No. 14-538

In The Supreme Court of the United States

STOCKBRIDGE-MUNSEE COMMUNITY,

Petitioner,

v.

STATE OF NEW YORK, *et al.*,

Respondents.

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

REPLY BRIEF FOR PETITIONER

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REPLY BRIEF FOR PETITIONER

In *Petrella v. Metro-Goldwyn-Mayer, Inc.*, 134 S.Ct. 1962 (2014) (*Petrella*), this Court unequivocally ruled that courts may not override Congress' judgment and apply laches to dismiss legal damages claims brought within the time allowed by a federal statute of limitations. While threshold dismissal of all claims is error, courts may, in extraordinary circumstances, bar at the outset equitable relief that would work an unjust hardship on innocent third parties.

The court below ignored Congress' will and dismissed Stockbridge's damages claims brought within the applicable federal statute of limitations. It relied on the *Cayuga* doctrine, which holds that "possessory land claims, are subject to equitable defenses, including laches . . . even when such claims are 'legally viable and within the statute of limitations,' when the relief sought is limited to monetary damages, and when the disruptive claims sound at law rather than in equity." *Oneida Indian Nation of N.Y. v. County of Oneida*, 617 F.3d 114, 126 (2d Cir. 2010) (*Oneida 2010*) (quoting *Cayuga Indian Nation of N.Y. v. Pataki*, 413 F.3d 266 (2d Cir. 2005) (*Cayuga*)) (citations omitted). Attempting to avoid *Petrella*, the court below took the *Cayuga* doctrine a step further, expanding the conflict with this Court's precedents to include the ruling that Congress has not enacted a statute of limitations for Indian land claims. App.7–8.

In addition to the conflict between the decision below and *Petrella*, review is warranted by conflicts

with this Court's earlier decisions in *Oneida County v. Oneida Indian Nation of N.Y.*, 470 U.S. 226 (1985) (*Oneida II*) and *City of Sherrill v. Oneida Indian Nation of N.Y.*, 544 U.S. 197 (2005) (*Sherrill*). The ruling below contradicts *Oneida II*'s holding that Indian tribes may have a live cause of action for violations of possessory rights that occurred 175 years ago. That subversion, in turn, is supposedly justified by this Court's disruptiveness analysis in *Sherrill*. But *Sherrill* plainly did not contemplate once and for all closing the federal courts to Indian land claims. Instead, *Sherrill* stands for the proposition that these are "grave, but ancient, wrongs, and the relief available must be commensurate with that historical reality." *Id.* at 216, n.11.

Petrella's extraordinary-circumstances exception, by permitting threshold dismissal of inequitable remedies, fully accommodates the court of appeals' disruptiveness concerns. Unlike the *Cayuga* doctrine, it does so in a manner fully consistent with the fundamental rule of federal equity practice that legal claims brought within a congressional limitations period may not be barred in their entirety by equitable doctrines. In the wake of *Petrella*, therefore, there can be absolutely no justification for the lower court's persistent disregard of this Court's precedents.

A. Respondents cannot avoid the conflict between *Petrella* and the decision below—and the consequent need for this Court's review—by misconstruing the applicable federal statute of limitations.

The state respondents' insistence that Congress has not imposed a limitation period for Indian land claims (Opp.22–24) highlights the direct conflict between the decision below and *Petrella*. The holding in *Petrella* was premised, in part, on this Court's expressed understanding that *Oneida II* had previously determined that Congress imposed a statute of limitations on Indian land claims. *See* 134 S.Ct. 1973–74; Pet.16–17.[1]

In *Oneida II*, this Court recognized that the Indian Claims Limitations Act of 1982 (ICLA) "imposed a statute of limitations on certain tort and contract claims for damages brought by . . . tribes . . . [and] established a system for the final resolution of pre-1966 claims cognizable under §§ 2415(a) and (b)." 470 U.S. 242–43. The limitations period for this action is set forth in 28 U.S.C. § 2415(b), covering "action[s] to recover damages" for "trespass" to tribal

[1] The *Petrella* dissent likewise understood that Congress had enacted a limitations statute for Indian claims. See 134 S.Ct. at 1984 ("[T]here is no reason to believe that the Court meant any of its statements in . . . *Oneida* [*II*] to announce a general rule about the availability of laches in actions for legal relief, *whenever Congress provides a statute of limitations*.") (emphasis added).

