about the scope of lower courts' inherent equitable power. The issue here, moreover, is not whether federal courts may ever "allocate shared resources among sovereigns" despite objections, but whether they must do so consistent with the limits on their equitable authority, including by satisfying the traditional test for injunctive relief. The lower courts ignored those limits, instead relying on inapposite precedent involving consent decrees. Pet.13-15.

## II. This Court's Precedents Preclude The Perpetual Equitable Authority Used To Justify The Decree

The briefs in opposition concede that equitable power "must be exercised consistent with traditional principles of equity," *eBay Inc.* v. *MercExchange*, 547 U.S. 388, 394 (2006), including that any remedy be tailored to "the wrong or injury that has been established," *Salazar* v. *Buono*, 559 U.S. 700, 718 (2010) (plurality op.). Here, however, the Sixth Circuit affirmed an equitable remedy that bears no connection to any "wrong or injury" established in the original suit, *id.*, and is inconsistent with traditional principles of equity as articulated by this Court, Pet.17-21.

Without any basis in equitable jurisdiction derived from the original suit, the decree here could only be entered through consent or as a permanent injunction. And indeed, that is how prior orders governing the tribal rights at issue proceeded. Pet.10-11. Respondents resist those limits and history, defying both this Court's longstanding precedents and the record.

### A. The Decree Exceeds The District Court's Equitable Authority Because It Does Not Right The Original Wrong

The Sixth Circuit affirmed the sprawling decree because, it held, the district court had retained "inherent equitable power" and "jurisdiction to enter regulations protecting the fishery resource" since its initial order in 1979. Pet.App.14a-15a. Pursuant to that authority, the court of appeals ruled that the district court could create and maintain a comprehensive regulatory framework, subject only to application of an amorphous fifteen-factor balancing test that includes considerations like "[p]reservation and conservation of the resource," "reduction of social conflict," "access," "stability of the fishery," and "management and marketing concerns." Pet.App.39a-40a, 54a. The Sixth Circuit identified no temporal limit to such authority; so long as the district court sought "to ensure that the Tribes' treaty rights to a scarce natural resource would remain protected," it could continue to regulate six sovereigns and their citizens. Pet.App.37a.

An equitable decree, however, must be "tailored to the original condition that [the court's] initial exercise of equitable power was aimed at addressing." Tribes.BIO.21-22; SG.BIO.15. The issuing court must determine that the ongoing exercise of its authority is supported by the "prior showing of illegality" rather than addressing conduct that is "objectionable for a different reason." *Salazar*, 559 U.S. at 718-719. The question is whether the new remedy "advances the ultimate objective of alleviating the initial … violation." *Freeman* v. *Pitts*, 503 U.S. 467, 489 (1992). That is especially so where, as here, the remedy imposes "prejudice to the interests" of the parties the injunction is "intended to

protect"—namely, limits on tribal treaty rights. *See United States* v. *Swift & Company*, 286 U.S. 106, 117-118 (1932).

Respondents do not dispute that the district court "made no inquiry" into whether the 2023 Decree was appropriately tailored, Pet.19 (quoting *Salazar*, 559 U.S. at 719). Instead, like the Sixth Circuit, they embrace an expansive "original condition" that bears no resemblance to the United States' 1973 suit. Tribes.BIO.21-22 (citing Pet.App.30a-31a); SG.BIO.15. The United States' 1973 complaint sought to remedy the chilling effect that Michigan's threats of arrest and prosecution for violations of state fishing laws had on tribal members' exercise of their treaty rights. C.A.App.A6-A11. It had nothing to do with allocating fishing rights among tribes or preventing a "racehorse fishery," the subjects of the 2023 Decree. SG.BIO.18. Such questions arose only years later in the context of a series of subsequent consent decrees. C.A.App.A61-A62.

The government responds by wrongly asserting (SG.BIO.15-16) that the 2023 Decree relies on a conception of ongoing equitable authority this Court approved in *Washington* v. *Washington State Commercial Passenger Fishing Vessel Association*, 443 U.S. 658 (1979). But neither the district court nor the Sixth Circuit relied on that case in adopting the 2023 Decree, for good reason: *Fishing Vessel* concerned a treaty that gave tribes "'[t]he right of taking fish … *in common with all citizens of the Territory*,'" and thus required ongoing apportionment to ensure the tribes did not "frustrat[e] the treaty right of 'all other citizens of the Territory,'" 443 U.S. at 674, 686 (emphasis added). The treaty here has no similar language creating an ongoing need for allocation because the tribes' "rights to fish in the Great Lakes [are] not shared with non-Indians through treaty provision."

*Michigan*, 471 F. Supp. at 270. And even setting that distinction aside, *Fishing Vessel* cannot rewrite or expand the legal violation underlying the United States' 1973 lawsuit—*Michigan's* interference with tribal rights, which bears no connection to the sweep of the 2023 Decree.

Respondents also fail to address this Court's precedent in *Arizona* v. *Navajo Nation*, 599 U.S. 555 (2023), which involved similar considerations. *See* Pet.29 (discussing *Navajo Nation*). There, the Court cautioned that it is "not the Judiciary's role" in interpreting treaty provisions to engraft requirements onto treaties to address contemporary resource disputes that may impact treaty rights. 599 U.S. at 566. Yet that is precisely what respondents endorse by bootstrapping ongoing regulatory authority over an evolving fishery to a lawsuit filed more than fifty years ago to enjoin state interference with specified treaty rights.

### B. The District Court's Exercise Of Equitable Jurisdiction Was Not Grounded In Any Alternative Authority

Without a connection to the original lawsuit, the district court could only have exercised its equitable authority through a consent decree or permanent injunction. Pet.21-26. Indeed, prior to the 2023 Decree, the district court's orders were limited to circumstances where the parties consented to the decree, *see* Pet.6-11, or the court satisfied itself that a party would suffer irreparable harm absent an injunction, *e.g.*, *United States* v. *Michigan*, 534 F. Supp. 668, 669 (W.D. Mich. 1982) ("The Tribes seek an affirmative injunction making effective certain regulations proposed by the Chippewa-Ottawa Treaty Fishery Management Authority."). The structure of the prior decrees is also consistent with the

need to identify authority beyond generic, ongoing jurisdiction to address changed conditions in the fishery—each contained an expiration date, belying the notion that the parties expected the district court to maintain plenary jurisdiction on the basis of the original suit or earlier orders alone. Pet.8-11.

The government claims (SG.BIO.19) the Sault Tribe forfeited its argument that the district court erred by not applying the test for a permanent injunction, but the Tribe's objections to the decree adequately preserved the argument. Pet.23 & n.3. In particular, the Tribe objected that the decree improperly "purports to bind and significantly restrict and limit the Sault Tribe treaty rights," Pet.App.56a, as with a permanent injunction. The Tribe also argued that the decree was improper absent a full trial with findings of fact and conclusions of law that found irreparable harm. Pet.App.26a-28a, 57a-58a. Substance—not form—should control, and the Tribe's objections put the district court on notice of its need to adhere to limits on courts' exercise of coercive power, including injunctions. Regardless, this issue is properly presented because the court of appeals "overlook[ed] forfeiture," Pet.App.22a, and "passed upon" this issue in affirming the 2023 Decree, *United States* v. *Williams*, 504 U.S. 36, 41 (1992).

Similarly, the government is wrong that the lower courts' failure to apply the test for permanent injunctive relief presents mere error correction. SG.BIO.20. That failure is illustrative of the broader point that the 2023 Decree countermands this Court's precedents establishing the limits on courts' equitable authority—an important question that warrants this Court's review. Pet.26-31.

## III. Litigation History Does Not Weigh Against Review

With little to say in defense of the 2023 Decree's exercise of authority, respondents and the Sixth Circuit claim that the Sault Tribe is barred from objecting based on its support for a 1985 Decree over an objection by the Bay Mills Indian Community. Pet.App.26a n.11; SG.BIO.21; Tribes.BIO.33. That misrepresents both the history of the 1985 Decree and the applicable law.

1. Respondents invoke judicial estoppel. SG.BIO.21-23; Tribes.BIO.33-34. The Sixth Circuit did not adopt that ground, and it would be patently inappropriate here for several reasons.

To start, the Sault Tribe's arguments are not "clearly inconsistent" with its position in 1985, *New Hampshire* v. *Maine*, 532 U.S. 742, 750 (2001), because there are material differences between the proceedings leading to the 1985 and 2023 Decrees. In negotiating the 1985 Decree, Bay Mills moved for entry of a consent order reflecting the parties' agreement, which the court entered. C.A.App.A82. Only *after* entry of the consent decree did Bay Mills object. *Id.* The district court held a hearing on the legality of that belated attempt to reject the consent decree. And as the respondent tribes recognize, Tribes.BIO.36, Bay Mills ultimately acquiesced. The district court then entered the decree as a "Consent Order" to which "the parties and litigating amici agree[d]." C.A.App.A91.