lands. It provides that claims on the published ICLA lists shall be barred unless filed within one year after the Secretary's rejection of the claim or three years after the Secretary has submitted a claim-resolution proposal to Congress. Until the Secretary acts, listed claims are preserved. App.26. As the petition demonstrates at 22–24, Stockbridge's claims were timely filed under § 2415(b).[2]

The state respondents nonetheless argue that Stockbridge's damages claims cannot fall under § 2415(b). Instead, they assert that, because damages remedies are dependent upon establishing title and possessory rights, they must fall under § 2415(c), which excludes title or possessory actions from the statute's limitations periods. Therefore, all claims

[2] For purposes of equitable analysis, the differences between the Copyright Act's fixed 3-year period and ICLA's contingent time periods are more illusory than real and do not diminish the conflict between the decision below and *Petrella*. As Justice Breyer observed, "[t]he 3-year limitations period . . . may seem brief, but it is not." *Id.* at 1979 (Breyer, J., dissenting). The Copyright Act's 3-year period is only part of the story—"Congress provided two controlling time prescriptions: the copyright term which endures for decades and may pass from one generation to another," 134 S.Ct. at 1970, and the 3-year period, which is attended by the separate-accrual rule. Justice Breyer envisioned cases where the Copyright Act's limitations scheme could allow delays of up to 50 or 60 years after accrual. *Id.* at 1980–81. These time limits would not seem to provide much more (if any) certainty than the limitations period provided in 28 U.S.C. § 2415(b), which, like the Copyright Act's limitations scheme, is the product of Congress' considered judgment over a long period. See 134 S.Ct. 1978–80.

must be barred regardless of the remedy sought. Opp.22. But respondents are wrong and their argument brings the conflict with *Petrella*, *Sherrill* and *Oneida II* into sharp relief. *Petrella* relied on *Oneida II*, where the claim upheld was "a common-law right of action for unlawful possession." 470 U.S. at 233. The result in *Sherrill* turned on the fact that in *Oneida II*, the right to sue was based wholly on the "alleg[ation] that the cession of 100,000 acres to New York State in 1795 violated the Nonintercourse Act and thus did not terminate the Oneidas' *right to possession*." 544 U.S. 208 (internal reference omitted) (emphasis added). Thus, *Sherrill* would not disturb *Oneida II*'s holding that damages are a proper remedy "for the Tribe's ancient dispossession." 544 U.S. at 221. Here, the court of appeals held precisely the opposite—that *Sherrill* precluded Stockbridge's damages remedy flowing from its claim of a right to possession because "'disruptiveness is inherent to the claim itself . . . rather than an element of any particular remedy which would flow from [a] possessory land claim.'" App.6 (quoting *Cayuga*, 413 F.3d at 275). The lower court's blatant failure to distinguish between legal claims and equitable remedies cannot be reconciled with this Court's decision in *Petrella*. *See* Pet.18–19.

Like Congress, this Court recognized in *Oneida Indian Nation of N.Y. v. Oneida County*, 414 U.S. 661 (1974) (*Oneida I*), *Oneida II* and *Sherrill*, *see* Pet.26–28, that land claims such as this are ejectment actions. An ejectment action encompasses both

possessory claims and damages claims—its elements are: a) plaintiff is entitled to, but out of, possession; b) defendant is in possession; and, c) plaintiff claims damages because of the wrongful possession. Ejectment actions must therefore be filed within the limitations period prescribed by 28 U.S.C. § 2415(b) lest the damages claims be barred.[3] While ejectment actions customarily seek the remedies of restoration of possession and damages, current possession is not an element of the cause of action. Thus, the right to pursue an ejectment-damages claim cannot, as the *Cayuga* doctrine erroneously mandates, be dependent upon the availability of a possessory remedy.

[3] Respondents' mistaken assertion that damages claims are dependent upon, and therefore inseparable from, title or possessory claims, Opp.21–22, improperly assumes that an action must be either a § 2415(b) tort suit or a § 2415(c) title suit. Congress understood, however, that damages claims for trespass to tribal lands and claims of title or possession could well be the subjects of a single action. Thus, § 2415 "does not limit the time for bringing an action to establish the title or possessory right to real or personal property but any claims for monetary relief arising from these actions must be filed before the deadline." S. Rep. No. 95-236 at 1–2 (1977). See Pet.25. Moreover, § 2415(c) was not intended to address claims such as this. It was enacted in 1966 to "make it clear that no one can acquire title to Government property by adverse possession or other means." S. Rep. No. 89-1328 at 3 (1966). To address the difficulties presented by old Indian claims, Congress amended §§ 2415(a) and (b), leaving § 2415(c) unchanged. See Pet.22–24 and n.13 and App.25–31.