The Sault Tribe's position that Bay Mills should be held to its agreement in no way contradicts its position that the 2023 Decree contravenes this Court's limits on the exercise of ongoing equitable authority and coercive injunctive relief. Unlike Bay Mills in 1985, the Sault Tribe never agreed to the proposed decree, did not move

for entry of the decree, and never consented to be bound by it. Given the obvious differences, there is no credible claim that the Sault Tribe "misled" the court or has somehow sought "an unfair advantage." *New Hampshire*, 532 U.S. at 750.

Even if the Sault Tribe had changed positions, however, changed circumstances would be ample justification. As the respondent tribes concede, "[w]hen the parties negotiated the 1985 and 2000 Decrees, they did so … in the context of a relatively healthy fishery," but "[b]y the time they negotiated the 2023 Decree, they faced a fishery in crisis." Tribes.BIO.11. Even respondents' principal authority (SG.BIO.21-23; Tribes.BIO.34-35) recognizes that "broad interests of public policy may make it important to allow a change of positions that might seem inappropriate as a matter of merely private interests." *New Hampshire*, 532 U.S. at 755 (quoting 18 Wright et al., *Federal Practice and Procedure* § 4477 (1981)).

In any event, binding a sovereign to a litigation position adopted over four decades ago under different circumstances clearly conflicts with this Court's teachings. Indeed, this Court has recognized that governments "may not be estopped on the same terms as any other litigant" and there are "substantial" arguments in favor of "a flat rule that estoppel may not in any circumstances run against the Government." *Heckler* v. *Community Health Services*, 467 U.S. 51, 60 (1984).

2. The Sixth Circuit's and respondents' reliance on law of the case fails for similar reasons. Contrary to the government's assertions, SG.BIO.21, Bay Mills asked the court to enter and ultimately consented to the 1985 Decree. The parties agree that a different standard governs consent decrees and that the 2023 Decree is not one.

The 1985 Decree thus did not include a decision "upon a rule of law … govern[ing] the same issues." *Arizona* v. *California*, 460 U.S. 605, 618 (1983). And even if the 1985 Decree had been based on the same kind of equitable authority the district court invoked in 2023, respondents identify no example of law of the case being used to hold a party to a prior determination that was reversible legal error. Law of the case therefore cannot preclude the Sault Tribe's objections to the 2023 Decree.

3. Forfeiture, waiver, and estoppel—though all inapplicable for the reasons explained—would also be particularly poor reasons to deny the petition given the jurisdictional character of the lower courts' errors. As this Court explained just last term, "[t]he Judiciary Act of 1789 endowed federal courts with jurisdiction over 'all suits ... in equity,' § 11, 1 Stat. 78, and still today, this statute 'is what authorizes the federal courts to issue equitable remedies.'" *Trump* v. *CASA, Inc.*, 606 U.S. 831, 841 (2025) (ellipsis in original). That jurisdiction is limited to what is provided by the Act because "the federal courts [have] no power that they would not have had … when courts were given 'cognizance,' by the first Judiciary Act, of equity." *Guaranty Trust Company* v. *York*, 326 U.S. 99, 105 (1945). Even if the Sault Tribe had committed any foot fault over the more than half-century course of this litigation, that should not insulate jurisdictional defects in the lower courts' exercise of ongoing equitable power from this Court's review.

## CONCLUSION

The Court should grant the petition.

Respectfully submitted.

RYAN J. MILLS
SAULT STE. MARIE TRIBE
OF CHIPPEWA INDIANS
523 Ashmun St.
Sault Ste. Marie, MI 49783

ALEX W. MILLER
WILMER CUTLER PICKERING
HALE AND DORR LLP
7 World Trade Center
250 Greenwich St.
New York, NY 10007

BRITANY RILEY-SWANBECK
WILMER CUTLER PICKERING
HALE AND DORR LLP
50 California St., Suite 3600
San Francisco, CA 94111

SETH P. WAXMAN
*Counsel of Record*
KELLY P. DUNBAR
KEVIN M. LAMB
WILMER CUTLER PICKERING
HALE AND DORR LLP
2100 Pennsylvania Ave., NW
Washington, DC 20037
(202) 663-6000
seth.waxman@wilmerhale.com

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