B. Review should not be denied on the basis of issues not set out in the petition and not addressed below.

Apparently recognizing that the decision below does contravene *Petrella*, respondents attempt to avoid review by pressing the Court to consider questions not set out in the petition or addressed below. This Court's prudential rule states, however, that "[o]nly the questions set out in the petition, or fairly included therein, will be considered by the Court." Supreme Court Rule 14.1(a). Thus, "[i]t is the petition for certiorari (not the brief in opposition and later briefs) that determines the questions presented."[4] *Bray v. Alexandria Women's Health Clinic*, 506 U.S. 263, 280–81 (1993).

This case is ideally postured to permit full review of the question presented: all respondents obtained dismissal based on the *Cayuga* doctrine and the court below addressed no other issues. The question is not abstract.[5] It is independently important regardless of

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[4] For this reason, the State respondents' attempt to airbrush *Petrella* out and re-frame the question presented as one identical to the questions presented in the pre-*Petrella* land-claim petitions is improper. See *id.* at 266 (respondents may not expand the questions presented).

[5] Even if respondents were correct (they are not) in their assertion that this case will ultimately be dismissed on other grounds, *DTD Enters. v. Wells*, 558 U.S. 964 (2009), does not support their claim that review should be denied because the question is abstract. Opp.25. In *DTD*, denial was justified because a procedural obstacle unrelated to the question presented

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whether Stockbridge ultimately prevails on the merits. As in *Oneida I*, 414 U.S. at 675, "[t]he claim may fail at a later stage for a variety of reasons," but *Petrella* establishes that that cannot justify summary dismissal at the litigation's outset to foreclose the possibility of any form of relief. *See Petrella*, 134 S.Ct. at 1978 ("Should Petrella ultimately prevail on the merits, the District Court . . . may take account of her delay in commencing suit.").

This case was dismissed on Rule 12(b) motions before disposition on any claims or defenses. The court of appeals did not address the district court's rulings on the Eleventh Amendment and tribal immunity, and this Court should decline respondents' invitation to deny review based on issues not ruled on below. *Cf. Oneida II*, 470 U.S. at 245 ("the Court of Appeals did not rule on this [laches] claim, and we likewise decline to do so."). These questions are not set out in the petition, are not fairly included therein and do not need to be addressed in order to consider the question.[6]

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and not addressed by the lower courts would have complicated or precluded the Court's consideration of the question presented. That is not the case here—the question is cleanly presented by the decision below.

[6] Because no court has considered Stockbridge's claims on the merits, this Court should disregard OIN's arguments (OIN Opp.2–6, 16–22) that this case is an unsuitable vehicle because OIN will ultimately prevail on the merits. OIN's opposition does not directly address the question presented. Instead, in circumstances where the limitations of certiorari practice preclude any

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Neither is it certain that, if this case were to proceed, the district court's dismissals based on the bars imposed by the Eleventh Amendment and tribal sovereign immunity would be upheld. Respondents' assumption that the Eleventh Amendment will compel dismissal of the claims against them (Opp.25–27) is mistaken because state and local sovereignty interests are not challenged by Stockbridge's claims. *Oneida II* and *Sherrill* together establish that Indian title and tribal sovereign authority are severable. Thus, as to the lands of the 1788 and 1794 treaties—the very treaties under which Stockbridge claims—Indian title may survive (at least insofar as it supports non-disruptive remedies), even though tribal governmental authority has been extinguished by two centuries of non-Indian occupancy and development. In light of *Sherrill*, Stockbridge has waived any claim of the right to exercise governmental jurisdiction over the entire 36-square-mile tract.[7]

Respondents' argument that the Eleventh Amendment would compel dismissal on remand because

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proportional response, it takes the opportunity to argue in lengthy detail issues neither set out in the petition nor heretofore addressed by any court.

[7] *Idaho v. Coeur D'Alene Tribe*, 521 U.S. 261 (1997), would not compel dismissal. Unlike this case, it sought to divest the state of all regulatory power over important state lands, implicating the state's sovereignty interests. See 521 U.S. at 296–97. Because state sovereignty interests are not implicated here, this cannot be said to be a suit against the state, *id.*, and the exception of *Ex parte Young*, 209 U.S. 123 (1908), is therefore available.

state sovereignty interests are implicated (Opp.26) is further compromised by admissions made to this Court as recently as two years ago. In their certiorari petition in *Madison County v. Oneida Indian Nation*, No. 12-604, 134 S.Ct. 1582 (Mar. 26, 2014) (dismissing petition), petitioners Madison and Oneida Counties asserted repeatedly that *Sherrill* completely severed the customary link between Indian title and sovereign-governmental authority on the 1788 treaty lands. Review was warranted, they argued, because *Sherrill* declared "that the OIN cannot exercise sovereignty '*in whole or in part*' [over] its former reservation . . . [and] recognized that those lands lack an essential characteristic of an existing reservation—the ability of the tribe to exercise jurisdiction over it." Counties' Pet.16–17 (emphasis in original). Thus, "all such lands within the 'not disestablished reservation' are indistinguishable from all other fee lands in the Counties and are equally subject to state and local taxation and regulation." *Id.* at 17, n.9. Similarly, the state acknowledged that *Sherrill* held that OIN "cannot exercise governmental authority," N.Y. Amicus Br. at 1, and that "the State retains its long-established tax and regulatory jurisdiction over the lands within the boundaries of the ancient reservation."[8] *Id.* at 9.

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[8] Respondents' confidence that Stockbridge's claims against OIN would be dismissed on tribal sovereign immunity grounds is similarly misplaced. Rather than intervene for the limited purpose of asserting its immunity and seeking dismissal under

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The Court should disregard OIN's argument that the United States' absence renders this case a poor-review vehicle because the most-equitable land-claim remedy, money damages against the State, cannot be pursued here. OIN Opp.1–2; 13–14. This action was dismissed before any consideration on the merits, and the United States' absence at this early stage is not necessarily indicative of the litigation's final contours. Should it be determined that the *Cayuga* doctrine is not a bar, the United States might well choose to intervene if its participation became necessary either to prevent the state's dismissal or ensure a more equitable resolution.[9] For example, the United States might assert its own sovereign rights arising out of violations of the Nonintercourse Act, 25 U.S.C. § 177,

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Rule 19, OIN intervened as a defendant "for all purposes" expressly to defend on the strength of its competing claim of possessory Indian title. Thereafter, OIN purchased more than 3,700 acres that were subject to this action. OIN thus waived its immunity and rendered itself vulnerable to a complete adjudication of the Indian title issue. Moreover, even if it should be determined that this suit is barred by tribal immunity, Stockbridge "could bring suit against tribal officials or employees (rather than the Tribe itself). . . . As this Court has stated before, analogizing to *Ex parte Young*, tribal immunity does not bar such a suit for injunctive relief against individuals, including tribal officers, responsible for unlawful conduct." *Michigan v. Bay Mills Indian Cmty.*, 134 S.Ct. 2024, 2035 (2014).

[9] The United States did not intervene in the Oneida land claim until 24 years after it was filed and did not intervene in the Cayuga land claim until 12 years after filing. See Dkt.No.48 in *Oneida 2010* (No.74-CV-187, NDNY) (3-20-1998) and Dkt.No.340 in *Cayuga* (No.80-CV-930, NDNY) (11-6-1992).

leaving it to the courts to decide which tribe is the proper tribal claimant.

Nor is this a less-suitable vehicle for review because the Mohawk land-claim case remains pending. OIN Opp.12. All parties in the Mohawk case have signed a settlement agreement.[10] Thus, there is no assurance that it would afford an opportunity to review the *Cayuga* doctrine, or, if it did, that the issue would be presented in as ideal a posture. Here, the issue is ripe and cleanly presented. There is no reason to wait for further conflicts to develop. As the petition shows, the decision below has resulted in a lower court's modification of an entire area of the law in direct conflict with this Court's decisions in *Petrella*, *Sherrill* and *Oneida II*. Now is the time for this Court to exercise its supervisory powers to correct the court of appeals' persistent disregard of this Court's decisions.

[10] Available at http://www.srmt-nsn.gov/news/detail/tribe_maintains_negotiation_of_land_claim_settlement_preferable. Last visited on 2-6-2015.

CONCLUSION

For the foregoing reasons and those stated in the petition, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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